

**CITY OF CHULA VISTA
CONTRACTOR SERVICES AGREEMENT
WITH TERRACARE ASSOCIATES, LLC
TO PROVIDE LANDSCAPE MAINTENANCE SERVICES**

This Agreement is entered into effective as of October 1, 2018 by and between the City of Chula Vista, a chartered municipal corporation (“City”) and **Terracare Associates, LLC**, a California corporation (“Contractor”), (collectively, the “Parties” and, individually, a “Party”) with reference to the following facts:

RECITALS

WHEREAS the City administers and maintains 36 Open Space Districts, Maintenance Community Facilities Districts, and their associated zones (collectively the “Districts”) and levies an annual assessment on property owners within each district to provide funding for maintenance of common area spaces; and

WHEREAS the City contracts with landscape firms to provide landscape maintenance services for the Districts; and

WHEREAS the landscape maintenance contracts in 11 Districts are set to expire on September 30, 2018, namely: Districts 7, 14; 15; 20 Zones 2, 3, 4, 5, and 6; 24; Village 6 McMillin; and Village 6 OR; and I-805 DAR West and Village 2 (New Development) are newly acquired landscape maintenance areas; and

WHEREAS on July 27, 2018 City staff issued a Request for Proposals for landscape maintenance services for common area spaces within the 13 Districts; and

WHEREAS in the Request for Proposal, the common area spaces within the 13 Districts were placed into four Bid Groups; and

WHEREAS a pre-bid meeting was held on August 1, 2018 to review and clarify bid requirements and to emphasize that the bids would be evaluated and contracts awarded by Bid Group to the lowest most competent and qualified bidder for each Bid Group; and

WHEREAS on August 15, 2018 City staff received responsive bids for Bid Group 3 (Otay Ranch Village 2) from two landscape maintenance companies which included Terracare Associates, LLC; and

WHEREAS after compilation of the bids staff determined Terracare Associates, LLC to be the lowest responsive bidder for Bid Group 3; and

WHEREAS staff recommended that the City Council accept the bids and award the landscape maintenance contract for Bid Group 3 to Terracare Associates, LLC for the 9-month period of October 1, 2018 to June 30, 2019, excepting OSD 7, DAR West, areas irrigated by Controllers SD-1, SD-2, and SV-7 which will be serviced for the 6-month period of January 1, 2019 to June 30, 2019; and

WHEREAS the City Council accepted the bids and awarded the landscape maintenance contract for Bid Group 3 to Terracare Associates, LLC on September 25, 2018; and

WHEREAS the Contractor warrants and represents that it can deliver the services required of Contractor to City in accordance with the time frames and the terms and conditions of this Agreement.

[End of Recitals. Next Page Starts Obligatory Provisions.]

OBLIGATORY PROVISIONS

NOW, THEREFORE, in consideration of the above recitals, the covenants contained herein, and other good and valuable considerations, the receipt and sufficiency of which the Parties hereby acknowledge, City and Contractor hereby agree as follows:

1. SERVICES

1.0. Contract Documents. This Agreement consists of the following contract documents (“Contract Documents”), all of which are incorporated into and made a part of this Agreement as if set forth in full:

1.0.1. This Agreement and all exhibits hereto, and any change orders, amendments, and supplemental agreements duly authorized and executed by authorized representatives of the City and Contractor.

1.0.2. All permits for the Project.

1.0.3. The City of Chula Vista’s Standard Special Provisions, Standard Special Provisions (“Greenbook”), Special Provisions, and Standard Plans.

1.0.4. All referenced specifications, plans, and materials.

1.0.5. The Project’s Notice to Bidders, Bid Requirements and Conditions, Bid Form, Special Provisions – General, Special Provisions – Technical, Bid General Provisions, and Open Space Landscape Maintenance Standards.

1.0.6. The successful bidder’s bid documents submitted in response to the request for bid, and any post-bid documentation submitted prior to the award of the Project contract.

1.1. Required Services. Contractor agrees to perform the services, and deliver to City the “Deliverables” (if any) described in the attached Exhibit A, incorporated into the Agreement by this reference, within the time frames set forth therein, time being of the essence for this Agreement. The services and/or Deliverables described in Exhibit A shall be referred to herein as the “Required Services.”

1.2. Reductions in Scope of Work. City may independently, or upon request from Contractor/Service Provider, from time to time, reduce the Required Services to be performed by the Contractor/Service Provider under this Agreement. Upon doing so, City and Contractor/Service Provider agree to meet and confer in good faith for the purpose of negotiating a corresponding reduction in the compensation associated with the reduction.

1.3. Additional Services. Subject to compliance with the City’s Charter, codes, policies, procedures and ordinances governing procurement and purchasing authority, City may request Contractor/Service Provider provide additional services related to the Required Services (“Additional Services”). If so, City and Contractor/Service Provider agree to meet and confer in good faith for the purpose of negotiating an amendment to Exhibit A, to add the Additional Services. Unless otherwise agreed, compensation for the Additional Services shall be charged and paid consistent with the rates and terms already provided therein. Once added to Exhibit A, “Additional Services” shall also become “Required Services” for purposes of this Agreement.

