

**AGREEMENT FOR LANDSCAPE MAINTENANCE SERVICES FOR
VICTORIA AVENUE PARKWAYS AND MEDIANS**

MERCHANTS LANDSCAPE SERVICES, INC.

On this _____ day of _____, 20____, ("Effective Date") the CITY OF RIVERSIDE, a California charter city and municipal corporation ("City"), and MERCHANTS LANDSCAPE SERVICES, INC., State Contractor's License No. 765658 ("Contractor"), mutually agree as follows:

1. Scope of Services. Contractor shall furnish all labor, materials and equipment for and perform the work of Landscape Maintenance Services for Victoria Avenue Parkways and Medians ("the Services"). Contractor shall perform the Services in accordance with the provisions and requirements of the following Contract Documents: City of Riverside Public Works Department Request for Proposals for City of Riverside, dated April 1, 2016, ("**RFP 1599**"), the General Conditions and Technical Specifications contained therein, this Agreement and all other documents, maps, texts and items referred to in the foregoing documents. These Contract Documents are incorporated herein by this reference and are intended to be correlative and constitute Contractor's performance obligations. The specific terms and conditions of this Agreement shall control and have precedence over any contradictory or inconsistent terms and conditions included in the other Contract Documents and shall be controlling in questions of interpretation.

2. Term. The term of the Agreement shall be from July 1, 2016, through June 30, 2019, unless earlier terminated as provided herein. **The term may be extended by mutual consent of the parties for additional one (1) year periods, not to exceed a total of two (2) additional years. All such extensions/amendments shall be made in writing and approved by the parties. The City Manager or his designee is authorized to execute any amendment subject to budgeted funds on behalf of the City.**

3. Compensation. City shall pay Contractor for the performance of the Services during the initial term of this Agreement a Contract Price not to exceed Nine Hundred Seventy-Two Thousand One Hundred Thirty-Two Dollars (\$972,132). City shall pay Contractor for Services performed to City's satisfaction on a monthly basis in accordance with the provisions of the RFP, and the Compensation Schedule attached hereto as Exhibit "A" and incorporated herein by this reference. If the term of the Agreement is extended, Contractor's compensation for the extended term shall be mutually agreed upon in writing by the parties.

For any extension of this Agreement, the annual compensation shall be increased by the CPI index for the Los Angeles – Riverside area, but in no event shall the increase be more than 2.5 percent.

4. Extra Material. Contractor shall not be compensated for any extra materials used or time expended over and above the Contract Price, unless prior written approval for the same has been granted by City. In addition, Contractor shall only be compensated for services actually rendered.

5. Warranties. Contractor shall obtain in the name of City, or transfer or assign to City or City's designee, any and all warranties or guarantees which Contractor obtained from manufacturers or suppliers, and further agrees to perform the Work in such a manner so as to preserve any and all such warranties.

6. General Compliance with Laws. Contractor shall keep fully informed of federal, state and local laws and ordinances and regulations which in any manner affect those employed by Contractor, or in any way affect the performance of Services by Contractor pursuant to this Agreement. Contractor shall at all times observe and comply with all such laws, ordinances and regulations, and shall be solely responsible for any failure to comply with all applicable laws, ordinances and regulations.

7. Business Tax and Penalties. Contractor acknowledges and agrees that with respect to any business tax or penalties thereon, utility charges, invoiced fee or other debt which is owed, or which becomes owed, by Contractor to City, City reserves the right to withhold and offset said amounts from any payments, refunds or reimbursements owed by City to Contractor under the Agreement. Notice of such withholding and offset shall promptly be given to Contractor by City in writing. In the event of a dispute as to the amount owed or whether such amount is owed to City, City will hold such disputed amount until either the appropriate appeal process has been completed or until the dispute has been resolved.

8. Business License. As a condition of this Agreement, Contractor shall secure a business license to operate in the City of Riverside, and shall also secure any other licenses or permits which may be required.

9. Worker's Compensation Insurance. By executing this Agreement, Contractor certifies that Contractor is aware of and will comply with Section 3700 of the Labor Code of the State of California requiring every employer to be insured against liability for workers' compensation or to undertake self-insurance before commencing any of the work. Contractor shall carry the insurance or provide for self-insurance required by California law to protect said Contractor from claims under the Workers Compensation Act.

