

**AGREEMENT FOR LANDSCAPING MAINTENANCE SERVICES FOR CIVIC GROUNDS AND
SMALL PARKS
BETWEEN THE CITY OF SAN JOSÉ
AND
BAYSCAPE MANAGEMENT, INC.**

This Agreement is entered into as of the City’s execution date (“Effective Date”) between the City of San José, a municipal corporation (“City”), and Bayscape Management, Inc., a California Corporation registered to conduct business in the State of California, (hereinafter “Contractor”). Each of City and Contractor are sometimes hereinafter referred to as a “Party” and collectively as the “Parties”.

RECITALS

WHEREAS, City has issued a Request for Proposal ("RFP") RFP 17-18-06 for Landscaping Maintenance Services for Civic Grounds and Small Parks; and

WHEREAS, Contractor has the necessary expertise and skill to perform such services and Contractor's proposal can best meet City's needs; and

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1 AGREEMENT DOCUMENTS

The documents forming the entire Agreement between City and Contractor shall consist of this Agreement including:

- Exhibit A – Scope of Services
 - Exhibit A-1, Civic Grounds and Small Parks Sites & Locations
- Exhibit B – Compensation and Payment Schedule
- Exhibit C – Insurance Requirements
- Exhibit D – Labor Compliance Addendum
 - Exhibit D-1, Wage Requirements and Required Wage Submittal Documents
- Exhibit E – Change Order Form
- Exhibit F – Notice of Option to Extend Agreement

In the event any discrepancies or inconsistencies between the provisions of this Agreement and any of the above-referenced documents arise, the provisions of this Agreement will prevail. The provisions in the Exhibits shall prevail over conflicting terms in any Attachments to the Exhibits. Contractor and City hereby acknowledge that they have drafted and negotiated the Agreement jointly and that the Agreement will be construed neither against nor in favor of either, but rather in accordance with its fair meaning

This Agreement and the Exhibits set forth above, contain all of the agreements, representations and understandings of the parties hereto, and supersede and replace any previous

understandings, commitments, or agreements, whether oral or written.

2 SCOPE OF SERVICES

2.1 Scope of Work

Contractor shall perform those services set forth in the Scope of Services in the attached Exhibits A hereto and incorporated as through fully set forth herein (the "Scope of Services").

2.2 Equipment

Any additional equipment, parts, or services required for final acceptance as detailed in Scope of Services but not reflected in the Contractor's proposal such pricing shall be the sole responsibility of the Contractor and at no cost to the City.

2.3 Notification

Contractor agrees to notify City promptly of any factor, occurrence, or event coming to its attention that may affect Contractor's ability to meet the requirements of the Agreement, or that is likely to cause any material delay in completion of the projects contemplated by this Agreement. Such notice shall be given in the event of any loss or reassignment of key employees, threat of strike, or major equipment failure.

3 TERM OF AGREEMENT

3.1 Term

The term of this Agreement is from *January 24, 2018* to *January 23, 2019* ("Initial Term"), inclusive, subject to the provisions of Section 10 and subsection 3.2.

3.2 Options to Extend

City has the right to extend the term of this Agreement for five (5) additional one-year periods ("Option Periods"), based upon the same conditions of the Initial Term, as set forth in Exhibit B. City shall provide Contractor prior written notice in the form of Exhibit F of its intention to exercise its option prior to the end of the then current term.

3.3 Annual Appropriations of Funds

City's funding of this Agreement shall be on a fiscal year basis (July 1 to June 30) and is subject to annual appropriations. Contractor acknowledges that City, a municipal corporation, is precluded by the California State Constitution and other laws from entering into obligations that financially bind future governing bodies, and that, therefore, nothing in this Agreement shall constitute an obligation of future legislative bodies of the City to appropriate funds for purposes of this Agreement. Accordingly, the Parties agree that the Initial Term and any Option Periods are contingent upon the appropriation of funds by the City. This Agreement will terminate immediately if funds necessary to continue the Agreement are not appropriated. Despite the foregoing, the City shall pay Contractor for any Services performed in accordance with this Agreement up to the date of termination.

4 COMPENSATION

4.1 *Contract Price*

The total contract price in U.S. dollars shall not exceed EIGHT HUNDRED THIRTY-FIVE THOUSAND DOLLARS (\$835,000) during the Initial Term ("Maximum Compensation"). The terms, rate and schedule of payment are set forth in the attached Exhibit B, entitled "Compensation and Payment Schedule are incorporated herein. City will make payments to Contractor within thirty (30) days after the date of approval of each invoice. City will make payments when due in the form of a check, cashier's check, or wire transfer drawn on a U.S. financial institution.

5 STANDARDS OF SERVICE

In connection with the performance of any Services pursuant to this Agreement:

5.1 *Number of Employees*

Contractor warrants it will provide sufficient employees to complete the Services ordered within the applicable time frames established pursuant to this Agreement. Furthermore, Contractor shall, at its expense, supply all tools, equipment and other materials necessary to perform the Services contemplated in this Agreement.

5.2 *Skill of Employees*

Contractor warrants that employees shall have sufficient skill, knowledge, and training to perform Services and that the Services shall be performed in a professional and workmanlike manner.

5.3 *Duty of Confidentiality*

All data, documents, discussions or other information developed or received by or for one Party in performance of this Agreement are confidential and must not be disclosed to any person except as authorized by the other Party, or as required by law. The receiving Party warrants that all employees utilized by it in performing Services are under a written obligation to the receiving Party requiring the employee to maintain the confidentiality of information of the other Party to the extent permitted by law.

5.4 *Security and Safety*

Contractor shall require employees providing Services at a City location to comply with applicable City security and safety regulations and policies. City may require each employee providing Services to undergo a background investigation, including, but not limited to a criminal records and fingerprint check. Contractor shall promptly replace any employee found to be unacceptable to City, in its sole discretion, on the basis of a significant infraction found in the background investigation.

5.5 *Contractor's obligations to employees*

Contractor shall provide for and pay the compensation of its employees and shall pay all taxes, contributions, and benefits (such as, but not limited to, workers' compensation benefits) which an employer is required to pay relating to the employment of employees. City shall not be liable to Contractor or to any employee for Contractor's failure to perform its compensation, benefit, or tax obligations. Contractor shall indemnify, defend and hold City harmless from and against all such taxes, contributions and benefits and will comply

with all associated governmental regulations, including the filing of all necessary reports and returns.

5.6 Replacement of Employees

During the course of performance of Services, City may request replacement of an employee or a proposed employee, provided that there is reasonable cause. In such event, Contractor shall, within five (5) working days of receipt of such request from City, provide a substitute employee of sufficient skill, knowledge, and training to perform the applicable Services. If, within the first thirty (30) days after an employee's commencement of Services, City notifies Contractor (1) such employee's level of performance is unacceptable, (2) such employee has failed to perform as required, or (3) such employee, in City's sole opinion, lacks the skill, knowledge or training to perform at the required level, then Contractor will be required to review the work performed by said employee, confirm the quality of work, and correct any items the Contractor deems incorrect. If City requests replacement of an employee for the above-referenced reasons after such thirty (30) day time period, or at any time for a reason other than the reasons indicated above. City shall not be required to pay for, and shall be entitled to a refund of, any sums paid to Contractor for such employee's Services after the date of City's requested replacement of such employee.

6 CHANGE ORDER PROCEDURE AND AUTHORIZATION

6.1 Changes

Any changes to this Agreement that relate to (i) the deletion of Products or Services, (ii) adding additional Products or Services, (iii) changing or modifying Products or Services, or (iv) making other changes that materially alter the scope of this Agreement or the Deliverables required under this Agreement, including approval of all performance and/or payment schedules shall be made by the Director of Finance in accordance with the procedures set forth below.

6.2 Contract Change Requests

Either Party hereto may, from time to time, and at any time during the term hereof request a change, as defined in the above section. The Party requesting the change is hereinafter referred to as the "Requesting Party." Requests for changes shall be in writing and shall be addressed and delivered to the other Party as provided herein. Such writing shall be identified as a "Contract Change Request," shall carry a sequential number for ease of tracking, shall set forth in detail the nature of the change requested and the costs associated therewith, and shall identify the Products, Services, Deliverables or Schedules to be changed.

6.3 Procedures

As soon as practical after receipt by the notified Party of copies of the Request, the Parties shall as necessary meet to discuss the change and to ascertain its cost and schedule impacts, if any.

6.4 Change Orders

If the Parties decide to implement a change request, a standard form Change Order ("CO") shall be prepared in a form substantially similar to the form attached hereto as Exhibit E, which CO shall describe the change, delineate the cost, schedule, and other

impacts of the change and the payment terms for any price increase. Only City's Director of Finance and Contractor's Authorized Representative shall have authority to execute CO's to this Agreement. Execution of a CO by City's Director of Finance and Contractor's Authorized Representative shall constitute a modification hereof and shall be binding on both Parties hereto.

7 TAXES AND CHARGES

Contractor shall be responsible for payment of all taxes, fees contributions or charges applicable to the conduct of Contractor's business.

8 LABOR COMPLIANCE

This Agreement is subject to City's Prevailing/Living Wage Policy and the applicable implementing regulations (collectively, the "Policy"). Contractor shall comply with the provisions of the attached Labor Compliance Addendum (Exhibit D) and Wage Requirements and Required Wage Documents (Exhibit D-1), which sets forth Contractor's obligations under the Policy.

9 REPRESENTATION AND WARRANTIES

9.1 Contractor Responsibility

Contractor understands and accepts full responsibility for all requirements and deliverables defined in this Agreement. Contractor warrants it:

- 9.1.1 Has read and agrees with the specifications contained in the Scope of Services (Exhibit A);
- 9.1.2 Fully understands the locations, facilities, specific details, difficulties, and restrictions attending performance of the services; and
- 9.1.3 Contractor agrees to inform City of any unforeseen conditions which will materially affect performance of the work within forty-five (45) days of the execution of this Agreement and shall not proceed until written instructions are received from City.

9.2 Authority to Make Agreement

Contractor represents and warrants that Contractor has full right and authority to perform its obligations under this Agreement.

9.3 Contractor Agreements with City Employees

Contractor agrees to not enter into a relationship that may result in a financial conflict of interest with any employee or agent of the City who participated in the making of governmental decisions related to this Agreement.

10 TERMINATION

10.1 Termination for Convenience

City shall have the right to terminate this Agreement, without cause, by giving not less than thirty (30) days' written notice of termination.

10.2 Termination for Default

If Contractor fails to perform any of its material obligations under this Agreement, in addition to all other remedies provided by law, City may terminate this Agreement immediately upon written notice.

10.3 Termination Authority

The Director of Finance ("Director") is empowered to terminate this Agreement on behalf of City.

10.4 Consequences of Termination

In the event of termination, Contractor shall deliver to City copies of all reports, documents, and other work performed by Contractor under this Agreement, and upon receipt thereof, City shall pay Contractor for services performed and reimbursable expenses incurred to the date of termination.

11 INDEMNIFICATION

Contractor shall defend, indemnify and hold harmless City, its officers, employees and agents against any claim, loss or liability arising out of or resulting in any way from work performed under this Agreement due to the willful or negligent acts (active or passive) or omissions by Contractor's officers, employees or agents. The acceptance of said services and duties by City shall not operate as a waiver of such right of indemnification.

12 INSURANCE REQUIREMENTS

Contractor agrees to have and maintain the policies set forth in Exhibit C, entitled "Insurance Requirements," which is attached hereto and incorporated herein. All policies, endorsements, certificates and/or binders shall be subject to approval by the Risk Manager of the City of San Jose as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the Risk Manager. Contractor agrees to provide City with a copy of said policies, certificates and/or endorsements before work commences under this Agreement.

13 WAIVER

Contractor agrees that City's waiver of any breach or violation of any provision of this Agreement shall not be deemed to be a waiver of any other provision or a waiver of any subsequent breach or violation of the same or any other provision. City's acceptance of the performance of any of Contractor's services will not be a waiver of any provision of this Agreement.

14 INDEPENDENT CONTRACTOR

Contractor, in the performance of this Agreement, is an independent contractor. Contractor shall maintain complete control over all of Contractor's employees, any subcontracting subcontractors, and Contractor's operations. Neither Contractor nor any person retained by Contractor may represent, act, or purport to act as the agent, representative or employee of City. Neither Contractor nor City is granted any right or authority to assume or create any obligation on behalf of the other.

15 COMPLIANCE WITH LAWS

Contractor shall comply with all applicable laws, ordinances, codes and regulations (collectively, "laws") of the federal, state and local governments, including without limitation, any and all laws specified elsewhere in this Agreement.

16 CONFLICT OF INTEREST

Contractor shall avoid all conflict of interest or the appearance of conflict of interest in performance of this Agreement.

17 NONDISCRIMINATION

Contractor agrees that there shall be no discrimination against, or segregation of, any person, on account of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, national origin, marital status, or family status, in connection with or related to the performance of this Agreement.

18 GIFTS

18.1 Prohibition on Gifts

Contractor acknowledges that Chapter 12.08 of the San Jose Municipal Code prohibits City's officers and designated employees from accepting gifts as defined in Chapter 12.08.

18.2 No Offer

Contractor agrees not to offer any City officer or designated employee any gift prohibited by Chapter 12.08.

18.3 Breach of Agreement

Contractor's offer or giving of any gift prohibited by Chapter 12.08 will constitute a material breach of this Agreement. In addition to any other remedies City may have in law or equity, City may terminate this Agreement for such breach as provided in Section 10 of this Agreement.

19 DISQUALIFICATION OF FORMER EMPLOYEES

Contractor is familiar with Chapter 12.10 of the San Jose Municipal Code ("Revolving Door Ordinance") relating to the disqualification of City's former officers and employees in matters which are connected with their former duties or official responsibilities. Contractor shall not utilize either directly or indirectly any officer, employee, or agent of Contractor to perform services under this Agreement, if in the performance of such services, the officer, employee, or agent would be in violation of the Revolving Door Ordinance.

20 CONFIDENTIAL INFORMATION

All data, documents, discussions or other information developed or received by or for Contractor in performance of this Agreement are confidential and must not be disclosed to any person except as authorized by City, or as required by law.

21 OWNERSHIP OF MATERIALS

All reports, documents or other materials developed or discovered by Contractor or any other person engaged directly or indirectly by Contractor to perform Contractor's services are City's property without restriction or limitation upon their use.

22 CONTRACTOR'S BOOKS AND RECORDS

22.1 Maintenance during Term

Contractor shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other documents evidencing or relating to charges for services, or expenditures and disbursements charged to City for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Contractor pursuant to this Agreement.

22.2 Maintenance after Term

Contractor shall maintain all documents which demonstrate performance under this Agreement for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

22.3 Inspection

Any documents required to be maintained pursuant to this Agreement must be made available for inspection or audit, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Contractor shall provide copies of such documents to City for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Contractor's address indicated for receipt of notices in this Agreement.

