

**LANDSCAPE MAINTENANCE OF
CITY PARKS AND CIVIC CENTER**

THIS CONTRACT SERVICES AGREEMENT (herein "Agreement"), is made and entered into this 1st day of July by and between the CITY OF WEST COVINA, a municipal corporation, (herein "City") and MARIPOSA LANDSCAPE (herein "Contractor"). The parties hereto agree as follows:

RECITALS

A. City requires **LANDSCAPE MAINTENANCE SERVICES**. Contractor has represented to City that Contractor is qualified to perform said services and has submitted a proposal to City for same.

B. City desires to have Contractor perform said services on the terms and conditions set forth herein.

NOW, THEREFORE, based on the foregoing Recitals and for good and valuable consideration, the receipt and sufficiency of which is acknowledged by both parties, City and Contractor hereby agree as follows:

1. **SERVICES OF CONTRACTOR**

1.1 **Scope of Services**. In compliance with all terms and conditions of this Agreement, Contractor shall provide those services specified in the "Scope of Services" attached hereto as Exhibit "A" and incorporated herein by this reference, which services may be referred to herein as the "services" or "work" hereunder. As a material inducement to the City entering into this Agreement, Contractor represents and warrants that Contractor is a provider of first class work and services and Contractor is experienced in performing the work and services contemplated herein and, in light of such status and experience, Contractor covenants that it shall follow the highest professional standards in performing the work and services required hereunder and that all materials will be of good quality, fit for the purpose intended.

1.2 **Documents Included in Contract**. This contract consists of the Notice to Contractors and Instructions to Bidders, bid documents, Proposal, Proposal Schedule, Designation of Subcontractors, Non-Collusion Affidavit, Certification of Principal, Supplemental Information, specifications, this Contract Services Agreement, Faithful Performance Bond, Tax Identification Form, Workers' Compensation certification, insurance certificates and endorsements, and any and all schedules and attachments to them which are incorporated as if fully set forth herein. In the event of an inconsistency, this Agreement shall govern.

1.3 **Compliance with Law**. All services rendered hereunder 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 rendered. Contractor shall keep itself informed of City, State, and Federal laws, ordinances, and

regulations, which in any manner affect the performance of its services pursuant to this Agreement. Neither the City nor its officers, agents or employees shall be liable at law or in equity as a result of Contractor's failure to comply with this section.

1.4 Licenses, Permits, Fees and Assessments. Contractor shall obtain at its sole cost and expense such licenses, permits and approvals as may be required by law for the performance of the services required by this Agreement. Contractor shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Contractor's performance of the services required by this Agreement, and shall indemnify, defend and hold harmless City against any such fees, assessments, taxes penalties or interest levied, assessed or imposed against City hereunder. Contractor shall be responsible for all subcontractors' compliance with this Section 1.4.

1.5 Familiarity with Work. By executing this Contract, Contractor warrants that Contractor (a) has thoroughly investigated and considered the scope of services to be performed, (b) has carefully considered how the services should be performed, and (c) fully understands the facilities, difficulties and restrictions attending performance of the services under this Agreement. If the services involve work upon any site, Contractor warrants that Contractor has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services hereunder. Should the Contractor discover any latent or unknown conditions, which will materially affect the performance of the services hereunder, 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 Contract Officer.

1.6 Care of Work. Contractor shall adopt reasonable methods during the life of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and/or other components thereof to prevent losses or damages, and shall be responsible for all such damages, to persons or property, until acceptance of the work by City, except such losses or damages as may be caused by City's own sole negligence.

1.7 Further Responsibilities of Parties. Both parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Both parties agree to act in good faith to execute all instruments, prepare all documents and take all actions as may be reasonably necessary to carry out the purposes of this Agreement. Unless hereafter specified, neither party shall be responsible for the service of the other. Contractor shall require all subcontractors to comply with the provisions of this agreement.

1.8 Additional Services. City shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to or deducting from said work. No such extra work may be undertaken unless a written change order is first given by the Contract Officer to Contractor, incorporating therein any adjustment in (i) the Contract Sum, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval of Contractor. Increases in compensation totaling up to eighty percent (80%) of the total cost of this Agreement may be approved by Contract Officer. Any greater increases, taken either separately or cumulatively, must be approved by the City Council. It is expressly understood by Contractor that

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the provisions of this Section shall not apply to services specifically set forth in the Scope of Services or reasonably contemplated therein. Contractor hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Services may be more costly or time consuming than Contractor anticipates and that Contractor shall not be entitled to additional compensation therefor.

1.9 Special Requirements. Additional terms and conditions of this Agreement, if any, which are made a part hereof are set forth in the "Special Requirements" attached hereto as Exhibit "B" and incorporated herein by this reference. In the event of a conflict between the provisions of Exhibit "B" and any other provisions of this Agreement, the provisions of Exhibit "B" shall govern.

