

**NON-PROFESSIONAL SERVICES AGREEMENT BETWEEN
THE CITY OF SAN LEANDRO AND
PACHECO BROTHERS GARDENING, INC.
FOR
CITYWIDE LANDSCAPE MAINTENANCE**

THIS AGREEMENT for Citywide Landscape Maintenance services is made by and between the City of San Leandro ("City") and Pacheco Brothers Gardening, Inc. ("Contractor") (together sometimes referred to as the "Parties") as of March 1, 2016 (the "Effective Date").

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Contractor shall provide to City the services described in Request for Proposal (RFP) number 55025 and in the Scope of Work attached as Exhibit A at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

- 1.1 **Term of Services.** The term of this Agreement shall begin on the Effective Date and shall end on June 30, 2017, and Contractor shall complete the work described in Exhibit A on or before that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Contractor to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as referenced in Section 8.
- 1.2 **Standard of Performance.** Contractor shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Contractor is engaged.
- 1.3 **Assignment of Personnel.** Contractor shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Contractor shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.
- 1.4 **Time.** Contractor shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Subsection 1.2 above and to satisfy Contractor's obligations hereunder.
- 1.5 **City of San Leandro Living Wage Rates.** This contract may be covered by the City of San Leandro Living Wage Ordinance (LWO). Bidder's attention is directed to the San Leandro Municipal Code, Title 1, Chapter 6, Article 6. Successful Bidder must submit completed self-certification form and comply with the LWO if covered.
- 1.6 **Public Works Contractor Registration.** Contractor agrees, in accordance with Section 1771.1 of the California Labor Code, that Consultant or any subconsultant shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work,

as defined in Chapter 1 of Part 7 of Division 2 of the California Labor Code, unless currently registered and qualified to perform public work pursuant to California Labor Code Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded. No contractor or subcontractor may be awarded a contract for public work on a public works project unless registered with the Department of Industrial Relations pursuant to California Labor Code Section 1725.5. Contractor agrees, in accordance with Section 1771.4 of the California Labor Code, that if the work under this Agreement qualifies as public work, it is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

Section 2. COMPENSATION. City hereby agrees to pay Contractor a sum not to exceed \$12,374 per month or \$49,496 total for fiscal year 2016; and \$12,696 per month or \$152,352 total for fiscal year 2017, notwithstanding any contrary indications that may be contained in Contractor's proposal, for services to be performed and reimbursable costs incurred under this Agreement. In the event of a conflict between this Agreement and Contractor's proposal, attached as Exhibit B, regarding the amount of compensation, the Agreement shall prevail. City shall pay Contractor for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Contractor for services rendered pursuant to this Agreement. Contractor shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City in writing, Contractor shall not bill City for duplicate services performed by more than one person.

Contractor and City acknowledge and agree that compensation paid by City to Contractor under this Agreement is based upon Contractor's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Contractor. Consequently, the Parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Contractor and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

2.1 **Invoices.** Contractor shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred prior to the invoice date. Invoices shall contain the following information:

- Serial identifications of progress bills; i.e., Progress Bill No. 1 for the first invoice, etc.;
- The beginning and ending dates of the billing period;
- A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion;
- At City's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the

hours spent by each person, a brief description of the work, and each reimbursable expense;

- The total number of hours of work performed under the Agreement by Contractor and each employee, agent, and subcontractor of Contractor performing services hereunder;
- The Contractor's signature;
- Contractor shall give separate notice to the City when the total number of hours worked by Contractor and any individual employee, agent, or subcontractor of Contractor reaches or exceeds 800 hours within a 12-month period under this Agreement and any other agreement between Contractor and City. Such notice shall include an estimate of the time necessary to complete work described in Exhibit A and the estimate of time necessary to complete work under any other agreement between Contractor and City, if applicable.

2.2 **Monthly Payment.** City shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. City shall have 30 days from the receipt of an invoice that complies with all of the requirements above to pay Contractor.

2.3 **Final Payment.** City shall pay the last 10% of the total sum due pursuant to this Agreement within 60 days after completion of the services and submittal to City of a final invoice, if all services required have been satisfactorily performed.

2.4 **Total Payment.** City shall pay for the services to be rendered by Contractor pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred by Contractor in rendering services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement.

In no event shall Contractor submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment.

2.5 **Hourly Fees.** Fees for work performed by Contractor on an hourly basis shall not exceed the amounts shown on the compensation schedule attached hereto as Exhibit B.

2.6 **Reimbursable Expenses.** Reimbursable expenses are specified in Exhibit B, and shall not exceed \$0.00. Expenses not listed in Exhibit B are not chargeable to City. Reimbursable expenses are included in the total amount of compensation provided under this Agreement that shall not be exceeded.

- 2.7 **Payment of Taxes.** Contractor is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.
- 2.8 **Payment upon Termination.** In the event that the City or Contractor terminates this Agreement pursuant to Section 8, the City shall compensate the Contractor for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Contractor shall maintain adequate logs and timesheets to verify costs incurred to that date.
- 2.9 **Authorization to Perform Services.** The Contractor is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the Contract Administrator.
- 2.10 **Liquidated Damages.** Failure of Contractor to respond to problems referred to it by City within the time limits established in Subsection 1.2 of this Agreement shall result in liquidated damages as set forth in Exhibit A.

Section 3. FACILITIES AND EQUIPMENT. Except as set forth herein, Contractor shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. City shall make available to Contractor only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein. Contractor shall make a written request to City to use facilities or equipment not otherwise listed herein.

- 3.1 **Safety Requirements.** In accordance with generally accepted construction practices and state law, Contractor shall be solely and completely responsible for conditions on the jobsite, including safety of all persons and property during performance of the work. This requirement shall apply continuously and not be limited to normal working hours.

Contractor shall take all necessary precautions and provide all necessary safeguards to prevent personal injury and property damage. Contractor shall provide protection for all persons including, but not limited to, its employees and employees of its subcontractors; members of the public; and employees, agents, and representatives of the City and regulatory agencies that may be on or about the work.

The services of the City in conducting review and inspection of Contractor's performance is not intended to include review of the adequacy of Contractor's work methods, equipment, bracing or scaffolding, or safety measures, in, on, or near any Contractor jobsite.

All work and materials shall be in strict accordance with all applicable state, city, county, and federal rules, regulations and codes, with specific attention to the United States Department of Labor Occupational Health and Safety Administration (OSHA) requirements. Contractor shall be solely responsible for compliance with all city, county, and state explosive transport, storage, and blasting requirements and for any damages caused by such operations.

Contractor is hereby informed that work on City property could be hazardous. Contractor shall carefully instruct all personnel working on City property that all conditions of the property are potentially hazardous work areas as to potential dangers and shall provide such necessary safety equipment and instructions as are necessary to prevent injury to personnel and damage to property. Special care shall be exercised relative to work underground.

In addition to complying with all other safety regulations, Contractor shall abide by any and all other City requirements contained in any specifications, special conditions or manuals, which shall be made available by City upon request.

Contractor shall provide and maintain all necessary safety equipment such as fences, barriers, signs, lights, walkways, guards, and fire prevention and fire-fighting equipment and shall take such other action as is required to fulfill its obligations under this section. It is the intent of the City to provide a safe working environment under normal conditions. CONTRACTOR IS ADVISED THAT CITY'S OPERATIONS AND PROPERTY ARE INHERENTLY HAZARDOUS BECAUSE OF CONDITIONS SUCH AS CONFINED SPACES, POTENTIALLY EXPLOSIVE ATMOSPHERES, AND POSSIBLE EXPOSURE TO PATHOGENS.