22.4 Custody of Records

Where City has reason to believe that any of Contractor's documents relating to this Agreement may be lost or discarded due to dissolution, disbandment or termination of Contractor's business, City may, by written request by any of the above-named officers, require that custody of the Contractor's documents be given to City and that these documents be maintained in City Hall. City agrees to grant access to Contractor's documents to any party authorized by Contractor, Contractor's representatives, or Contractor's successor-in-interest.

23 ASSIGNABILITY

The parties agree that the expertise and experience of Contractor are material considerations for this Agreement. Unless specifically authorized by this Agreement, Contractor may not assign the performance of any obligation or interest under this Agreement without the prior written consent of City. Any attempt by Contractor to assign this Agreement, in violation of this Section, will be voidable at City's sole option.

24 SUBCONTRACTORS

24.1 Authorized Subcontractors

Notwithstanding Section 23 (Assignability) above, Contractor may use designated subcontractors approved in advance by City in performing Contractor's services. Contractor must obtain City's prior written consent in order to change or add subcontractors. Contractor shall be responsible for directing the work of the approved subcontractors and for any compensation due to subcontractors. City assumes no responsibility whatsoever concerning such compensation.

24.2 Compliance with Agreement

Contractor shall ensure that Contractor's subcontractors comply with this Agreement. At City's request, Contractor shall require any or all of Contractor's subcontractors to sign an agreement with Contractor requiring compliance with this Agreement.

25 GOVERNING LAW

This Agreement must be construed -- and its performance enforced--under California law.

26 VENUE

In the event that suit is brought by either party to this Agreement, the parties agree that venue must be exclusively vested in the state courts of the County of Santa Clara, or where otherwise appropriate, exclusively in the United States District Court, Northern District of California, San Jose, California.

Contractor further agrees that in the event a lawsuit involving this Agreement is filed by City, Contractor will unconditionally accept the jurisdiction of a federal or state court located in Santa Clara County, California.

27 NOTICES

All notices and other communications required or permitted to be given under this Agreement must be in writing and must be personally served, or mailed, postage prepaid via U. S. mail, or sent via courier service, addressed to the respective parties as follows:

To City: City of San José
 Attention: Director of Finance
 200 East Santa Clara St., 13th Floor
 San Jose, CA 95113

To Contractor: ***Bayscape Management, Inc.***
 Attention: Tom Ellington, President
 PO BOX 880
 Alviso, CA 95002

Notice will be effective on the date personally delivered or if sent by courier service, on the date of receipt. If mailed, notice will be effective three (3) days after deposit in the mail.

The parties may change their respective addresses in accordance with the provisions of this Section.

28 MISCELLANEOUS

28.1 Survival of Provisions

If any part of this Agreement is for any reason found to be unenforceable, all other parts nevertheless remain enforceable.

28.2 Assignment

Subject to the provisions of Section 23 (Assignability) this Agreement binds and inures to the benefit of the parties and their respective successors and assigns.

28.3 Headings

The headings of the sections and exhibits of this Agreement are inserted for convenience only. They do not constitute part of this Agreement and are not to be used in its construction.

28.4 Authority of City Manager

Where this Agreement requires or permits City to act and no officer of the City is specified, City’s Manager or the designated representative of City’s Manager has the authority to act on City’s behalf.

APPROVED AS TO FORM:

City of San José
a municipal corporation

Senior Deputy City Attorney

By _____
Name:
Title:
Date: _____

Bayscape Management, Inc.
a California corporation authorized to do
business in California

By _____
First Authorized Signature

Name:
Title:
Date: _____

By _____
Second Authorized Signature

Name:
Title:
Date: _____

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

EXHIBIT A SCOPE OF SERVICES

Contractor shall perform the following services:

1. GENERAL INFORMATION

- 1.1.** Contractor shall provide all labor, material, and equipment necessary for the complete maintenance of landscape areas in the Parks, Recreation & Neighborhood Services (PRNS) Civic Grounds and Small Parks as identified in Exhibit A-1.
- 1.2.** Contractor shall provide maintenance and upkeep of San José dog parks at select contracted sites.
- 1.3.** Contractor shall be responsible for providing landscape services that include the following areas: Civic Grounds, frontages, pocket parks, walkways, trails, creek corridors, lighting, outdoor structures, bio-retention areas, outdoor furniture and play equipment and include curb and gutter and concrete areas within the project limits at each Location in Exhibit A-1.
- 1.4.** Work shall commence no later than thirty (30) days after the award of contract.
- 1.5.** All field staff working on City contract shall be under the direct supervision of a Bay-Friendly Qualified Landscape (“BFL”) Maintenance Professional. Thereafter, Contractor shall ensure all its employees providing services on this Agreement are properly trained to be self-sufficient and supervised by a Maintenance Professional. The certification to become self-sufficient must be acquired within one (1) year of the start of this Agreement.

2. GENERAL DESCRIPTION OF SERVICES

- 2.1.** Contractor shall provide the following general requirements at each location and area aforementioned; a detailed description of the required services is included in Sections three (3) through nine (9) of this scope of services.
 - 2.1.1.** Maintain existing irrigation system(s)
 - 2.1.2.** Provide litter, debris, graffiti and illegal dumping removal (including large items), at Contractor’s expense.
 - 2.1.3.** Trim and prune all trees, shrubs and ground cover, including palm trees and grape vines. Trees shall have an eight (8) foot clearance above footpaths and turf areas and should be fourteen (14) feet or higher above streets. All interior park lighting must have minimum two (2) foot clearance away from trees.
 - 2.1.4.** Mow, edge, aerate and remove thatch in turf areas
 - 2.1.5.** Prepare and properly apply pest control materials and report on type and quantity of materials applied, target pest and location(s)
 - 2.1.6.** Fertilize plant material
 - 2.1.7.** Staking and guying of trees – monitoring, replacing, repairing or removing
 - 2.1.8.** Replenish and maintain landscape materials, Pro-chip and mulch, including engineered wood chips and sand for playgrounds, as needed and as determined by the manufacturer recommendation
 - 2.1.9.** Maintain playgrounds, landscape furniture, fences, barricades and pavers
 - 2.1.10.** Provide erosion control/mediation and pollution prevention
 - 2.1.11.** Weed, disease and pest control, including vertebrate pests

- 2.1.12. Provide project supervision and coordinate activities with City Contract Manager
- 2.1.13. Routine power washing (weekly) at select contract neighborhood dog parks and at other sites as needed for health and safety
- 2.1.14. Other required duties as necessary and requested by the City

2.2. WORK AREAS AND QUANTITIES

- 2.2.1. Work will be performed in the landscaped areas of City property as listed in Exhibit A-1. Quantities are approximate:
 - 2.2.1.1. Small (Pocket) Parks – 66.68 acres
 - 2.2.1.2. Civic Grounds – 87.65 acres

3. MAINTENANCE OF LANDSCAPE AREAS

3.1. Contractor shall prepare and submit to the City a general maintenance plan for each site that includes a preliminary BFL Site Analysis within thirty (30) days of the agreement effective date.

- 3.1.1. BFL maintenance practices shall be employed to minimize waste, protect air and water quality, conserve energy and water, and protect natural ecosystems. Initial Planning is required during the first thirty (30) days of the contract.

3.2. TREE TRIMMING AND PRUNING

- 3.2.1. Contractor shall ensure experienced professional personnel shall perform all tree trimming and pruning services under this section.
- 3.2.2. Only recognized and approved methods, techniques and standards shall be used as described in Attachment A, Scope of Services or as described in the current edition of the Sunset Western Garden book, Sunset Publishing.
 - 3.2.2.1. Contractor shall be responsible for the pruning of all trees including, thinning, heading back and crowning, as needed to ensure the health, safety and controlled growth of trees.
- 3.2.3. Contractor shall replace all trees pruned improperly or damaged with plants of the same appropriate size as determined by the City Contract Manager.
- 3.2.4. Excessive pruning or stubbing back will not be permitted.
- 3.2.5. All dead, hanging or damaged branches shall be removed.
- 3.2.6. Pruning cuts shall be made cleanly, in one plane, and with no tearing of the bark.
- 3.2.7. All trimmings are to be removed from the site. No stockpiling of debris will be allowed on this project.
- 3.2.8. Pruning of trees shall be done for the following conditions:
 - 3.2.8.1. To maintain clearance from other plants, facilities, pedestrian or maintenance vehicular traffic eight (8) feet over turf and fourteen (14) feet over sidewalk/street.
 - 3.2.8.2. To correct shape, particularly to correct for wind disfigurements
 - 3.2.8.3. To provide visibility of pedestrians and motorists
 - 3.2.8.4. To maintain walkways free from obstructions

3.2.8.5. To eliminate or reduce potentially unsafe situations or spread of disease

3.3. SHRUB, VINE PRUNING AND GROUND COVER

- 3.3.1. All ground cover shall be pruned to correspond to and enhance the natural form and flowering habit. Shrubs shall be pruned according to guidelines in the current edition of the Sunset Western Garden book, Sunset Publishing.
- 3.3.2. Shrubs shall be pruned using selective cuts to lateral branches, or to the point of origin (thinning cuts). Shrubs shall not be sheared or hedged unless specifically required by the City Project Manager.
- 3.3.3. Shrubs shall be pruned often enough to maintain the optimum size and conformation, and to provide adequate clearance, visibility and maintain walkways free from obstructions.
- 3.3.4. All grape vines shall be pruned and maintained per the direction of a US Certified Crop Adviser (H8 – Viticulture) or other City approved credentialed equal who shall be retained by contractor at no additional cost to the City.

3.4. STAKING AND GUYING

- 3.4.1. Contractor shall check and perform staking and guying of all trees if required on a monthly basis as follows:
 - 3.4.1.1. Trees that are injured by stakes and/or girdled by ties will be replaced by Contractor as required by the City Contract Manager.
 - 3.4.1.2. Stakes and staking ties shall be checked and adjusted to ensure bark is not injured. The tree is to be tied at only one level below the lowest branches.
 - 3.4.1.3. The top of the stakes must extend no more than two (2) inches above the top tie. Stakes may not extend into the tree canopy where injury to branches could occur.
 - 3.4.1.4. The nursery stake shall be removed, if present. Stakes/guys shall be removed from trees planted for more than two (2) years at no additional cost to the City.
 - 3.4.1.5. Trees that are blown over will be evaluated on a case by case basis by the City. Replanting of trees planted by Contractor shall be at Contractor's expense. Removal and replacement of trees planted prior to Contractor's maintenance period shall be directed by the City at an additional cost.

3.5. REPLACEMENT OF MATERIALS

- 3.5.1. Replacement trees shall be of a size, condition and variety acceptable to the City Contract Manager. All plants shall be healthy, vigorous stock, free of insects and disease. Specifications for acceptance of nursery stock should follow guidelines in the current edition of ANSI Z60 1–2014 standards and Guideline Specifications for Nursery Tree Quality.
- 3.5.2. All replacement plants shall be nursery grown stock and shall have been grown in the specified container for less than twelve (12) months, and shall not have been overgrown in the container so as to become root-bound.
- 3.5.3. Contractor shall remove all bare, dead or unhealthy turf that results from Contractor negligence or direct damage at no cost to the City. Turf shall be replaced in kind through seeding or sod installation.

3.5.4. Contractor, at no cost to the City, must replace any plant material that dies or appears in poor health due to lack of maintenance or actions by Contractor.

3.6. FERTILIZATION AND SOIL ANALYSES

3.6.1. All fertilizers and applications must be approved by the City Contract Manager.

3.6.2. All woody plant material will be fertilized with 10 lb. IBDU (31-0-0) per 1,000 ft. two (2) times per year, in March and October. Fertilizer is to be evenly broadcast over the soil surface.

3.6.3. Contractor shall provide four soil analyses annually prior to the growing season (March - April) to determine fertilization requirements for the season.

3.6.3.1. Samples shall be collected to represent the range in plant performance and soils present. Soils shall be submitted to an approved laboratory and tested for pH, salinity, N, P, K, Ca, Mg, B, Na, Cl, and SAR.

3.6.3.2. Any soil amendments or fertilizers (in addition to IBDU) required to mitigate fertility imbalances or deficiencies indicated by the soil analyses will be furnished by Contractor and at their sole expense.

3.6.3.3. Sample locations shall be approved by the City Contract Manager.

3.7. TURF MAINTENANCE

3.7.1. **General** - Contractor shall maintain all turf areas in a green vigorous condition throughout the year without holes, brown patches or rutting as a result of maintenance activities.

3.7.2. **Mowing** - Turf shall be mowed once a week at minimum or as directed by the City Contract Manager to maintain a neat, trim appearance.

3.7.2.1. The cutting edges of all mowing equipment shall be kept in a sharp condition. If reel type mowers are used, they shall be kept in proper adjustment.

3.7.2.2. Bruising, scalping or rough cutting of lawn will not be permitted.

3.7.2.3. All debris shall be removed by Contractor prior to mowing.

3.7.2.4. All visible clumps of grass clippings shall be gathered and removed from site.

3.7.2.5. Lawns shall be cut to a height of one and a half (1-1/2) inches from November through February and two (2) inches from March through October.

3.7.3. **Trimming** - All edges shall be trimmed after each cutting or as necessary to maintain a neat, trim appearance. This trimming shall include cutting all grasses along walls, fences, poles, guy wires and edging all grasses along curbs, sidewalks, mowing strips or any other objects within or immediately adjacent to lawn areas.

3.7.3.1. Grasses shall be cut back and a tree buffer zone maintained at a minimum of twenty-four (24) inches from the base of any tree throughout the life of the tree. This buffer zone shall be kept weed and grass free and the bare soil covered by a two-inch layer of mulch.

3.7.3.2. Care shall be taken to avoid damage to tree trunks, shrubs, sprinklers and other structures when trimming. All damages shall be reported to the City Contract

Manager, and Contractor shall promptly make the necessary repairs at his own expense.