1.4. Standard of Care. Contractor expressly warrants and agrees that any and all hereunder shall be performed in accordance with the highest standard of care exercised by members of the profession currently practicing under similar conditions and in similar locations.

- 1.5. No Waiver of Standard of Care. Where approval by City is required, it is understood to be conceptual approval only and does not relieve the Contractor of responsibility for complying with all laws, codes, industry standards, and liability for damages caused by negligent acts, errors, omissions, noncompliance with industry standards, or the willful misconduct of the Contractor or its subcontractors.
- 1.6. Security for Performance. In the event that Exhibit A Section 4 indicates the need for Contractor to provide additional security for performance of its duties under this Agreement, Contractor shall provide such additional security prior to commencement of its Required Services in the form and on the terms prescribed on Exhibit A, or as otherwise prescribed by the City Attorney.
- 1.7. Compliance with Laws. In its performance of the Required Services, Contractor shall comply with any and all applicable federal, state and local laws, including the Chula Vista Municipal Code.
- 1.8. Business License. Prior to commencement of work, Contractor shall obtain a business license from City.
- 1.9. Subcontractors. Prior to commencement of any work, Contractor shall submit for City's information and approval a list of any and all subcontractors to be used by Contractor in the performance of the Required Services. Contractor agrees to take appropriate measures necessary to ensure that all subcontractors and personnel utilized by the Contractor to complete its obligations under this Agreement comply with all applicable laws, regulations, ordinances, and policies, whether federal, state, or local. In addition, if any subcontractor is expected to fulfill any responsibilities of the Contractor under this Agreement, Contractor shall ensure that each and every subcontractor carries out the Contractor's responsibilities as set forth in this Agreement. The Contractor is fully responsible for the acts and omissions of all subcontractors of every tier for the Project (as defined in Exhibit A), and for all persons and entities either directly or indirectly employed by or under the control of any subcontractor in the same manner and to the same extent that Contractor is responsible for the acts and omissions of persons directly employed by it or under its control pursuant to this Agreement.
- 1.9.1. Subcontract Indemnity. Contractor shall require all subcontracts for the Project to obligate each subcontractor, with respect to the work to be performed under that subcontract, to defend, indemnify, protect, and hold harmless the Indemnified Parties (as defined in Section 4.1) in the same manner and to the same extent that Contractor is required to defend, indemnify, protect, and hold harmless the Indemnified Parties under this Agreement.
- 1.9.2. Subcontract Insurance. Contractor shall require all subcontracts for the Project to obligate each subcontractor, with respect to the work to be performed under that subcontract, to procure and maintain insurance in the same manner and to the same extent that Contractor is required to procure and maintain insurance under the Agreement, including without limitation naming the City, its officers, officials, employees, and volunteers as additional insureds.
- 1.9.3. Subcontractor Licensure. Contractor shall require all subcontractors for the Project to be appropriately licensed before commencing work for the Project, and to remain licensed for the duration of their work performed under the subcontract. In the event that a subcontractor is not properly licensed at any time during the Project, Contractor shall immediately cease payment to that subcontractor and Contractor shall return to the City any payment made to that subcontractor for work performed during the period for which the subcontractor was not licensed.
- 1.9.4. Subcontractor Payments. Contractor shall pay its subcontractors for the Project not later than seven (7) days after receipt of each progress payment received in accordance with the provision in Section 7108.5 of the California Business and Professions Code. Any delay or postponement of payment may take

place only for good cause and with the City's prior written approval. Any violation of Section 7108.5 shall subject the violating Contractor and its respective subcontractors to the penalties, sanctions, and other remedies of that section.

1.10. Term. This Agreement shall commence on the earlier to occur of the Effective Date or Contractor's commencement of the Required Services hereunder, and shall terminate when the Parties have complied with all their obligations hereunder; provided, however, provisions which expressly survive termination shall remain in effect.

2. COMPENSATION

2.1. General. For satisfactory performance of the Required Services, City agrees to compensate Contractor in the amount(s) and on the terms set forth in Exhibit A, Section 4. Standard terms for billing and payment are set forth in this Section 2.

2.2. Detailed Invoicing. Contractor agrees to provide City with a detailed invoice for services performed each month, within thirty (30) days of the end of the month in which the services were performed, unless otherwise specified in Exhibit A. Invoicing shall begin on the first of the month following the Effective Date of the Agreement. All charges must be presented in a line item format with each task separately explained in reasonable detail. Each invoice shall include the current monthly amount being billed, the amount invoiced to date, and the remaining amount available under any approved budget. Contractor must obtain prior written authorization from City for any fees or expenses that exceed the estimated budget.

