

**AGREEMENT FOR GENERAL LANDSCAPE MAINTENANCE
AT VARIOUS PUBLIC UTILITIES PROPERTIES**

RFP NO. 1611

MARIPOSA LANDSCAPES, INC.

On this _____ day of _____, 2016, ("Effective Date") the CITY OF RIVERSIDE, a California charter city and municipal corporation ("City"), and MARIPOSA LANDSCAPES, INC., a California corporation, 15529 Arrow Highway, Irwindale, CA 91706, State Contractor's License No. 592268 ("Contractor"), mutually agree as follows:

1. Scope of Services. Contractor shall furnish all labor, materials and equipment for and perform the work of complete landscape maintenance services for various Public Utilities located in the Counties of Riverside and San Bernardino, and for work which is covered in the Contractor's Proposal ("the Services"). Contractor shall perform the Services in accordance with the provisions and requirements of the following Contract Documents: City of Riverside Public Utilities Department Request for Proposals 1611 for City of Riverside, dated May 5, 2016 ("RFP 1611"), 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 the July 1, 2016, through June 30, 2018, unless earlier terminated as provided herein. The term may be extended by mutual consent of the parties for three (3) additional one (1) year periods, not to exceed a total of three (3) additional years. All such extensions/amendments shall be made in writing and approved by the parties. The City Manager or his designee is authorized on behalf of the City to execute any amendment subject to budgeted funds.

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 Two Hundred Thirty Two Thousand Eight Hundred Forty Dollars (\$232,840.00). 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.

For any extension of this Agreement, the annual compensation shall be increased by the CPI 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;
- e. Section 1813 prescribing sanctions for violations of the provisions concerning eight-hour work days and forty-hour work weeks; and
- 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/PublicWorks/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:

<u>City</u>	<u>Contractor</u>
City of Riverside	Mariposa Landscapes, Inc.
Principal Engineer	Attn: Joshua Cho
3750 University Avenue, 3 rd Floor	15529 Arrow Highway
Riverside, CA 92522	Irwindale, CA 91706

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.

(Signatures on Following Page)

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

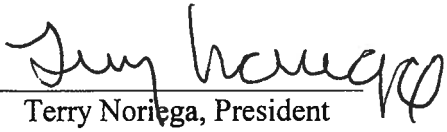
CITY OF RIVERSIDE, a California charter city
and municipal corporation

By: _____
City Manager

Attest:

By: _____
City Clerk

MARIPOSA LANDSCAPES, INC.,
a California corporation

By: 
Terry Noriega, President

By: 
Antonio Valenzuela, Secretary

Approved as to form:

By: 
Assistant City Attorney

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EXHIBIT “A”

Compensation Schedules

(Inserted behind this page)

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: _____

Mariposa Landscapes, Inc.

By _____

PERFORMANCE BOND

Bond No.

Premium:

KNOW ALL PERSONS BY THESE PRESENTS THAT:

WHEREAS, on _____, 20____, the CITY OF RIVERSIDE ("CITY") awarded to MARIPOSA LANDSCAPES, INC. ("PRINCIPAL") a contract for performance of the work described as Landscape and General Outside Maintenance Services for South Quadrant Parkways and Medians; RFP No. 1611 ("CONTRACT"), the terms and conditions of which are incorporated herein by reference; and

WHEREAS, the CONTRACT requires PRINCIPAL to furnish this Performance Bond ("BOND") to guarantee PRINCIPAL's faithful performance of all provisions of the CONTRACT; and

WHEREAS, _____ ("SURETY"), a corporation legally authorized to execute and furnish performance bonds as sole surety in the State of California, is willing to act as PRINCIPAL's SURETY in the making and giving of this BOND.

NOW, THEREFORE, we PRINCIPAL and SURETY hereby hold and firmly bind ourselves to pay to CITY in lawful United States currency the principal sum of Two Hundred Thirty Two Thousand Eight Hundred Forty Dollars (\$232,840.00) for which payment well and truly to be made to CITY or CITY's successors or assigns we hereby bind ourselves and our heirs, legal representatives, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS BOND IS THAT IF PRINCIPAL or PRINCIPAL's heirs, legal representatives, successors or assigns shall in all things stand to, abide by, and well and truly keep and faithfully perform all of the covenants, conditions and promises in the CONTRACT, including its work Guaranty, and all alterations thereof made as therein provided on PRINCIPAL's part to be kept and performed at the time and in the manner specified therein, and in all respects according to their true intent and meaning, and shall indemnify and save harmless CITY and CITY's officers, employees and agents as therein specified, then this obligation shall become null and void; otherwise, it shall be and remain in full force and binding effect.