- 3.7.4. **Watering** - Turf shall be deeply watered, as weather conditions require, to provide moisture for optimum growth. Irrigation of hard fescue and tall fescue shall be set to maintain a minimum twelve (12)-inch rooting depth of moisture.
- 3.7.4.1. Water usage shall be based on eighty percent (80%) of the evapotranspiration (ETo) requirements for the region. The ETo requirements can be found at <http://www.cimis.water.ca.gov/cimis/welcome.jsp>.
- 3.7.4.2. Cycling of the irrigation system may be required to provide adequate deep moisture while avoiding any run off or ponding of irrigation water. Monthly irrigation report (sample in packet) shall be provided monthly to City.
- 3.7.4.3. Turf shall at no time show a lack of fresh green color or a loss of resilience due to lack of water. Watering shall be done in such a manner as to avoid erosion, excessive run-off, ponding or creation of a waterlogged soil condition. Hoses and sprinklers shall be used to supplement the sprinkler system where necessary to insure complete coverage.
- 3.7.4.4. If the permanently installed sprinkler system is not working properly, or adequately covering the areas, Contractor shall provide means for adequately and uniformly addressing the watering areas. This may include, but not limited to raising heads, cleaning heads, adjusting nozzle, etc.
- 3.7.5. **Fertilizer Application** - Turf shall be fertilized a minimum of four (4) times per year.
- 3.7.5.1. Applications shall be limited to two formulations of fertilizer, 37-0-0 (Sulfur Coated Urea) and 16-8-8.
- 3.7.5.2. Fertilizers shall be applied at a rate of one to two pounds of Nitrogen per thousand (1,000 ft²) square feet dependent on the formulation used. Total annual Nitrogen shall not exceed six (6) pounds per thousand (1000 ft²) square feet.
- 3.7.5.3. Formulation 46-0-0 shall be applied from spring to early fall and 16-8-8 shall be applied from late fall to early spring.
- 3.7.5.4. When specific nutrient deficiencies are noted, additional fertilization may be required as directed by the City Contract Manager.
- 3.7.5.5. Any and all damage due to improper fertilization shall be corrected at Contractor's expense.
- 3.7.5.6. All fertilizers and applications must be approved by the City Contract Manager.
- 3.7.6. **Aeration and Thatch Removal** - Turf shall be aerated at least twice per year to achieve a minimum depth of three (3) inches.
- 3.7.6.1. Once aeration has been completed, lawns shall be fertilized as previously specified in Section 3.7.5.
- 3.7.6.2. Contractor, at no cost to the City, shall repair any and all damage to the adjacent irrigation heads, wires, or system as a result of aeration.

3.7.6.3. Thatch removal must be done with enough frequency to allow no more than one-half inch of accumulated thatch when compressed. Cost for thatch removal is a separate payment based on the quoted square footage price.

3.7.7. **Replacing/Repairing Turf** - All bare, dead, or unhealthy turf areas caused by Contractor negligence, poor maintenance, faulty equipment, etc. shall be re-seeded or removed and sod installed at no additional cost to the City.

3.8. GRAFFITI ABATEMENT

3.8.1. Graffiti removal shall be accomplished by the use of American Protective Coatings SK-1 Graffiti Remover or approved equal, properly applied. American Protective Coatings SK-1 Graffiti Shield or approved equal shall then be applied per manufacturers' specifications. All approved equals shall be approved by City Contract Manager prior to beginning graffiti abatement.

3.8.2. The Anti-Graffiti Program managed by the City is dedicated to removing graffiti throughout the City. The program offers paint and tools for removing graffiti to volunteers. Call the 24 Hour Hotline: 1-866-249-0543 or e-mail at antigrffiti@sanjoseca.gov.

3.8.3. Signs within service areas shall be kept in proper and readable condition at all times. Any damaged signs shall be reported to the City Contract Manager upon discovery.

3.8.4. Contractor must provide graffiti abatement services on park property for areas of up to ten (10) feet x ten (10) feet. Contractor must remove graffiti within 48 hours, vulgar or gang graffiti must be removed within twenty-four (24) hours. Graffiti larger than one hundred (100) square feet in size must be reported to the City Contract Manager upon discovery.

3.9. PROPERTY FENCE LINES

3.9.1. All weeds or native plant material shall be cut back or removed from within twenty (20) feet of any fence abutting the maintained area.

3.9.2. All planted material shall be kept one (1) foot from a good neighbor fence, or as directed by the City Contract Manager.

3.10. PEST AND DISEASE CONTROL – TURF, TREE, SHRUB AND GROUND COVER

3.10.1. A copy of Contractor's State Pesticide Report must be furnished each month to City Project Manager.

3.10.2. It is contractor's responsibility to monitor pest population(s) and develop an appropriate pest management program for control.

3.10.3. Contractor shall maintain pest populations and disease infestations below the level at which they cause a reduction in plant health, vigor and aesthetics. Cultural practices shall be employed to minimize pest populations. Least toxic, effective chemicals shall be used, with emphasis on biological controls, when available.

3.10.4. Contractor shall treat all landscape areas for insects and diseases at the request of the City. Insects and diseases shall be controlled by the use of City approved insecticides and fungicides with specific recommendations by a licensed Pest Control Advisor provided by contractor.

3.11. VERTEBRATE PEST (RODENT) CONTROL

- 3.11.1. Contractor is advised that all landscape areas are adjacent to native open space. Rodent pest infiltration will affect landscaped areas and may cause damage to turf, trees, shrubs, ground cover and vines causing health and safety issues.
- 3.11.2. Contractor agrees to monitor and eradicate, as needed, all gophers, voles, moles, ground squirrels and other related pests from all landscaped areas as described in this Scope of Services.
- 3.11.3. Moles, voles, squirrels, and gophers shall be controlled by City approved methods with specific recommendations by a licensed Pest Control Advisor. At this time, surface bait broad casting is not permitted.
- 3.11.4. Contractor shall restore the area to its proper condition in the event of visible evidence of pest(s) infestation.
- 3.11.5. Contractor agrees to provide material safety data sheets on any and all pesticides used on the site prior to their application.
- 3.11.6. Poison baits or traps must be placed so as not to create a hazard to children or pets.
- 3.11.7. Contractor shall document all damage resulting from vertebrate activity and provide monthly report to City.

3.12. WEED CONTROL

- 3.12.1. Extreme cautionary measures shall be observed if applying selective weed killers, as not to damage any other plants.
- 3.12.2. Landscape (including mulch areas) and hardscape shall be kept free of weeds. Weeding may be done manually or by the use of selective weed killers with specific recommendations by a licensed Pest Control Advisor. As mentioned above, City Policy requires consideration of non-chemical methods of weed control over the use of toxic chemicals.
- 3.12.3. Turf shall be kept weed free. This may require the use of pre-emergent to prevent crab grass.
- 3.12.4. All areas shall be serviced weekly. No weeds taller or wider than four inches are allowed in any service area.

3.13. DEBRIS AND LITTER CONTROL

- 3.13.1. Must remove all litter and debris from the serviced areas including all planted areas, slopes, creek trails, native areas, curb and gutter pan, hardscape areas and illegal signage on sign, signal and light poles promptly.
- 3.13.2. Must remove all trash receptacles content a minimum of two times per week at no additional cost to the City. Overflowing trash receptacles shall not be permitted. Contractor shall program garbage removal so as to eliminate overflowing trash receptacles including weekends/holidays. Contractor shall provide additional trash removal service as needed.
- 3.13.3. Contractor shall dispose of litter/debris/garbage/illegal dumping (including large items) at their sole cost.
- 3.13.4. All areas shall be serviced twice weekly, or as directed by City Contract Manager, to maintain a clean and groomed appearance.

3.14. BIORETENTION AREAS

- 3.14.1. The primary maintenance requirement for bioretention areas is the regular

inspection and repair or replacement of the treatment measure's components. Because these systems remove pollutants by filtering runoff through soil, routine maintenance is needed to ensure the flow is unobstructed, erosion is prevented, and the soils are biologically active. Generally, the level of effort is similar to the routine, periodic maintenance of any landscaped area.

3.14.1.1. Conduct monthly inspections as follows:

3.14.1.1.1. Inspect the bioretention surface area, inlets and outlets for obstructions and trash; clear any obstructions and remove trash.

3.14.1.1.2. Inspect bioretention area for ponded water. If ponded water does not drain within two to three days, the surface soils should be tilled or replaced and replanted. If mosquito larvae are observed, contact the County Vector Control District at (408) 918-4770 or (800) 675-1155.

3.14.1.1.3. Inspect the energy dissipation at the inlet to ensure it is functioning adequately, and that there is no scour of the surface mulch. Remove any accumulation of sediment.

3.14.1.2. Conduct an evaluation of the health of the vegetation, at least twice per year, to ensure that it is healthy and dense enough to provide filtering and protect soils from erosion. Maintain the vegetation as needed.

3.14.1.2.1. Prune and weed the bioretention area.

3.14.1.2.2. Remove and/or replace any dead plants.

3.14.1.2.3. Treat diseased plants, as needed, using preventative and low-toxic measures to the extent possible.

3.14.1.2.4. Avoid the use of pesticides and quick-release synthetic fertilizers and follow the principles of Integrated Pest Management (IPM). Check with the local jurisdiction for any local policies regarding the use of pesticides and fertilizers.

3.14.1.2.5. Maintain the irrigation system and ensure that plants are receiving the correct amount of water (if applicable).

3.14.1.3. Inspect and, if needed, replace mulch before the wet season begins. It is recommended that one inch (1") to two inch (2") of composted mulch be applied once a year. Mulch should also be replaced when erosion is evident; spot mulching may be sufficient for random void areas.

4. INTEGRATED PEST MANAGEMENT

4.1. Integrated Pest Management (IPM) is an ecosystem-based strategy that focuses on long-term prevention of pests or their damage through a combination of techniques such as biological control, habitat manipulation, modification of cultural practices and the use of resistant varieties. IPM techniques include limiting the use of pesticides to situations where monitoring indicates that they are needed, selecting least toxic pest control materials, and applying these materials in a manner that minimizes risk to human health, beneficial and no target organisms, and the environment.

4.2. The City's IPM policy is subject to change as needed.

4.3. Compliance with City IPM Policy:

4.3.1. Contractor shall obtain and comply with all requirements of the City of San José's Integrated Pest Management (IPM) policy. Contractor shall apply all pesticides with extreme care to avoid any hazard to persons, pets, property and the environment. A copy may be obtained at <http://www.sanjoseca.gov/DocumentCenter/View/3867>.

4.3.2. Best Management Practices (BMPs) and Standard Operating Procedures (SOPs)

4.3.2.1. Contractor shall obtain and comply with the City's BMPs and SOPs. If Contractors wish to propose modifications to existing BMPs and SOPs, contractor must submit a copy of the proposed BMPs and SOPs in writing to the City Contract Manager for review and approval. City approval of BMPs and SOPs will be based on degree of conformance with the City's IPM Policy, BMPs and SOPs.

4.3.3. Use of Pesticides

4.3.3.1. Contractor shall comply with all federal, state and local rules and regulations that govern the use of pesticides, including the City of San José's IPM Policy. Pesticides utilized for control of pests on City property shall have current EPA registration and be applied in strict accordance with label directions. All pesticide use on City property shall be subject to advance approval by the contract manager.

4.3.4. Pesticide Approval and Application

4.3.4.1. As required by law, each person performing pest control activities shall be certified by the State of California.

4.3.4.2. All recommendations for pest control must be in compliance with the current IPM policies and guidelines of the City of San José.

4.3.4.3. All pesticide applications shall receive advance approval from the City Contract Manager.

4.3.4.4. Contractor shall provide written recommendations from a licensed California Pest Control Advisor (PCA) for any pesticides approved for use on City property.

4.3.4.5. Any Contractor's employee who applies Class I pesticides shall possess a Qualified Applicator Certificate (QAC) from the State. This certification (silver card) and written pesticide recommendations shall be with the employee while applying any pesticides.

Any Contractor's employee who oversees the application of pesticides shall possess a Qualified Applicator License (QAL) from the State. This license (brown card) and written pesticide recommendations shall be with the employee while supervising any pesticide application City Property.

4.3.5. Pesticide Use Reporting

4.3.5.1. Contractor shall obtain access to the online form for submitting monthly Pesticides Toxicity Control (PTC) reports from the ESD IPM Coordinator by calling (408) 945-3000. The PTC report shall be submitted online by the 10th of each month and shall contain the following information for each pesticide application:

4.3.5.1.1. Date application

4.3.5.1.2. Facility Treated

4.3.5.1.3. Chemical Applied

4.3.5.1.4. Total Product Used

4.3.5.1.5. Units

4.3.5.1.6. Alternative Treatment

4.3.5.1.7. Acres/Unit Treated

4.3.5.1.8. Target Pest

4.3.5.1.9. Comments

4.3.5.1.10. Company Name

4.3.5.1.11. Title (Okay to leave blank)

4.3.5.1.12. Attachments (Photos)

4.3.5.1.13. Name of Applicator

4.3.5.2. City may withhold payment for services until the pesticide report for the invoice month is received and approved. The report shall include information for San José municipal property only.

4.3.6. Evidence of Training

4.3.6.1. Contractor shall demonstrate evidence of recent IPM training, to the maximum extent feasible, upon entering into a new contract or renewal of an existing contract.

4.3.7. Restricted Pesticides

4.3.7.1. Before a Contractor can apply a California Restricted Material on a City site, contractor must first obtain a copy of the City's Restricted Use Materials Permit that will be provided by the City Contract Manager. Before the application can be made, the operator must notify the contract manager twenty-four (24) hours in advance of the application. Contractor must provide the contract manager with a copy of the notice of intent per site. This should correlate to the monthly usage report also provided by contractor.

5. IRRIGATION SYSTEM MAINTENANCE

- 5.1.** The irrigation system consists of automatic controllers, low voltage wires, remote control valves, irrigation laterals, risers, low volume drip bubblers, filters, pressure regulators, pressure relief stations and all other incidentals associated with standard low volume City irrigation systems.
- 5.2.** Maintenance of the existing system shall include, but not be limited to, all expenses related to the following items:
- 5.2.1. Annual blowing out of lateral lines to remove debris by removing the last irrigation head and flushing lines
 - 5.2.2. Monthly exercising of controllers and valves,
 - 5.2.3. Monthly checking of mains, laterals, risers and heads for leaks.
 - 5.2.4. All repairs/replacements from downstream of each station valve.
 - 5.2.5. Checking drip bubblers for correct flow, cleaning filters, adjusting pressure reducing valves, and cleaning and adjusting valves,
 - 5.2.6. Raising and/or straightening of heads that are sunken and/or tipped as necessary or as directed,
 - 5.2.7. Cleaning and adjusting valves, emitters, bubblers and sprinkler heads for optimum performance,
 - 5.2.8. Annual cleaning of all Y-strainers,
 - 5.2.9. Monthly irrigation reports.
 - 5.2.10. In the event of a drought, contractor shall cooperate in the enforcement of mandated water allocations.
 - 5.2.11. Contractor shall be responsible for all repairs to the irrigation system at their cost for all components down stream of each station valve (excludes valve).
 - 5.2.12. The Certified Landscape Technician (CLT) will receive training from the Calsense representative for use of the Calsense controllers. The CLT shall keep all Calsense controllers functioning properly and at less than 80% of the calculated ETo for each Calsense controller.
 - 5.2.13. A complete irrigation system check must be completed monthly.
 - 5.2.14. Contractor shall respond and make necessary repairs within forty-eight (48) hours.