Prior to City's execution of this Agreement, Contractor shall file with City either (1) a certificate of insurance or self-insurance evidencing that such insurance is in effect, or that Contractor is self-insured for such coverage; or (2) a certified statement that Contractor has no employees, and acknowledging that if Contractor does employ any person, the necessary certificate of insurance will immediately be filed with City. Any certificate filed with the City shall provide that City shall be given ten (10) days prior written notice before modification or cancellation thereof.

Contractor's workers' compensation carrier shall be authorized to transact insurance business in the State of California with a policy holder's rating of "A" or higher and a Financial Class VII or larger.

10. Commercial General Liability and Automobile Liability Insurance. Prior to City's execution of this Agreement, Contractor shall secure, and shall thereafter maintain until

completion of the Agreement, such commercial general and automobile liability insurance as shall protect Contractor from claims for damages for personal injury, including accidental death, as well as from claims for property damage which may arise from or which may concern operations under this Agreement, whether such operations be by or on behalf of Contractor, any subcontractor or anyone directly or indirectly employed by, connected with or acting for or on behalf of any of them.

All liability insurance shall be issued by an insurance company or companies authorized to transact liability insurance business in the State of California with a policy holder's rating of A or higher and a Financial Class of VII or larger and shall cover commercial general and automobile liability for both bodily injury (including death) and property damage, including but not limited to aggregate products, aggregate operations, aggregate protective and aggregate contractual with the following minimum limits:

Commercial General	\$1,000,000 per occurrence
	\$2,000,000 aggregate
Automobile	\$1,000,000 per occurrence

Policies or original certificates of insurance along with additional insured endorsement acceptable to City, evidencing the coverage required by this Agreement for both commercial general and automobile liability, shall be filed with City and shall include City as an additional insured. The policy or policies shall be in the usual form of public liability insurance, but shall also include the following provisions:

Solely for Services performed by and on behalf of the named insured for the City of Riverside, it is agreed that the City of Riverside and its officers and employees are added as additional insureds under this policy.

The insurance policy or policies shall also comply with the following provisions:

- a. Policies shall include premises/operations, products completed operations, independent contractors, owners and contractors' protection, broad form contractual, personal injury with employment exclusion deleted, and broad form property damage.
- b. The policy shall be endorsed to waive any right of subrogation against the City and its subcontractors, employees, officers, agents and directors for work performed under this Agreement.
- c. If policies are written on a claims made basis, the certificate should so specify and the policy must continue in force for one year after completion of the project. The retroactive date of the coverage must also be listed.
- d. The policy shall specify that the insurance provided by Contractor will be considered primary and not contributory to any other insurance available to the City of Riverside. Contractor shall provide Form No. CG 20010413 to City.

11. Bonds. Prior to City's execution of this Agreement, Contractor shall furnish City with two completed surety bonds (on bond forms provided by City), one as security for the faithful performance of this Agreement and one as security for the payment of all persons performing labor and furnishing materials in connection with this Agreement. Both bonds shall be in the amount of 100% of the Contract Price and shall be subscribed by a corporate surety which is authorized to transact surety insurance business in the State of California with a policy holder's rating of A or higher and a Financial Class VII or larger. Should any bond or surety become insufficient, Contractor shall furnish City with new bonds within 10 days after receiving notice from City. No payments will be due or paid under this Agreement until any and all bond deficiencies have been remedied. Contractor by execution of this Agreement acknowledges that the bonds are not Contract Documents but are separate obligations.

12. Termination. City and Contractor shall have the right to terminate any or all of Contractor's Services and work covered by this Agreement at any time upon thirty (30) calendar day's written notice to Contractor. In the event of such termination, Contractor shall submit Contractor's final written statement of the amount of services provided as of the date of such termination for payment by the City.

Notwithstanding the foregoing, the City may terminate Contractor's performance of this Agreement upon five (5) calendar day's written notice if:

- a. Contractor fails to promptly begin performance of the Services; or
- b. Contractor fails to perform the Services in accordance with the Contract Documents, including conforming to applicable standards set forth therein, or refuses to remove and replace rejected materials or unacceptable work; or
- c. Contractor discontinues performance of the Services; or
- d. Contractor fails to make payment to subcontractors for materials or labor in accordance with applicable law; or
- e. Contractor disregards laws, ordinances, or rules, regulations, or orders of a public authority having jurisdiction; or
- f. Contractor otherwise is guilty of breach of a provision of this Agreement; or
- g. Contractor becomes insolvent, is adjudicated bankrupt, or makes a general assignment for the benefit of creditors and fails to provide City with adequate assurances of Contractor's ability to satisfy its contractual obligations.