SURETY hereby agrees that no change in the terms of the CONTRACT or the work to be performed thereunder, or any extension of time for completion thereof, shall in any way relieve it of its obligations under this BOND, and hereby waives notice of any change or extension thereof, and further waives the provisions of California Civil Code sections 2819 and 2845.

If suit is brought by the CITY on this BOND, SURETY shall pay to the CITY, over and above the principal sum hereof, reasonable attorneys' fees and costs which the court is hereby authorized to award. PRINCIPAL and SURETY agree that this BOND shall not be considered a part of the CONTRACT, that this BOND is a separate obligation from the CONTRACT, and that any attorneys' fee provision contained in this BOND shall not apply to the CONTRACT. In the event there is any litigation between PRINCIPAL and the CITY arising from the CONTRACT, neither PRINCIPAL nor the CITY will be entitled to recover attorneys' fees as against the other.

IN WITNESS WHEREOF, we sign and seal this BOND on _____, 20____.

Correspondence or claims relating to
this BOND should be sent to SURETY at
the following address:

Telephone Number _____

Note: Signatures of those executing for
SURETY must be acknowledged, and a
Power of Attorney attached.

MARIPOSA LANDSCAPES, INC.
Principal

By _____ (Seal)

Typed Name and Title

Surety

Attorney-In-Fact (Seal)

Typed Name and Title

PAYMENT BOND

Bond No.

Premium:

KNOW ALL PERSONS BY THESE PRESENTS THAT:

WHEREAS, on _____, 20____, the CITY OF RIVERSIDE ("CITY") awarded to MARIPOSA LANDSCAPES, INC. ("PRINCIPAL") a contract for performance of the work described as Landscape and General Outside Maintenance Services for South Quadrant Parkways and Medians; RFP No. 1611 ("CONTRACT"), the terms and conditions of which are incorporated herein by reference; and

WHEREAS, the CONTRACT requires PRINCIPAL to furnish this Payment Bond ("BOND") to secure payment of the claims of persons described in California Civil Code section 3248(b); and

WHEREAS, _____ ("SURETY"), a corporation legally authorized to execute and furnish payment bonds as sole surety in the State of California, is willing to act as PRINCIPAL's SURETY in the giving of this BOND.

NOW, THEREFORE, we PRINCIPAL and SURETY hold and firmly bind ourselves unto CITY and all persons and entities described in California Civil Code section 3248(b) whose claims are not paid by PRINCIPAL in the total sum of Two Hundred Thirty Two Thousand Eight Hundred Forty Dollars (\$232,840.00), for which payment well and truly to be made we bind ourselves and our heirs, legal representatives, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS BOND IS THAT IF PRINCIPAL or PRINCIPAL's successors, assigns, or subcontractors fail to pay any of the persons described in California Civil Code section 3181, any amounts due under the California Unemployment Insurance Code with respect to work or labor performed under the CONTRACT or any amounts required to be deducted, withheld and paid over to the California Employment Development Department from the wages of employees of PRINCIPAL and PRINCIPAL's subcontractors pursuant to California Unemployment Insurance Code section 13020 with respect to such work and labor, SURETY will pay for the same in an amount not exceeding the sum stated above, plus all costs and reasonable attorney's fees awarded by any court of competent jurisdiction in any lawsuit brought upon this BOND.

THIS BOND SHALL INURE TO the benefit of all persons and entities described in California Civil Code section 3248(b) so as to give them or their assigns a right of action in any lawsuit brought upon this BOND, and is executed and filed to comply with the Public Works Payment Bond provisions of Chapter 7, Title 15, Part 4, Division 3 of the California Civil Code (commencing at Section 3247) and all amendments thereto, which provisions are incorporated herein by this reference.

IN WITNESS WHEREOF, we sign and seal this BOND on _____, 20____.

Correspondence or claims relating to
this BOND should be sent to SURETY at
the following address:

Telephone Number _____

Note: Signatures of those executing for
SURETY must be acknowledged, and a
Power of Attorney attached.

MARIPOSA LANDSCAPES, INC.

Principal

By _____ (Seal)

Typed Name and Title

Surety

Attorney-In-Fact (Seal)

Typed Name and Title

CORPORATE CERTIFICATE

STATE OF)
) SS:
COUNTY OF)

I, HEREBY, CERTIFY that during a meeting of the Board of Directors of the _____, a corporation existing under the laws of the State of _____, held on _____, 20____, the following resolution was duly passed and adopted:

“RESOLVED, that _____, as _____ of the Corporation, be and is hereby authorized to execute the Agreement for _____ between the City of Riverside and this corporation and that his execution thereof and with the Corporate Seal affixed, shall be the official act and deed of this Corporation.”

I further certify that said resolution is now in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the corporation.
this _____, day of _____, 20_____.

Secretary (Seal)