5.3. IRRIGATION REPORTS

- 5.3.1. A complete irrigation system review and written report shall be done every thirty (30) days after the initial inspection period has ended. The written report shall list each controller and valve station condition, date and time checked, irrigation schedule and maintenance performed (i.e., adjusting, cleaning, etc.).
- 5.3.2. Damage reports or problems not resulting from contractor's activities or negligence shall list the approximate cost of the repair or modification in addition to the date checked, controller, valve number and type of problem.
- 5.3.3. The irrigation report shall be submitted along with the monthly billings and must be approved by the City Contract Manager prior to any payment.

5.4. IRRIGATION REPAIRS

- 5.4.1. Irrigation repairs shall be completed within forty-eight (48) hours after approval by the City Contract Manager. All repairs or replacements not resulting from maintenance operations will be paid as specified in accordance with the provisions in the maintenance contract. Installation of replacement parts must be as per original design intent.
- 5.4.2. The same exact parts (i.e., same drip bubbler with same G.P.H. rating) must be used for replacements unless otherwise specified by the City Contract Manager.

5.5. IRRIGATION SYSTEM SCHEDULING

- 5.5.1. Irrigation shall be scheduled with appropriate frequency and duration to meet the water requirements of the plants served by the valve.
- 5.5.2. Irrigation frequency shall be based on evapotranspiration (ETo). The target range for water usage in all areas shall be sixty percent (60%) to eighty percent (80%) of the ETo reported for the region on CIMIS. CIMIS data can be obtained on the State of California website www.cimis.water.ca.gov.
- 5.5.3. Irrigation duration shall be adjusted for each valve to apply the appropriate amount of water required to uniformly wet the root zone of the plants within that irrigation zone. Irrigation duration shall consider the following:
 - 5.5.3.1. Precipitation rate (inches per hour) of the specific sprinkler operated by that valve
 - 5.5.3.2. Infiltration rate of the soil
 - 5.5.3.3. Water holding capacity of the soil (inches of available water per foot of soil).
 - 5.5.3.4. Rooting depth of plant material:
 - 5.5.3.4.1. Turf 8"
 - 5.5.3.4.2. Ground cover 12"
 - 5.5.3.4.3. Shrubs 24"
 - 5.5.3.4.4. Trees 36"
- 5.5.4. Irrigation shall be applied in a manner to avoid erosion, excessive run-off, ponding, or creation of a waterlogged soil condition. Irrigation cycling may be required to maintain proper soil moisture levels.
- 5.5.5. Controller:
 - 5.5.5.1. Irrigation controllers shall be programmed as much as necessary, and as climate conditions dictate or as directed by the City Contract Manager.
 - 5.5.5.2. Controller programming shall adhere to the scheduling requirements set forth by the City Contract Manager, if any.
 - 5.5.5.3. Controller programs shall be designed to conserve water and encourage deep rooting of all trees and ground cover.
 - 5.5.5.4. Controllers shall be set to irrigate between the hours of 9:00 p.m. and 5:00 a.m.
 - 5.5.5.5. Contractor is responsible for supplying replacement batteries in the controllers at no additional cost to the City.

6. PLAYGROUND AREA AND EQUIPMENT

- 6.1.** Playground(s) inspection shall occur daily and schedules shall be based on manufacturer's recommendation. If manufacturer's recommendations are not available, the service provider shall provide a schedule for inspection to the City Contract Manager for approval. Reporting of any damage/unsafe equipment must be made to contract supervisor within twenty-four (24) hours.
- 6.2.** Unsafe playground equipment shall be removed, locked, caution taped, barricaded or otherwise isolated from use. Contractor shall document safety inspections using the attached sample form. Notification of needed playground replacement shall be submitted to the City Contract Manager before the next business day. The service provider shall continue the locked, caution taped, barricaded or otherwise isolated from use play equipment until repaired.

7. REPAIR AND RENOVATION WORK (R&RW)

- 7.1.** If/when additional work identified as Repair and Renovation Work (R&RW) is required, all labor, materials and equipment used in the performance of such work shall be subject to the prior written approval of the City Contract Manager and compensation will be determined as specified herein.
- 7.2.** R&RW is defined as any work or repairs necessary that are outside of the routine daily maintenance or specified non-routine work described in this Scope of Services. Specific non-routine work included in this Scope of Services, includes, but is not limited to turf aeration, soil sampling, and fertilization. R&RW will be determined by the project manager.
- 7.2.1.** Labor: Labor will be compensated at the rates stated on "Attachment B, Cost Proposal".
- 7.2.2.** Materials: The City reserves the right to furnish such materials as it deems advisable, and contractor shall have no claims for costs and mark-up on such materials.
- 7.2.3.** Only materials furnished by contractor and necessarily used in the performance of the work shall be paid for by the City. The cost of such materials will be the cost to contractor plus a percentage mark-up to cover administrative costs. Below are conditions of the purchase of materials:
- 7.2.3.1.** If a cash or trade discount by the actual supplier is offered, or available to contractor, it shall be credited to the City notwithstanding the fact that such discount may not have been taken.
- 7.2.3.2.** If the materials are obtained from a supply source owner, owned wholly or in part by contractor, payment therefore shall not exceed the current wholesale price for such materials delivered to the job site.
- 7.2.3.3.** If the cost of such materials is, in the opinion of the City Contract Manager, excessive, then the cost of such material shall be deemed to be the lowest current wholesale price at which such materials are available in the quantities concerned delivered to the job site, less any discounts, as provided in Paragraph 7.2.3.1 of this subsection.
- 7.2.3.4.** If contractor does not furnish satisfactory evidence of the cost of such materials from the actual supplier thereof, the cost shall then be determined in accordance with current wholesale prices in Paragraph 7.2.3.3 of this subsection.

7.3. SUBCONTRACTING

- 7.3.1. When the City Contract Manager and contractor agree, contractor may subcontract with a City approved specialist. It is the responsibility of contractor to maintain a daily log of staff-hours, equipment and supplies provided by the subcontractor. The daily log of staff-hours worked by the subcontractor must be provided to the City Contract Manager each day. The list of supplies and equipment may be provided with the final invoice unless otherwise requested by the City Contract Manager.
- 7.3.2. To the specialist invoice price, less a credit to the City for any cash or trade discount offered or available, whether or not such discount may have been taken, will be added a mark-up as quoted by Contractor in Attachment B, Cost Proposal.
- 7.3.3. Records: Contractor shall maintain Contractor's records in such a manner as to provide a clear distinction between the direct costs of R&RW and the costs of other maintenance work.
- 7.3.4. From the above records, Contractor shall furnish the City Contract Manager completed reports, for all R&RW. The R&RW reports shall be submitted no later than seven (7) days following the performance of said work. The R&RW reports shall list all work completed. The reports shall provide names or identifications of workmen, the hourly rate of pay and hours worked, and also the size type and identification number of equipment, and hours operated. Before presenting the R&RW reports to the City Contract Manager for payment, contractor shall compile the cost of the R&RW to be paid for and attach a copy of the written cost estimate.
- 7.3.5. Material charges shall be substantiated by valid copies of Contractor's invoices. Such invoices shall be submitted with the R&RW reports, or if not available, they shall be submitted subsequently.
- 7.3.6. Should said Contractor's invoices not be submitted within sixty (60) days after the date of delivery of the material, the City Contract Manager reserves the right to establish the cost of such materials at the lowest current wholesale prices at which said materials are available in the quantities concerned delivered to the location of the work, less any discounts. Said R&RW reports shall be signed by contractor or Contractor's authorized representative.
- 7.3.7. City Contract Manager shall compare Contractor's records with the completed R&RW reports furnished by contractor and make any adjustments. When these reports are agreed upon and signed by both parties, said reports shall not preclude subsequent adjustment based on later audit by the City. The cost records pertaining to work paid for on a R&RW account basis shall be open to inspection or audit by representatives of the City during the life of the Contract and for a period of not less than three (3) years after the expiration thereof, and contractor shall retain such records for that period.

8. GENERAL REQUIREMENTS

8.1. LAWS TO BE OBSERVED

- 8.1.1. Contractor shall be responsible for being fully informed of all existing and future state and federal laws, including Occupational Safety and Health Administration (O.S.H.A.) standards, Santa Clara County regulations, and all municipal ordinances and regulations of the City of San José which in any manner affect those engaged or employed in the provision of the services or the equipment and materials used, or which in any way affect the conduct of the services and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same.

8.2. PERMITS AND LICENSES

- 8.2.1. Contractor shall procure all permits and licenses, pay all charges and fees, give all notices necessary and incidental to the due and lawful prosecution of the provision of services.

8.3. PUBLIC CONVENIENCE AND SAFETY

- 8.3.1. Traffic control procedures stated herein and traffic control standard plans shall be the minimum accepted by the City. Any variations shall be approved by the City Contract Manager prior to use. In no way shall compliance with these requirements and standards relieve contractor of any liability for claims or damages arising from Contractor's work.
- 8.3.2. Adequate traffic warning and control devices (appropriate size arrow board, cones, etc.) shall be provided and maintained by Contractor during maintenance activities in accordance with the "U.S Department of Transportation's Manual on Uniform Traffic Control Devices (MUTCD)" latest edition which can be viewed at the following link: <http://www.dot.ca.gov/hq/traffops/signtech/signdel/trafficmanual-current.html>
- 8.3.3. A lighted arrow board will be required for all lane closures. When inadequate traffic warning and control devices have been installed, the City shall either provide whatever facilities are deemed necessary as provided in Chapter 11.16, Traffic Control Services, of the City of San José Municipal Code or stop work until adequate devices are installed. Costs for the provision of such facilities will be charged to Contractor.
- 8.3.4. Flag persons are mandatory at locations where equipment is intermittently blocking a traffic lane or where only one lane is available for two-direction traffic.
- 8.3.5. All the work specified herein shall be considered to be Contractor's expense.

8.4. RESPONSIBILITY FOR WORK

- 8.4.1. Except as provided above, until the formal acceptance of the services by the City, Contractor shall have the charge and care thereof and shall bear the risk of injury or damage to any part thereof by execution or from the non-execution of the services.
- 8.4.2. Contractor shall rebuild, repair and restore, and make good all injuries or damages to any portion of the services occasioned by any of the above causes before final acceptance and shall bear the expense thereof.

8.5. RESPONSIBILITY OF CITY

- 8.5.1. City shall not be held responsible for the care or protection of any material or portion of the work prior to final acceptance, except as expressly provided for in these requirements.

8.6. PRESERVATION OF PROPERTY

- 8.6.1. Due care shall be exercised to avoid injury to existing improvements or facilities, adjacent property and real or personal property that is not to be removed.

8.7. COOPERATION

- 8.7.1. Should work be performed by other firms within or adjacent to the limits of the services specified, or should work of any other nature be underway by other firms within or adjacent to said limits, Contractor shall cooperate with all such other firms so that any delay or hindrance to their work will be avoided. The right is reserved to the City to

perform other services as additional work at or near the site (including material sources) at any time, by the use of other firms.

- 8.7.2. When two (2) or more firms are employed on related or adjacent work, each shall conduct their operations in such a manner as to not cause any unnecessary delay or hindrance to the other. Each firm shall be responsible to the other for all damage to work, to persons or property caused to the other by their operations and for loss caused the other due to Contractor's unnecessary delays or failure to finish the services within the time specified for completion.

8.8. CARE AND PROTECTION

- 8.8.1. Contractor shall be entirely responsible for any damage to the City's or adjacent property due to hauling materials or other causes attributable to the conduct of the work, and all such damage will be repaired by Contractor when and as directed by the City's representative, and as required to place the property in as good condition as before the commencement of the work

8.9. WORKER SAFETY

- 8.9.1. Contractor shall observe applicable O.S.H.A. and Cal-O.S.H.A. requirements.

8.10. IDENTIFICATION

- 8.10.1. All personnel who work on this project shall wear clothing, which clearly bears Contractor's company name. A company photo ID of the employee shall be displayed or displayed upon request.
- 8.10.2. All equipment used in performance of the work shall be clearly marked with Contractor's name, insignia, or other identifying emblem. Such markings shall be provided at Contractor's sole expense.

8.11. STORAGE AREAS

- 8.11.1. Contractor is responsible for making Contractor's own storage arrangements for equipment and material, etc. Stockpiling material on the streets or in the public right-of-way is not allowed at any time. Materials and debris will be removed from the job sites by the end of the working day. Failure to do so will cause the City to remove the material or debris from the site and deduct the cost of said work from Contractor's monthly maintenance payment.

8.12. WATER POLLUTION CONTROL REQUIREMENTS

- 8.12.1. Water pollution control is intended to provide prevention, control, and abatement of water pollution to storm drain systems, streams, waterways, groundwater, and other bodies of water. The provisions included herein are pursuant to the City of San José's Pollution Prevention Policy (Policy # 4-5), and City Ordinance 15.14.515, "It shall be unlawful to discharge any sewage, industrial waste or other polluted waters into any storm drain or natural outlet or channel without a valid National Pollutant Discharge Elimination System (NPDES) permit."
- 8.12.2. Contractor shall at all times observe and comply with, and shall cause all Contractor's agents, employees, and subcontractors to observe and comply with, all existing and future Federal, State, and local laws, ordinances, regulations, orders and decrees of bodies or tribunals having any jurisdiction or authority over the work.
- 8.12.3. Contractor shall exercise every reasonable precaution to protect storm drain systems, streams, lakes, reservoirs, bays, and coastal waters from pollution with sediments, fuels, oils, bitumen, pesticides, and other harmful materials and shall conduct and

schedule their operations so as to avoid or minimize muddying and silting of said storm drain systems, streams, lakes, reservoirs, bays and coastal waters.

- 8.12.4. Contractor shall maintain a neat appearance to the work site. Contractor shall not sweep construction and/or other material into the storm drain system and shall prevent such materials from entering the storm drains. Contractor is advised that disposal of dirt and/or other debris into the public storm drain system is prohibited under the San José Municipal Code and under California Department of Fish & Game Code.
- 8.12.5. In order to provide effective and continuous control of water pollution, Contractor shall provide temporary water pollution control measures, including but not limited to, dikes, basins, ditches, tarps, and applying straw and seed, which become necessary as a result of their operations. Contractor shall provide proper storage and disposal of all materials used in their operations. If the measures being taken by contractor are inadequate to control water pollution effectively, the City Contract Manager may direct contractor to revise their operations and their water pollution control measures. No further work shall be performed on said items until the water pollution control measures are adequate. The City will not be liable to contractor for any delays to the work due to contractor's failure to provide adequate water pollution control measures.
- 8.12.6. Any fines or penalties levied against contractor for violation of the above and related regulations are the sole responsibility of Contractor.