2.3. Payment to Contractor. Upon receipt of a properly prepared invoice and confirmation that the Required Services detailed in the invoice have been satisfactorily performed, City shall pay Contractor for the invoice amount within thirty (30) days. Payment shall be made in accordance with the terms and conditions set forth in Exhibit A and section 2.4, below. At City's discretion, invoices not timely submitted may be subject to a penalty of up to five percent (5%) of the amount invoiced.

2.4. Retention Policy. City shall retain ten percent (10%) of the amount due for Required Services detailed on each invoice (the "holdback amount"). Upon City review and determination of Project Completion, the holdback amount will be issued to Contractor.

2.5. Reimbursement of Costs. City may reimburse Contractor's out-of-pocket costs incurred by Contractor in the performance of the Required Services if negotiated in advance and included in Exhibit A. Unless specifically provided in Exhibit A, Contractor shall be responsible for any and all out-of-pocket costs incurred by Contractor in the performance of the Required Services.

2.6. Exclusions. City shall not be responsible for payment to Contractor for any fees or costs in excess of any agreed upon budget, rate, or other maximum amount(s) provided for in Exhibit A. City shall also not be responsible for any cost: (a) incurred prior to the Effective Date; or (b) arising out of or related to the errors, omissions, negligence or acts of willful misconduct of Contractor, its agents, employees, or subcontractors.

2.7. Payment Not Final Approval. Contractor understands and agrees that payment to the Contractor or reimbursement for any Contractor costs related to the performance of Required Services does not constitute a City final decision regarding whether such payment or cost reimbursement is allowable and eligible for payment under this Agreement, nor does it constitute a waiver of any violation by Contractor of the terms of this Agreement. If City determines that Contractor is not entitled to receive any amount of compensation already paid, City will notify Contractor in writing and Contractor shall promptly return such amount.

3. INSURANCE

3.1. Required Insurance. Contractor must procure and maintain, during the period of performance of Required Services under this Agreement, and for twelve months after completion of Required Services, the policies of insurance described on the attached Exhibit B, incorporated into the Agreement by this reference (the “Required Insurance”). The Required Insurance shall also comply with all other terms of this Section.

3.2. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions relating to the Required Insurance must be disclosed to and approved by City in advance of the commencement of work.

3.3. Standards for Insurers. Required Insurance must be placed with licensed insurers admitted to transact business in the State of California with a current A.M. Best’s rating of A V or better, or, if insurance is placed with a surplus lines insurer, insurer must be listed on the State of California List of Eligible Surplus Lines Insurers (LESLI) with a current A.M. Best’s rating of no less than A X. For Workers’ Compensation Insurance, insurance issued by the State Compensation Fund is also acceptable.

3.4. Subcontractors. Contractor must include and/or require to be included all subcontractors of every tier as insureds under its policies and/or furnish separate certificates and endorsements demonstrating separate coverage for those not under its policies. Any separate coverage for subcontractors of every tier must also comply with the terms of this Agreement.

3.5. Additional Insureds. City, its officers, officials, employees, agents, and volunteers must be named as additional insureds with respect to any policy of general liability, automobile, or pollution insurance specified as required in Exhibit B or as may otherwise be specified by City’s Risk Manager. The general liability additional insured coverage must be provided in the form of an endorsement to the Contractor’s insurance using ISO CG 2010 (11/85) or its equivalent; such endorsement must not exclude Products/Completed Operations coverage.

3.6. General Liability Coverage to be “Primary”. Contractor’s general liability coverage must be primary insurance as it pertains to the City, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers is wholly separate from the insurance provided by Contractor and in no way relieves Contractor from its responsibility to provide insurance.

3.7. No Cancellation. No Required Insurance policy may be canceled by either Party during the required insured period under this Agreement, except after thirty days’ prior written notice to the City by certified mail, return receipt requested. Prior to the effective date of any such cancellation Contractor must procure and put into effect equivalent coverage(s).

3.8. Waiver of Subrogation. Contractor’s insurer(s) will provide a Waiver of Subrogation in favor of the City for each Required Insurance policy under this Agreement. In addition, Contractor waives any right it may have or may obtain to subrogation for a claim against City.

3.9. Verification of Coverage. Prior to commencement of any work, Contractor shall furnish City with original certificates of insurance and any amendatory endorsements necessary to demonstrate to City that Contractor has obtained the Required Insurance in compliance with the terms of this Agreement. The words “will endeavor” and “but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents, or representatives” or any similar language must be deleted from all certificates. The required certificates and endorsements should otherwise be on industry standard forms. The City reserves the right to require, at any time, complete, certified copies of all required insurance policies, including endorsements evidencing the coverage required by these specifications.