2.A COMPENSATION

2.1 Contract Sum. For the services rendered pursuant to this Agreement, the Contractor shall be compensated as specified herein, but not exceeding the maximum contract amount **ONE MILLION SEVEN HUNDRED THIRTY-SIX EIGHT HUNDRED EIGHTY 60/100** dollars (**\$1,736,880.60**) (herein "Contract Sum"), except as provided in Section 1.8. The Contract Sum shall include the attendance of Contractor at all project meetings reasonably deemed necessary by the City; Contractor shall not be entitled to any additional compensation for attending said meetings.

2.2 Progress Payments. City agrees to pay Contractor and Contractor agrees to accept as payment in full for the work to be performed hereunder, payments during the sixty (60) month period of this Agreement of **TWENTY-EIGHT THOUSAND NINE HUNDRED FOURTY-EIGHT 01/100** dollars (**\$28,948.01**) per month. Payments will only be made upon satisfactory completion and acceptance of the work by the Contract Officer and presentation of a monthly statement to the City. Prior to payment, Contractor will adhere to and provide upon request to the Maintenance Department, documented proof of compliance with Division 2, Part 7, Chapter 1, Article 2, of the Labor Code. If contractor fails to perform its obligations or fails to cure defaults within the time frames specified in Section 7.2 of this Agreement, in addition to liquidated damages specified in Section 7.7 of this Agreement, City may withhold payment to Contractor until such defaults are cured.

3. PERFORMANCE SCHEDULE

3.1 Time of Essence. Time is of the essence in the performance of this Agreement.

3.2 Schedule of Performance. Following receipt of a written notice to proceed, Contractor shall commence and perform the services pursuant to this Agreement upon the date specified and within the time period(s) established in the "Schedule of Performance" attached hereto as Exhibit "C", if any, and incorporated herein by this reference. When requested by Contractor,

extensions to the time period(s) specified in the Schedule of Performance may be approved in writing by the Contract Officer.

3.3 Force Majeure. The time period(s) specified in the Schedule of Performance for performance of the services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of Contractor, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including City, if Contractor shall within ten (10) days of the commencement of such delay notify Contract Officer in writing of the causes for the delay. The Contract Officer shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of the Contract Officer such delay is justified. The Contract Officer's determination shall be final and conclusive upon the parties to this Agreement.

3.4 Term. Unless earlier terminated in accordance with Section 7.8 of this Agreement, this Agreement shall continue in full force and effect for a period of 60 months, commencing on the date contractor commences work pursuant to Section 3.2 of this Agreement.

4. COORDINATION OF WORK

4.1 Representative of Contractor. The following principals of Contractor are hereby designated as being the principals and representatives of Contractor authorized to act in its behalf with respect to the work specified herein and make all decisions in connection therewith:

-John Mackessey (626) 960-0196
-Terry Noriega (626) 960-0196

It is expressly understood that the experience, knowledge, capability and reputation of the foregoing principals were a substantial inducement for City to enter into this Agreement. Therefore, the foregoing principals shall be responsible during the term of this Agreement for directing all activities of Contractor and devoting sufficient time to personally supervise the services hereunder. For purposes of this Agreement, the foregoing principals may not be replaced nor may their responsibilities be substantially reduced by Contractor without the express written approval of City.

4.2 Contract Officer. The Contract Officer shall be such person as may be designated by the City Manager or City Engineer of City. It shall be Contractor's responsibility to assure that the Contract Officer is kept informed of the progress of the performance of the services and the Contractor shall refer any decisions which must be made by City to the Contract Officer. Unless otherwise specified herein or required by applicable law, any approval of City required hereunder shall mean the approval of Contract Officer. The Contract Officer shall have authority to sign documents on behalf of City required hereunder to carry out the terms of this Agreement.

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4.3 Prohibition Against Assignment. The experience, knowledge, capability and reputation of Contractor, its principals and employees were a substantial inducement for City to enter into this Agreement. Neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of City. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty five percent (25%) of the present ownership and/or control of Contractor, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release Contractor or any surety of Contractor of any liability hereunder without the express consent of City.

4.4 Independent Contractor. Neither City nor any of its employees shall have any control over the manner, mode or means by which Contractor, its subcontractors, agents or employees, perform the services required herein, except as otherwise set forth herein. City shall have no voice in the selection, discharge, supervision or control of Contractor's employees, subcontractors, servants, representatives or agents, or in fixing their number, compensation or hours of service. Contractor shall perform all services required herein as an independent contractor of City and shall remain at all times as to City a wholly independent contractor with only such obligations as are consistent with that role. Contractor shall not at any time or in any manner represent that it or any of its subcontractors, agents or employees are agents or employees of City. City shall not in any way or for any purpose become or be deemed to be a partner of Contractor in its business or otherwise or a joint venture or a member of any joint enterprise with Contractor. City officers, employees, or agents shall not be deemed the officers, employees or agents of Contractor as a result of this Agreement.

4.5 Identity of Persons Performing Work. Contractor represents that it employs or will employ at its own expense all personnel required for the satisfactory performance of any and all tasks and services set forth herein. Contractor represents that the tasks and services required herein will be performed by Contractor or under its direct supervision, and that all personnel engaged in such work shall be fully qualified and shall be authorized and permitted under applicable State and local law to perform such tasks and services.