Contractor shall maintain all portions of the jobsite in a neat, clean, and sanitary condition at all times. If required by the City, toilets shall be furnished by Contractor where needed for use of its employees and their use shall be strictly enforced. Contractor shall not use the City's existing sanitary facilities, unless previously authorized by the City.

Contractor shall keep adequate first aid facilities and supplies available and instruction in first aid for its employees shall be given.

City reserves the right to require that Contractor bring onto the project or engage the services of a licensed safety engineer at any time during the term of this Agreement. If Contractor does not have a licensed safety engineer on staff, then City may require that Contractor engage a subcontractor or subconsultant as the project's safety engineer. Contractor shall bear all costs in connection with meeting the requirements of this section.

Section 4. INSURANCE REQUIREMENTS. Before fully executing this Agreement, Contractor, at its own cost and expense, unless otherwise specified below, shall procure the types and amounts of insurance listed below against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Contractor and its agents, representatives, employees, and subcontractors. Consistent with the following provisions, Contractor shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects, and that such insurance is in effect prior to beginning work to the City. Contractor shall maintain the insurance policies required by this section throughout the term of this Agreement. The cost of such insurance shall be included in the Contractor's bid. Contractor shall not allow any subcontractor to commence work on any subcontract until Contractor has obtained all insurance required herein for the subcontractor(s) and provided evidence that such insurance is in effect to City.

VERIFICATION OF THE REQUIRED INSURANCE SHALL BE SUBMITTED AND MADE PART OF THIS AGREEMENT PRIOR TO EXECUTION. Contractor shall maintain all required insurance listed herein for the duration of this Agreement.

4.1 Workers' Compensation.

4.1.1 General Requirements. Contractor shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Contractor. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than **\$1,000,000** per accident. In the alternative, Contractor may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the California Labor Code shall be solely in the discretion of the Contract Administrator.

The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the entity for all work performed by the Contractor, its employees, agents, and subcontractors.

4.1.2 Submittal Requirements. To comply with Subsection 4.1, Contractor shall submit the following:

- a. Certificate of Liability Insurance in the amounts specified in the section; and
- b. Waiver of Subrogation Endorsement as required by the section.

4.2 Commercial General and Automobile Liability Insurance.

4.2.1 General Requirements. Contractor, at its own cost and expense, shall maintain commercial general liability insurance for the term of this Agreement in an amount not less than **\$1,000,000** and automobile liability insurance for the term of this Agreement in an amount not less than **\$1,000,000** per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

4.2.2 Minimum Scope of Coverage. Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (most recent edition) covering comprehensive General Liability on an "occurrence" basis. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001, Code 1 (any auto). No endorsement shall be attached limiting the coverage.

4.2.3 Additional Requirements. Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy:

- a. The Insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
- b. City, its officers, officials, employees, and volunteers are to be covered as additional insureds as respects: liability arising out of work or operations performed by or on behalf of the Contractor; or automobiles owned, leased, hired, or borrowed by the Contractor.
- c. Contractor hereby agrees to waive subrogation which any insurer or contractor may require from vendor by virtue of the payment of any loss. Contractor agrees to obtain any endorsements that may be necessary to affect this waiver of subrogation.
- d. For any claims related to this Agreement or the work hereunder, the Contractor's insurance covered shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

4.2.4 Submittal Requirements. To comply with Subsection 4.2, Contractor shall submit the following:

- a. Certificate of Liability Insurance in the amounts specified in the section;
- b. Additional Insured Endorsement as required by the section;
- c. Waiver of Subrogation Endorsement as required by the section; and
- d. Primary Insurance Endorsement as required by the section.

4.3 All Policies Requirements.

4.3.1 Acceptability of Insurers. All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A:VII.

- 4.3.2 **Verification of Coverage.** Prior to beginning any work under this Agreement, Contractor shall furnish City with complete copies of all Certificates of Liability Insurance delivered to Contractor by the insurer, including complete copies of all endorsements attached to the policies. All copies of Certificates of Liability Insurance and certified endorsements shall show the signature of a person authorized by that insurer to bind coverage on its behalf. If the City does not receive the required insurance documents prior to the Contractor beginning work, it shall not waive the Contractor's obligation to provide them. The City reserves the right to require complete copies of all required insurance policies at any time.
- 4.3.3 **Deductibles and Self-Insured Retentions.** Contractor shall disclose to and obtain the written approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, employees, and volunteers; or the Contractor shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- 4.3.4 **Wasting Policies.** No policy required by this Section 4 shall include a "wasting" policy limit (i.e. limit that is eroded by the cost of defense).
- 4.3.5 **Endorsement Requirements.** Each insurance policy required by Section 4 shall be endorsed to state that coverage shall not be canceled by either party, except after 30 days' prior written notice has been provided to the City.
- 4.3.6 **Subcontractors.** Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

4.4 **Remedies.** In addition to any other remedies City may have if Contractor fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Contractor's breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order Contractor to stop work under this Agreement or withhold any payment that becomes due to Contractor hereunder, or both stop work and withhold any payment, until Contractor demonstrates compliance with the requirements hereof; and/or

- Terminate this Agreement.

Section 5. INDEMNIFICATION AND CONTRACTOR'S RESPONSIBILITIES. Contractor shall indemnify, defend with counsel acceptable to City, and hold harmless City and its officers, officials, employees, agents and volunteers from and against any and all liability, loss, damage, claims, expenses, and costs (including without limitation, attorney's fees and costs and fees of litigation) (collectively, "Liability") of every nature arising out of or in connection with Contractor's performance of the Services or its failure to comply with any of its obligations contained in this Agreement, except such Liability caused by the sole negligence or willful misconduct of City.

The Contractor's obligation to defend and indemnify shall not be excused because of the Contractor's inability to evaluate Liability or because the Contractor evaluates Liability and determines that the Contractor is not liable to the claimant. The Contractor must respond within 30 days, to the tender of any claim for defense and indemnity by the City, unless this time has been extended by the City. If the Contractor fails to accept or reject a tender of defense and indemnity within 30 days, in addition to any other remedy authorized by law, so much of the money due the Contractor under and by virtue of this Agreement as shall reasonably be considered necessary by the City, may be retained by the City until disposition has been made of the claim or suit for damages, or until the Contractor accepts or rejects the tender of defense, whichever occurs first.

Notwithstanding the forgoing, to the extent this Agreement is a "construction contract" as defined by California Civil Code Section 2782, as may be amended from time to time, such duties of Contractor to indemnify shall not apply when to do so would be prohibited by California Civil Code Section 2782.

In the event that Contractor or any employee, agent, or subcontractor of Contractor providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Contractor shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Contractor or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Section 6. STATUS OF CONTRACTOR.

- 6.1 Independent Contractor.** At all times during the term of this Agreement, Contractor shall be an independent contractor and shall not be an employee of City. City shall have the right to control Contractor only insofar as the results of Contractor's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subsection 1.3; however, otherwise City shall not have the right to control the means by which Contractor accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Contractor and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System

(PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.

- 6.2 **Contractor Not an Agent.** Except as City may specify in writing, Contractor shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Contractor shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

Section 7. LEGAL REQUIREMENTS.