9. SPECIAL PROVISIONS

9.1. MAINTENANCE EXPECTATIONS

- 9.1.1. Failure to adhere to the management plan may result in the termination of the agreement. The management plan includes the staffing to be provided, weekly personnel hours for each staff classification and working days that will be available routinely for maintenance of this contract on a year around basis.
- 9.1.2. Contractor shall satisfy the maintenance expectations for the areas serviced that include a specific awareness and working knowledge of the following:
 - 9.1.2.1. Slope landscape maintenance and installation
 - 9.1.2.2. Erosion Control
 - 9.1.2.3. Seasonal Color
 - 9.1.2.4. Weed Control
 - 9.1.2.5. Concrete, asphalt and retaining wall maintenance
 - 9.1.2.6. Irrigation Systems
 - 9.1.2.7. Vertebrate pest control
 - 9.1.2.8. Insect and disease pest control
 - 9.1.2.9. Graffiti removal
 - 9.1.2.10. Recycled water and soil management
 - 9.1.2.11. Bioretention area maintenance

9.2. FAILURE TO PERFORM MAINTENANCE

- 9.2.1. Contractor shall perform maintenance of City-owned properties, as specified, without notice or instructions from the City Contract Manager. However, in case of negligence on the part of Contractor in performing specified work on the contract, the City Contract Manager shall notify Contractor in writing to perform the specified maintenance.
- 9.2.2. Failure to respond to said written notice, and to perform said specified maintenance within forty-eight (48) hours after receipt of said written notice, will result in the City causing the maintenance work to be done and deducting the cost thereof from the payment due to Contractor.
- 9.2.3. In the case of an emergency or hazardous situation, Contractor shall respond and address the issue within four (4) hours of normal business operation upon notification from City Contract Manager. Failure to respond to notification within allotted time will result in the City causing the maintenance work to be done and deducting the cost thereof from the payment due to Contractor.

9.3. SUPERVISION

- 9.3.1. It is Contractor's responsibility to furnish proper supervision of the project consisting of one (1) employee who oversees and coordinates the maintenance activities. Work under this item includes:
- 9.3.2. Maintaining daily maintenance records indicating inter alia, the amount of the various maintenance activities performed, the hours during which they were performed, employees who performed the work, location and equipment used
- 9.3.3. Preparing monthly reports
- 9.3.4. Summary report of daily maintenance records
- 9.3.5. Landscape areas updates
- 9.3.6. Irrigation report updates
- 9.3.7. Pesticide Reports
- 9.3.8. Providing field supervision and verifying daily assignments of the various maintenance activities
- 9.3.9. Reporting visually obvious deficiencies of any items to the responsible party, e.g., damaged traffic signs to the City's Signs and Marking Division, etc.;
- 9.3.10. Coordinating the efforts of the different maintenance activities to obtain the maximum quality project appearance as well as coordinating with other Contractor's
- 9.3.11. Receiving direction from the City Contract Manager and adjusting schedules and the amount of various activities to be performed

9.4. AUTHORIZED REPRESENTATIVES

- 9.4.1. Whenever Contractor's superintendent is not present on any part of the work where it may be desirable to give direction, the direction shall then be given by the City Contract Manager or designated representative, which shall be received and obeyed by the authorized representative in charge of work. An authorized representative of Contractor shall be available at all times for the duration of the contract.
- 9.4.2. City Contract Manager shall be supplied, at all times with the names and telephone numbers of at least two (2) persons in charge of or responsible for the work, who can be reached for emergency work twenty-four (24) hours a day, seven (7) days a week.

9.5. INSPECTION

- 9.5.1. Contractor's Project Superintendent shall be available for bi-weekly inspection tours with the City Contract Manager (or designated representative) to review the services performed.

9.6. CONTRACTOR'S INITIAL INSPECTION PERIOD AND LANDSCAPE AREAS INITIAL REPORTS

- 9.6.1. During the first thirty (30) days of maintenance, Contractor shall familiarize himself with the project plans and specifications and inspect all landscape architectural improvements.
- 9.6.2. At the conclusion of the first thirty (30) days, Contractor shall submit reports describing all plant material (see Section 9.7) the irrigation system (see 9.8), the lighting (see Section 2.1.3) and associated hard surfaces (see Section 9.9) within the areas to be serviced.
- 9.6.3. Contractor's initial report, including subsections for plant material, irrigation, lighting and hard surfaces, will be required in order to receive any payments.
- 9.6.4. Additional Landscape Improvements Initial Reports
- 9.6.5. Initial inspection reports will be required for any new area(s) added to service. These supplemental reports shall be submitted at the end of the first thirty (30) days of maintenance.

9.7. PLANT MATERIAL INITIAL REPORT

- 9.7.1. Contractor shall review each plant in the landscaped areas. Contractor's report to the City Contract Manager shall address compliance with the construction specifications, missing or dead plant material, the general health and vigor of each species, and potential problems. Any plant material abnormalities and/or deficiencies shall be fully described and documented (may include photographs) and located by irrigation controller and valve station.

9.8. IRRIGATION SYSTEM INITIAL REPORT

- 9.8.1. After reviewing each controller, remote control valve, irrigation head and water meter, contractor's report to the City Contract Manager shall address compliance with the construction specifications, and accepted practices of the irrigation, plumbing and electrical disciplines. Also, the report will list any design problems, missing heads, damaged valves or any other items, which in contractor's opinion, could hamper the functioning of the system.
- 9.8.2. The report shall list each irrigation controller and valve by station and zone.

9.9. HARD SURFACES INITIAL REPORT

- 9.9.1. After reviewing all of the hardscape walkways, paths, surfaces and retaining walls, Contractor shall report to the City Contract Manager any problems of immediate or future consequence. Examples: surface undermining, displaced surface, failing / damaged retaining walls.

10. REPORTING SUMMARY

10.1. INITIAL REPORTING

- 10.1.1. Conduct an initial inspection as described section 9.6.

10.2. MONTHLY REPORTING REQUIREMENTS

10.2.1. Summary of landscape maintenance activities performed on a monthly basis for:

10.2.1.1. Maintenance of landscape areas as described in Section 3 (includes reports on plant material, signage, and fences throughout the serviced areas)

10.2.1.2. Irrigation system maintenance as described in Section 5.

10.2.1.3. Repair and renovation work as described in Section 7.

10.2.1.4. Damage caused by invertebrates (if any)

10.2.1.5. Summary of reported playground damage and repair

10.2.2. A work schedule describing planned maintenance for the following month. Format of work schedule will be agreed upon between the City's Contract Manager and Contractor.

10.2.3. Pesticide use reports as described in section 4.3.5

11. BASIS OF PAYMENT

11.1. PAYMENTS

11.1.1. Contractor shall submit a monthly statement on or about the last day of each month indicating quantities of the various maintenance activities and any Repair and Renovation Work (R&RW) performed. Contractor shall furnish to the City, the following documents prior to any monthly payment processing by the City:

11.1.1.1. A comprehensive work schedule describing planned maintenance for the following month to include number of crew(s), crew size(s), dates, and location of planned work

11.1.1.2. The monthly maintenance summary for month invoiced (status & repairs)

11.1.1.3. Irrigation reports (status, repairs and on line reporting)

11.1.1.4. Detailed Pesticide use report for City's pesticide tracking purposes

11.1.1.5. A duplicate copy of the State Pesticide Report

11.1.1.6. Payment will be made in the ordinary course of business for work performed on developed landscape areas maintained by contractor during said month.

11.1.1.7. Any sums due to the City shall be deducted prior to payment.

11.1.1.8. City may withhold payment for services until all reports are submitted, services are invoiced properly, and approved for payment.

11.2. ASSIGNMENT

11.2.1. Any assignment of money shall be subject to all proper set-offs in favor of the City, and to all deductions provided for in the requirements and particularly all money withheld,

whether or not assigned, shall be subject to being used by the City for the completion of the services, in the event that Contractor should be in default therein.

11.3. PAYMENT BASIS

- 11.3.1. Maintenance of landscape areas as described in Section 3.1 through 3.11, inclusive (paid monthly).
- 11.3.2. Weed control and Debris/Litter as described in Section 3.12 through 3.13, inclusive (paid monthly).
- 11.3.3. Maintenance of irrigation system as described in Section 5, inclusive (paid monthly).
- 11.3.4. Playground area and equipment inspections as described in Section 6, inclusive (paid monthly).
- 11.3.5. Repair and Renovation Work as described in Section 7.
 - 11.3.5.1. Contractor payment will not exceed the amount of the mutually agreed upon unit price if a written cost estimate for the work is requested by the City.
 - 11.3.5.2. "Repair and Renovation Work" will cover the costs of all repairs and/or renovation described in Section 7 and includes the repair of vandalism and vehicle accident damage. This quantity of R&RW is an estimate and work is considered revocable.
 - 11.3.5.3. If no unit price is requested or agreed upon, then contractor shall be paid for the costs for labor and materials used in performing the work determined as hereinafter provided.
 - 11.3.5.4. If unforeseen conditions are encountered that require an increase in the amount of the payment, while completing the work these conditions should be brought to the attention of the City representative for evaluation. A payment adjustment will be made at his or her sole discretion.
 - 11.3.5.5. To the total of the direct costs computed as provided in "Labor," and "Materials," there will be added a mark up to the cost of materials only. The amount of the mark up to be determined by the proposed cost described in Attachment B, Cost Proposal.
 - 11.3.5.6. The above markup shall constitute full compensation for all overhead costs which shall be deemed to include all items of expense not specifically designated as costs as described in Attachment B, Cost Proposal. The total payment made as provided above shall be deemed to be the actual cost of such work and shall constitute full compensation.
 - 11.3.5.7. When forces other than Contractor's organization perform R&RW, Contractor shall reach agreement with such other forces as to the distribution of the payment made by the City for such work. No additional payment will be made by the City by reason of the performance of the work by forces other than Contractor's.
 - 11.3.5.8. Payment, as provided herein shall constitute full compensation to Contractor for performance of R&RW per Attachment B, Cost Proposal pricing submitted. No additional compensation shall be allowed.

- 11.3.5.9. Deductions from Payments: The City may, at its option and at any time, retain out of any amounts due contractor, 1) sums sufficient to cover any unpaid claims which are not covered by insurance covering the City, its officers and employees, provided by contractor and 2) any other sums which City is authorized or required to withhold under any applicable laws.
- 11.3.6. The cost of on-site "Project Supervision" and all other related fees are inclusive for the minimum hours per day, and are considered to be inclusive in the monthly cost of the payment basis items. No additional compensation will be paid for this required activity.

**EXHIBIT A-1
Civic Grounds and Small Parks Sites and Locations**

DESCRIPTION	COUNCIL DISTRICT	ACRES	PARK	CIVIC	LOCATION
ALMA COMMUNITY CENTER	7	1.5		X	136 W. ALMA
ALUM ROCK LIBRARY GROUNDS	5	1.18		X	3090 ALUM ROCK AVE
ALUM ROCK YOUTH CENTER	4	0.69		X	136 N. WHITE RD
ALUM ROCK AND 31 ST	5	0.86	X		WHITTON AVE AND S. 31 ST STREET
ALVISO COMMUNITY POLICING CENTER (OLD LIBRARY)	4	0.3		X	1060 TAYLOR ST
ANIMAL CARE CENTER	7	2.68		X	2750 MONTEREY RD
AVENIDA ESPANA PARK	2	0.91	X		DOWNS DR AND N CREEK DR
BARBERRY LANE WALKWAY	7	0.5	X		BARBERRY LN @ KING RD
BASCOM COMMUNITY CENTER	6	0.9		X	1000 S. BASCOM AVE
BELLEVUE AVE PARK	5	1.66	X		29 BELLEVUE AVE
BERRYESSA YOUTH CENTER - MODULARS	4	0.2		X	1970 MORRILL AVE
BESTOR ART PARK	3	0.669	X		6TH & BESTOR
BIBLIOTECA LIB & WASHINGTON YOUTH CTR & LOPEZ PARK	3	1.8		X	921 S. 1ST ST
BONITA PARK	3	0.84	X		SUNNY CT @ BONITA ST
BOYS & GIRLS CLUB, SMYTHE FIELD	8	2.49		X	2195 CUNNINGHAM AVE
BRIGADOON TOT LOT	8	0.5	X		FIRTH WY AND THREADNEEDLE WY
BUENA VISTA PARK	6	0.30	X		SCOTT & MENKER
CAMBRIAN LIBRARY	9	0.5		X	1780 HILLSDALE AVE
CANYON CREEK PARK	8	1.2	X		LARKSPUR CYN. & TRINITY HILLS
CAROLYN NORRIS PARK	9	1.34	X		2133 SAMARITAN DR
CASSELL PARK	5	1.4	X		LEEWARD DR. & LEEWARD CT.
CENTRAL SERVICE YARD	7	15.3		X	1601 SENTER ROAD
CHARLOTTE COMMONS PARK – CFD14	9	1.0	X		CHARLOTTE DR.@ RALEIGH RD.
CHILDREN OF THE RAINBOW	5	1.3	X		MADDEN & ELODIE
CHRIS HOTT'S PARK	10	1	X		ALMADEN EXPWY & VIA MONTE
CITY HALL GROUNDS	3	3.43		X	200 E. SANTA CLARA ST
CYPRESS SENIOR CENTER	1	1.9		X	403 S.CYPRESS

DESCRIPTION	COUNCIL DISTRICT	ACRES	PARK	CIVIC	LOCATION
DARYLVIEW COURT TRAIL	8	0.7	X		DARYLVIEW COURT (ADJACENT TO 2074 DARYLVIEW COURT)
DEL MONTE PARK	6	1.7	X		SUNOL ST. & AUZERAIS AVE
DOBERN BRIDGE TRAIL	5	0.063	X		ADJACENT TO 2492 ABED CT AND ADJACENT TO 2532 BAMBI LANE
EAST BRANCH CARNEGIE LIBRARY	3	0.3		X	1102 E. SANTA CLARA ST
EDENVALE LIBRARY GROUNDS	2	2.2		X	101 BRANHAM LANE EAST
EDENVALE COMMUNITY CENTER	2	1.602		X	330 BRANHAM LANE EAST
ELAINE RICHARDSON	7	2.0	X		MONTECITO VISTA DRIVE AND GOBLE LANE
ENVIRONMENTAL INNOVATION CENTER	3	4.4		X	1608 LAS PLUMAS AVE
EDENVALE YOUTH CENTER	2	0.6		X	285 AZUCAR AVE
ERIKSON PARK	9	1.6	X		PEARL AVE & BRANHAM LN
FAIR SWIM CENTER	7	3		X	1350 BACCHUS DR
FALLON HOUSE	3	0.33		X	115 W. ST JOHN
FALLS CREEK PARK	8	1.07	X		METROPOLITAN WY @ BOWERY LN
FIRE TRAINING CENTER	6	0.6		X	255 S. MONTYGOMERY
FLEMING PARK	5	0.4	X		139 FLEMING AVENUE
FOOTHILL PARK	10	0.1	X		FOOTHILL & CAHALAN
FORESTDALE TOT LOT	3	0.4	X		FORESTDALE AVE @ JEANNE AVE
GEORGE SHIRAKAWA COMMUNITY CENTER GROUNDS	7	5.2		X	2072 LUCRETIA AVE
GLEASON AVENUE MINI-PARK	1	0.17	X		GLEASON AVE @ SAN TOMAS AQUINO EXPY 95130 (ACROSS FROM 3500 GLEASON)
GRAN PARADISO PARK	4	1.25	X		MCKAY DR AND RINGWOOD
GREGORY TOT LOT	6	0.2	X		GREGORY & HELEN
GUADALUPE PARKING LOT	3	0.1		X	MISSION ST @ SAN PEDRO ST (ACROSS FROM ASBURY ST)
GUADALUPE RIVER PARK - DISCOVERY DOG PARK	3	0.39	X		PARK AVE @ DELMAS AVE
GULLO PARK	1	0.7	X		MOORPARK AVE & CASTLEWOOD DR