3.10. Claims-Made Policy Requirements. If General Liability, Pollution and/or Asbestos Pollution Liability and/or Errors & Omissions coverage are required and are provided on a claims-made form, the following requirements also apply:

a. The “Retro Date” must be shown, and must be before the date of this Agreement or the beginning of the work required by this Agreement.

b. Insurance must be maintained, and evidence of insurance must be provided, for at least five (5) years after completion of the work required by this Agreement.

c. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a “Retro Date” prior to the effective date of this Agreement, the Contractor/Service Provider must purchase “extended reporting” coverage for a minimum of five (5) years after completion of the work required by this Agreement.

d. A copy of the claims reporting requirements must be submitted to the City for review.

3.11. Not a Limitation of Other Obligations. Insurance provisions under this section shall not be construed to limit the Contractor/Service Provider’s obligations under this Agreement, including Indemnity.

3.12. Additional Coverage. To the extent that insurance coverage provided by Contractor maintains higher limits than the minimums appearing in Exhibit B, City requires and shall be entitled to coverage for higher limits maintained.

4. INDEMNIFICATION

4.1. General. To the maximum extent allowed by law, Contractor shall protect, defend, indemnify and hold harmless City, its elected and appointed officers, agents, employees and volunteers (collectively, “Indemnified Parties”), from and against any and all claims, demands, causes of action, costs, expenses, (including reasonable attorneys’ fees and court costs), liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any alleged acts, omissions, negligence, or willful misconduct of Contractor, its officials, officers, employees, agents, and contractors, arising out of or in connection with the performance of the Required Services, the results of such performance, or this Agreement. This indemnity provision does not include any claims, damages, liability, costs and expenses arising from the sole negligence, active negligence, or willful misconduct of the Indemnified Parties. Also covered is liability arising from, connected with, caused by or claimed to be caused by the active or passive negligent acts or omissions of the Indemnified Parties which may be in combination with the active or passive negligent acts or omissions of the Contractor, its employees, agents or officers, or any third party.

4.2. Modified Indemnity Where Agreement Involves Design Professional Services. Notwithstanding the forgoing, if the services provided under this Agreement are design professional services, as defined by California Civil Code section 2782.8, as may be amended from time to time, the defense and indemnity obligation under Section 1, above, shall be limited to the extent required by California Civil Code section 2782.8.

4.3. Costs of Defense and Award. Included in Contractor’s obligations under this Section 4 is Contractor’s obligation to defend, at Contractor’s own cost, expense and risk, any and all suits, actions or other legal proceedings that may be brought or instituted against one or more of the Indemnified Parties. Subject to the limitations in this Section 4, Contractor shall pay and satisfy any judgment, award or decree

that may be rendered against one or more of the Indemnified Parties for any and all related legal expenses and costs incurred by any of them.

4.4. Contractor/Service Provider's Obligations Not Limited or Modified. Contractor's obligations under this Section 4 shall not be limited to insurance proceeds, if any, received by the Indemnified Parties, or by any prior or subsequent declaration by the Contractor. Furthermore, Contractor's obligations under this Section 4 shall in no way limit, modify or excuse any of Contractor's other obligations or duties under this Agreement.

4.5. Enforcement Costs. Contractor/Service Provider agrees to pay any and all costs City incurs in enforcing Contractor's obligations under this Section 4.

4.6. Survival. Contractor's obligations under this Section 4 shall survive the termination of this Agreement.

5. FINANCIAL INTERESTS OF CONTRACTOR/SERVICE PROVIDER.

5.1. Form 700 Filing. The California Political Reform Act and the Chula Vista Conflict of Interest Code require certain government officials and Contractor performing work for government agencies to publicly disclose certain of their personal assets and income using a Statement of Economic Interests form (Form 700). In order to assure compliance with these requirements, Contractor shall comply with the disclosure requirements identified in the attached Exhibit C, incorporated into the Agreement by this reference.

5.2. Disclosures; Prohibited Interests. Independent of whether Contractor is required to file a Form 700, Contractor warrants and represents that it has disclosed to City any economic interests held by Contractor, or its employees or subcontractors who will be performing the Required Services, in any real property or project which is the subject of this Agreement. Contractor warrants and represents that it has not employed or retained any company or person, other than a bona fide employee or approved subcontractor working solely for Contractor, to solicit or secure this Agreement. Further, Contractor warrants and represents that it has not paid or agreed to pay any company or person, other than a bona fide employee or approved subcontractor working solely for Contractor, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. Contractor further warrants and represents that no officer or employee of City has any interest, whether contractual, non-contractual, financial or otherwise, in this transaction, the proceeds hereof, or in the business of Contractor/Service Provider or Contractor's subcontractors. Contractor further agrees to notify City in the event any such interest is discovered whether or not such interest is prohibited by law or this Agreement. For breach or violation of any of these warranties, City shall have the right to rescind this Agreement without liability.

6. REMEDIES

6.1. Termination for Cause. If for any reason whatsoever Contractor shall fail to perform the Required Services under this Agreement in a proper or timely manner, or if Contractor shall violate any of the other covenants, agreements or conditions of this Agreement (each a "Default"), in addition to any and all other rights and remedies City may have under this Agreement, at law or in equity, City shall have the right to terminate this Agreement by giving five (5) days written notice to Contractor. Such notice shall identify the Default and the Agreement termination date. If Contractor notifies City of its intent to cure such Default prior to City's specified termination date, and City agrees that the specified Default is capable of being cured, City may grant Contractor up to ten (10) additional days after the designated termination date to effectuate such cure. In the event of a termination under this Section 6.1, Contractor shall immediately provide City any and all "Work Product" (defined in Section 7 below) prepared by Contractor as part of the

Required Services. Such Work Product shall be City's sole and exclusive property as provided in Section 7 hereof. Contractor may be entitled to compensation for work satisfactorily performed prior to Contractor's receipt of the Default notice; provided, however, in no event shall such compensation exceed the amount that would have been payable under this Agreement for such work, and any such compensation shall be reduced by any costs incurred or projected to be incurred by City as a result of the Default.

6.2. Termination or Suspension for Convenience of City. City may suspend or terminate this Agreement, or any portion of the Required Services, at any time and for any reason, with or without cause, or for no reason by giving specific written notice to Contractor/Service Provider of such termination or suspension at least fifteen (15) days prior to the effective date thereof. Upon receipt of such notice, Contractor shall immediately cease all work under the Agreement and promptly deliver all "Work Product" (defined in Section 7 below) to City. Such Work Product shall be City's sole and exclusive property as provided in Section 7 hereof. Contractor shall be entitled to receive just and equitable compensation for this Work Product in an amount equal to the amount due and payable under this Agreement for work satisfactorily performed as of the date of the termination/suspension notice plus any additional remaining Required Services requested or approved by City in advance that would maximize City's value under the Agreement.

6.3. Waiver of Claims. In the event City terminates the Agreement in accordance with the terms of this Section, Contractor hereby expressly waives any and all claims for damages or compensation as a result of such termination except as expressly provided in this Section 6.

6.4. Administrative Claims Requirements and Procedures. No suit or arbitration shall be brought arising out of this Agreement against City unless a claim has first been presented in writing and filed with City and acted upon by City in accordance with the procedures set forth in Chapter 1.34 of the Chula Vista Municipal Code, as same may be amended, the provisions of which, including such policies and procedures used by City in the implementation of same, are incorporated herein by this reference. Upon request by City, Contractor shall meet and confer in good faith with City for the purpose of resolving any dispute over the terms of this Agreement.

6.5. Governing Law/Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Any action arising under or relating to this Agreement shall be brought only in San Diego County, State of California.

6.6. Service of Process. Contractor agrees that it is subject to personal jurisdiction in California. If Contractor/Service Provider is a foreign corporation, limited liability company, or partnership that is not registered with the California Secretary of State, Contractor irrevocably consents to service of process on Contractor/Service Provider by first class mail directed to the individual and address listed under "For Legal Notice," in section 1.B. of Exhibit A to this Agreement, and that such service shall be effective five days after mailing.

7. OWNERSHIP AND USE OF WORK PRODUCT

All reports, studies, information, data, statistics, forms, designs, plans, procedures, systems, and any other materials or properties produced in whole or in part under this Agreement in connection with the performance of the Required Services (collectively "Work Product") shall be the sole and exclusive property of City. No such Work Product shall be subject to private use, copyrights, or patent rights by Contractor in the United States or in any other country without the express, prior written consent of City. City shall have unrestricted authority to publish, disclose, distribute, and otherwise use, copyright or patent, in whole or in part, any such Work Product, without requiring any permission of Contractor, except as may be limited by the provisions of the Public Records Act or expressly prohibited by other applicable laws. With respect to computer files containing data generated as Work Product, Contractor shall make available

to City, upon reasonable written request by City, the necessary functional computer software and hardware for purposes of accessing, compiling, transferring, and printing computer files.

8. GENERAL PROVISIONS

8.1. Reserved.

8.2. Assignment. City would not have entered into this Agreement but for Contractor's unique qualifications and traits. Contractor shall not assign any of its rights or responsibilities under this Agreement, nor any part hereof, without City's prior written consent, which City may grant, condition, or deny in its sole discretion.

8.3. Authority. The person(s) executing this Agreement for Contractor warrants and represents that they have the authority to execute same on behalf of Contractor and to bind Contractor to its obligations hereunder without any further action or direction from Contractor or any board, principal, or officer thereof.

8.4. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one Agreement after each Party has signed such a counterpart.

8.5. Entire Agreement. This Agreement together with all exhibits attached hereto and other agreements expressly referred to herein, constitutes the entire Agreement between the Parties with respect to the subject matter contained herein. All exhibits referenced herein shall be attached hereto and are incorporated herein by reference. All prior or contemporaneous agreements, understandings, representations, warranties and statements, oral or written, are superseded.

8.6. Record Retention. During the course of the Agreement and for three (3) years following completion of the Required Services, Contractor agrees to maintain, intact and readily accessible, all data, documents, reports, records, contracts, and supporting materials relating to the performance of the Agreement, including accounting for costs and expenses charged to City, including such records in the possession of subcontractors of every tier.