A receiver, trustee, or other judicial officer shall not have any right, title, or interest in or to this Agreement. Upon that person's appointment, City has, at its option and sole discretion, the right to immediately cancel the Agreement and declare it null and void.

13. Indemnification. Except as to the sole negligence, or willful misconduct of City, Contractor shall defend, indemnify and hold the City, its officers and employees, harmless from any and all loss, damage, claim for damage, liability, expense or cost, including attorney's fees, which arises out of or is in any way connected with the performance of work under this Agreement by Contractor or any of Contractor's employees, agents or subcontractors and from all claims by Contractor's employees, subcontractors and agents for compensation for services rendered to Contractor in the performance of this Agreement, notwithstanding that City may have benefited from their services. This indemnification provision shall apply to any acts or omissions, willful misconduct or negligent conduct, whether active or passive, on the part of Contractor or any of the Contractor's employees, subcontractors or agents.

The parties expressly agree that any payment, attorney's fee, costs or expense City incurs or makes to or on behalf of an injured employee under the City's self-administered workers' compensation is included as a loss, expense or cost for the purposes of this Section, and that this Section shall survive the expiration or early termination of the Agreement.

14. Defense Obligation. Contractor agrees, at its cost and expense, to promptly defend the City and the City's employees, officers, managers, agents, and council members (collectively the "Parties to be defended") from and against any and all claims, allegations, lawsuits or other legal proceedings which arise out of, or are related to, or are in any manner connected with: (1) the work, activities operations, or duties of Contractor, or of anyone employed by or working under the Contractor, or (2) any breach of this Agreement by Contractor. This duty to defend shall apply whether or not such claims, allegations, lawsuits or proceedings have merit or are meritless or, which involve claims or allegations that any of the Parties to be defended were actively, passively or concurrently negligent, or which otherwise assert that the parties to be defended are responsible, in whole or in part, for any loss, damage or injury. Contractor agrees to provide this defense immediately upon written notice from the City, and with well qualified, adequately insured and experienced legal counsel acceptable to the City.

15. Non-Discrimination. During Contractor's performance of this Agreement, Contractor shall not discriminate on the grounds of race, religious creed, color, national origin, ancestry, age, physical disability, mental disability, medical condition including the medical condition of Acquired Immune Deficiency Syndrome (AIDS) or any condition related thereto, marital status, genetic information, gender, gender identity, gender expression, sex or sexual orientation, in the selection and retention of employees and subcontractors and the procurement of materials and equipment, except as provided in Section 12940 of the California Government Code. Further, Contractor agrees to conform to the requirements of the Americans with Disabilities Act in the performance of this Agreement.

16. Prevailing Wage. Pursuant to Section 1771 of the California Labor Code, Contractor and all subcontractors are required to pay the general prevailing rates of per diem wages, overtime and holiday wages as determined by the Director of the Department of Industrial Relations and implemented by Resolution No. 13346 of the City Council of the City of Riverside. The Director's determination of prevailing wage rates is available on-line at www.dir.ca.gov/dlsr/DPreWageDetermination.htm, and is referred to and made a part hereof as though fully set forth herein.

Per Senate Bill 854 (2014), Contactor and subcontractors shall register with the Department of Industrial Relations (DIR) in order to bid and perform public works projects. Contractors and subcontractors on all public works projects shall submit electronic certified payrolls to the Labor Commissioner and City unless excused from this requirement.

Contractor is aware of and stipulates that Contractor will also comply with the following sections of the California Labor Code:

- a. Section 1775 prescribing sanctions for failure to pay prevailing wage rates;
- b. Section 1776 requiring the making, keeping and disclosing of detailed payroll records and prescribing sanctions for failure to do so;
- c. Section 1777.5 prescribing the terms and conditions for employing registered apprentices;
- d. Section 1810 providing that eight hours of labor shall be a day's work; and
- e. Section 1813 prescribing sanctions for violations of the provisions concerning eight-hour work days and forty-hour work weeks.
- f. Sections 1725.5 and 1771.1 requiring all general contractors and subcontractors to be registered with DIR. Registration can be accomplished through the DIR website by using this link: <http://www.dir.ca.gov/Public-Works/PublicWorks.html>.

17. Notices. Service of any notices, bills, invoices or other documents required or permitted under this Agreement shall be sufficient if sent by one party to the other by United States mail, postage prepaid and addressed as follows:

City

City of Riverside
Public Works Director
3900 Main Street
Riverside, California 92522

Contractor

Merchants Landscape Services, Inc.
Attn: Patrick Healy
8847 W. 9th Street
Rancho Cucamonga, CA 91730

18. Venue. Any action at law or in equity brought by either of the parties hereto for the purpose of enforcing a right or rights provided for by this Agreement shall be tried in a court of competent jurisdiction in the County of Riverside, State of California, and the parties hereby waive all provisions of law providing for a change of venue in such proceedings to any other county.

19. Independent Contractor. Contractor shall at all times during its performance of the Work retain its status as an independent contractor. Contractor's employees and agents shall under no circumstances be considered or held to be employees or agents of City and City shall have no obligation to pay or withhold state or federal taxes or provide workers' compensation or unemployment insurance for or on behalf of Contractor or its employees and agents.

20. Waiver. No action or failure to act by the City shall constitute a waiver of any right or duty afforded City under this Agreement, nor shall any action or failure to act constitute an

approval of or acquiescence in any breach thereunder, except as may be specifically provided in this Agreement or as may be agreed in writing.

21. Severability. Each provision, term, condition, covenant and/or restriction, in whole and in part, in this Agreement shall be considered severable. In the event any provision, term, condition, covenant and/or restriction, in whole and/or in part, in this Agreement is declared invalid, unconstitutional, or void for any reason, such provision or part thereof shall be severed from this Agreement and shall not affect any other provision, term, condition, covenant and/or restriction of this Agreement and the remainder of the Agreement shall continue in full force and effect.

22. Authority. The individuals executing this Agreement and the instruments referenced herein on behalf of Contractor each represent and warrant that they have the legal power, right and actual authority to bind Contractor to the terms and conditions hereof and thereof.

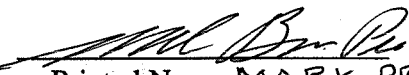
23. Entire Agreement. This Agreement constitutes the final, complete, and exclusive statement of the terms of the agreement between the parties pertaining to the subject matter of this Agreement, and supersedes all prior and contemporaneous understandings or agreements of the parties. Neither party has been induced to enter into this Agreement by, and neither party is relying on, any representation or warranty outside those expressly set forth in this Agreement.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed the day and year first above written.

CITY OF RIVERSIDE, a California charter
city and municipal corporation

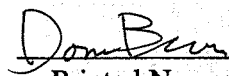
MERCHANTS LANDSCAPE SERVICES,
INC., a California corporation

By: _____
City Manager

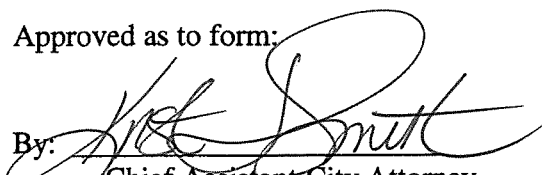
By: 
Printed Name: MARK BROWER
Title: PRES.

Attest:

By: _____
City Clerk

By: 
Printed Name: Donna Brower
Title: SECRETARY

Approved as to form:

By: 
Chief Assistant City Attorney

COMPENSATION SCHEDULES

Proposer Name: Merchants Landscape Services, Inc.

The above-named Proposer having examined the proposed Contract Documents and having visited the sites and examined the conditions affecting the work, hereby proposes and agrees to furnish all labor, materials, supplies and equipment, and to perform operations necessary to complete the work as required by proposed Contract Documents.

Item No.	Description	Quantity	Amount Per Month Year 1	Amount Per Month Year 2	Amount Per Month Year 3
1.	<u>Victoria Avenue Special Maintenance Tasks—Article 2 – Part 3</u> Trees, Ragged Robin Roses, Carpet Roses, Hybrid Teas, Irrigation System, Paths, Dog waste Stations and Trashcans.	All within specified limits	\$ 11,125.00	\$ 11,348.00	\$ 11,688.00
2.	<u>Turf Maintenance—Article 3 – Part 3</u> Turf mowing, edging, fertilization, reseeding, seasonal over seeding, clipping pick-up, waste disposal and general clean-up, green waste and recycling.	All within specified limits	\$ 250.00	\$ 255.00	\$ 263.00
3.	<u>Irrigation—Article 4 – Part 3</u> Irrigation services, schedules, manual watering, special watering, irrigation system testing, irrigation system maintenance, products, special events, trained personnel, damages from irrigation, City requests, compliance with AB325 "Model Water Irrigation Ordinance"	All within specified limits	\$ 3,750.00	\$ 3,825.00	\$ 3,940.00
4.	<u>Fertilization—Article 5 – Part 3</u> Ground cover areas, tree and shrub areas, annual flower beds/hydro seed areas	All within specified limits	\$ 1,000.00	\$ 1,020.00	\$ 1,050.00
5.	<u>Weed Control—Article 7 – Part 3</u> General, median islands, sidewalks, walkways, curbs, gutters and tree wells.	All within specified limits	\$ 2,500.00	\$ 2,550.00	\$ 2,626.00
6.	<u>Shrub Maintenance—Article 8 – Part 3</u> Pruning, pruning schedule, shrubbery replacement, cultivation and mulching, irrigation (deep soaking), disease, rodent and insect control and weed control.	All within specified limits	\$ 875.00	\$ 892.00	\$ 919.00
7.	<u>Ground Cover—Article 9 – Part 3</u> Renovation, cultivation and mulching, edging, replanting, ground cover replacement, ground cover maximum height, irrigation, weed control and annual color.	All within specified limits	\$ 625.00	\$ 637.00	\$ 657.00
8.	<u>Vine Maintenance—Article 10 – Part 3</u> Pruning, irrigation, replanting	All within specified limits	\$ 375.00	\$ 382.00	\$ 394.00

Item No.	Description	Quantity	Amount Per Month Year 1	Amount Per Month Year 2	Amount Per Month Year 3
9.	<u>Tree Care—Article 11 – Part 3</u> Tree maintenance.	All within specified limits	\$ 2,000.00	\$ 2,040.00	\$ 2,101.00
10.	<u>Disease, Insect and Pest Control—Article 12 – Part 3</u> General, use of chemicals, disease, insect and pest control	All within specified limits	\$ 750.00	\$ 765.00	\$ 788.00
11.	<u>Plant Material Replacement—Article 13 – Part 3</u> Notification of material loss, replacement, quarterly plant replacement and plant removals.	All within specified limits	\$ 625.00	\$ 637.00	\$ 656.00
12.	<u>Amenities—Article 14 – Part 3</u> Trail maintenance, Drains and Grates	All within specified limits	\$ 375.00	\$ 382.00	\$ 394.00
13.	<u>Litter and Debris—Article 15 – Part 3</u> General, trash receptacles, graffiti, abandoned shopping carts, other conditions of blight/security concern and contractor operations.	All within specified limits	\$ 500.00	\$ 510.00	\$ 525.00
14.	<u>Curb, Gutter, Sidewalk, Tree Well, Curb Ramp, Fixture, Drain and General Maintenance—Article 16 – Part 3</u> General maintenance, drains, leaves, signs, sidewalks and walkways, special events	All within specified limits	\$ 250.00	\$ 255.00	\$ 262.00
	<u>Total Per Month – All Items</u>		\$ 25,000.00	\$ 25,498.00	\$ 26,263.00
	<u>Total Per Year—All Items</u> (Per Month Amount x 12)		\$ 300,000.00	\$ 305,976.00	\$ 315,156.00

Additional Items			
1.	Per square foot cost for additional areas	\$.012	\$.013
2.	Hourly cost for additional labor	\$ 21.00	\$ 21.50
3.	Hourly cost for Irrigation Specialist	\$ 38.00	\$ 39.00
4.	Hourly cost for additional Supervisor	\$ 45.00	\$ 45.00
5.	Unit cost for 1 gallon plant	\$ 8.00	\$ 8.00
6.	Unit cost for 5 gallon plant	\$ 20.00	\$ 20.00
7.	Unit cost for 15 gallon plant	\$ 65.00	\$ 65.00
8.	Unit cost for flat of groundcover	\$ 18.00	\$ 18.00
9.	Unit Cost for 24" box tree	\$ 295.00	\$ 295.00

WORKERS' COMPENSATION CERTIFICATION

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

DATED: 5/25/16

Merchants Landscape Services, Inc.

By 