DESCRIPTION	COUNCIL DISTRICT	ACRES	PARK	CIVIC	LOCATION
HACIENDA PARK	3	0.3	X		WEST COURT & JULIAN ST
HESTER PARK	6	0.5	X		NAGLEE AVE @ DANA WY
HILLVIEW LIBRARY (NEW)	5	2.02		X	1600 HOPKINS DR
HUERTA TOT LOT	9	0.3	X		HILLSDALE AVE @ ROSS ST
HUMMINGBIRD PARK	6	0.39	X		BIRD AVE @ FISK ST
JACKSON MADDEN PARK	5	0.3	X		MADDEN AVE BETWEEN JACKSON AVE & RTE 680
JOYCE ELLINGTON (EMPIRE) LIBRARY	3	0.57		X	491 E. EMPIRE ST
LA RAGIONE TOT LOT	7	0.12	X		TULLY RD @ LA RAGGIONE
LAS PLUMAS WAREHOUSE –ESD		1.14		X	1590/1600 LAS PLUMAS AVE
LONE BLUFF MINI PARK	7	0.07	X		LONE BLUFF & PINTO
LUNA PARK	3	1.2	X		BERRYESSA RD & 15TH ST (ACROSS FROM 683 BERRYESSA ROAD)
MCLAUGHLIN PARK	7	0.6	X		CLEMENCE AVE @ BELLHURST AVE (ACROSS FROM 1192 CLEMENCE AVE)
MUNICIPAL RIFLE RANGE	7	0.5		X	1580 S. 10TH ST
NANCY LANE TOT LOT	5	0.1	X		NANCY LANE & FLORENCE
NEWHALL PARK	3	1.46	X		971 NEWHALL STREET 95126 @ CAMPBELL AVENUE
NISICH PARK	7	1.3	X		NISICH DRIVE AND SUZAY COURT
NOBLE HOUSE (OLD BERRYESSA TEEN CENTER)	4	0.1		X	14630 NOBLE AVE
NORTHSIDE SENIOR CENTER	3	0.32		X	488 N. 6TH ST
O'DONNELL GARDEN PARK	3	0.72	X		6TH ST & WILLIAM ST.
OLD MARTIN LUTHER KING LIBRARY	3	0.5		X	150 E. SAN FERNANDO ST
OUR PARK	5	0.5	X		VAN WINKLE RD @ STORY RD
PARQUE DE LA AMISTAD	5	1	X		VOLLMER AVE @ MCCREERY WY
PARQUE DE LOS POBLEDOS (GORE) PLAZA	3	0.2	X		1ST ST @ MARKET ST
PARQUE DE PADRE MATEO SHEEDY PARK	3	0.26	X		FLOYD ST @ LOCUST ST
PEARL AVENUE LIBRARY	10	0.78		X	4270 PEARL AVE

DESCRIPTION	COUNCIL DISTRICT	ACRES	PARK	CIVIC	LOCATION
PERALTA ADOBE	3	0.5		X	115 W. ST JOHN
PFEIFFER PARK	10	0.45	X		PFEIFFER RANCH RD @ BOULDER MOUNTAIN WAY
POLICE ADMINISTRATION GROUNDS	3	2.48		X	201 W. MISSION
POLICE ADMIN NORTH AND SOUTH	3	2.9		X	201 W. MISSION @ MISSION ST
POLICE SUBSTATION	2	8.45		X	6087 GREAT OAKS BLVD
POLICE/COMMUNICATIONS PARKING STRUCTURE	3	1.7		X	201 W MISSION ST
PUEBLO DE DIOS	1	1.25	X		3257 PAYNE AVENUE
RAMAC PARK – CFD 14	9	10.64	X		GREAT OAKS PARKWAY @ CHARLOTTE DR
RALIEGH LINEAR PARK – CFD14	9	5.37	X		RALEIGH RD @ CHARLOTTE DR.
RIVER OAKS PARKWAY (TRAIL HEAD)	4	0.1	X		TRAIL HEADS ABETWEEN 237 AND TRIMBLE NEAR MCCARTHY BLVD.
ROBERT ANTONIO BALERMINO PARK	7	1.8	X		1527 ALMADEN EXPRESSWAY
ROCK SPRINGS PARK	7	0.5	X		NEEDLES RD @ SENTER RD
ROSE GARDEN LIBRARY	6	0.6		X	1580 NAGLEE AVE @ DANA AVE
ROSEMARY GARDEN PARK	3	1.36	X		SONORA AVE @ SANTA PAULA AVE
ROY AVENUE PARK	6	1	X		ROY AVE @ SPADAFORE AVE
RUSSO PARK	9	0.35	X		TERMINUS RUSSO DR, RUSSO AVE @ CHERRY AVE
SAN ANTONIO TOT LOT	5	0.08	X		EAST SAN ANTONIO ST NEAR 34TH ST
SANTA TERESA LIBRARY	2	1.04		X	290 INTERNATIONAL CIRCLE
SCENIC MEADOWS PARK (SITES 1, 2, & 3)	8	1.05	X		2195 CUNNINGHAM AVE
SCOTTSDALE PARK	9	0.42	X		BRANHAM LN AND CASA DE PONSELLE
SOUTHSIDE COMMUNITY CENTER	2	2.97		X	5585 COTTLE RD
SOUTHEAST BRANCH LIBRARY (Change Order #11 – ADD)	8	0.23		X	4001 EVERGREEN VILLAGE SQUARE
ST. ELIZABETH PARK	6	0.7	X		CURCI DR & ST ELIZABETH DR

DESCRIPTION	COUNCIL DISTRICT	ACRES	PARK	CIVIC	LOCATION
SUPERBLOCK PARKING LOT	3	0.23		X	ALMADEN AVE @ BALBACH ST
TAMIEN PARK	3	1.40	X		GOODYEAR @ LICK
TAYLOR SAN PEDRO POLICE GARAGE	3	6.53		X	TAYLOR @ SAN PEDRO
THEODORE LENZEN PARK	6	0.5	X		LENZEN AVE @ STOCKTON AVE
TURTLE ROCK PARK	7	0.7	X		BOA VISTA DR @ MALDEN AVE
VIEIRA PARK	7	1.63	X		ADELINE AVE @ BATISTA DR
VIEIRA PARK OUTLOOK	7	0.37	X		ADELINE AVE @ BATISTA DR
VISTA MONTANA	4	1	X		4041 N FIRST STREET
VINELAND BRANCH LIBRARY	10	1.38		X	1450 BLOSSOM HILL RD
WEST PD - COMM POLICING CTR & PRNS BUILDING	1	0.25		X	3707 WILLIAMS ROAD @ BOYNTON
WEST EVERGREEN PARK	7	1.1	X		1500 ABORN RD SAN JOSE CA 95121
WEST VALLEY LIBRARY	1	0.46		X	1243 SAN TOMAS AQUINO
WILCOX PARK	6	1.9	X		WINONA DR @ WILCOX WY
WILLIAM H CILKER PARK	9	1.88	X		WINFIELD BLVD @ CHYNOWETH AVE
WILLOW GLEN LIBRARY	6	0.7		X	1157 MINNESOTA AVE
Total Outsourced Park and Civic Acreage:		156.344	68	46	
Total number of Outsourced Small Parks:	68				
Total number of Civic Grounds:	46				
Total Number of Contracted Sites:	114				

**EXHIBIT B
COMPENSATION AND PAYMENT SCHEDULE**

1. Compensation

1.1. City shall compensate Contractor for Landscaping Maintenance Services for Civic Grounds and Small Parks according with the following schedule:

PRNS Landscaping Maintenance Services for Civic Grounds and Small Parks	Description of Work	Monthly Rate	Annual Rate	Initial Year Total
Landscaping maintenance services (includes all management personnel, supervision, labor, material, and equipment required for complement maintenance of landscaped areas specified in Exhibit A-1.)	Maintenance of Landscaping Areas (Exhibit A, Sections 3.1 to 3.11)	\$44,547	\$534,564	\$534,564
	Weed Control & Debris and Litter Control (Exhibit A, Sections 3.12 to 3.13)	\$14,392	\$172,704	\$172,704
	Irrigation System Maintenance (Exhibit A, Section 5)	\$5,483	\$65,796	\$65,796
	Playground Area and Equipment Inspection (Exhibit A, Section 6)	\$1,828	\$21,936	\$21,936
TOTAL		\$66,250	\$795,000	\$795,000

PRNS Landscaping Maintenance Services for Civic Grounds and Small Parks for New Locations Added	Description of Work	Monthly Per Acre Rate
Landscaping maintenance services (includes all management personnel, supervision, labor, material, and equipment required for complement maintenance of landscaped areas specified in Exhibit A-1.)	Maintenance of Landscaping Areas (Exhibit A, Sections 3.1 to 3.11)	\$475
	Weed Control & Debris and Litter Control (Exhibit A, Sections 3.12 to 3.13)	\$225
	Irrigation System Maintenance (Exhibit A, Section 5)	\$100
	Playground Area and Equipment Inspection (Exhibit A, Section 6)	\$50

1.2. All Payments are based upon City’s acceptance of Contractor’s performance of the task as evidenced by successful completion of the Deliverable for that task. City shall have no obligation to pay unless Contractor has successfully completed and City has approved the task for which payment is due.

1.3. The maximum compensation to be paid to Contractor shall not exceed Eight Hundred Thirty-Five Thousand Dollars and no cents (\$835,000). This amount is inclusive of all management personnel, supervision, labor, material and equipment required for completed maintenance or landscape areas in Exhibit A-1.

1.4. Monthly Invoice

1.4.1. Contractor shall submit to City a monthly invoice within fifteen (15) working days of the last day of each month, in arrears, for payment for services performed pursuant to this Agreement. The monthly invoice shall include a statement of work performed during the month. City shall review the monthly invoice submitted by Contractor and within ten (10) working days of receipt of the invoice, City shall notify Contractor of any discrepancies or deficiencies in said invoice.

1.5. Payment to Contractor

1.5.1. Except as otherwise provided in this Agreement, City shall make monthly payments within ten (10) business days of City’s approval of Contractor’s invoice. If City makes any payments or incurs any costs for which City is entitled to reimbursement from any payment otherwise due to Contractor from City, City may deduct such reimbursement from any payment otherwise due to Contractor from City. City shall submit to Contractor

written documentation in support of such deduction upon Contractor's request. In the event City does not deduct such reimbursement from Contractor's payment but submits to Contractor an invoice for reimbursement, Contractor shall reimburse City within thirty (30) days of receipt of such invoice.

- 1.5.2. For work deemed by the CITY as not meeting the requirements of the specifications, the City shall withhold monthly payments or percentages thereof for work not completed, or until work is completed as per contract specifications. City shall withhold monthly payments or percentages thereof for work that is not completed on schedule.
- 1.5.3. Any City facilities damaged by contractor shall be repaired at Contractor's cost. City shall withhold monthly payments or percentages thereof until the damages are repaired to the City's satisfaction.

1.6. Renewal Period Compensation

- 1.6.1. After the Initial Term, the City reserves the right to extend the term of this Agreement pursuant to Section 2.2 ("Options to Extend") for ongoing services at the same rates as the final year of the Initial Term unless otherwise requested and agreed to in writing by the Parties.
- 1.6.2. Price Renegotiation. Contractor may request adjustments to the compensation rates sixty (60) days prior to an option term. Contractor shall provide information justifying reasons for any increase, and City shall not unreasonably withhold approval of any increase provided the renewal quote for ongoing services does not increase more than the Consumer Price Index over the previous year's fees, unless otherwise negotiated.
- 1.6.3. City shall provide Contractor prior written notice in the form of Exhibit F of its intention to exercise its option for the next term prior to the end of the then current term. The City's Director of Finance or designee is authorized to exercise options on behalf of the City.

4 Additional Services

4.1 In the event the City requires additional services, Contractor shall provide a written quotation, at no cost to the City, of the type of Additional Service requested and the time required to complete requested work.

4.2 Supplemental professional service rates shall not exceed the following:

PRNS Supplemental Services for Landscaping Maintenance of Civic Grounds and Small Parks (Exhibit A, Section 7)	Description of Work	Hourly Rate	Annual Rate	Initial Year Total
Plant Material, Repair, and Replacement	One Person Crew, Truck/Tools	\$45	\$4,500	\$4,500
	Two Person Crew, Truck/Tools	\$90	\$4,500	\$4,500
	Supervisor, Truck/Tools	\$65	\$1,625	\$1,625
Irrigation Repair and/or Renovation Work	One Person Crew, Truck/Tools	\$75	\$3,750	\$3,750
	Two Person Crew, Truck/Tools	\$75	\$1,875	\$1,875
	Supervisor, Truck/Tools	\$75	\$900	\$900
Miscellaneous Materials/Parts	Cost +10%		\$22,000	\$22,000
TOTAL		\$425	\$39,150	\$39,150

4.3 City reserves the right to request a fixed priced quote in lieu of time and materials. Any fixed price quotes shall be consistent with the agreed-upon supplemental service rates in Section 4.2 above and must be good for at least ninety (90) days.

4.4 Quotes must be approved by the City through an executed Change Order prior to any work being performed

**EXHIBIT C
INSURANCE REQUIREMENTS**

Contractor, at Contractor's sole cost and expense, shall procure and maintain for the duration of this Agreement, insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the services hereunder by contractor, its agents, representatives, employees or subcontractors or suppliers. The cost of such insurance shall be included in Contractor's bid.

1 Minimum Scope and Limit of Insurance

There shall be no endorsements reducing the scope of coverage required below unless approved by the City's Risk Manager.