8.7. Further Assurances. The Parties agree to perform such further acts and to execute and deliver such additional documents and instruments as may be reasonably required in order to carry out the provisions of this Agreement and the intentions of the Parties.

8.8. Independent Contractor. Contractor is and shall at all times remain as to City a wholly independent contractor. Neither City nor any of its officers, employees, agents, or volunteers shall have control over the conduct of Contractor/Service Provider or any of Contractor's officers, employees, or agents ("Contractor Related Individuals"), except as set forth in this Agreement. No Contractor Related Individuals shall be deemed employees of City, and none of them shall be entitled to any benefits to which City employees are entitled, including but not limited to overtime, retirement benefits, worker's compensation benefits, injury leave, or other leave benefits. Furthermore, City will not withhold state or federal income tax, social security tax or any other payroll tax with respect to any Contractor Related Individuals; instead, Contractor/Service Provider shall be solely responsible for the payment of same and shall hold the City harmless with respect to same. Contractor shall not at any time or in any manner represent that it or any of its Contractor Related Individuals are employees or agents of City. Contractor shall not incur or have the power to incur any debt, obligation, or liability whatsoever against City, or bind City in any manner.

8.9. Notices. All notices, demands or requests provided for or permitted to be given pursuant to this Agreement must be in writing. All notices, demands, and requests to be sent to any Party shall be deemed to have been properly given or served if personally served or deposited in the United States mail, addressed to such Party, postage prepaid, registered or certified, with return receipt requested, at the addresses identified

in this Agreement at the places of business for each of the designated Parties as indicated in Exhibit A, or otherwise provided in writing.

8.10. No Waiver. The failure of City to insist, in any one or more instances, upon the performance of any provision of the Agreement, or to exercise any right in the Agreement, shall not be construed as a waiver or relinquishment of such provisions or rights. Any waiver of any breach of this Agreement shall not be held to be a waiver of any other or subsequent breach. Any waiver issued by the City of any provision of the Agreement shall only be effective if issued in writing by the City and shall be specific and apply only to the particular matter concerned and not to other similar or dissimilar matters.

8.11. No Limitation. The duties and obligations imposed by this Agreement and the rights and remedies available hereunder to the parties hereto, and, in particular but without limitation, the warranties, guarantees, and obligations imposed upon the Agreement or by this Agreement and all of the rights and remedies available to City thereunder, are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies imposed or available by laws, regulations, or codes, by special warranty or guarantee or by other provisions of the Contract Documents.

8.12. Severability. If any term or provision or portion of a term or provision of this Agreement is declared invalid or unenforceable by any court of lawful jurisdiction, then the remaining terms and provisions or portions of terms or provisions will not be affected thereby and will remain in full force and effect.

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**SIGNATURE PAGE
LANDSCAPE MAINTENANCE SERVICES AGREEMENT**

IN WITNESS WHEREOF, by executing this Agreement where indicated below, City and Contractor agree that they have read and understood all terms and conditions of the Agreement, that they fully agree and consent to be bound by same, and that they are freely entering into this Agreement as of the Effective Date.

Terracare Associates, LLC

CITY OF CHULA VISTA

BY: _____
SERGIO HERNANDEZ
REGION MANAGER |

BY: _____
MARY CASILLAS SALAS
MAYOR |

ATTEST

BY:

Kerry K. Bigelow, MMC
City Clerk

APPROVED AS TO FORM

BY: _____
GLEN R. GOOGINS
CITY ATTORNEY

EXHIBIT A
SCOPE OF WORK AND PAYMENT TERMS

1. Contact People for Contract Administration and Legal Notice

A. City Contract Administration:

Iracsema Quilantan
Director of Public Works
1800 Maxwell Road, Chula Vista, CA 91911
619-397-6066
IQuilantan@chulavistaca.gov

For Legal Notice Copy to:

City of Chula Vista
City Attorney
276 Fourth Avenue, Chula Vista, CA 91910
619-691-5037
CityAttorney@chulavistaca.gov

B. Contractor Contract Administration:

Terracare Associates, LLC Monarch Landscape Companies
Sergio Hernandez, Region Manager
550 S. Hope St., Suite 1675, Los Angeles, CA 90071
310-367-0221
sergio.hernandez@monarchlandscape.com

For Legal Notice Copy to:

Myesha Rozar, Terracare Associates Branch Administrator
1545 Lake Drive, Encinitas, CA 92024
760-633-2200
myesha.rozar@monarchlandscape.com

2. Required Services

A. General Description:

The Contractor will furnish all work, materials, equipment, services, and labor necessary to fully complete landscape maintenance services of Chula Vista's Open Space Bid Group 3 (the "Project") in strict accordance with the Contract Documents. |

B. Detailed Description:

The Contractor will perform and complete landscape maintenance services, and all other Required Services at various locations throughout the City's Open Space at the unit prices contained in Contractor's submitted bid and this Agreement in strict accordance with the Contract Documents. |

3. Term: In accordance with Section 1.10 of this Agreement, the term of this Agreement shall begin |October 1, 2018| and end on |June 30, 2019| for completion of all Required Services.

4. Compensation:

Section	Item Code	Description	Unit	Qty	Monthly Cost	Total Cost
Main Bid	Grp 3 Otay Ranch Village 2 11.86 acres	Code 1- 0.69 acres	Monthly	6	\$3,786.60	\$22,719.60
Main Bid	Grp 3 Otay Ranch Village 2 11.86 acres	Code 1- 0.02 acres	Monthly	9	\$109.76	\$987.84
Main Bid	Grp 3 Otay Ranch Village 2 11.86 acres	Code 2- 0.95 acres	Monthly	6	\$6,895.16	\$41,370.96
Main Bid	Grp 3 Otay Ranch Village 2 11.86 acres	Code 3- 6.18 acres	Monthly	9	\$2,670.38	\$24,033.42
Main Bid	Grp 3 Otay Ranch Village 2 11.86 acres	Code 4- 4.02 acres	Monthly	9	\$1,634.13	\$14,707.17
Main Bid	Grp 3 Otay Ranch Village 2 11.86 acres	Code 5- 0 acres	Monthly	9	\$0.00	\$0.00
Main Bid	Grp 3 Otay Ranch Village 2 11.86 acres	152 Tree Trims	One Time	1	\$1,722.67	\$15,504.03
Main Bid	Grp 3 Otay Ranch Village 2 11.86 acres	Fertilizer	Per Schedule	1	\$149.67	\$1,347.03
						\$120,670.05
					Total Group 3	\$120,670.05

***Disclosure:**

Payment. As full compensation in consideration of completion of the Required Services in strict accordance with the Contract Documents and in consideration of the fulfillment of all of the Contractor’s obligations under the Contract Documents, the City shall pay the Contractor for the quantity of line item of work actually performed in strict accordance with the Contract Documents. The City’s obligation to pay the Contractor under this Agreement is subject to and may be offset by charges that may apply to the Contractor under this Agreement.

5. Special Provisions:

Security for Performance: Contractor shall procure Performance and Labor and Material Bonds for the Work that are to be issued by a Surety authorized to transact such business in the State of California, be listed as approved by the United States Department of Treasury Circular 570, and whose Underwriting Limitation is sufficient to issue bonds in the amount required by any contract entered into pursuant to this Notice. Approved listing can be obtained through the United States Department of Treasury’s website www.fiscal.treasury.gov/fsreports/ref/suretyBnd/c570.htm. Any renewal certificates required during the course of the Agreement must be renewed and received by the City within fifteen (15) days prior to expiration and must meet the same criteria. No substitutions shall be allowed.

DIR/Prevailing Wages. No Contractor or subcontractor shall be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, unless currently registered with the Department of Industrial Relations (DIR) and qualified to perform public work pursuant to Labor Code section 1725.5. No Contractor or subcontractor may be awarded a contract for public work on a public works project unless registered with the DIR pursuant to Labor Code section 1725.5. The Work is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

Contractor and its subcontractors are required by bid specifications and California Labor Code sections 1771 and 1774 to pay prevailing wages ("Prevailing Wage Rates") to persons employed by them for work in a covered work classification under this Agreement. In accordance with the provisions of Section 1773 of the Labor Code of the State of California, the City has ascertained the general prevailing wage scales are applicable to the work to be done. The prevailing wage scales are those determined by the DIR. If Contractor intends to use a craft or classification not shown on the general prevailing wage rates determinations, it may be required to pay the wage rate of that craft or classification most closely related to it as shown in the general wage rates determinations effective at the time of the call for bids.

Non-Collusion Affidavit. Prior to commencing the Project, Contractor shall provide a fully executed and properly notarized Non-Collusion Affidavit, attached hereto and incorporated herein as Exhibit D.

Workers' Compensation Insurance Declaration. Prior to commencing the Project, Contractor shall provide a fully executed and properly notarized Workers' Compensation Insurance Declaration, attached hereto and incorporated herein as Exhibit E. |

OPTIONAL (check if applicable):

Permitted Sub-Contractor/Service Providers: ["None"]

EXHIBIT B
INSURANCE REQUIREMENTS

Contractor shall adhere to all terms and conditions of Section 3 of the Agreement and agrees to provide the following types and minimum amounts of insurance, as indicated by checking the applicable boxes (x):

	Type of Insurance	Minimum Amount	Form
<input checked="" type="checkbox"/>	General Liability: Including products and completed operations, personal and advertising injury	\$2,000,000 per occurrence for bodily injury, personal injury (including death), and property damage. If Commercial General Liability insurance with a general aggregate limit is used, either the general aggregate limit must apply separately to this Agreement or the general aggregate limit must be twice the required occurrence limit Additional Insured Endorsement or Blanket AI Endorsement for City* Waiver of Recovery Endorsement	Insurance Services Office Form CG 00 01 <i>*Must be primary and must not exclude Products/Completed Operations</i>
<input checked="" type="checkbox"/>	Automobile Liability	\$1,000,000 per accident for bodily injury, including death, and property damage	Insurance Services Office Form CA 00 01 Code 1-Any Auto Code 8-Hired Code 9-Non Owned
<input checked="" type="checkbox"/>	Workers' Compensation Employer's Liability	\$1,000,000 each accident \$1,000,000 disease policy limit \$1,000,000 disease each employee Waiver of Recovery Endorsement	

EXHIBIT C
CONTRACTOR CONFLICT OF INTEREST DESIGNATION

The Political Reform Act¹ and the Chula Vista Conflict of Interest Code² (“Code”) require designated state and local government officials, including some Contractor/Service Providers, to make certain public disclosures using a Statement of Economic Interests form (Form 700). Once filed, a Form 700 is a public document, accessible to any member of the public. In addition, Contractors designated to file the Form 700 are also required to comply with certain ethics training requirements.³

A. Contractor **IS** a corporation or limited liability company and is therefore EXCLUDED⁴ from disclosure.

B. Contractor is **NOT** a corporation or limited liability company and disclosure designation is as follows:

APPLICABLE DESIGNATIONS FOR INDIVIDUAL(S) ASSIGNED TO PROVIDE SERVICES

(Category descriptions available at www.chulavistaca.gov/departments/city-clerk/conflict-of-interest-code.)

Name	Email Address	Applicable Designation
		<input type="checkbox"/> A. Full Disclosure <input type="checkbox"/> B. Limited Disclosure (select one or more of the categories under which the Contractor shall file): <input type="checkbox"/> 1. <input type="checkbox"/> 2. <input type="checkbox"/> 3. <input type="checkbox"/> 4. <input type="checkbox"/> 5. <input type="checkbox"/> 6. <input type="checkbox"/> 7. Justification: <input type="checkbox"/> C. Excluded from Disclosure

1. Required Filers

Each individual who will be performing services for the City pursuant to the Agreement and who meets the definition of “Contractor/Service Provider,” pursuant to FPPC Regulation 18700.3, must file a Form 700.

2. Required Filing Deadlines

Each initial Form 700 required under this Agreement shall be filed with the Office of the City Clerk via the City's online filing system, NetFile, within 30 days of the approval of the Agreement. Additional Form 700 filings will be required annually on April 1 during the term of the Agreement, and within 30 days of the termination of the Agreement.

3. Filing Designation

The City Department Director will designate each individual who will be providing services to the City pursuant to the Agreement as *full disclosure*, *limited disclosure*, or *excluded from disclosure*, based on an analysis of the services the Contractor/Service Provider will provide. Notwithstanding this designation or anything in the Agreement, the Contractor/Service Provider is ultimately responsible for complying with FPPC regulations and filing requirements. If you have any questions regarding filing requirements, please do not hesitate to contact the City Clerk at (619)691-5041, or the FPPC at 1-866-ASK-FPPC, or (866) 275-3772 *2.

Pursuant to the duly adopted City of Chula Vista Conflict of Interest Code, this document shall serve as the written determination of the Contractor’s requirement to comply with the disclosure requirements set forth in the Code.

Completed by: *Sam Oludunfe, Open Space Manager*

1 Cal. Gov. Code §§81000 *et seq.*; FPPC Regs. 18700.3 and 18704.

2 Chula Vista Municipal Code §§2.02.010-2.02.040.

3 Cal. Gov. Code §§53234, *et seq.*

4 CA FPPC Adv. A-15-147 (*Chadwick*) (2015); *Davis v. Fresno Unified School District* (2015) 237 Cal.App.4th 261; FPPC Reg. 18700.3 (Consultant defined as an “individual” who participates in making a governmental decision; “individual” does not include corporation or limited liability company).

EXHIBIT D
NON-COLLUSION AFFIDAVIT

To the City of Chula Vista, Director of Engineering & Capital Projects:

The undersigned, in submitting a bid for performing the following work by Contract being duly sworn, deposes and says:

That he/she has not, either directly or indirectly entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding and has not accepted any deposit from any subcontractor or material supplier through any bid depository, the by-laws, rules, and regulations of which prohibit or prevent the Contractor from considering any bid from any subcontractor or material supplier, which is not processed through said bid depository, or which prevent any subcontractor or material supplier from bidding to any Contractor who does not use the facilities or accept bids from or through such bid depository in connection with this Contract.

Business Address

Company

Place of Residence

Signature of Bidder

(Attach Proper Notarization)

EXHIBIT E
WORKERS' COMPENSATION INSURANCE DECLARATION

Date: _____

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.

Signature

Contractor

State Contractor's License No.

Address

City/State

Phone Number

(Attach Proper Notarization)

|