4.6 Utility Relocation. City is responsible for removal, relocation, or protection of existing main or trunkline utilities to the extent such utilities were not identified in the invitation for bids or specifications. City shall reimburse contractor for any costs incurred in locating, repairing damage not caused by contractor and removing or relocating such unidentified utility facilities, including equipment idled during such work. Contractor shall not be assessed liquidated damages for delay arising from the removal or relocation of such unidentified utility facilities.

4.7 Trenches or Excavations. Pursuant to California Public Contract Code Section 7104, in the event the work included in this Agreement requires excavations more than four (4) feet in depth, the following shall apply.

(a) Contractor shall promptly, and before the following conditions are disturbed, notify City, in writing, of any: (1) material that Contractor believes may be

material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law; (2) Subsurface or latent physical conditions at the site different from those indicated; or (3) Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the contract.

(b) City shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in Contractor's cost of, or the time required for, performance of any part of the work shall issue a change order per Section 1.8 of this Agreement.

(c) That, in the event that a dispute arises between City and Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in Contractor's cost of, or time required for, performance of any part of the work, Contractor shall not be excused from any scheduled completion date provided for by the contract, but shall proceed with all work to be performed under the contract. Contractor shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the contracting parties.

5. INSURANCE, INDEMNIFICATION AND BONDS

5.1 Insurance. Without limiting Contractor's indemnification, Contractor shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City, during the entire term of this Agreement including any extension thereof, the following policies of insurance:

| <u>Coverage (Check if applicable)</u> | <u>Minimum Limits</u> |
|---|--|
| (x) Comprehensive General Liability Insurance (including premises and operations) | \$1,000,000 per occurrence combined single limit |
| () Contractual Liability Insurance Products Liability Insurance | \$1,000,000 limit |
| (x) Comprehensive Automobile Liability Insurance (including owned, non-owned, and hired automobile hazards) | \$1,000,000 per occurrence combined single limit |
| () Professional Liability Insurance (providing for a one-year discovery period) | \$1,000,000 per occurrence combined single limit |
| (x) Workers' Compensation/Employers' | Statutory \$1,000,000 |

Liability Insurance

per occurrence

Conditions:

(a) In accordance with Public Code Section 20170, the insurance of surety companies who provide or issue the policy shall have been admitted to do business in the State of California with a credit rating of A- or better and shall meet the requirements of Section 5.4 hereof.

(b) Any insurance maintained by City of West Covina shall apply in excess of and not combined with insurance provided by this policy.

(c) City, its officers, employees, representatives, attorneys, and volunteers shall be named as additional named insureds.

(d) Prior to commencement of any work under this contract, Contractor shall deliver to the City insurance endorsements confirming the existence of the insurance required by this contract, and including the applicable clauses referenced above. Such endorsements shall be signed by an authorized representative of the insurance company and shall include the signator's company affiliation and title. Should it be deemed necessary by the City, it shall be Contractor's responsibility to see that the City receives documentation, acceptable to the City, which sustains that the individual signing said endorsements is indeed authorized to do so by the insurance company.

(e) If Contractor fails to maintain the aforementioned insurance, or secure and maintain the aforementioned endorsements, City may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement. However, procuring of said insurance by City is an alternative to other remedies City may have, and is not the exclusive remedy for failure of Contractor to maintain said insurance or secure said endorsements. In addition to any other remedies City may have upon Contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, City shall have the right to order Contractor to stop work hereunder, and/or withhold any payment(s) which become due to Contractor hereunder until Contractor demonstrates compliance with the requirements hereof.

(f) Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or its subcontractor's performance of or failure to perform the work covered under this Agreement.

(g) Each contract between Contractor and any subcontractor shall require the subcontractor to maintain the same policies of insurance that Contractor is required to maintain pursuant to this Section 5.1.

5.1.1 Liability Insurance: Without limiting Contractor's indemnification, Contractor shall secure from a good and responsible company or companies doing insurance

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business in the State of California, pay for, and maintain in full force and effect for the duration of this Agreement, a policy of comprehensive general liability insurance, and shall furnish a Certificate of Liability Insurance to the Maintenance Operations Manager. Said policy shall provide:

(a) An endorsement naming City, its officers, agents and employees as additional insureds before execution of this Agreement by City.

(b) Contractor also shall maintain throughout the term of this Agreement, comprehensive automobile liability insurance (including owned, non-owned and hired automobile hazards) on the same terms and conditions.

Notwithstanding any inconsistent statement in the policy or any subsequent endorsement attached thereto, the protection offered by the policy shall:

(c) Insure City, its officers, employees and agents, while acting within the scope of their duties under this Agreement, against all claims arising out of, or in connection with the Agreement.

(d) A combined single limit policy for both liability and property in the amount of \$1,000,000 per occurrence will be considered equivalent to the required minimum limits. Contractor may file insurance acceptable to City, covering more than one project.

(e) Bear an endorsement or shall have attached a rider providing that, in the event of expiration or proposed cancellation of such policy for any reason whatsoever, the Maintenance Operations Manager shall be notified by registered mail, postage prepaid, return receipt requested, not less than thirty (30) days before such expiration or cancellation is effective.

5.1.2 Workers' Compensation Insurance:

(a) By execution of this Agreement, Contractor agrees to the following certification: "I am aware of, and will comply with, Section 3700 of the Labor Code, requiring every employer to be insured against liability of Workers' Compensation or to undertake self-insurance before commencing any of the work."

(b) Contractor shall also comply with Section 3800 of the Labor Code by securing, paying for and maintaining in full force and effect for the duration of this Agreement, complete Workers' Compensation Insurance, and shall furnish a Certificate of Insurance to the Maintenance Operations Manager before execution of this Agreement by City. City, its agents, officers and employees shall not be responsible for any claims in law or equity occasioned by the failure of Contractor to comply with this section.

(c) Every compensation insurance policy shall bear an endorsement or shall have attached a rider providing that, in the event of expiration or proposed cancellation

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of such policy for any reason whatsoever, the Maintenance Operations Manager shall be notified by registered mail, postage prepaid, return receipt requested, not less than thirty (30) days before such expiration or cancellation is effective.

5.2 Indemnification. Contractor shall indemnify, defend, and protect City, its officers, agents and employees against, and will hold and save them and each of them harmless from, any and all actions, suits, claims, damages to persons or property, losses, costs, expenses, penalties, obligations, errors, omissions or liabilities, (herein "claims or liabilities") for any damage whatsoever, including but not limited to, bodily injury, death, or injury to property that may be asserted or claimed by any person, firm or entity arising or alleged to arise out of or in connection with the negligent performance of the work, act, omission, operations or activities of Contractor, its agents, employees, subcontractors, or invitees, provided for herein, or arising from the negligent acts or omissions of Contractor hereunder, or arising or alleged to arise from Contractor's negligent performance of or failure to perform any term, provision, covenant or condition of this Agreement, but excluding such claims or liabilities or portion of such claims or liabilities arising from the sole negligence or willful misconduct of City, its officers, agents or employees and in connection therewith:

(a) Contractor will defend any action or actions filed in connection with any of said claims or liabilities and will pay all costs and expenses, including legal costs and attorneys' fees and necessary disbursements incurred in connection therewith;

(b) Contractor will promptly pay any judgment rendered against the City, its officers, agents or employees for any such claims or liabilities arising or alleged to arise out of or in connection with Contractor's (or its agents' employees', subcontractors' or invitees') negligent performance of or failure to perform such work, operations or activities hereunder; and Contractor agrees to save and hold City, its officers, agents, and employees harmless therefrom;

(c) In the event City, its officers, agents or employees is made a party to any action or proceeding filed or prosecuted against Contractor for such damages or other claims arising or alleged to arise out of or in connection with the negligent performance of or failure to perform the work, operation or activities of Contractor hereunder, Contractor shall pay to City, its officers, agents or employees, any and all costs and expenses incurred by the City, its officers, agents or employees in such action or proceeding, including but not limited to, legal costs and attorneys' fees for counsel acceptable to City.

(d) Contractor's duty to defend and indemnify as set out in this Section 5.2 shall include any claims, liabilities, obligations, losses, demands, actions, penalties, suits, costs, expenses or damages or injury to persons or property arising or alleged to arise from, in connection with, as a consequence of or pursuant to any local, County, State or Federal law or regulation regarding hazardous substances, including but not limited to the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA"), Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), Resource Conservation and Recovery Act of 1976 ("RCRA"), the Hazardous and Solid Waste Amendments of 1984, the Hazardous Material Transportation Act, the Toxic Substances control Act, the

Clean Air Act, the Clean Water Act, the California Hazardous Substance Account Act, the California Hazardous Waste Control Law or the Porter-Cologne Water Quality Control Act, as any of those statutes may be amended from time to time.

Contractor's indemnification obligations pursuant to this Section 5.2 shall survive the termination of this Agreement. Contractor shall require the same indemnification from all subcontractors.

5.3 Sufficiency of Insurer or Surety. Insurance or bonds required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated "A-" or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived by the Risk Manager of the City ("Risk Manager") due to unique circumstances. In the event the Risk Manager determines that the work or services to be performed under this Agreement creates an increased risk of loss to City, Contractor agrees that the minimum limits of the insurance policies and the performance bond required by this Section 5 may be changed accordingly upon receipt of written notice from Risk Manager; provided that Contractor shall have the right to appeal a determination of increased coverage by Risk Manager to the City Council of City within ten (10) days of receipt of notice from Risk Manager.

5.4 Substitution of Securities. Pursuant to California Public Contract Code Section 22300, substitution of eligible equivalent securities for any moneys withheld to ensure performance under the contract for the work to be performed will be permitted at the request and expense of the successful bidder.

6. RECORDS AND REPORTS

6.1 Reports. Contractor shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the services required by this Agreement as the Contract Officer shall require. Contractor hereby acknowledges that City is greatly concerned about the cost of work and services to be performed pursuant to this Agreement. For this reason, Contractor agrees that if Contractor becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the work or services contemplated herein or, if Contractor is providing design services, the cost of the project being designed, Contractor shall promptly notify the Contract Officer of said fact, circumstance, technique or event and the estimated increased or decreased cost related thereto and, if Contractor is providing design services, the estimated increased or decreased cost estimate for the project being designed.

6.2 Records. Contractor shall keep, and require subcontractors to keep, such books and records (including but not limited to payroll records as required herein) as shall be necessary to perform the services required by this Agreement and enable the Contract Officer to evaluate the performance of such services. The Contract Officer shall have full and free access to such books and records at all times during normal business hours of City, including the right to

inspect, copy, audit and make records and transcripts from such records. Such records shall be maintained for a period of three (3) years following completion of the services hereunder, and the City shall have access to such records in the event any audit is required.

6.3 Ownership of Documents. All drawings, specifications, reports, records, documents and other materials prepared by Contractor, its employees, subcontractors and agents in the performance of this Agreement shall be the property of City and shall be delivered to City upon request of the Contract Officer or upon the termination of this Agreement, and Contractor shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership of the documents and materials hereunder. Contractor may retain copies of such documents for its own use. Contractor shall have an unrestricted right to use the concepts embodied therein. All subcontractors shall provide for assignment to City of any documents or materials prepared by them, and in the event Contractor fails to secure such assignment, Contractor shall indemnify City for all damages resulting therefrom.

7. ENFORCEMENT OF AGREEMENT

7.1 California Law. This Agreement shall be construed and interpreted both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Los Angeles, State of California, or any other appropriate court in such county, and Contractor covenants and agrees to submit to the personal jurisdiction of such court in the event of such action.

7.2 Disputes. In the event either party fails to perform its obligations hereunder, the non-defaulting party shall provide the defaulting party written notice of such default. The defaulting party shall have ten (10) days to cure the default; provided that, if the default is not reasonably susceptible to being cured within said ten (10) day period, the defaulting party shall have a reasonable time to cure the default, not to exceed a maximum of thirty (30) days, so long as the defaulting party commences to cure such default within ten (10) days of service of such notice and diligently prosecutes the cure to completion; provided further that if the default is an immediate danger to the health, safety and general welfare, the defaulting party shall take such immediate action as may be necessary. Notwithstanding the foregoing, the non-defaulting party may, in its sole and absolute discretion, grant a longer cure period. Should the defaulting party fail to cure the default within the time period provided in this Section, the non-defaulting party shall have the right, in addition to any other rights the non-defaulting party may have at law or in equity, to terminate this Agreement. Compliance with the provisions of this Section 7.2 shall be a condition precedent to bringing any legal action, and such compliance shall not be a waiver of any party's right to take legal action in the event that the dispute is not cured.

7.3 Retention of Funds. Not used.

7.4 Waiver. No delay or omission in the exercise of any right or remedy by a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. A party's consent to or approval of any act by the other party requiring the party's consent or

approval shall not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

7.5 Rights and Remedies are Cumulative. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

7.6 Legal Action. In addition to any other rights or remedies, either party may take legal action, at law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement.

7.7 Liquidated Damages. Since the determination of actual damages for any delay in performance of this Agreement would be extremely difficult or impractical to determine in the event of a breach of this Agreement, Contractor and its sureties shall be liable for and shall pay to City the sum of two hundred dollars (\$200.00) as liquidated damages for each deficiency for each day of delay in excess of the time allowed for correction of deficiencies. In addition, liquidated damages may be assessed for failure to comply with the emergency call out requirements described in the scope of services (Exhibit "A"). The City may withhold from any moneys payable on account of services performed by Contractor any accrued liquidated damages.

7.8 Termination or Suspension of Contract.

(a) By Reasons of Contractor's Default: The contract may be terminated by the City at any time during the term and without prejudice to any other remedy to which City may be entitled at law, in equity or under the contract, if Contractor should:

- i. be judged bankrupt, become insolvent or have a receiver of his assets or property appointed because of insolvency, make a general assignment for the benefit of creditors, suffer any judgment against him to remain unsatisfied or unbonded of record for fifteen (15) days or longer, or institute or cause to be instituted any procedures for reorganization.
- ii. be judged incompetent as to lack of qualities needed to effectively provide the contractual obligation of this Agreement and fail to render satisfactory performance upon written notice from City within the time specified in such notice. Upon failure to cure any and all deficiencies within the time period established in the notice, City shall have a right to immediately terminate the contract.

- iii. abandon the work to be done under the contract, unnecessarily or unreasonably delay performance under the contract, violate any of the provisions of the contract, fail to follow the instructions of City, or fail to cure such default by rendering satisfactory performance upon written notice from City within the time specified in such notice. Upon failure to cure any and all deficiencies within the time period established in the notice, City shall have a right to immediately terminate the contract.

Determination of whether Contractor has defaulted on the contract under the provisions of this subsection shall be made by the Maintenance Operations Manager or his representatives and his decision shall be binding on Contractor.

If termination is due to the failure of Contractor to fulfill its obligations under this Agreement, Contractor shall vacate any City owned property which Contractor is permitted to occupy hereunder and City may, after compliance with the provisions of Section 7.2, take over the work and prosecute the same to completion by contract or otherwise, and Contractor shall be liable to the extent that the total cost for completion of the services required hereunder exceeds the compensation herein stipulated (provided that City shall use reasonable efforts to mitigate such damages), and City may withhold any payments to the Contractor for the purpose of setoff or partial payment of the amounts owed City as previously stated.

(b) At the Option of City: This Section 7.8(b) shall govern any termination of this Agreement except as specifically provided in the preceding Section 7.8(d). The City reserves the right to terminate this Agreement at any time, with or without cause upon thirty (30) days' written notice to Contractor. Upon receipt of notice of termination, Contractor shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. Contractor shall be entitled to compensation for all services rendered prior to the effective date of the notice of termination and for any services authorized by the Contract Officer thereafter in accordance with the Schedule of Compensation or such as may be approved by the Contract Officer, except as provided in Section 7.3. In the event of termination without cause pursuant to this Section 7.8(d), the terminating party need not provide the non-terminating party with the opportunity to cure pursuant to Section 7.2.

(c) At the Option of Either Party: The City or Contractor may terminate the contract by giving sixty days prior written notice to the other party.

(d) By Mutual Consent of the Parties: The contract may be terminated by mutual consent of the City and Contractor at any time during the term.

7.9 Attorneys' Fees. If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding to enforce or interpret this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted,

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whether legal or equitable, shall be entitled to reasonable attorney's fees. Attorney's fees shall include attorney's fees on any appeal, and in addition a party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

8. CITY OFFICERS AND EMPLOYEES; NONDISCRIMINATION

8.1 Non-liability of City Officers and Employees. No officer or employee of City shall be personally liable to Contractor, or any successor in interest, in the event of any default or breach by City or for any amount which may become due to Contractor or to its successor, or for breach of any obligation of the terms of this Agreement.

8.2 Conflict of Interest. Contractor warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.

8.3 Covenant Against Discrimination. Contractor covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry in the performance of this Agreement. To the extent required by law, contractor shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, marital status, national origin, or ancestry.

9. MISCELLANEOUS PROVISIONS

9.1 Notice. Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and shall be deemed to be given when served personally or deposited in the US Mail, prepaid, first-class mail, return receipt requested, addressed as follows:

To City: Attn: Maintenance Operations Manager
 City of West Covina
 Maintenance Department
 825 South Sunset Avenue
 West Covina, California 91793

To Contractor:

Landscape Maintenance
Parks and Civic Center

9.2 Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

9.3 Integration; Amendment. It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties, and none shall be used to interpret this Agreement. This Agreement may be amended at any time by the mutual consent of the parties by an instrument in writing.

9.4 Severability. In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.

9.5 Hiring of Illegal Aliens Prohibited. Contractor shall not hire or employ any person to perform work within the City of West Covina or allow any person to perform work required under this Agreement unless such person is properly documented and legally entitled to be employed within the United States.

9.6 Unfair Business Practices Claims. In entering into a public works contract or a subcontract to supply goods, services or materials pursuant to a public works contract, Contractor or subcontractor offers and agrees to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2, (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body renders final payment to Contractor without further acknowledgment by the parties. (Sec. 7103.5, California Public Contract Code).

9.7 Corporate Authority. The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound.

Landscape Maintenance
Parks and Civic Center

IN WITNESS WHEREOF, the parties have executed and entered into this Agreement as of the date first written above.

ATTEST:

CITY OF WEST COVINA,
a municipal corporation

By: *Susan Kesh, Assistant*
City Clerk

By: *sy*
Public Works Director/City Engineer

APPROVED AS TO FORM:

/s/ Arnold M. Alvarez-Glasman
City Attorney

CONTRACTOR:

By: Terry Noriega
(Print)
Title: President

By: Theresa Lu
(Print)
Title: Treasurer

Address: 15529 Arrow Highway
Irwindale, CA 91706

Address: 15529 Arrow Highway
Irwindale, CA 91706

Signature: *Terry Noriega*

Signature: *Theresa Lu*

EXHIBIT "C" - SCHEDULE OF PERFORMANCE

**LANDSCAPE MAINTENANCE OF
CITY PARKS AND CIVIC CENTER**

SECTION 1. BEGINNING OF WORK, TIME OF COMPLETION

- 1.1. Attention is directed to the provisions of Section 8-1.03 ("Beginning of Work"), Section 8-1.06 ("Time of Completion"), and Section 8-1.07 ("Liquidated Damages"), of the State Specifications and these Provisions.
- 1.2. The Contractor shall begin work on July 1, 2011. All work shall be performed within the time frames specified throughout this Agreement. The Contractor shall cooperate with local authorities relative to handling traffic through the area and shall make his own arrangements relative to keeping the working area clear of parked vehicles.
- 1.3. The Contractor shall diligently prosecute the work to completion.

SUPPLEMENTAL INFORMATION TO BE COMPLETED BY PRINCIPAL

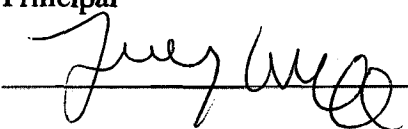
If an individual, so state. If a firm or co-partnership, state the firm and give the names of all individual co-partners composing the partnership. If a Corporation, state legal name of corporation; state also the names of the president, secretary, treasurer and manager thereof.

Business Address: Mariposa Landscapes, Inc.
President: Terry Noriega
Secretary: Antonio Valenzuela
Treasurer: Theresa Lu
15529 Arrow Highway
Irwindale, CA 91706

Telephone Number: () 626-960-0196

Date: June 7, 2011

Print Name: Terry Noriega
Principal

Signature: 

APPROVED AS TO FORM:

/s/ Arnold M. Alvarez-Glasman
City Attorney

TAX IDENTIFICATION NUMBER

The Tax Equity and Fiscal Responsibility Act of 1982 requires the payer (City of West Covina) to report to the Internal Revenue Service taxable payments to payees.

You (as a payee) are required by law to provide us with your Taxpayer Identification Number (if an individual or partnership, your Social Security Number). If you do not provide us with your correct identification number, you may be subject to a penalty imposed by the Internal Revenue Service. The payments subject to withholdings may include, but are not limited to, interest, dividends, or other payments the City of West Covina and/or the West Covina Redevelopment Agency made to you. Other payments may include rents, royalties, commissions and fees for service of non-employees.

If you are exempt from income tax, we are still required, by law, to maintain a Tax Identification Number on file. PLEASE PROVIDE YOUR TAX IDENTIFICATION NUMBER next to the appropriate listing below, sign, date and return to:

City of West Covina, Finance Department
P. O. Box 1440
West Covina, CA 91793

Check one:

Tax ID No. 95-4245898

Exempt

Corporation:

Mariposa Landscapes, Inc.

USA or any agencies thereof:

IRS Code #501 tax-exempt Organization:

Noncommissioned City of WC Employee:

Sole Proprietor:

Partnership:

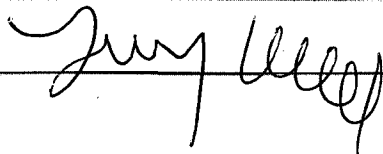
Other (explain):

Print Name: Terry Noriega

Title: President

Phone: 626-960-0196

Signature:



Date: 6/7/11

(Use of City Form
Is Required)

EQUALS

The undersigned desires to use the material, product, thing, or service described below, as "an equal" to such item as specified.

In accordance with the provisions under General Conditions, entitled EQUALS, if the City shall find any item so described equal to the respective item specified, then the undersigned may furnish such item so described equal to the respective item specified, then the undersigned may furnish such item, together with all necessary labor, materials, equipment and incidentals required to perform and complete the work.

| | |
|--|--------------|
| Mariposa Landscapes, Inc. | June 7, 2011 |
| Contractor's Name | Date |
| 15529 Arrow Highway, Irwindale, CA 91706 | 626-960-0196 |
| Address | Phone No. |

| | |
|---------------------------|--|
| Materials, apparatus or) | (Complete description of the materials, |
| equipment specified for) | (apparatus or equipment the bidder desires |
| which bidder proposes) | (to use as "an equal" and name of |
| "an equal") | (contractor if different |

Specify page number

1. None

2. _____

3. _____



Liberty Mutual Surety
1001 4th Avenue, Suite 1700
Seattle, WA 98154

Bond 6716517

CONTRACT BOND - CALIFORNIA
PAYMENT BOND

Premium: \$2432.00

KNOW ALL BY THESE PRESENTS, That we, Mariposa Landscapes, Inc.

and the Safeco Insurance Company of America, a corporation organized and existing under the laws of the State of Washington and authorized to transact surety business in the State of California, as Surety, are held and firmly bound unto the City of West Covina

, as Obligee,
in the sum of Three Hundred Forty Seven Thousand Three Hundred Seventy Six and 12/100 -----

Dollars (\$ 347,376.12),
for the payment whereof, well and truly to be made, said Principal and Surety bind themselves, their heirs, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THE FOREGOING OBLIGATION IS SUCH, That WHEREAS, the above-bounden Principal has entered into a contract, dated 8th day of May, 2011, with the Obligee to do and perform the following work, to-wit:

Landscape Maintenance Contract for City Parks and Civic Center

NOW, THEREFORE, if the above-bounden Principal or his/her subcontractors fail to pay any of the persons named in Section 3181 of the Civil Code of the State of California, or amounts due under the 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 Franchise Tax Board from the wages of employees of the Principal or his/her subcontractors pursuant to Section 18806 of the Revenue and Taxation Code, with respect to such work and labor, Surety will pay for the same, in an amount not exceeding the amount specified in this bond, and also, in case suit is brought upon this bond, a reasonable attorney's fee, to be fixed by the court.

This bond shall inure to the benefit of any and all persons, companies or corporations entitled to file claims under Section 3181 of the Civil Code of the State of California, so as to give a right of action to them or their assigns in any suit brought upon this bond.

Signed, sealed and dated this 13th day of June, 2011

Mariposa Landscapes, Inc.
Principal
By: Terry Noriega
Terry Noriega, President

Safeco Insurance Company of America
By: Jeffrey R. Gryde
Jeffrey R. Gryde, Attorney-in-Fact



Jurat

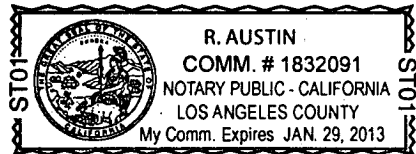
State of California
County of Los Angeles

On, June 21, 2011, before me, Terry Noriega President – Mariposa Landscapes, Inc., Subscribed and sworn to (or affirmed) before me on this date, proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

WITNESS my hand and official seal.

(Seal)

Signature R. Austin
R. Austin - Notary Public # 1832091





POWER OF ATTORNEY

Safeco Insurance Company of America
General Insurance Company of America
1001 4th Avenue
Suite 1700
Seattle, WA 98154

No. 9392

KNOW ALL BY THESE PRESENTS:

That SAFECO INSURANCE COMPANY OF AMERICA and GENERAL INSURANCE COMPANY OF AMERICA, each a Washington corporation, does each hereby appoint

*****JEFFREY R. GRYPDE; Laguna Niguel, California*****

its true and lawful attorney(s)-in-fact, with full authority to execute on its behalf fidelity and surety bonds or undertakings and other documents of a similar character issued in the course of its business, and to bind the respective company thereby.

IN WITNESS WHEREOF, SAFECO INSURANCE COMPANY OF AMERICA and GENERAL INSURANCE COMPANY OF AMERICA have each executed and attested these presents

this 21st day of March 2009

Dexter R. Legg

TAMIKOLAJEWSKI

Dexter R. Legg, Secretary

Timothy A. Mikolajewski, Vice President

CERTIFICATE

Extract from the By-Laws of SAFECO INSURANCE COMPANY OF AMERICA and of GENERAL INSURANCE COMPANY OF AMERICA:

"Article V, Section 13. - FIDELITY AND SURETY BONDS ... the President, any Vice President, the Secretary, and any Assistant Vice President appointed for that purpose by the officer in charge of surety operations, shall each have authority to appoint individuals as attorneys-in-fact or under other appropriate titles with authority to execute on behalf of the company fidelity and surety bonds and other documents of similar character issued by the company in the course of its business...

Extract from a Resolution of the Board of Directors of SAFECO INSURANCE COMPANY OF AMERICA and of GENERAL INSURANCE COMPANY OF AMERICA adopted July 28, 1970.

"On any certificate executed by the Secretary or an assistant secretary of the Company setting out,

- (i) The provisions of Article V, Section 13 of the By-Laws, and
(ii) A copy of the power-of-attorney appointment, executed pursuant thereto, and
(iii) Certifying that said power-of-attorney appointment is in full force and effect,

the signature of the certifying officer may be by facsimile, and the seal of the Company may be a facsimile thereof."

I, Dexter R. Legg, Secretary of SAFECO INSURANCE COMPANY OF AMERICA and of GENERAL INSURANCE COMPANY OF AMERICA, do hereby certify that the foregoing extracts of the By-Laws and of a Resolution of the Board of Directors of these corporations, and of a Power of Attorney issued pursuant thereto, are true and correct, and that both the By-Laws, the Resolution and the Power of Attorney are still in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the facsimile seal of said corporation

this 13th day of June 2011



Dexter R. Legg

Dexter R. Legg, Secretary

CALIFORNIA CERTIFICATE OF ACKNOWLEDGMENT

State of California
County of Orange

On June 13, 2011 before me, **Patti Zeis, Notary Public**, personally appeared **Jeffrey R. Gryde** Who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature 

(Notary Seal)

ADDITIONAL OPTIONAL INFORMATION

| | |
|--|---------------------|
| DESCRIPTION OF THE ATTACHED DOCUMENT | |
| _____ (Title or description of attached document) | |
| _____ (Title or description of attached document continued) | |
| Number of Pages _____ | Document Date _____ |
| _____ (Additional information) | |

| | |
|--|------------------|
| CAPACITY CLAIMED BY THE SIGNER | |
| <input type="checkbox"/> Individual (s) | |
| <input type="checkbox"/> Corporate Officer | _____ (Title) |
| <input type="checkbox"/> Partner(s) | |
| <input checked="" type="checkbox"/> Attorney-in-Fact | |
| <input type="checkbox"/> Trustee(s) | |
| <input type="checkbox"/> Other _____ | |

INSTRUCTIONS FOR COMPLETING THIS FORM

- Any acknowledgment completed in California must contain verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a document is to be recorded outside of California. In such instances, any alternative acknowledgment verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.*
- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
 - Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
 - The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
 - Print the name(s) of document signer(s) who personally appear at the time of notarization.
 - Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. ~~he/she/they~~ is /are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
 - The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
 - Signature of the notary public must match the signature on file with the office of the county clerk.
 - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
 - ❖ Indicate title or type of attached document, number of pages and date.
 - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
 - Securely attach this document to the signed document