Type of Insurance	Minimum Limit
<p>1. Commercial General Liability</p> <p>The coverage provided by Insurance Services Office "occurrence" form CG 0001, including coverages for contractual liability, personal injury, broadform property damage, independent contractors, products and completed operations.</p>	<p>\$1,000,000 per occurrence for bodily injury, personal injury and property damage or \$2,000,000 annual aggregate</p>
<p>2. Automobile Liability</p> <p>The coverage provided by Insurance Services Office form number CA 0001. Coverage shall be included for all owned, non-owned and hired automobiles.</p>	<p>\$1,000,000 combined single limit per accident for bodily injury and property damage or waiver of Automobile Liability coverage is permitted if Contractor is not performing services on City Property and signs written waiver</p>
<p>3. Workers' Compensation and Employer Liability</p> <p>As required by the Labor Code of the State of California.</p>	<p>Not less than \$1,000,000 each claim and annual aggregate</p>

2 Other (as checked below)

	Type of Insurance	Minimum Limit
<input type="checkbox"/>	<p>4a. Professional Liability/Errors and Omissions</p> <p>Including coverages for negligent acts, errors or omissions arising from professional services provided</p>	<p>Not less than \$1,000,000 each claim and annual aggregate</p>

	under this contract, with any deductible not to exceed \$25,000 each claim.	
<input type="checkbox"/>	<p>4b. Environmental & Pollution Liability</p> <p>Including coverages for sudden and accidental pollution, gradual pollution, transportation and disposal of hazardous materials and cleanup costs, with any deductible not to exceed \$25,000 each occurrence, add City as additional insured.</p>	Not less than \$1,000,000 each occurrence
<input type="checkbox"/>	<p>4c. Aircraft Liability</p> <p>Including passenger liability, add City as additional insured.</p>	Not less than \$2,000,000 each occurrence
<input type="checkbox"/>	<p>4d. Crime/Custodial/Security – Commercial Crime Insurance,</p> <p>Including coverages for loss sustained by a client as a result of employee dishonesty.</p>	Not less than \$500,000 each loss
<input type="checkbox"/>	<p>4e. Garagekeepers Legal Liability</p> <p>Including coverages for all risks of loss or physical damage to vehicles in care, custody or control, and any deductible not to exceed \$5,000 each occurrence</p>	Not less than \$500,000 each occurrence
<input type="checkbox"/>	<p>4f. Inland Marine</p> <p>For property of others in transit or storage, and any deductible not to exceed \$5,000 each loss, including City as Loss Payee as its interests may appear.</p>	Not less than the replacement value of property in care, custody or control
<input type="checkbox"/>	<p>4g. Cyber & Technology Errors & Omissions</p> <p>Technology/professional liability insurance and data protection liability insurance covering liabilities for financial loss resulting or arising from acts, errors, or omissions, in rendering services provided and network security liability under this agreement as well as all Vendor costs, including damages it is obligated to pay Client or any third party, which are associated with any Security Breach (as hereafter defined) or loss of Personal Data or Protected Data, regardless of cause (including, without limitation, Vendor negligence or gross negligence and unlawful third party acts). Costs to be covered by this insurance policy shall include without limitation: (a) costs to notify individuals whose Personal Data was lost or compromised; (b) costs to provide credit monitoring and credit restoration services to individuals whose Personal Data was lost or compromised; (c) costs associated with third party claims arising from the Security Breach or loss of</p>	Not less than \$1,000,000 each occurrence

	<p>Personal Data, including litigation costs and settlement costs; and (d) any investigation, enforcement or similar miscellaneous costs. For the purposes of this Section, " Security Breach" means (1) the failure by the Vendor to properly handle, manage, store, destroy or otherwise control, or the unauthorized disclosure by the Vendor of: (a) Personal Data in any format or (b) third party corporate information in any format specifically identified as confidential and protected under a confidentiality agreement or similar contract; (2) an unintentional violation of the Vendor's privacy policy or misappropriation that results in the violation of any applicable data privacy laws or regulations; or (3) any other act, error, or omission by Vendor in its capacity as such which is reasonably likely to result in the unauthorized disclosure of Personal Data.</p>	
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3 Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to, and approved by, the City’s Risk Manager. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officials, employees, agents and contractors; or contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the City’s Risk Manager.

4 Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

4.1. General Liability and Automobile Liability Coverages

- a. The City, its officials, employees, and agents are to be covered as additional insureds as respects: liability arising out of activities performed by, or on behalf of, contractor; products and completed operations of contractor; premises owned, leased or used by contractor; or automobiles owned, leased, hired or borrowed by contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees, and agents.
- b. Contractor’s insurance coverage shall be primary insurance as respects the City, its officials, employees, and agents. Any insurance or self-insurance maintained by the City, its officials, employees, and agents shall be excess of contractor’s insurance and shall not contribute with it.
- c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officials, employees, or agents.
- d. Coverage shall state that contractor’s insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer’s liability.
- e. Coverage shall contain a waiver of subrogation in favor of the City, its officials, employees, and agents.

4.2. Workers' Compensation and Employers Liability

Coverage shall be endorsed to state carrier waives its rights of subrogation against the City, its officials, and agents.

4.3. All Coverages

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to the City; except that ten (10) days' prior written notice shall apply in the event of cancellation for non-payment of premium..

5 Acceptability of Insurance

Insurance is to be placed with insurers acceptable to the City's Risk Manager.

6 Verification of Coverage

6.1. Contractor shall furnish the City with certificates of insurance and with original endorsements affecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

6.2. Copies of all the required endorsements shall be attached to the Certificate of Insurance which shall be provided by contractor's insurance company as evidence of the stipulated coverages.

6.3. Proof of insurance shall be either emailed in pdf format to: Riskmgmt@sanjoseca.gov, or mailed to the following postal address (or any subsequent email or postal address as may be directed in writing by the Risk Manager):

City of San José – Finance Department
Risk & Insurance
200 East Santa Clara St., 14th Floor
San José, CA 95113-1905

7 Subcontractors

Contractors shall include all subcontractors as insureds under its policies or shall obtain separate certificates and endorsements for each subcontractor.

**EXHIBIT D
LABOR COMPLIANCE ADDENDUM**



LABOR COMPLIANCE ADDENDUM

AGREEMENT TITLE:	Landscaping Maintenance Services for Civic Grounds and Small Parks
CONTRACTOR Name and Address:	Bayscape Management, Inc. P.O. Box 880 Alviso, CA 95002

By executing this Addendum, Contractor acknowledges and agrees that the work performed pursuant to the above referenced Agreement or Purchase Order, including all renewals and extensions, is subject to all applicable provisions.

Payment of Minimum Compensation to Employees. Contractor shall be obligated to pay not less than the General Prevailing Wage Rate and/or Living Wage Rate as indicated in the attached Exhibit(s) titled “**Work Classification and/or Living Wage Determination.**”

- A. Prevailing Wage Requirements.** California Labor Code and/ or Resolutions of the San Jose City Council require the payment of not less than the general prevailing rate of per diem wages and rates for holiday and overtime and adherence to all labor standards and regulations. The General Prevailing Wage Rates may be adjusted throughout the term of this Agreement. Notwithstanding any other provision of this Agreement, Contractor shall not be entitled to any adjustment in compensation rates in the event there are adjustments to the General Prevailing Wage Rates.
- B. Living Wage Requirements.** Any person employed by Contractor or subcontractor or City financial recipient or any sub recipient whose compensation is attributable to the City’s financial assistance, who meets the following requirements is considered a covered employee. The employee: 1) is not a person who provides volunteer services, that are uncompensated except for reimbursement of expenses such as meals, parking or transportation; 2) spends at least half of his or her time on work for the City; 3) is at least eighteen (18) years of age; and 4) is not in training for the period of training specified under training standards approved by the City.
- C. Reports.** Contractor shall file a completed and executed copy of this Addendum with the Department of Finance/Purchasing Division. Upon award the Department of Finance/Purchasing Division shall provide contractor with compliance documents to be completed and returned (with supporting documentation) to the Office of Equality Assurance. **These documents must be returned within ten (10) days of receipt.** Contractor shall not perform on site work on this contract until labor compliance documents are filed. Contractor shall also report additional information, including certified payrolls, as requested by Director of Equality Assurance to assure adherence to the Policy.
- D. Coexistence with Any Other Employee Rights.** These provisions shall not be construed to limit an employee’s ability to bring any legal action for violation of any rights of the employee.

E. Audit Rights. All records or documents required to be kept pursuant to this Agreement to verify compliance with the Wage Requirement shall be made available for audit at no cost to City, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such records or documents shall be provided to City for audit at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records or documents shall be available at Contractor's address indicated for receipt of notices in this Contract.

F. Enforcement.

1. **General.** Contractor acknowledges it has read and understands that, pursuant to the terms and conditions of this Agreement, it is required to comply with the Wage Requirement and to submit certain documentation to the City establishing its compliance with such requirement. ("Documentation Provision.") Contractor further acknowledges the City has determined that the Wage Requirement promotes each of the following (collectively "Goals"):
 - a. It protects City job opportunities and stimulates the City's economy by reducing the incentive to recruit and pay a substandard wage to labor from distant, cheap-labor areas.
 - b. It benefits the public through the superior efficiency of well-paid employees, whereas the payment of inadequate compensation tends to negatively affect the quality of services to the City by fostering high turnover and instability in the workplace.
 - c. Paying workers a wage that enables them not to live in poverty is beneficial to the health and welfare of all citizens of San Jose because it increases the ability of such workers to attain sustenance, decreases the amount of poverty and reduces the amount of taxpayer funded social services in San Jose.
 - d. It increases competition by promoting a more level playing field among contractors with regard to the wages paid to workers.

2. Remedies for Contractor's Breach of Prevailing Wage/Living Wage Provisions.

- a. **WITHHOLDING OF PAYMENT:** Contractor agrees that the Documentation Provision is critical to the City's ability to monitor Contractor's compliance with the Wage Requirement and to ultimately achieve the Goals. Contractor further agrees its breach of the Documentation Provision results in the need for additional enforcement action to verify compliance with the Wage Requirement. In light of the critical importance of the Documentation Provision, the City and Contractor agree that Contractor's compliance with this Provision, as well as the Wage Requirement, is an express condition of City's obligation to make each payment due to contractor pursuant to this Agreement. **THE CITY IS NOT OBLIGATED TO MAKE ANY PAYMENT DUE CONTRACTOR UNTIL CONTRACTOR HAS PERFORMED ALL OF ITS OBLIGATIONS UNDER THESE PROVISIONS. THIS PROVISION MEANS THAT CITY CAN WITHHOLD ALL OR PART OF A PAYMENT TO CONTRACTOR UNTIL ALL REQUIRED DOCUMENTATION IS SUBMITTED.** Any payment by the City despite Contractor's failure to fully perform its obligations under these provisions shall not be deemed to be a waiver of any other term or condition contained in this Agreement or a waiver of the right to withhold payment for any subsequent breach of the Wage Requirement or the Documentation Provision.
- b. **RESTITUTION:** Require the employer to pay any amounts underpaid in violation of the required payments and City's administrative costs and liquidated damages and, in the case of financial assistance, to refund any sums disbursed by the City.
- c. **SUSPENSION OR TERMINATION:** Suspend and/or terminate Agreement for cause;
- d. **DEBARMENT:** Debar Contractor or subcontractor from future City contracts and/or deem the recipient ineligible for future financial assistance.

e. **LIQUIDATED DAMAGES FOR BREACH OF WAGE PROVISION:** Contractor agrees its breach of the Wage Requirement would cause the City damage by undermining the Goals, and City's damage would not be remedied by Contractor's payment of restitution to the workers who were paid a substandard wage. Contractor further agrees that such damage would increase the greater the number of employees not paid the applicable prevailing wage and the longer the amount of time over which such wages were not paid. The City and Contractor mutually agree that making a precise determination of the amount of City's damages as a result of Contractor's breach of the Wage Requirement would be impracticable and/or extremely difficult. **THEREFORE, THE PARTIES AGREE THAT, IN THE EVENT OF SUCH A BREACH, CONTRACTOR SHALL PAY TO THE CITY AS LIQUIDATED DAMAGES THE SUM OF THREE (3) TIMES THE DIFFERENCE BETWEEN THE ACTUAL AMOUNT OF WAGES PAID AND THE AMOUNT OF WAGES THAT SHOULD HAVE BEEN PAID.**

City

Contractor Bayscape Management, Inc.

By _____
Name: Theresa Porter
Title: Buyer III
Date: _____

By _____
Name: _____
Title: _____
Date: _____

**EXHIBIT D-1
WAGE REQUIREMENTS AND REQUIRED WAGE DOCUMENTS**



Work Classification Determination

The following classification(s) are applicable to this contract. The prevailing wage rates for this contract are contained in the General Prevailing Wage Determination issued by the Director of Industrial Relations. More information about the General Wage Determination is provided on the next page. If you have any questions regarding the classifications listed for this contract, please contact the Office of Equality Assurance and reference the OEA# at the bottom of this page.

Work Description

Classification(s)

<p>Landscape Maintenance & Clean-Up Mowing, hedge trimming, edging, minor tree trimming, routine irrigation system repair, over-the-counter pesticide use, turf maintenance including aeration, dethatching and fertilizing, cleaning grounds using rakes, brooms, hose & leaf blowers, minor graffiti clean-up and color change (seasonal change of flowers)</p>	<p>Craft: Living Wage (See attachment dated 7.1.2017)</p>
<p>Pesticide/Herbicide Application</p>	<p>Craft: Laborer Group 4 [Pages 49-50]</p>
<p>Repair and Renovation Work Sod installation/tree planting, spreading mulch, plant & shrub removal/planting, retaining walls & trails</p>	<p>Craft: Laborer Group 3 [Pages 49-50]</p>
<p>Traffic Control</p>	<p>Craft: Traffic Control/ Lane Closure, (Laborer) [Pg. 44]</p>

For any work not expressly identified, please contact the Office of Equality Assurance at 408.535-8430.

Small Parks Landscape Maintenance



LABOR COMPLIANCE WORKFORCE STATEMENT

CONTRACTOR NAME: _____

CONTRACT: _____

In the chart below, list the name, prevailing wage or living wage classification(s) to be used, rate of pay and hire date for each employee expected to work on the above contract. See example below.

EMPLOYEE NAME	CRAFT/TRADE CLASSIFICATION	BASIC HOURLY RATE OF PAY (On City of San Jose Contract)	DATE OF HIRE (Indenture Date If Apprentice)
<i>Example: Bob Jones</i>	<i>Recycle Driver</i>	<i>\$24.28</i>	<i>6/1/2002</i>

Questions regarding classifications allowed on San Jose projects should be directed to the Office of Equality Assurance at 408-535-8430.