- 7.1 **Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 **Compliance with Applicable Laws.** Contractor and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.
- 7.3 **Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Contractor and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.
- 7.4 **Licenses and Permits.** Contractor represents and warrants to City that Contractor and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Contractor represents and warrants to City that Contractor and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions. In addition to the foregoing, Contractor and any subcontractors shall obtain and maintain during the term of this Agreement valid Business Licenses from City.
- 7.5 **Nondiscrimination and Equal Opportunity.** Contractor shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Contractor under this Agreement. Contractor shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Contractor thereby.

Contractor shall include the provisions of this Subsection in any subcontract approved by the Contract Administrator or this Agreement.

Section 8. TERMINATION AND MODIFICATION.

- 8.1 **Termination.** City may cancel this Agreement at any time and without cause upon written notification to Contractor.

Contractor may cancel this Agreement upon sixty days' written notice to City and shall include in such notice the reasons for cancellation.

In the event of termination, Contractor shall be entitled to compensation for services performed to the effective date of termination; City, however, may condition payment of such compensation upon Contractor delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Contractor or prepared by or for Contractor or the City in connection with this Agreement.

- 8.2 **Extension.** City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein. Contractor understands and agrees that, if City grants such an extension, City shall have no obligation to provide Contractor with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the Contract Administrator, City shall have no obligation to reimburse Contractor for any otherwise reimbursable expenses incurred during the extension period. Per RFP 55025, dated August 31, 2015, the contract may be extended by the City in the form of four one-year renewal options. The contractor may request, in writing, that the contract amount be adjusted by annual CPI each renewal year.
- 8.3 **Amendments.** The Parties may amend this Agreement only by a writing signed by all the Parties.
- 8.4 **Assignment and Subcontracting.** City and Contractor recognize and agree that this Agreement contemplates personal performance by Contractor and is based upon a determination of Contractor's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Contractor. Contractor may not assign this Agreement or any interest therein without the prior written approval of the Contract Administrator. Contractor shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the Contract Administrator.
- 8.5 **Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Contractor shall survive the termination of this Agreement.
- 8.6 **Options upon Breach by Contractor.** If Contractor materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, the following:

- 8.6.1 Immediately terminate the Agreement;

- 8.6.2 Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Contractor pursuant to this Agreement;
- 8.6.3 Retain a different contractor to complete the work described in Exhibit A not finished by Contractor; or
- 8.6.4 Charge Contractor the difference between the cost to complete the work described in Exhibit A that is unfinished at the time of breach and the amount that City would have paid Contractor pursuant to Section 2 if Contractor had completed the work.

Section 9. KEEPING AND STATUS OF RECORDS.

- 9.1 **Records Created as Part of Contractor's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Contractor prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Contractor hereby agrees to deliver those documents to the City upon termination of the Agreement. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. City and Contractor agree that, until final approval by City, all data, plans, specifications, reports and other documents are confidential and will not be released to third parties without prior written consent of both Parties.
- 9.2 **Contractor's Books and Records.** Contractor shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of 3 years, or for any longer period required by law, from the date of final payment to the Contractor to this Agreement.
- 9.3 **Inspection and Audit of Records.** Any records or documents that Subsection 9.2 of this Agreement requires Contractor to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds \$10,000.00, the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of 3 years after final payment under the Agreement.

Section 10. MISCELLANEOUS PROVISIONS.

- 10.1 **Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which

that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

- 10.2 **Venue.** In the event that either party brings any action against the other under this Agreement, the Parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Alameda or in the United States District Court for the Northern District of California.
- 10.3 **Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 10.4 **No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5 **Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the Parties.
- 10.6 **Conflict of Interest.** Contractor may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Contractor in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Contractor shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Section 1090 *et seq.*

Contractor hereby warrants that it is not now, nor has it been in the previous 12 months, an employee, agent, appointee, or official of the City. If Contractor was an employee, agent, appointee, or official of the City in the previous 12 months, Contractor warrants that it did not participate in any manner in the forming of this Agreement. Contractor understands that, if this Agreement is made in violation of California Government Code Section 1090 *et seq.*, the entire Agreement is void and Contractor will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Contractor will be required to reimburse the City for any sums paid to the Contractor. Contractor understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of California Government Code Section 1090 *et seq.*, and, if applicable, will be disqualified from holding public office in the State of California.

- 10.7 **Solicitation.** Contractor agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.

10.8 Contract Administration. This Agreement shall be administered by Jennifer Auletta, Deputy Public Works Director ("Contract Administrator"). All correspondence shall be directed to or through the Contract Administrator or his or her designee.

10.9 Notices. Any written notice to Contractor shall be sent to:
Karl Pacheco, Operations Manager
Pacheco Brothers Gardening, Inc.
20973 Cabot Blvd
Hayward, CA 94545

Any written notice to City shall be sent to:
Jennifer Auletta, Deputy Public Works Director
City of San Leandro
14200 Chapman Rd
San Leandro, CA 94578

With a copy to:
City of San Leandro
Department of Finance
c/o Purchasing Technician
835 East 14th Street
San Leandro, CA 94577

10.10 Integration. This Agreement, including the scope of work attached hereto and incorporated herein as Exhibits A, B, and C represents the entire and integrated agreement between City and Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral.

<u>Exhibit A</u>	Scope of Services
<u>Exhibit B</u>	Compensation Schedule & Reimbursable Expenses
<u>Exhibit C</u>	California Labor Code Section 1720 Information

10.11 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.


10.12 Certification per Iran Contracting Act of 2010. In the event that this contract is for one million dollars (\$1,000,000.00) or more, by Contractor's signature below Contractor certifies that Contractor, and any parent entities, subsidiaries, successors or subunits of Contractor are not identified on a list created pursuant to subdivision (b) of Section 2203 of the California Public Contract Code as a person engaging in investment activities in Iran as described in subdivision (a) of Section 2202.5, or as a person described in subdivision (b) of Section 2202.5 of the California Public Contract Code, as applicable.

SIGNATURES ON FOLLOWING PAGE

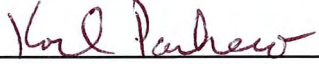
The Parties have executed this Agreement as of the Effective Date. The persons whose signatures appear below certify that they are authorized to sign on behalf of the respective Party.

CITY OF SAN LEANDRO

PACHECO BROTHERS GARDENING, INC.



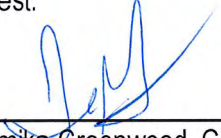
Chris Zapata, City Manager



Karl Pacheco, Operations Manager

Attest:


1000001754



Tamika Greenwood, City Clerk

Contractor's DIR Registration Number

Approved as to Fiscal Authority:




David Baum, Finance Director

010-62-001-5340 (49%); 147-42-142-5340 (26%); 597-57-003-5340 (25%)

Account Numbers

Approved as to Form:



Richard D. Pio Roda, City Attorney

1957063.2 (2015)

EXHIBIT A
SCOPE OF SERVICES

EXHIBIT A

TECHNICAL SPECIFICATIONS

GENERAL INFORMATION

Work Schedule

The Contractor shall conduct all operations during the hours of 7:00 a.m. to 5:00 p.m. Monday through Friday, unless otherwise approved by the City. Contractor may not work on any Federal, State, or local holidays. The City reserves the right to change schedules for any reason, such as special events, or conflicts with adjacent property owners/tenants within five (5) working days advance notice.

The Contractor shall provide sufficient personnel to perform all work in accordance with these specifications. Each work crew shall include at least one individual who speaks the English language proficiently. All contract employees are to adhere to basic Public Works standards for working attire including; uniform shirts with Contractor's name or logo clearly visible at all times when working at all locations, proper shoes and other gear required by State Safety Regulations. Shirts are to be maintained in a neat and presentable condition. All contractor vehicles are to have a readable sign with Contractor's name or logo and telephone number. Trucks are to be kept in a clean and presentable condition. The use of subcontractors in fulfilling the obligations of this contract is forbidden without prior written approval from the City.

The Contractor will be expected to know the streets within the City of San Leandro so that work can be performed independently.

Contractor is responsible for (a) having thoroughly investigated and considered the scope of services to be performed, (b) carefully considering how the services should be performed, and (c) fully understanding the facilities, difficulties, and restrictions attending the performance of the services required. Contractor is responsible to investigate each site and be fully acquainted with the conditions of each site. Should the Contractor discover any latent or unforeseeable conditions, which will materially affect the performance of services, Contractor shall immediately inform the City of such fact and shall not proceed except at Contractor's risk until written instructions are received from the City.

Compliance with Law

All services rendered shall be provided in accordance with all ordinances, resolutions, statutes, rules, and regulations of the City, and any Federal, State, or local governmental agency having jurisdiction in effect at the time service is provided. Contractor is responsible for obtaining all permits and licenses required to perform work.

All spray applications are to be done in accordance with all Alameda County and State of California laws. The Contractor shall have secured from the Alameda County Agricultural Commissioner all necessary permits and shall possess a current California State Department of Agriculture license. Contractor is to provide the City with a copy of Written Recommendations from a State of California Licensed Pest Adviser for all applications. The city will provide the contractor a pesticide use report that shall be turned in to the city each month by the 5th, as well as monthly documentation to the City on pesticides and amounts used.

In addition, the Contractor shall adhere to the City's Temporary Traffic Control (TTC) Procedures for all work to be performed within a public right-of-way.

Payment

Payment for all services shall be made based on the Monthly Maintenance bid price. Contractor shall submit an itemized invoice for services rendered in the prior month. Invoices shall be paid by the City within 30 days of receipt.

The City will pay only once for spraying, regardless of the number of spray applications necessary to control weed growth as described in these specifications. In other words, if property requires several applications of pre-emergent and/or systemic sprays in order to control weeds as described herein, the City shall make only one payment, based on the Monthly Maintenance bid price, regardless of the number of spray applications performed.

The City may deduct from any amount payable to Contractor (a) any amounts the payment of which may be in dispute, (b) any amounts necessary to compensate the City for any losses, costs, liabilities, or damages suffered by the City, and (c) all amounts for which the City may be liable to third parties, by reason on Contractor's acts or omissions in performing or failing to perform Contractor's obligations as part of the contract. Any failure of the City to withhold payments due for such cause, shall not affect the obligations of the Contractor. Amounts withheld due to Contractor failure to adequately monitor the service areas shall be permanently forfeited by the Contractor.

Payment deductions for Contractor Non-Compliance

(a) If in the judgment of the City, Contractor has failed to perform any of its duties or obligations of these specifications, the City, at its option, in addition to, or in lieu of, any other remedies set forth in these specifications, may withhold the entire monthly payment or deduct pro rata from Contractor's invoice for work not performed after providing Contractor with written notice (via email) identifying the duty(ies) or obligation(s) not performed and the time period Contractor may have to cure the duty(ies) or obligation(s).

(b) If the deficiency(ies) identified by the City are of a type that is susceptible to being corrected by Contractor, the City shall provide the Contractor with forty-eight (48) hours to cure the deficiency(ies), unless in the sole opinion of the City, the deficiency(ies) causes an immediate danger to the health, safety, or general welfare of the City in which case the City may at its option use whatever means the City deems reasonable to correct the deficiency(ies). If the Contractor corrects the problem within the cure period specified, then the City shall pay Contractor the amount retained with the next payment due Contractor. Otherwise, the City shall retain the amount withheld.

(c) The amount to be retained by the City shall be determined at the sole discretion of the City. Notwithstanding the foregoing, to the extent possible, the City will use the unit prices set forth in the Contractor's bid in determining the amount to be retained.

(d) The right to withhold payment shall not be construed as a penalty but as an adjustment of payment to Contractor to recover City costs due to the failure of the Contractor to complete or comply with the provisions of these specifications. City has the right, but not the obligation, to use the funds retained to correct Contractor's deficiencies. The right of the City to withhold payment shall be in addition to any other remedies herein provided or available under applicable law, including the right to terminate the contract.

(e) If in the opinion of the City there are repeated and/or frequent Contractor deficiencies, the contract may be terminated.

Reduction in Scope – The City reserves the right to reduce the scope of work up to 50% of the total monthly bid. Should any reduction be necessary the contractor shall receive thirty (30) days' notice. The remaining areas of contractor responsibility shall be paid at the rate bid by the contractor for those items. Any reduction in excess of 50% of total monthly bid shall be made within sixty (60) days' notice. For reductions in excess of 50%, Contractor shall have the option to either accept the remaining items at their bid rate or to terminate the agreement. Notice of termination by Contractor under these circumstances shall be given to the city in writing at least forty-five (45) days before agreement termination.

Communication with City

Contractor shall designate one person as the representative of Contractor authorized to act on its behalf with respect to this specified work. At the end of each work day the contractor shall e-mail the contract manager advising of the work completed that day and the work to be performed the following day.

The City of San Leandro, through a designated representative, shall inspect areas on a minimum weekly basis to insure that maintenance work, as specified, is fulfilled. The City may inspect plantings and make recommendations regarding trimming or replacement.

Contractor shall be required to attend meetings with City staff to review Contractor's performance and the condition of all maintenance areas. Dates and times of meetings shall be set by the City and the Contractor. These meetings do not negate the Contractor's responsibility to regularly inspect areas.

The Contractor shall submit periodic inspection reports, signed by the Contractor's representative that shows that all areas have been inspected on a weekly basis, which areas are out of conformance with these specifications and the Contractor's plans for bringing the areas into specification conformance.

The Contractor shall submit a written report each month stating all contract work completed. The report shall show the work completed during each week contract work was accomplished, and shall be submitted with and cover the same work as the Contractor's billing statement for the previous month's work. The report shall include documentation of aeration, fertilization and chemical applications. Failure to submit reports by the tenth of each month shall result in the Contractor forfeiting \$500 from any amounts owed by the City.

Emergencies

Contractor shall be responsible for responding to all emergencies within two (2) hours of notification during the hours of 7:00 a.m. to 5:00 p.m., Monday through Friday.

Change Orders

If the City makes any other substantial change to the landscaping in a contract area, the City and Contractor shall negotiate any necessary adjustments to the monthly maintenance contract. The City reserves the right to remove any area from the maintenance contract if agreement cannot be reached.

Extra Work

The City may request extra work from the Contractor as needs arise. Contractor will only be compensated for work which is approved in writing by the City in

advance. The City reserves the right to accomplish extra work with City forces or with other contractors instead of this Maintenance Contractor.

Upon notification that extra work will be required, the Contractor shall submit an itemized, written cost proposal for such work to the City. The City shall retain the right to reject such cost proposal and perform the extra work with City forces or other contractors. Should the proposal be acceptable to the City, the Contractor shall be advised in writing and upon receipt of such written notification shall begin the work within five (5) working days or as agreed to between the Contractor and the City.

The Contractor shall do such extra work in accordance with the agreement for extra work and with the provisions of these specifications and shall furnish all labor, materials and equipment. Any extra work shall be performed in a manner and time that does not negate the normal contracted work and schedule. The City reserves the right to have other contractors perform extra work. Irrigation repairs performed as extra work must meet the City irrigations standards. All requests for extra irrigation work must be performed within 48 hours. If the work is not performed within 48 hours the repair cost may be withheld from the monthly payments.

Payment for extra work performed shall be as agreed to by the Contractor and the City and as bid. Compensation for material will not exceed Contractor cost plus 10%. Contractor must provide invoice copies to be compensated for material and must provide employee timesheets in order to be compensated for labor at the extra work rate.

The City may choose to have the contractor perform the extra work at the Hourly Rate for Extra work listed after Attachment 6 under special notes.

Other

The Contractor shall be responsible for any and all damage to surface and underground improvements due to the Contractor's operations on or adjacent to parcels upon which landscape maintenance and weed abatement work is performed.

Specification Interpretation - Should any misunderstanding arise, the City will interpret the Specifications.

OPERATIONAL STANDARDS

Each site shall conform to these standards unless the frequency is noted under the description for each site.

Drought Conditions

Contractor shall be required to modify standards in order to meet state and/or EBMUD drought condition requirements. Currently, watering with potable water is restricted to two (2) non-consecutive applications per week. All watering shall occur between the hours of 6 PM and 9 AM only. Bare areas should be mulched with 3 inches of material as specified by the City. If the watering requirements change the contractor will be required to adhere to these changes and make timely and necessary changes to the irrigation clocks.

Turf Maintenance

Turf shall be maintained in a healthy, superior condition with a crisp, clean appearance at all times, with uniform density and no bare spots (Contractor is responsible for fixing bare areas due to scalping from the mower). Weed control shall be practiced in all turf areas. City Hall and the Main Library shall be aerated two times per year.

Turf shall be mowed a minimum of once per week during the growing season (March through October). During the months of November through February, turf shall be mowed on an as-needed basis. The exception to this is the Civic Center, which is to be mowed every week. The City shall determine the mowing schedule.

Bruising or rough cutting of grass shall not be permitted. Mower blades shall be sharp and properly adjusted so that turf is cut to a uniform height. Scalping will not be permitted. Mowing patterns will be changed weekly or however necessary to avoid rutting. All grass clippings shall be picked up and removed from the site, or and properly recycled on-site in accordance with *Bay Friendly Guidelines*.

Turf shall be mowed at a height appropriate for the species of the turf:

Tall fescue	2-3"
Bluegrass, ryegrass, red fescue	1.5-2.5"
Dichondra, Bermuda grass	0.5-1.0"

At no time shall more than 1/3 of the height be removed at any mowing.

Rakes are preferred for leaf litter removal over blowers. Leaf litter shall not be allowed to accumulate to the point that it will damage or kill turf. Leaf litter that is removed from turf shall be transported to a plant debris recycling facility.

All turf areas shall be cleanly edged to the inside (turfside) edge of any concrete or asphalt interface. All turf growing along public sidewalks and walkways shall be edged to maintain a crisp, clean edge along all such structures. Grass shall also be kept from overgrowing sprinkler heads and irrigation boxes. Edging shall also include trimming grass around trees, poles, utilities, and any other concrete pads within or immediately adjacent to the turf areas. Edging shall be done once per month during the months of November through February, and every two (2) weeks during the months of March through October. Edging shall be done by the use of power edgers or by hand. Soil sterilants or other herbicides shall not be used for edging.

Care shall be taken to avoid damage by mowers to tree trunks, irrigation heads and any other utilities, facilities or structures within or adjacent to turf areas. Any damage caused by the Contractor's negligence shall be repaired at the Contractor's expense. Prior to mowing, the contractor shall insure that the mower is clean so that no roots, stolons, seeds or crowns of foreign grasses are introduced.

All litter, fruit and debris in turf areas shall be picked up and disposed of properly. Litter, fruit and debris shall not be allowed to accumulate but shall be picked up and disposed of a minimum of once per week. The Contractor shall accomplish such litter and debris pickup prior to mowing to avoid shredding and dispersal of these materials.

Turf fertilization shall be performed a minimum of twice per year with weed and feed, with the time to be determined with City staff. Fertilization shall be with a slow release, non-water-soluble, high nitrogen fertilizer. Chemical composition shall be approved by the City prior to application. All excess chemicals shall be cleaned from benches, tables, BBQs, and pathways.

Prior to lawn fertilization with granular-type fertilizers, the Contractor shall ensure that the root zone of the turfgrass is damp and that the grass itself is free of surface moisture. Lawns shall be watered immediately after fertilization to prevent burning the grass.

Weed & feed, fertilization and aeration shall be done within 30 days of the City's request.

Trees

Trees which are staked shall have supports kept in good repair. Any broken or damaged supports or ties shall be replaced as soon as possible. Staking shall remain in place until trees are fully capable of self-support at that time the stakes shall be removed by the contractor at no cost to the City. Trees which have low hanging, diseased, dead or broken branches shall be trimmed by the Contractor. Only those tree branches which can be pruned from the ground level using hand

or pole-pruning equipment may be trimmed by the Contractor. Branches overhanging traffic lanes shall be kept side trimmed to face of curb line and to a height of twelve (12) feet. Branches and vines overhanging pedestrian routes shall be kept trimmed to a height of eight (8-12ft) feet above walkway level.

All trees shall be pruned by qualified personnel using horticulturally-sound methods and approved techniques. Trees shall be pruned to develop a structurally sound shape and a healthy, natural appearance. No excessive pruning or stubbing back will be allowed. Sucker growth originating at the crown or below shall be removed at a height less than 12-18 inches.

Perennials

The City has made a concerted effort to change areas previously planted with annuals to perennials and adhering to *Bay Friendly Guidelines* for maintenance. This includes leaving plants in their natural shape, trimming back one to two times per year, adding three inches of mulch to bare areas, and watering by bubblers or by hand. Contractor shall be required to replace dead or diseased perennials with like species in consultation with the City. Perennials shall be fertilized twice per year in October and April with a complete fertilizer formulated to keep perennials in a vigorous and health condition.

Shrubs

Shrubs shall be pruned as necessary to encourage healthy, natural growth patterns for each specific variety. Pruning shall include thinning, shaping, and removing dead or diseased branches. For flowering shrubs, including roses, dead blossoms still attached shall be removed. Shrubs which may restrict visibility, such as those adjacent to left hand turn lanes or those within 100 feet of any intersection shall be kept within the height range of 12-24 inches as measured from the street level. Rhododendron shall be fertilized as needed by the appropriate fertilizer. Different types of shrubs should not be allowed to grow together and suckers/volunteer intruders shall not be allowed to grow within the established shrubs. Existing ivy growth in shrubs shall be removed and shall be kept trimmed back from shrubs/trees.

All shrubs shall be pruned back to clear all roadways, curbs, gutters, buildings, and sidewalks. Shrubs shall not block signs, utilities, utility meters or any other facilities located within the work areas. Shrubs shall not block access to controllers or electric valves and shall be pruned so as to minimize blockage of irrigation spray head patterns.

Shrubs shall be fertilized a minimum of twice per year, once in October and once in April, with a complete fertilizer. Shrub fertilizer shall be a formulation to keep shrubs in a vigorous and healthy condition.

Bay Friendly Landscape Maintenance

Trimming/maintenance of the Senior Community Center and two parking lots shall follow strict Bay Friendly maintenance guidelines. The City reserves the right to add 'bay friendly' plant material to any area and the contractor will be required to maintain them under these guidelines.

Irrigation System Maintenance

The City shall be responsible for all maintenance of the irrigation system including piping, wiring, spray heads, electric valves, and automatic controllers. The irrigation system shall be inspected by the Contractor on a bi-monthly basis during the irrigation period. Inspections shall be documented on format that will be provided by the City and provided to the City once completed. During these inspections the contractor shall adjust the water budget to ensure the amount of water being applied matches the needs of the plant material as closely as possible, while adhering to any watering restrictions in place. Contractor may be required to adjust the clocks as requested by the City. It is the Contractor's responsibility to insure that the system is operating correctly and that there is adequate coverage. Any failure on the part of the Contractor to reduce a water budget when requested to do so by the City will result in withholding of payment to cover excessive water bills for that particular area. All spray heads shall be kept cleaned and adjusted to maximize coverage with limited to no overspray or run-off onto hardscape.

All irrigation parts and materials which are damaged or broken shall be reported to the City. Upon request, Contractor shall then submit in writing a written proposal for repair and/or replacement. A City representative shall then determine if work shall be done by Contractor or a City crew. Contractor is responsible for any damage caused by Contractor. For any repair work performed by the City, which is at fault by the Contractor, shall be charged against the Contractor's monthly account (Contractor shall have opportunity to perform repairs, which meet the City's irrigation standards, first). If the contractor agrees to perform extra irrigation work it must be performed within 48 hours of the request unless otherwise specified by the City and agreed to by the contractor. If the work is not performed within the agreed upon time frame the repair cost may be withheld from the monthly payments. This work normally includes broken sprinklers, lateral lines and occasionally mainlines. When lateral and mainline repairs are made, the City must be given the opportunity to inspect the work before it is covered up. If the City is not given the chance to inspect the work the contractor may have to uncover the work so that it can be inspected.

Valves shall be kept well adjusted to insure efficient operation of the irrigation system. The Contractor shall also keep the controllers clean and free of insects and dust, and shall make any necessary repairs or replacements.

No modifications may be made to the existing automatic irrigation system without express approval of the City. Any changes so approved shall be noted by the Contractor on a copy of the Irrigation Plan and submitted to the City within five working days of the completion of the work. The Contractor is responsible for manually changing all irrigation clock watering times. In the event of a drought condition, including mandatory water rationing, the City shall have the authority to modify the watering requirements described in these specifications.

Weed Control (Other than Turf)

All areas within the work sites are to be kept free of weeds and volunteer tree growth. This includes but is not limited to, all bare dirt areas and any weed growth within ground cover and shrub plantings. Pedestrian walkways and other hardscaped areas are to be kept weed-free at all times.

Volunteer tree growth shall be removed by the Contractor as part of this contract. Weed spraying of docks shall occur at least once, possibly twice, in the Spring, using an acceptable marine-grade pre-emergent to control weed growth.

The Contractor shall comply with all rules, regulations, and license requirements of the California Department of Pesticide Regulation, the Department of Health, the Department of Industrial Relations and all other agencies which govern the use of pesticides required in the performance of work on the Contract. The city will provide the contractor a pesticide use report that shall be turned in to the city each month by the 5th.

Spraying

1. The Contractor shall perform spraying on City properties to prevent weed growth. Spraying shall consist of (1) use of a pre-emergent herbicide to prevent weed growth during the growing season following application, and (2) use of a systematic herbicide to kill re-growth and/or summer weeds. Soil sterilants may not be used unless directed by the City. At the City's discretion and request, dye may be used to denote areas that have been sprayed. Chemicals with a low, non-offensive odor are required to be used.
2. It shall be the Contractor's responsibility to apply herbicides as necessary to keep all properties appropriately free of weeds throughout the year. Weeds shall be sprayed and removed prior them reaching a maximum height or diameter of two (2) inches. It is the Contractor's responsibility to control summer weeds such as, but not limited to: Russian thistle, puncture vine, morning glory, anise, kikuyu grass, and Bermuda grass. It is also the Contractor's responsibility to control perennial and/or woody plants such as but not limited to: blackberry and coyote brush.

3. It shall be the Contractor's responsibility to determine the most appropriate times of year to apply herbicides.
4. It shall be the Contractor's responsibility to **independently monitor** all contract areas and perform touch-up spraying. Monitoring shall as a minimum include a weekly physical inspection of all spray areas. Touch-up spraying shall be required at any time that weed growth occurs. Thirty (30) days after application, if any weeds remain, Contractor shall remove by hand or have a second application applied at Contractor's cost.
5. The Contractor shall use the necessary equipment in order to accomplish the work in a satisfactory manner. The Contractor shall arrange operations so that the herbicides will not be distributed beyond the limit of property sprayed. The Contractor shall apply the herbicides using nozzles and pressure necessary for a proper application.
6. The Contractor shall supply water for the chemical mix. No reclaimed water may be utilized. Well water from City Parks is encouraged for use for spraying at no extra cost. (Washington Manor, San Leandro Ball Park, Thrasher, Cherry Grove, and Halcyon Parks)
7. The materials used by the Contractor must be of such composition and of sufficient strength to kill weeds, but may not sterilize the soil for a period in excess of one year following application. The chemicals used shall not be toxic or harmful in any manner to animals or human beings when used in prescribed manner. The materials used shall not harm desirable vegetation such as trees or turf. The materials used shall not be flammable or leave an oily residue that will discolor or leave a slippery film on sidewalks and curbs. The City may at any time during the spraying operation take samples to check materials being used. Upon request, the Contractor shall provide the City with information regarding chemicals applied to specified locations. In addition, the Contractor shall upon request provide the City with specimen labels of chemicals applied. In the event the treatment is not effective, the contractor will be required to remove all growth from the area within the limits of the spray application.

Material

The Contractor shall supply all new and replacement material for all new construction or replacements necessary as per City Standard Construction Drawings. All replacements, whether due to disease, pest infestation or Contractor negligence shall be Contractor responsibility and considered part of the bid item without separate payment made therefore.

Fertilizers shall conform to the California Food and Agricultural Code. Commercial fertilizers shall be complete fertilizers furnishing the required percentages of

nitrogen, phosphoric acid, potash, and other necessary micronutrients as needed to keep turf, trees, and shrubs in a healthy and vigorous growing condition.

Any tree stakes, tree ties, and/or guy wires needing replacement shall be replaced with new materials as per the City Standard Contract Drawings, at the expense of the Contractor.

Pest Management

All landscaped areas shall be maintained free of disease and harmful insects without compensation beyond the base bid.

The City of San Leandro seeks to control pests without harming non-target organisms, or negatively affecting air and water quality and public health. The Contractor shall give preference to reasonably available non-pesticide alternatives when conducting pest management activities on City property and public right-of-ways. Chemical controls should only be applied when monitoring indicates that preventative and non-chemical methods are not keeping pests below acceptable levels. When pesticides are required, the least toxic and the least persistent pesticide that will provide adequate pest control is applied. Pesticides should not be applied on a prescheduled basis.

The Contractor shall conduct pest management activities in conformance with the City's Integrated Pest Management (IPM) policy when controlling pests. IPM uses cultural, mechanical, physical, and biological control methods before using pesticides. Contractor may be required to obtain IPM certification and demonstrate the implementation of IPM techniques if mandated by the San Francisco Bay Area Regional Water Quality Control Board.

Litter and Leaves

Prior to mowing, all litter is to be removed from turf by the contractor and properly disposed of. In addition, litter, trash, leaves, clippings, and other debris shall be removed from the work sites a minimum of once per week or unless otherwise specified, more often to maintain a neat and clean appearance (Civic Center to be cleaned each Monday and Thursday by power blowers or vacuums). Green Waste cannot be landfilled per Alameda County regulation and must be properly recycled at an authorized transfer station or composting facility. Litter that is recyclable must be recycled.

All excess material shall become the property of the Contractor to be legally disposed of as Contractor sees fit. The City of San Leandro will not reimburse the contractor for any disposal fees incurred.

Public Safety

The Contractor shall conduct maintenance operations so as to offer the least possible obstruction to the public and to abutting property owners.

No material or equipment shall be stored on City property. Any materials or equipment brought to the site for use during any one day shall be placed where it will not interfere with the free and safe passage of traffic and pedestrians. Such materials and equipment shall be removed at the end of each day or when maintenance operations are suspended for any reason.

If a hazardous condition is observed and the City notifies the Contractor either directly or by telephone, the Contractor shall correct the condition immediately. If the Contractor fails to correct the hazardous condition immediately, the City reserves the right to install or have installed the necessary lights, barricades, etc. The cost involved shall be deducted from any money due or to become due the Contractor.

Full compliance with this section shall be considered as included in the contract price paid and no separate payment will be made therefore.

Traffic Control

The Contractor shall adhere to all Cal-OSHA and Department of Transportation standards and requirements and take all necessary safety precautions to insure that maintenance work does not endanger the health and safety of the public or cause hazards to the safety of landscape maintenance employees. Construction signs, lights, barricades, etc. shall conform to the latest revision of the Manual of Uniform Traffic Control Devices, by the California Department of Transportation.

Traffic lanes shall be kept open at all times except when maintenance work may require temporary closing of the lane immediately adjacent to the work area. At no time shall there be less than one traffic lane open in each direction. The Contractor shall minimize closing of traffic lanes by parking maintenance vehicles for loading and unloading of materials and landscape maintenance equipment in the left hand turn lanes(s) at the beginning of the median taper. Appropriate safety devices such as traffic cones, warning signs, early warning safety directional boards and/or barricades shall still be used as required.

Whenever the Contractor's operations create a condition hazardous to traffic or to the public, the Contractor shall, without cost to the City, furnish, erect and maintain such barricades, lights, signs, and other devices and take such other precautions as are necessary to prevent damage or accidents or injury to the public and the Contractor's employees. The Contractor shall also furnish such flagmen as are necessary to give adequate warning to traffic or to the public of any dangerous conditions to the public. All flagging costs shall be born solely by the Contractor.

It is the Contractor's responsibility to provide for the safety of traffic and the public. This includes responsibility to inspect, and identify conditions that render any portions of the jobsite unsafe. The City shall be notified immediately of any unsafe conditions that requires major correction. The Contractor shall be responsible for making minor corrections, including, but not limited to; filling holes in turf areas and paving, using barricades or traffic cones to alert the public to the existence of hazards, and replacing valve box covers.

Pedestrian travel shall be maintained at all times along both sides of all streets or streets where work as part of this contract is being performed. All temporary pedestrian walkways shall be at least four (4) feet wide and fully accessible to handicapped pedestrians. In all cases, pedestrian walkways shall be separated from vehicular traffic by a clear area of at least six (6) feet.

Fuel Conservation and Low Emission Equipment

The Contractor shall implement strategies in work operations to reduce fossil fuel consumption and emissions such as: use hand powered equipment when possible; minimize use of gas-powered blowers; select the smallest, most fuel-efficient equipment to accomplish the work; consider vehicles that operate on natural gas or biodiesel; maintain equipment properly and keep it well-tuned; and emphasize employee carpooling to jobsites. All blowers shall be 4-stroke to help reduce noise complaints.

Use Local Products and Supplies

The Contractor shall use local products and suppliers to the extent possible to minimize fuel consumption and emissions.

Equipment Refueling and Repair

The Contractor shall refuel and repair equipment in a safe manner to protect against accidental spills. Limit refueling to specific and limited areas on a site. Measures shall be taken to prevent, control, and clean-up spills. Clean-ups shall be immediate, automatic and routine and performed by a trained staff member or a licensed cleaning company. Contact the local emergency response team agencies to report all minor or major spills. Contractor shall be aware of and abide by Spare-the Air Day fueling advisories.

Lost and Found

Personal property found by the Contractor on City property or in public right-of-way shall be reported to the City representative immediately and turned into the City on the same day that the property is found.

ATTACHMENT 6
COST PROPOSAL FOR CITYWIDE LANDSCAPE MAINTENANCE SERVICES
 All maintenance to be provided in accordance with Operational Standards

Monthly Price	Annual Amount	Location/Description of Area	Special Instructions ¹
\$ 600.75	\$ 7,209	SL Hospital/Senior Center Shared Parking Lot and the Senior Center grounds and parking lot E. 14 th Street and 139 th	The parking lots and the grounds are designed with bio-swales and shall be maintained using <i>Bay Friendly Guidelines</i> . Grasses are to be trimmed <u>and all trimmings removed</u> in November and again in May (if needed). Trash pick-up in the bio-swale is once per week. Leaf litter and trash on remainder of grounds picked up once per week. Pots shall contain perennials be trimmed 2x per year, as needed. All landscaping (outside of the bio-swales) maintained on a monthly basis and dead-headed and/or hand-trimmed as may be necessary to maintain a healthy plant environment. Grape vines along the southern fence trimmed once per year in Nov/Dec. Maintenance of plant material (ivy) growing on the north fence line is also included.
\$ 245	\$ 2,940	Former Comcast Building Western terminus of Marina Blvd	Maintenance work to be provided once per month.
\$ 147	\$ 1,764	Fire Station #9 450 Estudillo Avenue	Maintenance work to be provided once per month.
\$ 122.50	\$ 1,470	Fire Station #10 2194 Williams Street	Maintenance work to be provided once per month.
\$ 122.50	\$ 1,470	Fire Station #11 14903 Catalina Street	Maintenance work to be provided once per month.
\$ 122.50	\$ 1,470	Fire Station #12 1065 143rd Street	Maintenance work to be provided once per month.
\$ 73.50	\$ 882	Fire Station #13 637 Fargo Avenue	Maintenance work to be provided once per month.
\$ 73.50	\$ 882	Old Fire Station #10 2101 Marina Blvd.	Maintenance work to be provided once per month.
\$ 159.75	\$ 1,917	Manor Branch Library 241 Manor Blvd.	Maintenance work to be provided twice per month March-October and once per month all other months. Includes exterior courtyard at rear of building and sweeping out Dumpster.
\$ 159.75	\$ 1,917	Mulford Branch Library 13699 Aurora Dr.	Maintenance work to be provided once per month.

¹ Landscaped areas shall be maintained in accordance with the Operational Standards, with noted exceptions listed under Special Instructions.

Monthly Price	Annual Amount	Location/Description of Area	Special Instructions ¹
\$ 159.75	\$ 1,917	South Branch Library 14799 E. 14 th St	Maintenance work to be provided once per month. Bottlebrush to be trimmed as needed.
\$ 3,062.50	\$ 36,750	Shoreline Area Maintenance	Maintenance work to be provided twice per month April-October and once per month November-March. Debris pickup in landscaped areas only. Trees to be trimmed as needed. (See Shoreline Area Landscape Maps #1-4).
\$ 2,082.50	\$ 24,990	Civic Center 835-999 E. 14 th Street	All turf and paved areas, including sidewalks, between Root Park and Peralta Avenue, between E. 14 th Street and Lafayette, includes parking lots (north and south) and landscaping. These areas are clean-up, mowing, turf edging, blowing, maintenance of shrubs, and includes weeding the large pots in the plaza (and trimming perennials back 1/year). Work must be done on Monday (mowing/edging/blowing) and Thursday (blowing, clean-up) of each week. During leaf drop months, leaves should be picked up twice per week.
\$ 490	\$ 5,880	Marina Community Center 15301 Wicks Blvd.	Maintenance work to be provided once per week. Includes all exterior landscaping (including the courtyard) and all paved areas.
\$ 367.50	\$ 4,410	Victoria Circle Both sides of Bancroft Ave	Maintenance work to be provided once per week.
* \$ 3,284	* \$ 38,808	Heron Bay Western terminus of Lewelling Blvd./Bayfront Drive	Maintenance of lawn area and shrubs around information kiosk to be provided once per week. (See Heron Bay Maps #1-4).
\$ 245	\$ 2,940	Casa Peralta & History Museum 384 W. Estudillo Avenue	Maintenance of entire exterior/courtyard area to be provided once per week March-October and twice a month Nov.-Feb. Landscaping maintenance and trees on W. Estudillo in front of the Museum, west to San Leandro Blvd., on both sides of the street to be provided twice a month.
\$ 784	\$ 9,408	Main Library 300 Estudillo Avenue	Maintenance of entire exterior/courtyard area, including pots, on a weekly basis.
\$ 122	1,464	2139 Laura Ave	Mow lawn twice a month. Trim plants as needed but no less than quarterly.

monthly total: \$12,374

Special Notes:

RFP 55025 CITYWIDE LANDSCAPE MAINTENANCE

* Hourly rate for extra work = \$40.00 per hour

* weed & feed: \$8.75 per 1000 sq. ft. per occurrence

EXHIBIT C

PROVISIONS REQUIRED FOR PUBLIC WORKS CONTRACTS PURSUANT TO CALIFORNIA LABOR CODE SECTION 1720 *ET SEQ.*

HOURS OF WORK:

- A. In accordance with California Labor Code Section 1810, 8 hours of labor in performance of the services described in Exhibit A shall constitute a legal day's work under this contract.
- B. In accordance with California Labor Code Section 1811, the time of service of any worker employed in performance of the services described in Exhibit A is limited to 8 hours during any one calendar day, and 40 hours during any one calendar week, except in accordance with California Labor Code Section 1815, which provides that work in excess of 8 hours during any one calendar day and 40 hours during any one calendar week is permitted upon compensation for all hours worked in excess of 8 hours during any one calendar day and 40 hours during any one calendar week at not less than one-and-one-half times the basic rate of pay.
- C. The Contractor and its subcontractors shall forfeit as a penalty to the City \$25 for each worker employed in the performance of the services described in Exhibit A for each calendar day during which the worker is required or permitted to work more than 8 hours in any one calendar day, or more than 40 hours in any one calendar week, in violation of the provisions of California Labor Code Section 1810 and following.

WAGES:

- A. In accordance with California Labor Code Section 1773.2, the City has determined the general prevailing wages in the locality in which the services described in Exhibit A are to be performed for each craft or type of work needed to be as published by the State of California Department of Industrial Relations, Division of Labor Statistics and Research, a copy of which is on file in the City Public Works Office and shall be made available on request. The Contractor and subcontractors engaged in the performance of the services described in Exhibit A shall pay no less than these rates to all persons engaged in performance of the services or work.
- B. In accordance with California Labor Code Section 1775, the Contractor and any subcontractors engaged in performance of the services described in Exhibit A shall comply with California Labor Code Section 1775, which establishes penalties per day for each worker engaged in the performance of the services described in Exhibit A that the Contractor or any subcontractor pays less than the specified prevailing wage. The amount of such penalty shall be determined by the Labor Commissioner and shall be based on consideration of the mistake, inadvertence, or neglect of the Contractor or subcontractor in failing to pay the correct rate of prevailing wages, or the previous record of the Contractor or subcontractor in meeting applicable prevailing wage obligations, or the willful failure by the Contractor or subcontractor to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rate of

prevailing wages is not excusable if the Contractor or subcontractor had knowledge of their obligations under the California Labor Code. The Contractor or subcontractor shall pay the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate. If a subcontractor worker engaged in performance of the services described in Exhibit A is not paid the general prevailing per diem wages by the subcontractor, the Contractor is not liable for any penalties therefore unless the Contractor had knowledge of that failure or unless the Contractor fails to comply with all of the following requirements:

1. The contract executed between the Contractor and the subcontractor for the performance of part of the services described in Exhibit A shall include a copy of the provisions of California Labor Code Sections 1771, 1775, 1776, 1777.5, 1813, and 1815.
 2. The Contractor shall monitor payment of the specified general prevailing rate of per diem wages by the subcontractor by periodic review of the subcontractor's certified payroll records.
 3. Upon becoming aware of a subcontractor's failure to pay the specified prevailing rate of wages, the Contractor shall diligently take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds due the subcontractor for performance of the services described in Exhibit A.
 4. Prior to making final payment to the subcontractor, the Contractor shall obtain an affidavit signed under penalty of perjury from the subcontractor that the subcontractor has paid the specified general prevailing rate of per diem wages for employees engaged in the performance of the services described in Exhibit A and any amounts due pursuant to California Labor Code Section 1813.
- C. In accordance with California Labor Code Section 1776, the Contractor and each subcontractor engaged in performance of the services described in Exhibit A shall keep accurate payroll records showing the name, address, social security number, work, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed in performance of the services described in Exhibit A. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:
1. The information contained in the payroll record is true and correct.
 2. The employer has complied with the requirements of California Labor Code Sections 1771, 1811, and 1815 for any work performed by the employer's employees on the public works project.

The payroll records required pursuant to California Labor Code Section 1776 shall be certified and sent directly to the Labor Commissioner, and available for inspection by the Owner and its

authorized representatives, the Division of Labor Standards Enforcement, the Division of Apprenticeship Standards of the Department of Industrial Relations and shall otherwise be available for inspection in accordance with California Labor Code Section 1776.

- D. In accordance with California Labor Code Section 1777.5, the Contractor, on behalf of the Contractor and any subcontractors engaged in performance of the services described in Exhibit A, shall be responsible for ensuring compliance with California Labor Code Section 1777.5 governing employment and payment of apprentices on public works contracts.

- E. In case it becomes necessary for the Contractor or any subcontractor engaged in performance of the services described in Exhibit A to employ for the services described in Exhibit A any person in a trade or occupation (except executive, supervisory, administrative, clerical, or other non manual workers as such) for which no minimum wage rate has been determined by the Director of the Department of Industrial Relations, the Contractor or subcontractor shall pay the minimum rate of wages specified therein for the classification which most nearly corresponds to services described in Exhibit A to be performed by that person. The minimum rate thus furnished shall be applicable as a minimum for such trade or occupation from the time of the initial employment of the person affected and during the continuance of such employment.