LABOR COMPLIANCE FRINGE BENEFIT STATEMENT

CONTRACTOR NAME: _____

CONTRACT: _____

I certify under penalty of perjury that fringe benefits are paid to the approved plans, funds, or programs as listed below:

Classification	Fringe Benefit Hourly Amount	Name of the Plan or Fund (Attach Premium Transmittal)
<p>1. <i>Documentation of Plan contribution <u>must</u> be returned with this statement</i> Please attach a copy of your most recent transmission into each medical, pension, or profit sharing plan account indicating worker name and amount of contribution.</p>	Vacation \$ _____ Health & Welfare \$ _____ Pension \$ _____ Apprentice \$ _____ Other (specify) \$ _____	_____ _____ _____ _____ _____
<p>2. _____</p>	Vacation \$ _____ Health & Welfare \$ _____ Pension \$ _____ Apprentice \$ _____ Other (specify) \$ _____	_____ _____ _____ _____ _____
<p>3. _____</p>	Vacation \$ _____ Health & Welfare \$ _____ Pension \$ _____ Apprentice \$ _____ Other (specify) \$ _____	_____ _____ _____ _____ _____

All (or some) fringes are paid in cash by adding the amount to the employee's basic hourly rate.

Company Name (Please Print)

Name and Title (Please Print)

Date

Signature

**ATTACHMENT H Exhibit 5 EMPLOYEE WORK ENVIRONMENT AND LABOR PEACE
QUESTIONNAIRE**

SECTION I: CONTRACTOR INFORMATION

Contractor Name: **Bayscape Landscape Management**
Address: **P.O. Box 880 Alviso, CA 95002**
Phone: **408.288.2940** FAX: **408.392.9014**
Prepared by: **Tom Ellington** Title: **President**

SECTION II: EMPLOYEE HEALTH BENEFITS

1. Does your company provide a health insurance plan or program for employees?

NO, we do not provide a health insurance plan or program for employees.

YES, we do provide a health insurance plan or program for employees.

If the answer is no, does your company provide benefits in lieu of a health insurance plan? (Be specific. Describe on a separate sheet and attach.)

2. If the answer to Question 1 above is yes, please provide the following information:

2a. Please list the health insurance plan(s) or program(s) offered to your employees (use additional sheets if necessary)

Kaiser Permanente – Bronze 60 HSA

2b. What is the contribution by the employee per pay period to this plan?

\$ 50% for single coverage, no dependents
\$ _____ for family coverage, with dependents

Pay period is (check one): Weekly Bi-weekly Semi-monthly Monthly

2c. What is the contribution by the company, per employee, per pay period, to this plan?

\$ _____ for single coverage, no dependents
\$ _____ for family coverage, with dependents

2d. How long must the employee be employed by your company before they are eligible for health insurance coverage?

90 Days Month Year

2e. What job classifications of your employees are covered by the insurance program outlined above? (Use additional sheets if necessary.)

All Classifications

2f. Does your health insurance coverage pertain to part-time and full-time employees?
 Yes No If no, please explain.
Full time employees only

SECTION III: EMPLOYEE BASIC BENEFITS

1. Indicate the basic benefits your workers receive.

Years of Service	# of Vacation Days	# of Sick Days	# of Personal Days
After 1 year	80 Hrs PTO - MGT		
After 5 years	120 Hrs PTO - MGT		
After 10 years	160 Hrs PTO - MGT		

Other: (Explain.)

2. Indicate the paid holidays your workers receive by placing check mark to the left of each.

<input checked="" type="checkbox"/>	New Year's Day - MGT	<input checked="" type="checkbox"/>	Independence Day - MGT	<input checked="" type="checkbox"/>	Christmas - ALL
	Martin Luther King Jr. Day	<input checked="" type="checkbox"/>	Labor Day - MGT		Floating Holiday
	Washington's Birthday		Veterans' Day		Other:
<input checked="" type="checkbox"/>	Memorial Day - MGT	<input checked="" type="checkbox"/>	Thanksgiving Day - ALL		Other:

3. Do you allow for unpaid leave? Yes, please explain policy. No

SECTION IV: EMPLOYEE COMPLAINT PROCEDURE

1. Does your company have an employee complaint resolution procedure?

YES (Attach a copy of our company's employee complaint resolution procedure.

NO, our company does not have an employee complaint resolution procedure.

SECTION V: COMPLIANCE WITH STATE AND FEDERAL WORKPLACE STANDARDS

Have any of the following State or Federal Regulatory agencies obtained final orders or final judgments finding a violation by your company of State or Federal law relating to the treatment of your employees? If your answer is yes to any of the questions below, please provide the date of entry of the final judgment or order, the agency which obtained the order, and a brief description of the nature of the violation on a separate sheet of paper.

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Reasonable Suspicion Testing	18
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Section 5.1 Open Door Policy

The Company is committed to open and honest communication in the workplace. Management is available to discuss your problems. The Company is interested in listening to your concerns, problems, and suggestions and will seek employee input on important work-related matters.

If you have a problem or concern, you often will find the easiest and most effective way to find a solution is to have an honest discussion with your management. You should follow the usual reporting channels to find a solution, starting with your immediate Supervisor, going to your manager and then upper management. If the nature of the matter is such that you would prefer not to discuss it with a particular person, you should discuss it with the next level of management or with the President without fear of reprisal. The objective is to maintain open and honest communication to help find a fair solution to your problems or concerns.

Section 5.2 Problem-Solving Procedure

Your Management is aware that in any business organization, work oriented dissatisfaction may arise because an employee may not know, or understand, certain policies or decisions, or feels unfairly treated.

Whenever a work-related problem arises, an earnest effort will be made to resolve it. If you have a problem, always present it first to your immediate Supervisor. He or she is interested in the solution of any job-related problem you, as a member of the team, may have. Experience has shown that problems can usually be settled satisfactorily after a thorough discussion and an understanding between an employee and the Supervisor. If you are not satisfied with the results at this stage, you may take your problem to management, who is available to you for consultation and advice on any work-related problem.

The prompt and sincere use of this procedure is generally sufficient to solve misunderstandings, problems and differences of opinion as necessary to maintain the harmonious relations which all of us strongly desire.

Section 5.3 Garnishment

You are responsible for your own debts. Garnishments cause the Company additional paperwork and added expense. We strongly encourage you to work out a financial problem before garnishment of wages become necessary.

Section 5.6 Job Evaluation

Your Supervisor or Department Head will review your work. Such evaluations will be an important factor in determining compensation.

The Supervisor or Department Head will prepare a written evaluation and will discuss the evaluation with you in

private. You will be allowed to see the evaluation, make any comments, sign it, and receive a copy, after which the evaluation will be placed in your personnel file. Other factors considered in determining compensation are the nature of the job and the degree of responsibility called for, training required, education, experience, skill required, ability, on-the-job performance and length of service.

A satisfactory performance review **does not** guarantee continued employment. Performance reviews and salary reviews do not necessarily correspond in time.

Section 5.9 Promotions

It is the policy of this Company, where practicable, to promote qualified personnel from within the Company. To enhance this policy, most open positions will be posted. Qualified present employees will receive an opportunity to apply for an open position even though it has also been opened to the public.

Section 5.10 Employment Separation

Your employment with Bayscape Management, Inc. is voluntarily entered into and you are free to resign at any time. Similarly, we are free to conclude our employment relationship at any time we feel it is appropriate. It should be recognized that neither you, nor we, have entered into any contract of employment, expressed or implied.

If you find it necessary to resign, you are requested to give advance notice of at least two weeks in writing to your Supervisor indicating the last day of work and the reason for your resignation. This date will be considered the effective date of your resignation. The final paycheck for employees who resign with at least seventy-two (72) hours advance notice will be provided on their last day of work. Employees who do not give such notice will receive their paycheck within seventy-two (72) hours of their resignation date.

If you are involuntarily terminated, terminated or laid off, you will be provided your final pay on your last day of work.

Company property, such as keys, uniforms, automobiles, tools, audio equipment and credit cards, must be returned by you at the time the final paycheck is provided.

If you are unable to pick up your final pay in person, unless otherwise directed, the Company will mail your check to your last known address.

Section 5.11 Exit Interview

The supervisor will schedule an exit interview with each employee who leaves the Company, regardless of the reason. This interview allows employees to communicate their views on their work with the Company and the job requirements, operations and training needs. It also provides the employee an opportunity to discuss issues concerning benefits and insurance. At the time of the interview, employees are expected to return all Company-furnished uniforms, tools and equipment, such as ID

1. California Department of Fair Employment and Housing Department (DFEH).

NO, our company has not had any final judgment or administrative order.

YES, our company has had final judgment(s) or administrative order(s).

2. California Department of Industrial Relations (Cal OSHA).

NO, our company has not had any final judgment(s) or administrative order(s)

YES, our company has had final judgment(s) or administrative order(s).

3. California Department of Industrial Relations (Minimum Wage, hours or working conditions) Labor Board

NO, our company has not had any final judgment(s) or administrative order(s).

YES, our company has had final judgment(s) or administrative order(s).

SECTION VI: LABOR PEACE ASSURANCE

The City of San Jose has determined that labor peace is essential to the proprietary interests of the City in this RFP to ensure that contractors conducting business on City property are good employers, provide a good work environment without encroaching on the contractor's ability to conduct business and comply with federal, state and City employment policies.

Proposers are free to submit any plan or program that demonstrates a good work environment and prevents disruption in services due to disputes with its employees. The following examples are provided solely for purpose of example. They are not intended to limit a proposer in any way from submitting any plan or program that assures labor peace.

1. Any existing or proposed plans, benefits or programs undertaken by the employer to attract and retain qualified employees and assist in providing uninterrupted service through the employer's workplace condition and practices (Example: Company's Employee Handbook);
2. A written dispute resolution policy or procedure (Example: Company's Employee Handbook);
3. A written grievance policy or procedure (Example: Company's Employee Handbook);
4. The formation of a joint labor-management committee – A committee comprised of employees from both labor and management to discuss issues of mutual concern;
5. A collective bargaining agreement between a firm and a recognized union;

6. Labor neutrality provision – A labor neutrality provision means the proposer, as employer, will accept a union’s campaign to convince the employer’s employees about the merits of unionization and also refrain from offering arguments against unionization;
7. “Card Check” provision – A “card check” provision means the proposer/employer would agree to allow representatives from a labor union to come on company property during work hours for the purpose of organizing its workforce and collecting union authorization cards. The Proposer/Employer pledges to recognize the union if a certain number of signed union authorization cards are collected. This type of provision is typically coupled with a Labor Neutrality provision;
8. Any other information, plan or program regarding how the proposer will protect against disruptions in service due to disputes with its employees during the Term and any Option period of the Agreement.

Proposers are required to respond in the space provided below and attach any documents to show how it will prevent labor disputes or unrest from occurring during the term of the City Agreement. If the Questionnaire is incomplete or inadvertently omitted from your proposal, it will not result in immediate disqualification of your proposal. However, failure to submit this Questionnaire with your proposal or incomplete submittals, may result in a lower overall score.

Proposer provides the following Labor Peace Assurance(s):

See Attached

Bayscape Management, Inc. Employee Handbook Supplement of Benefits

Bayscape Management, Inc. Employee Handbook

SECTION VII: WARRANTY AND REPRESENTATION

By signing below, proposer warrants and represents that if proposer is successful, the above listed benefits and complaint procedure will be maintained for the term of the agreement, and proposer declares that, to the best of its ability, it intends to ensure that essential services and labor for which it has been contracted will be provided efficiently and without interruption.

Company: Bayscape Landscape Management

Signature:



Name: Matt Ellington

Title: Vice President of Operations

Date:

10/11/17

**EXHIBIT E
CHANGE ORDER FORM**

CHANGE ORDER # __

<p>Pursuant to Section 7 of the Agreement for the _____ System between _____ and the City of San José, the Agreement is hereby amended as follows:</p> <p><i>(The following language is provided as an example of how to complete this form.)</i></p>									
<p>1. Contractor shall provide the following additional services at the costs indicated below:</p>									
<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:50%; padding: 5px;">TOTAL</td> <td style="width:50%;"></td> </tr> </table>		TOTAL							
TOTAL									
<p>2. The following services, products or deliverables are hereby deleted and the associated costs in amounts set forth below are also deleted.</p>									
<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:50%; padding: 5px;">TOTAL</td> <td style="width:50%;"></td> </tr> </table>		TOTAL							
TOTAL									
<p>3. Exhibit __ is hereby amended to read as set forth in the Revised Exhibit __ which is attached hereto.</p>									
<p>4. All of the terms and conditions of the Agreement not modified by Change Order shall remain in full force and effect.</p>									
	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:70%; padding: 5px;">Total Cost of Change</td> <td style="width:30%;"></td> </tr> <tr> <td style="padding: 5px;">Total Credit of Change</td> <td></td> </tr> <tr> <td style="padding: 5px;">Previous Amendments and/or Change Orders</td> <td></td> </tr> <tr> <td style="padding: 5px;">Original Contract</td> <td></td> </tr> </table>	Total Cost of Change		Total Credit of Change		Previous Amendments and/or Change Orders		Original Contract	
Total Cost of Change									
Total Credit of Change									
Previous Amendments and/or Change Orders									
Original Contract									
<p>ACCEPTANCE</p> <p>Contractor hereby agrees to accept the amount set forth herein as payment in full of the work described and further agrees that Contractor is entitled to no additional time or compensation for such work other than as set forth herein.</p> <p>Contractor</p> <p>_____</p> <p align="center">Date</p>	<p>APPROVED AS TO FORM</p> <p>_____</p> <p>{Name} Title</p> <p>City of San José</p> <p>_____</p> <p>Name _____ Date _____ Title</p>								

EXHIBIT F
Notice of Exercise of Option to Extend Agreement

AGREEMENT TITLE:	
CONTRACTOR Name and Address:	
DATE:	

(date the notice is sent must be consistent with the time for exercise set forth in Agreement)

Pursuant to Section _____ of the Agreement referenced above, the City of San José hereby exercises its option to extend the term under the following provisions:

OPTION NO.	
-------------------	--

NEW OPTION TERM

Begin date:	
End date:	

CHANGES IN RATE OF COMPENSATION

Percentage change in CPI upon which adjustment is based:	
---	--

Pursuant to Section ____ of the Agreement the Rates of Compensation are hereby adjusted as follows:
(use attachment if necessary)

MAXIMUM COMPENSATION for New Option Term:	
--	--

For the option term exercised by this Notice, City shall pay Contractor an amount not to exceed the amount set forth above for Contractor's services and reimbursable expenses, if any. The undersigned signing on behalf of the City of San José hereby certifies that an unexpended appropriation is available for the term exercised by this Notice, and that funds are available as of the date of this signature.

<p>CITY OF SAN JOSÉ a municipal corporation</p> <p>By _____ Name: Title:</p>

Date: