

**PALM DESERT HOUSING AUTHORITY  
MAINTENANCE SERVICES AGREEMENT  
LANDSCAPE MAINTENANCE AREA NO. 3  
Project No. MLS00010  
Contract No. \_\_\_\_\_**

**1. PARTIES AND DATE.**

This Agreement is made and entered into this 8<sup>TH</sup> day of JUNE, 2024 by and between the Palm Desert Housing Authority, organized under the laws of the State of California with its principal place of business at 73-510 Fred Waring Drive, Palm Desert, California 92260-2578, County of Riverside, State of California ("Authority") and EXCEL LANDSCAPE, INC., a CORPORATION with its principal place of business at 1185 MAGNOLIA AVENUE, SUITE E400, CORONA, CALIFORNIA 92879 ("Contractor"). Authority and Contractor are sometimes individually referred to as "Party" and collectively as "Parties" in this Agreement.

**2. RECITALS.**

**2.1 Contractor.**

Contractor desires to perform and assume responsibility for the provision of certain maintenance services required by the Authority on the terms and conditions set forth in this Agreement. Contractor represents that it is experienced in providing landscape maintenance services to public clients, that it and its employees or subcontractors have all necessary licenses and permits to perform the Services in the State of California, and that is familiar with the plans of Authority. Contractor shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of Authority. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

**2.2 Project.**

Authority desires to engage Contractor to render such services for the PALM DESERT HOUSING AUTHORITY LANDSCAPE MAINTENANCE project ("Project") as set forth in this Agreement.

**3. TERMS.**

**3.1 Scope of Services and Term.**

3.1.1 General Scope of Services. Contractor promises and agrees to furnish to the AUTHORITY all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional landscape maintenance services necessary for the Project ("Services"). The Services are more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

3.1.2 Term. The term of this Agreement shall be from July 1, 2024 to June 30, 2027, unless earlier terminated as provided herein. The Authority shall have the unilateral option, at its sole discretion, to renew this Agreement automatically for no more than two (2) additional one-year terms. The contractor shall provide services within the term of this Agreement, and shall meet any other established schedules and deadlines. The Parties may, by mutual, written consent, extend the term of this Agreement if necessary to complete the Services.

3.1.3 Incorporation of Documents. The following documents shall be referred to collectively as the "Contract Documents," each of which is incorporated into and made part of this Agreement by reference, including all exhibits, drawings, specifications and documents therein, and attachments and addenda thereto:

- Maintenance Services Agreement

- Scope of Services (Exhibit “A”)
- Schedule of Services (Exhibit “B”)
- Compensation (Exhibit “C”)
- Performance and Payment Bond (Exhibit “D”)
- Special Provisions (Exhibit “E”)
- Frequency Legend and Schedule (Exhibit “F”)
- Addenda, if any
- Change Orders executed by the Authority
- Latest Edition of the Standard Specifications for Public Works Construction (The Greenbook),
- The Notice Inviting Proposals
- The Instructions Proposals,
- Contractor’s Cost Proposal
- All Exhibits attached hereto to this Agreement and incorporated herein by this reference

3.1.4 Precedence. To the extent there is a conflict between any portions of this Contract, the order of precedence shall be as follows: change orders, special conditions, technical specifications, plans/construction drawings, general contract terms, scope of work, standard plans, advertisements for bid/proposals, bids/proposals or other documents submitted by Contractor.

**3.2 Responsibilities of Contractor.**

3.2.1 Control and Payment of Subordinates; Independent Contractor. The Services shall be performed by Contractor or under its supervision. Contractor will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. Authority retains Contractor on an independent contractor basis and not as an employee. Contractor retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Contractor shall also not be employees of Authority and shall at all times be under Contractor’s exclusive direction and control. Contractor shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Contractor shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers’ compensation insurance.

3.2.2 Schedule of Services. Contractor shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the Schedule of Services set forth in Exhibit “B” attached hereto and incorporated herein by reference. Contractor represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Contractor’s conformance with the Schedule, Authority shall respond to Contractor’s submittals in a timely manner. Upon request of Authority, Contractor shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

3.2.3 Conformance to Applicable Requirements. All work prepared by Contractor shall be subject to the approval of Authority.

3.2.4 Authority’s Representative. The Authority hereby designates Authority’s Property Manager,

Falkenberg/Gilliam & Associates, Cyndi Karp or his or her designee, to act as its representative for the performance of this Agreement. Authority's Representative shall have the power to act on behalf of the Authority for all purposes under this Agreement. Contractor shall not accept direction or orders from any person other than the Authority's Representative or his or her designee.

3.2.5 Contractor's Representative. Contractor hereby designates JOSE ALFARO, PRESIDENT or his or her designee, to act as its representative for the performance of this Agreement ("Contractor's Representative"). Contractor's Representative shall have full authority to represent and act on behalf of the Contractor for all purposes under this Agreement and all communications given to the Contractor's Representative shall be as binding as if given to the Contractor. The Contractor's Representative shall supervise and direct the Services, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Services under this Agreement. The Contractor's Representative shall be present on the work site at all times as required to perform adequate supervision and coordination of the work. Contractor shall not change its Contractor's Representative without written approval of Engineer.

3.2.6 Coordination of Services. Contractor agrees to work closely with Authority staff in the performance of Services and shall be available to Authority's staff, consultants and other staff at all reasonable times.

3.2.7 Standard of Care; Performance of Employees. Contractor shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Contractor represents and maintains that it is skilled in the professional calling necessary to perform the Services. Contractor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Finally, Contractor represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, including a City of Palm Desert ("City") Business License, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Contractor shall perform, at its own cost and expense and without reimbursement from the Authority, any services necessary to correct errors or omissions which are caused by the Contractor's failure to comply with the standard of care provided for herein. Any employee of the Contractor or its sub-contractors who is determined by the Authority to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the Authority, shall be promptly removed from the Project by the Contractor and shall not be re-employed to perform any of the Services or to work on the Project.

3.2.8 Period of Performance Contractor shall perform and complete all Services under this Agreement within the term set forth in Section 3.1.2 above ("Performance Time"). Contractor shall perform the Services in strict accordance with any completion schedule or Project milestones described in Exhibits "A" or "B" attached hereto, or which may be provided separately in writing to the Contractor. Contractor agrees that if the Services are not completed within the aforementioned Performance Time and/or pursuant to any such completion schedule or Project milestones developed pursuant to provisions of this Agreement, it is understood, acknowledged and agreed that the Authority will suffer damage. .

3.2.9 Disputes. Should any dispute arise respecting the true value of any work done, of any work omitted, or of any extra work which Contractor may be required to do, or respecting the size of any payment to Contractor during the performance of this Contract, Contractor shall continue to perform the Work while said dispute is decided by the Authority. If

Contractor disputes the Authority's decision, Contractor shall have such remedies as may be provided by law.

3.2.10 Laws and Regulations; Employee/Labor Certifications. Contractor shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Contractor shall be liable for all violations of such laws and regulations in connection with Services. If the Contractor performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the Authority, Contractor shall be solely responsible for all costs arising therefrom. Authority is a public entity of the State of California subject to certain provisions of the Health & Safety Code, Government Code, Public Contract Code, and Labor Code of the State. It is stipulated and agreed that all provisions of the law applicable to the public contracts of a municipality are a part of this Agreement to the same extent as though set forth herein and will be complied with. These include but are not limited to the payment of prevailing wages, the stipulation that eight (8) hours' labor shall constitute a legal day's work and that no worker shall be permitted to work in excess of eight (8) hours during any one calendar day except as permitted by law. Contractor shall defend, indemnify and hold City and/or Authority, and their officials, directors, officers, employees and agents free and harmless pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.2.10.1 Employment Eligibility; Contractor. By executing this Agreement, Contractor verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time. Such requirements and restrictions include, but are not limited to, examination and retention of documentation confirming the identity and immigration status of each employee of the Contractor. Contractor also verifies that it has not committed a violation of any such law within the five (5) years immediately preceding the date of execution of this Agreement, and shall not violate any such law at any time during the term of the Agreement. Contractor shall avoid any violation of any such law during the term of this Agreement by participating in an electronic verification of work authorization program operated by the United States Department of Homeland Security, by participating in an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, or by some other legally acceptable method. Contractor shall maintain records of each such verification, and shall make them available to the Authority or its representatives for inspection and copy at any time during normal business hours. The Authority shall not be responsible for any costs or expenses related to Contractor's compliance with the requirements provided for in Section 3.2.10 or any of its sub-sections.

3.2.10.2 Employment Eligibility; Subcontractors, Sub-subcontractors and Consultants. To the same extent and under the same conditions as Contractor, Contractor shall require all of its subcontractors, sub-subcontractors and consultants performing any work relating to the Project or this Agreement to make the same verifications and comply with all requirements and restrictions provided for in Section 3.2.10.1.

3.2.10.3 Employment Eligibility; Failure to Comply. Each person executing this Agreement on behalf of Contractor verifies that they are a duly authorized officer of Contractor, and understands that any of the following shall be grounds for the Authority to terminate the Agreement for cause: (1) failure of Contractor or its subcontractors, sub-subcontractors or consultants to meet any of the requirements provided for in Sections 3.2.10.1 or 3.2.10.2; (2) any misrepresentation or material omission concerning compliance with such

requirements (including in those verifications provided to the Contractor under Section 3.2.10.2); or (3) failure to immediately remove from the Project any person found not to be in compliance with such requirements.

3.2.10.4 Labor Certification. By its signature hereunder, Contractor certifies that it is aware of the provisions of Section 3700 of the California 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 agrees to comply with such provisions before commencing the performance of the Services.

3.2.10.5 Equal Opportunity Employment. Contractor represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Contractor shall also comply with all relevant provisions of City's Minority Business Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.2.10.6 Air Quality. Contractor must fully comply with all applicable laws, rules and regulations in furnishing or using equipment and/or providing services, including, but not limited to, emissions limits and permitting requirements imposed by the California Air Resources Board (CARB). Contractor shall specifically be aware of the CARB limits and requirements' application to "portable equipment", which definition is considered by CARB to include any item of equipment with a fuel-powered engine. Contractor shall indemnify City and Authority against any fines or penalties imposed by CARB or any other governmental or regulatory agency for violations of applicable laws, rules and/or regulations by Contractor, its subcontractors, or others for whom Contractor is responsible under its indemnity obligations provided for in this Agreement.

3.2.10.7 Water Quality.

(A) Management and Compliance. To the extent applicable, Contractor's Services must account for, and fully comply with, all local, state and federal laws, rules and regulations that may impact water quality compliance, including, without limitation, all applicable provisions of the Federal Water Pollution Control Act (33 U.S.C. §§ 1300); the California Porter-Cologne Water Quality Control Act (Cal Water Code §§ 13000-14950); laws, rules and regulations of the Environmental Protection Agency and the State Water Resources Control Board; the City of Palm Desert's ordinances regulating discharges of storm water; and any and all regulations, policies, or permits issued pursuant to any such authority regulating the discharge of pollutants, as that term is used in the Porter-Cologne Water Quality Control Act, to any ground or surface water in the State.

(B) Liability for Non-Compliance. Failure to comply with the laws, regulations and policies described in this Section is a violation of law that may subject Contractor or Authority to penalties, fines, or additional regulatory requirements. Contractor shall defend, indemnify and hold the City, Authority, City and/or Authority, and their officials, directors, officers, employees, volunteers and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from and against any and all fines, penalties, claims or other regulatory requirements imposed as a result of Contractor's non-compliance with the laws, regulations and policies described in this Section, unless such non-compliance is the result of the sole established negligence, willful misconduct or active negligence of the City, Authority and their officials officers, agents, employees or authorized volunteers.

(C) Training. In addition to any other standard of care requirements set forth in this Agreement, Contractor warrants that all employees and

subcontractors shall have sufficient skill and experience to perform the Services assigned to them without impacting water quality in violation of the laws, regulations and policies described in this Section. Contractor further warrants that it, its employees and subcontractors will receive adequate training, as determined by Authority, regarding the requirements of the laws, regulations and policies described in this Section as they may relate to the Services provided under this Agreement. Upon request, Authority will provide Contractor with a list of training programs that meet the requirements of this paragraph.

### 3.2.11 Insurance.

3.2.11.1 Minimum Requirements. Without limiting Contractor's indemnification of Authority, and prior to commencement of Work, Contractor shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form that is satisfactory to Authority. The Authority's Risk Manager may modify this requirement if it is determined that the Contractor will not be utilizing a vehicle in the performance of his/her duties under this Agreement.

(A) General Liability Insurance. Contractor shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.

(B) Automobile Liability Insurance. Contractor shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Contractor arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than \$1,000,000 combined single limit for each accident. The Authority's Risk Manager may modify this requirement if it is determined that Consultant will not be utilizing a vehicle in the performance of his/her duties under this agreement.

(C) Umbrella or Excess Liability Insurance. Contractor may opt to utilize umbrella or excess liability insurance in meeting insurance requirements. In such circumstances, Contractor may obtain and maintain an umbrella or excess liability insurance policy with limits that will provide bodily injury, personal injury and property damage liability coverage at least as broad as the primary coverages set forth above, including commercial general liability and employer's liability. Such policy or policies shall include the following terms and conditions:

- (a) A drop down feature requiring the policy to respond if any primary insurance that would otherwise have applied proves to be uncollectible in whole or in part for any reason;
- (b) Pay on behalf of wording as opposed to reimbursement;
- (c) Concurrency of effective dates with primary policies; and
- (d) Policies shall "follow form" to the underlying primary policies.
- (e) Insureds under primary policies shall also be insureds under the umbrella or excess policies.

(D) Workers' Compensation Insurance. Contractor shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000). Contractor shall submit to Authority, along with the certificate

of insurance, a Waiver of Subrogation endorsement in favor of the City of Palm Desert, Palm Desert Housing Authority, and their officers, agents, employees and volunteers.

3.2.11.2 Other Provisions and Requirements.

(A) Proof of Insurance. Contractor shall provide certificates of insurance to Authority as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation. Insurance certificates and endorsements must be approved by Authority's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with Authority at all times during the term of this contract. Authority reserves the right to require complete, certified copies of all required insurance policies, at any time.

(B) Duration of Coverage. Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the Work hereunder by Contractor, his/her agents, representatives, employees or subconsultants.

(C) Primary/Non-Contributing. Coverage provided by Contractor shall be primary and any insurance or self-insurance procured or maintained by Authority shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of Authority before the Authority's own insurance or self-insurance shall be called upon to protect it as a named insured.

(D) Authority's Rights of Enforcement. In the event any policy of insurance required under this Agreement does not comply with these specifications, or is canceled and not replaced, Authority has the right, but not the duty, to obtain the insurance it deems necessary and any premium paid by Authority will be promptly reimbursed by Contractor, or Authority will withhold amounts sufficient to pay premium from Contractor payments. In the alternative, Authority may cancel this Agreement.

(E) Acceptable Insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance or is on the List of Approved Surplus Line Insurers in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the Authority's Risk Manager.

(F) Waiver of Subrogation. All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against the City of Palm Desert, Authority, and their elected or appointed officers, agents, officials, employees and volunteers, or shall specifically allow Contractor or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Contractor hereby waives its own right of recovery against the City of Palm Desert, Authority, and their elected or appointed officers, agents, officials, employees and volunteers and shall require similar written express waivers and insurance clauses from each of its subcontractors.

(G) Enforcement of Contract Provisions (non estoppel). Contractor acknowledges and agrees that any actual or alleged failure on the part of the Authority to inform Contractor of non-compliance with any requirement imposes no additional obligations on the Authority nor does it waive any rights hereunder.

(H) Requirements Not Limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance.

Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Contractor maintains higher limits than the minimums shown above, the Authority requires and shall be entitled to coverage for the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Authority.

(I) Notice of Cancellation. Contractor agrees to oblige its insurance agent or broker and insurers to provide to Authority with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage.

(J) Additional Insured Status. General liability, automobile liability, and if applicable, pollution liability and cyber liability, policies shall provide or be endorsed to provide that the City of Palm Desert, Palm Desert Housing Authority and their officers, officials, employees, agents, and volunteers shall be additional insureds under such policies. This provision shall also apply to any excess/umbrella liability policies.

(K) Prohibition of Undisclosed Coverage Limitations. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to Authority and approved of in writing.

(L) Separation of Insureds. A severability of interests provision must apply for all additional insureds ensuring that Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limits of liability. The policy(ies) shall not contain any cross-liability exclusions.

(M) Pass Through Clause. Contractor agrees to ensure that its sub-consultants, sub-contractors, and any other party involved with the project who is brought onto or involved in the project by Contractor, provide the same minimum insurance coverage and endorsements required of Contractor. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Contractor agrees that upon request, all agreements with consultants, subcontractors, and others engaged in the project will be submitted to Authority for review.

(N) Authority's Right to Revise Specifications. The Authority or its Risk Manager reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Contractor ninety (90) days advance written notice of such change. If such change results in *substantial* additional cost to the Contractor, the Authority and Contractor may renegotiate Contractor's compensation. If the Authority reduces the insurance requirements, the change shall go into effect immediately and require no advanced written notice.

(O) Self-Insured Retentions. Any self-insured retentions must be declared to and approved by Authority. Authority reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by Authority.

(P) Timely Notice of Claims. Contractor shall give Authority prompt and timely notice of claims made or suits instituted that arise out of or result from Contractor's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

(Q) Additional Insurance. Contractor shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the work.

3.2.12 Safety. Contractor shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Contractor shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions, where applicable, shall include, but shall not be limited to: (A) adequate life protection and lifesaving equipment and procedures; (B) instructions in accident prevention for all employees and subcontractors, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

3.2.13 Bonds.

3.2.13.1 Performance Bond. If required by law or otherwise specifically requested by Authority in Exhibit "D" attached hereto and incorporated herein by reference, Contractor shall execute and provide to Authority concurrently with this Agreement a Performance Bond in the amount of the total, not-to-exceed compensation indicated in this Agreement, and in a form provided or approved by the Authority. If such bond is required, no payment will be made to Contractor until it has been received and approved by the Authority.

3.2.13.2 Payment Bond. If required by law or otherwise specifically requested by Authority in Exhibit "D" attached hereto and incorporated herein by reference, Contractor shall execute and provide to Authority concurrently with this Agreement a Payment Bond in the amount of the total, not-to-exceed compensation indicated in this Agreement, and in a form provided or approved by the Authority. If such bond is required, no payment will be made to Contractor until it has been received and approved by the Authority.

3.2.13.3 Bond Provisions. Should, in Authority's sole opinion, any bond become insufficient or any surety be found to be unsatisfactory, Contractor shall renew or replace the affected bond within 10 days of receiving notice from Authority. In the event the surety or Contractor intends to reduce or cancel any required bond, at least thirty (30) days prior written notice shall be given to the Authority, and Contractor shall post acceptable replacement bonds at least ten (10) days prior to expiration of the original bonds. No further payments shall be deemed due or will be made under this Agreement until any replacement bonds required by this Section are accepted by the Authority. To the extent, if any, that the total compensation is increased in accordance with the Agreement, the Contractor shall, upon request of the Authority, cause the amount of the bonds to be increased accordingly and shall promptly deliver satisfactory evidence of such increase to the Authority. To the extent available, the bonds shall further provide that no change or alteration of the Agreement (including, without limitation, an increase in the total compensation, as referred to above), extensions of time, or modifications of the time, terms, or conditions of payment to the Contractor, will release the surety. If the Contractor fails to furnish any required bond, the Authority may terminate this Agreement for cause.

3.2.13.4 Surety Qualifications. Only bonds executed by an admitted surety insurer, as defined in Code of Civil Procedure Section 995.120, shall be accepted. The surety must be a California-admitted surety with a current A.M. Best's rating no less than A:VIII and satisfactory to the Authority. If a California-admitted surety insurer issuing bonds does not meet these requirements, the insurer will be considered qualified if it is in conformance with Section 995.660 of the California Code of Civil Procedure, and proof of such is provided to the Authority.

3.2.14 Accounting Records. Contractor shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records

shall be clearly identifiable. Contractor shall allow a representative of Authority during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Contractor shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

3.2.15 Work Site.

3.2.15.1 Contract Documents. The Contractor shall carefully study and compare the Contract Documents with each other and with information available to the Contractor and furnished by the Authority and shall immediately notify the Engineer of errors, inconsistencies or omissions discovered. If the Contractor performs any maintenance activity knowing it involves a recognized error, inconsistency or omission in the Contract Documents without notice to the Engineer, the Contractor shall assume appropriate responsibility for such performance and shall assume responsibility for the full costs for correction.

3.2.15.2 Inspection Of Site. Contractor shall visit sites where Services are to be performed and shall become acquainted with all conditions affecting the Services prior to commencing the Services. Contractor shall make such examinations as it deems necessary to determine the condition of the work sites, its accessibility to materials, workmen and equipment, and to determine Contractor's ability to protect existing surface and subsurface improvements. No claim for allowances—time or money—will be allowed as to such matters after commencement of the Services.

3.2.15.3 Field Measurements. Contractor shall make field measurements, verify field conditions and shall carefully compare such field measurements and conditions and other information known to Contractor with the Contract Documents, including any plans, specifications, or scope of work before commencing Services. Errors, inconsistencies or omissions discovered shall be reported to the Authority immediately and prior to performing any Services or altering the condition.

3.2.15.4 Hazardous Materials and Differing Conditions. Except as set forth in the Special Conditions or Specifications, should Contractor encounter material reasonably believed to be polychlorinated biphenyl (PCB) or other toxic wastes, hazardous substance and hazardous materials as defined in California state or federal law at the Site which have not been rendered harmless, the Contractor shall immediately stop work at the affected area and shall report the condition to the Authority in writing. The Authority shall contract for any services required to directly remove and/or abate PCBs, hazardous substances, other toxic wastes and hazardous materials, and shall not require the Contractor to subcontract for such services. The Services in the affected area shall not thereafter be resumed except by written agreement of the Authority and Contractor.

3.2.15.5 Palm Desert Housing Authority Property. Where Services are performed on Authority property:

(A) Contractor acknowledges that the Authority provides forty-eight (48) hours-notice in advance of the start of any work that is to occur at any residential unit. Contractor shall provide sufficient notice to the Authority before beginning any such work so that the Authority may provide timely notice to residents.

(B) Pedestrian paths of travel must be maintained free of obstructions and hazardous conditions, except where the condition is necessary for completion of the work. To the extent any portion of the work requires obstructing pedestrian paths of travel, the work shall be performed so as to minimize the extent of the obstruction. Where Contractor's operations may create hazardous conditions to pedestrian paths of travel, appropriate signing and barricades shall be installed to safely route pedestrians around the impacted area. The

Authority shall be given at least 48 hours-notice prior to the creation of any condition affecting pedestrian paths of travel.

(C) Contractor shall remove at its own expense all rubbish and waste materials resulting from its operations, including any material that may fall in swimming pools, lagoons, or other water features. If on private property, Contractor must obtain permission from the property owner prior to removing debris. All debris must be removed before the end of the day unless otherwise directed by Authority.

(D) Authority may issue an immediate order to Contractor to stop performing work until adequate notice may be provided to residents. Any stoppage, suspension, or delay in the Work resulting from Contractor's failure to provide adequate notice to Authority shall not be a basis for any adjustment to the Agreement price or the Agreement time.

3.2.16 Loss and Damage. Contractor shall be responsible for all loss and damage which may arise out of the nature of the Services agreed to herein, or from the action of the elements, or from any unforeseen difficulties which may arise or be encountered in the prosecution of the Services until the same is fully completed and accepted by Authority.

3.2.17 Warranty. Contractor warrants all Services under the Agreement (which for purposes of this Section shall be deemed to include unauthorized work which has not been removed and any non-conforming materials incorporated into the work) to be of good quality and free from any defective or faulty material and workmanship. Contractor agrees that for a period of one year (or the period of time specified elsewhere in the Agreement or in any guarantee or warranty provided by any manufacturer or supplier of equipment or materials incorporated into the work, whichever is later) after the date of final acceptance, Contractor shall within ten (10) days after being notified in writing by the Authority of any defect in the Services or non-conformance of the Services to the Agreement, commence and prosecute with due diligence all Services necessary to fulfill the terms of the warranty at its sole cost and expense. Contractor shall act sooner as requested by the Authority in response to an emergency. In addition, Contractor shall, at its sole cost and expense, repair and replace any portions of the work (or work of other contractors) damaged by its defective Services or which becomes damaged in the course of repairing or replacing defective work. For any work so corrected, Contractor's obligation hereunder to correct defective work shall be reinstated for an additional one year period, commencing with the date of acceptance of such corrected work. Contractor shall perform such tests as the Authority may require to verify that any corrective actions, including, without limitation, redesign, repairs, and replacements comply with the requirements of the Agreement. All costs associated with such corrective actions and testing, including the removal, replacement, and reinstatement of equipment and materials necessary to gain access, shall be the sole responsibility of the Contractor. All warranties and guarantees of subcontractors, suppliers and manufacturers with respect to any portion of the work, whether express or implied, are deemed to be obtained by Contractor for the benefit of the Authority, regardless of whether or not such warranties and guarantees have been transferred or assigned to the Authority by separate agreement and Contractor agrees to enforce such warranties and guarantees, if necessary, on behalf of the Authority. In the event that Contractor fails to perform its obligations under this Section, or under any other warranty or guaranty under this Agreement, to the reasonable satisfaction of the Authority, the Authority shall have the right to correct and replace any defective or non-conforming work and any work damaged by such work or the replacement or correction thereof at Contractor's sole expense. Contractor shall be obligated to fully reimburse the Authority for any expenses incurred hereunder upon demand.

### **3.3 Fees and Payments.**

3.3.1 Compensation. Contractor shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth

in Exhibit "C" attached hereto and incorporated herein by reference. The total compensation shall not exceed FOUR HUNDRED EIGHTEEN THOUSAND SIX HUNDRED EIGHTY DOLLARS (\$418,680.00) without written approval of Authority's Executive Director or its designee. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.3.2 Payment of Compensation. Contractor shall submit to Authority a monthly itemized statement which indicates work completed and hours of Services rendered by Contractor. The statement shall describe the amount of Services and supplies provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. Authority shall, within thirty (30) days of receiving such statement, review the statement and pay all approved charges thereon. Contractor shall pay all subcontractors for and on account of work performed by such subcontractors in accordance with the terms of their respective subcontracts and as provided for in Section 7108.5 of the California Business and Professions Code. Such payments to subcontractors shall be based on the measurements and estimates made and progress payments provided to Contractor pursuant to this Agreement.

3.3.3 Deductions. Authority may deduct or withhold, as applicable, from each progress payment an amount necessary to protect Authority from loss because of: (1) stop payment notices as allowed by state law; (2) unsatisfactory prosecution of the Services by Contractor; (3) sums representing expenses, losses, or damages as determined by the Authority, incurred by the Authority for which Contractor is liable under the Agreement; and (4) any other sums which the Authority is entitled to recover from Contractor under the terms of the Agreement or pursuant to state law, including Section 1727 of the California Labor Code. The failure by the Authority to deduct any of these sums from a progress payment shall not constitute a waiver of the Authority's right to such sums.

3.3.4 Reimbursement for Expenses. Contractor shall not be reimbursed for any expenses unless authorized in writing by Authority.

3.3.5 Extra Work. At any time during the term of this Agreement, Authority may request that Contractor perform Extra Work. As used herein, "Extra Work" means any work which is determined by Authority to be necessary for the proper completion of the Project, but which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Contractor shall not perform, nor be compensated for, Extra Work without written authorization from Authority's Representative.

3.3.6 Prevailing Wages. Contractor is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. Authority shall provide Contractor with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Contractor's principal place of business and at the project site. Contractor shall defend, indemnify and hold the City, Authority, and their elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon the Contractor and all subcontractors to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor

Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.

3.3.7 Registration/DIR Compliance. If the Services are being performed as part of an applicable “public works” or “maintenance” project, and if the total compensation is \$15,000 or more, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Contractor and all subcontractors performing such Services must be registered with the Department of Industrial Relations. Contractor shall maintain registration for the duration of the Project and require the same of any subcontractors, as applicable. This Project may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Contractor’s sole responsibility to comply with all applicable registration and labor compliance requirements. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1. Any stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor that affect Contractor’s performance of Services, including any delay, shall be Contractor’s sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Contractor caused delay and shall not be compensable by the Authority. Contractor shall defend, indemnify and hold the City, Authority, and their officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor.

### **3.4 Termination of Agreement; Temporary Suspension of Work**

3.4.1 Grounds for Termination. Authority may, by written notice to Contractor, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Contractor of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Contractor shall be compensated only for those services which have been adequately rendered to Authority, and Contractor shall be entitled to no further compensation. Contractor may not terminate this Agreement except for cause.

3.4.2 Effect of Termination. If this Agreement is terminated as provided herein, Authority may require Contractor to provide all finished or unfinished documents and data and other information of any kind prepared by Contractor in connection with the performance of Services under this Agreement. Contractor shall be required to provide such document and other information within fifteen (15) days of the request.

3.4.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, Authority may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.4.4 Temporary Suspension of Work. The Authority may order the Contractor to suspend the work on the project, wholly or in part, for such period of time as he may deem necessary due to unsuitable weather or to such other conditions as may be considered unfavorable for the suitable prosecution of the work, or for such time as he may deem necessary due to the failure of the Contractor to carry out orders given or to perform any provision of the contract. The Contractor shall immediately comply with the order of the Authority to suspend the work, wholly or in part, as the order may provide. Work shall be resumed when conditions are favorable or when the methods have been corrected, as ordered or approved in writing by the Authority.

**3.5 General Provisions.**

3.5.1 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

**Contractor:**

Excel Landscape, Inc.

1185 Magnolia Avenue, Suite E400  
Corona, CA 92879  
Attn: Jose Alfaro

**Authority:**

Palm Desert Housing Authority  
  
73-510 Fred Waring Drive  
Palm Desert, CA 92260-2578  
Attn: Jessica Gonzalez

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.5.2 Indemnification.

3.5.2.1 Scope of Indemnity. To the fullest extent permitted by law, Contractor shall defend, indemnify and hold the City, Authority, and their officials, employees, agents and authorized volunteers free and harmless from any and all claims, demands, causes of action, suits, actions, proceedings, costs, expenses, liability, judgments, awards, decrees, settlements, loss, damage or injury of any kind, in law or equity, regardless of whether the allegations are false, fraudulent, or groundless, to property or persons, including wrongful death, (collectively, "Claims") in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Contractor, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Contractor's services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorneys' fees and other related costs and expenses. Notwithstanding the foregoing, to the extent required by Civil Code section 2782, Contractor's indemnity obligation shall not apply to liability for damages for death or bodily injury to persons, injury to property, or any other loss, damage or expense arising from the sole or active negligence or willful misconduct of the Authority or Authority's agents, servants, or independent contractors who are directly responsible to the or Authority.

3.5.2.2 Additional Indemnity Obligations. Contractor shall defend, with counsel of Authority's choosing and at Contractor's own cost, expense and risk, any and all Claims covered by this section that may be brought or instituted against City, Authority or their officials, employees, agents and authorized volunteers. In addition, Contractor shall pay and satisfy any judgment, award or decree that may be rendered against City, Authority or their officials, employees, agents and authorized volunteers as part of any such claim, suit, action or other proceeding. Contractor shall also reimburse Authority for the cost of any settlement paid by City, Authority or their officials, employees, agents and authorized volunteers as part of any such claim,

suit, action or other proceeding. Such reimbursement shall include payment for Authority's attorney's fees and costs, including expert witness fees. Contractor shall reimburse City, Authority and their officials, employees, agents and authorized volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Contractor's obligation to indemnify shall survive expiration or termination of this Agreement, and shall not be restricted to insurance proceeds, if any, received by the City, Authority, or their officials, employees, agents and authorized volunteers.

3.5.3 Governing Law; Government Code Claim Compliance. This Agreement shall be governed by the laws of the State of California. Venue shall be in Riverside County. In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, claims and/or changed conditions, Contractor must comply with the claim procedures set forth in Government Code sections 900 et seq. prior to filing any lawsuit against the Authority. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, claims, and/or changed conditions have been followed by Contractor. If no such Government Code claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Contractor shall be barred from bringing and maintaining a valid lawsuit against the Authority.

3.5.4 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.5.5 Authority's Right to Employ Other Contractors. Authority reserves right to employ other contractors in connection with this Project.

3.5.6 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties.

3.5.7 Assignment or Transfer. Contractor shall not assign, hypothecate or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the Authority. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

3.5.8 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Contractor include all personnel, employees, agents, and subcontractors of Contractor, except as otherwise specified in this Agreement. All references to City or Authority include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content or intent of this Agreement.

3.5.9 Amendment; Modification. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.5.10 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel or otherwise.

3.5.11 No Third Party Beneficiaries. Except to the extent expressly provided for in Section 3.5.7, there are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.5.12 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.5.13 Prohibited Interests. Contractor maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Agreement. Further, Contractor warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee 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 agrees to file, or shall cause its employees or subcontractors to file, a Statement of Economic Interest with the Authority's Filing Officer as required under state law in the performance of the Services. For breach or violation of this warranty, Authority shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of Authority, during the term of his or her service with Authority, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.5.14 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.5.15 Authority to Enter Agreement. Contractor has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.5.16 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

3.5.17 Entire Agreement. This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both parties.

3.5.18 Anti-Trust Claims. This provision shall be operative if this Agreement is applicable to California Public Contract Code Section 7103.5. In entering into this Agreement to supply goods, services or materials, Contractor hereby offers and agrees to assign to the Authority 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. Section 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 Agreement. This assignment shall be made and become effective at the time the Authority tender final payment to Contractor, without further acknowledgment by the Parties.

**[SIGNATURES ON NEXT PAGE]**

**SIGNATURE PAGE FOR MAINTENANCE SERVICES AGREEMENT  
BETWEEN THE PALM DESERT HOUSING AUTHORITY  
AND EXCEL LANDSCAPE, INC.**

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the 13<sup>th</sup> day of June, 2024.

PALM DESERT HOUSING AUTHORITY

By: \_\_\_\_\_  
L. Todd Hileman  
Executive Director

NAME OF CONTRACTOR

By:

\_\_\_\_\_

Its: President  
Printed Name: Jose Alfaro

By:

ATTEST:

By: \_\_\_\_\_  
Authority Secretary

\_\_\_\_\_

Its: Vice President  
Printed Name: Marty Fox

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Best Best & Krieger LLP  
Authority Attorney

\_\_\_\_\_  
Contractor's License Number and  
Classification

\_\_\_\_\_  
DIR Registration Number *(if applicable)*

**EXHIBIT "A"**  
**CONTRACT SITES AND SCOPE OF WORK**

1.1 One Quail Place Apartments, 72-600 Fred Waring Drive. There are 384 rental units at this property.

1.2 Las Serenas Apartments, 73-315 Country Club Drive. There are 150 units at this property.

1.3 California Villas Apartments, 77-107 California Drive. There are 141 units at this property.

1.4 Catalina Garden Apartments, 73-600 Catalina Way. There are 72 units at this property. Maintenance also includes the Community areas between Catalina Gardens and Pueblos.

1.5 Desert Pointe Apartments, 43-805 Monterey Avenue. There are 64 units at this property.

1.6 Laguna Palms Apartments, 73-875 Santa Rosa Way. There are 48 units at this property.

1.7 Neighbors Apartments, 73-535 Santa Rosa Way. There are 24 units at this property..

1.8 The Pueblos Apartments, 73-695 Santa Rosa Way. There are 15 units at this property.

1.9 Taos Palms Apartments, 44-830 Las Palmas Avenue. There are 16 units at this property.

1.10 Candlewood Apartments, 74-000 & 74-002 Shadow Mountain Drive. There are 30 units at this property. Maintenance also includes adjacent vacant lot and perimeter.

1.11 Palm Village Apartments, 73-560 Santa Rosa Way. There are 36 units at this property.

1.12 Sagecrest Apartments, 73-775, 73-805, and 73-811 Santa Rosa Way. There are 14 units at this property. Maintenance also includes adjacent vacant lot.

1.13 La Rocca Villas, Assessor parcel 624-432-001 also known as 42-135 and 42-205 Golden Eagle Lane. There are 27 units at this location. Maintenance also includes adjacent vacant lot.

1.14 Carlos Ortega Villas, 77-915 Avenue of the States. There are 72 units at this property.

1.15 Santa Rosa, 73-625 Santa Rosa Way. There are 20 units at this property.

**2. SCOPE OF WORK**

2.1 The work to be done consists of furnishing all labor, materials, necessary tools and machinery, supervision, and all utility and transportation services required to provide landscape maintenance services for Palm Desert Housing Authority Landscape Maintenance in accordance with the Contract Documents.

2.2 Contractor shall provide the necessary manpower and equipment to maintain the areas listed in the specified locations, at the level of maintenance and service defined by Authority. The work shall include, but is not limited to, proper horticultural practices, as defined in the City of Palm Desert Landscape Maintenance Manual, maintenance of all landscape materials and hardscape structures as designated in the following specifications and per the Frequency Schedule.

2.3 Contractor shall provide appropriate equipment and labor for the execution of all maintenance activities. Authority reserves the right to inspect and/or approve any equipment used in this contract. If Authority deems the equipment to be in disrepair or inappropriate to the

task at hand, Authority may require that the equipment be removed from the job site and replaced with a different piece of equipment.

**2.4** Contractor shall adhere to Palm Desert Municipal Code Chapter 9.24.075 regarding noise sources and hours of property maintenance activity.

**2.5** Contractor shall provide personnel fully trained in all phases of landscape maintenance, tree maintenance, and irrigation maintenance and operation. Contractor shall provide personnel capable of effective verbal communication with Authority representatives. If Authority deems personnel to be inadequate to accomplish the task at hand, Authority may require that the personnel be removed from the job site and replaced with personnel demonstrating the appropriate level of job knowledge, skills, and verbal communication to effectively accomplish the work.

**2.6** Prior to commencement of the contract, designated Authority representative(s) and the Contractor will perform a mandatory acceptance walk-through inspection of the contract area. Authority may utilize a third-party property manager as its agent and/or representative to act on its behalf with respect to the landscape contract. Contractor shall meet with the property manager weekly or with a frequency acceptable to the Authority for the duration of the contract term. It is Contractor's responsibility to identify to Authority unacceptable conditions with plant material, trees, and/or irrigation systems at the time of the walk-through. At Authority's discretion, unacceptable conditions may be resolved with the current (outgoing) contractor or with the successor Contractor on a "one-time only, extra-work" basis. After such corrections are made, the successor Contractor will be responsible for all contractual services.

**2.7** Contractor shall replace, at no additional cost to Authority for labor or materials, any plant or tree that dies beginning 30 days from commencement of the contract throughout the term of the contract, if such plant or tree demise is due to neglect, lack of maintenance, or otherwise improper care.

**2.8** Contractor shall remove debris caused by all maintenance activities, including pruning and tree maintenance, on the same working day that such debris is accumulated.

**2.9** Contractor shall provide the labor and equipment for the application of fertilizers and fertilizers with pre-emergent and post-emergent. Fertilizers with pre-emergent and post-emergent will be supplied by Contractor and reimbursed by the Authority at actual cost plus 15% mark-up. Authority reserves the right to purchase Standard fertilizer.

The application of fungicides will be performed outside the scope of this contract.

**2.9** Monthly reports for irrigation, green waste and pesticide application shall be submitted no later than the first Monday of each month, for the preceding month. Monthly payments will not be processed until all required reports are received.

**2.9.1** The Irrigation Monthly Report shall include, but not necessarily be limited to, the following: date, irrigation technician identification, site identification, controller and valve identification, description of service and/or repair, statement of plant material condition as relates to water needs, and a section for general notes or comments.

**2.9.2** The Green Waste Monthly Report submittal shall include the green waste facility tipping ticket. The tipping ticket shall be clearly legible and shall contain the name and address of the waste facility, the weight, and the Authority's name.

**2.9.3** The Pesticide Application Monthly Report shall consist of a copy of the monthly report submitted to the Riverside County Agricultural Commissioner or, in the case of no pesticide applications made, a statement to that effect in the form of a letter or memorandum to Authority.

### **3. SPECIFIC SERVICES TO BE PERFORMED**

#### **3.1 Plant Litter and Trash Control**

3.1.1 Contractor shall remove and appropriately dispose of all plant litter (broken branches, broken limbs, excessive leaf-drop); trash and/or paper, cans, bottles, broken glass; dog droppings and any other out-of-place or discarded items. Plant litter includes plant debris caused by extreme temperatures or high winds.

3.1.2 Where trash cans are present, Contractor shall remove and dispose of their contents and replace the liners (Authority may provide trash bags, or if provided by Contractor, bill at cost plus 15%). Contractor shall wipe surfaces clean with a non-toxic cleaning solution.

#### **3.2 Pest Control**

3.2.1 Gophers and ground squirrels will be controlled on an as-needed basis using Authority-approved traps, within the scope of this contract.

3.2.2 Ants will be controlled on an as-needed basis, and is included in the scope of the contract. Red Imported Fire ant control is outside the scope of this contract. If Red Imported Fire ants are encountered the Contractor shall report the discovery to the Authority prior to the end of the workday.

3.2.3 Contractor shall immediately report any bee activity (swarms or hives) detected to the Authority. Bee removal is the responsibility of Authority.

3.2.4 Aphids will be chemically controlled on oak trees in parking lots and along parkways.

3.2.5 Fruit set will be chemically controlled on olive trees. These trees are located adjacent to parking lots, sidewalks, and hardscape areas designated for pedestrian traffic and use.

3.2.6 Contractor shall provide control and/or eradication of all weeds, as needed. Areas to be weeded include: planters, gravel and decomposed granite areas, sidewalks, curbs, expansion joints, fence lines, drainage areas, cobble areas, bare areas, and the area around trees.

3.2.7 Mechanical and/or chemical methods of weed control are acceptable for annual and perennial weeds with the exception of Bermuda grass, nutsedge, and bindweed, which shall be controlled by chemical means only.

3.2.8 Contractor shall remove any debris generated by the weed control process after weeds have been sprayed and plant death has occurred.

3.2.9 Weeds in turf areas will be managed on an as-needed basis and shall be considered extra work.

3.2.10 Any recommended chemical treatment and the schedule for its application must be reviewed and approved in advance by Authority. Authority, at its discretion, may require from Contractor all Material Safety Data Sheets, pesticide labels, and Pesticide Control Advisor recommendations for any and all pesticide applications performed. Contractor will be responsible for the material and labor and perform this work as well for all posting as required by label and law.

#### **3.3 Plant Maintenance**

3.3.1 All plant material in the public right-of-way shall be maintained one foot behind the curb line and/or sidewalk to allow for the safe passage of vehicles, pedestrians and/or the general public.

3.3.2 Dead flower stalks shall be pruned from plants at the conclusion of flowering. If plants (such as agaves) die after flowering, Contractor will remove the entire plant and, if needed, shall repair the irrigation and backfill the hole. There shall be no dead blossoms, stalks,

branches or foliage left on an otherwise healthy plant for more than one month, unless otherwise directed by Authority and/or the contract documents. If offshoots are present, they will be left in place and irrigation will be adjusted to assure adequate water supply to the offshoots.

3.3.3 Dead or weather-damaged plant material shall be pruned or removed under direction from Authority within one week of notification.

3.3.4 The Authority encourages contractors to familiarize themselves with the City of Palm Desert's "[Landscape Maintenance Guide](#)" book. The book, intended to serve as a visual guide to contractors, also provides pruning techniques and a calendar for ideal maintenance timing. The Authority may at its own discretion alter timelines or techniques and supply additional reference materials as the Authority deems necessary.

3.3.5 The plant material will be pruned as needed, to keep plant material to scale based on the planter size, plant species, plant location and for safety purposes. The Authority will work with the Contractor to determine appropriate size for each plant species. In addition, the Contractor shall perform a yearly pruning to reduce the size and density of all shrubs and groundcovers, as directed by the Authority.

3.3.6 Annual color shall include at a minimum 300 flats of 4 inch containers of annual color. Annuals to be changed in the spring (130 flats) and the fall (170 flats) of the year. Contractor to purchase, City to approve prior to installation. In the fall, at a minimum of 40 flats are to be 4 inch geraniums.

### **3.4 Tree Maintenance**

3.4.1 All tree pruning shall be consistent with the current and applicable International Society of Arboriculture (ISA) guidelines, the American National Standards Institute (ANSI) standards, the City of Palm Desert's Landscape Maintenance Guidelines book and the Tree Pruning Ordinance.

3.4.2 Contractor shall perform safety and sucker pruning on all trees (including palms) eight feet (8) in height and under. All broadleaf and palm tree pruning will be performed outside this contract. Contractor shall prune fronds, flowers, and seed pods on all palms that have six (6) feet of brown trunk or less. Authority may request that a Certified Arborist be on site when Contractor's staff safety prunes trees.

3.4.3 Tree branches shall be pruned as needed for traffic and pedestrian safety. Sidewalk clearance will be eight (8) feet and vehicular clearance fourteen (14) feet from grade. Trees must be maintained at seven (7) feet from playground equipment. Any broken, dead or detached limb is considered a hazard and upon notice from Authority, Contractor must remove such limbs by close of business the same day.

3.4.4 Trees broken or damaged as a direct result of storm, wind, accident, vandalism or structural failure shall be pruned and/or removed, upon Authority's request to Contractor, within 24 hours of notification and shall be an extra to this contract. Any debris blocking roadways or parking areas shall be removed within one hour of notification to Contractor. Replacement of trees and plants caused by reasons not related to contractual maintenance shall be reimbursable as an extra cost.

### **3.5 Turf Maintenance – General**

3.5.1 All turf areas must be mowed in a manner that provides for the adequate and safe use of each facility for its intended purpose.

3.5.2 Bermuda grass will be mowed at  $\frac{3}{4}$ " height during the active-growth period.

3.5.3 Rye grass will be mowed at 1" height starting with its first cut after over-seeding and continuing until spring when the Bermuda grass becomes active.

3.5.4 All turf areas will be mowed weekly and may be mowed with rotary mowers; however, if Authority deems that the finished turf surface is irregular, aesthetically unacceptable,

or if it creates a potential public safety issue, Authority will require the turf area to be mowed with a reel mower. Excess clippings will be raked, swept and/or vacuumed leaving a regular, clean, aesthetically acceptable and safe turf surface. Removal of clippings will be at no extra cost to the Authority.

3.5.5 Detailing and edging of turf shall include chemical and/or mechanical detailing using a string trimmer or an edger around buildings, sidewalks, mow strips, paved areas, valve boxes, goal posts, light fixtures, fence lines, walls, along infield edges, behind back-stops, drainage areas, and bare areas in planters. Only an edger shall be used on, but not be limited to hardscape areas such as sidewalks and mow strips. All other areas may use an edger or string trimmer as appropriate and as approved by Authority.

3.5.6 Contractor shall provide the labor and equipment for the application of fertilizers and fertilizers with pre-emergent(s) and post-emergent(s). Fertilizer and fertilizer with pre-emergent(s) and post-emergent(s) will be supplied by Contractor. Standard fertilizer may be supplied by Authority. In the event Contractor supplies standard fertilizer, the Authority will reimburse Contractor at actual cost plus 15% mark-up. The Contractor shall apply irrigation immediately following any fertilizer application to effectively wash the product into the soil. Contractor shall also post notifications as required by the product labeling and law.

### **3.6 Turf Maintenance – Overseeding**

3.6.1 Turf areas designated for over-seeding will be indicated in the Frequency Schedule. Authority will provide specific dates and times for the over-seeding schedule based on the use of each facility.

3.6.2 Contractor shall begin lowering the height of the turf during the scheduled weekly mowing approximately three weeks before the final cut. One week before the final cut, Contractor will reduce irrigation to the minimum in the turf areas. Contractor shall mow turf to a height of one-half inch (1/2") and mower blades shall not be allowed to disturb the soil.

3.6.3 All grass clippings generated from this process will be vacuumed, swept or raked after each cut.

3.6.4 A light irrigation syringe cycle will be applied before the final cut to keep the dust levels to a minimum (per Coachella Valley Association of Governments guidelines).

3.6.5 Actual dates for the final mowing will be determined by Authority. Mowing activities may vary due scheduled activities, condition of turf, and the actual mowing height needed to ensure seed-to-soil contact. Should Contractor fail to complete mowing or renovations during weekdays, Contractor shall adjust the schedule to work on Saturdays at no additional cost to Authority. Advance permission to perform work on Saturdays is required.

3.6.6 The Authority may supply grass seed. However, the Authority may request that Contractor supply Authority specified grass seed, and be reimbursed at the cost of material plus an allowable mark-up of fifteen percent (15%). The application rate for the seed shall be no less than ten (10) pounds per 1,000 square feet. The Contractor shall also spot seed and mulch as necessary, areas after germination to ensure a well-covered rye stand, at no additional labor cost as directed by the Authority. The Contractor is to verify and confirm quantity of seed bags with Authority personnel prior to installation and after seeding task is complete.

### **3.7 Hardscape, and Decomposed Granite (DG) Planter Areas**

3.7.1 Contractor shall remove any sand, gravel, grass, and plant clippings or debris from all sidewalk and hardscape areas after all maintenance activities or as indicated in the Frequency Schedule.

3.7.2 Daily sidewalk cleaning shall consist of removing debris from sidewalks by blowing or sweeping. Carports, basketball courts, tennis courts and all other hardscape areas

not previously addressed shall consist of removing debris either blown or swept weekly. Blower throttle to be maintained at the lowest practical setting possible.

3.7.3 Contractor shall rake planter areas. Contractor shall also rake underneath living plant material, unless **directed not** to do so by Authority. Slope areas are to be raked horizontally and not from top to bottom. If existing grade is adversely affected by raking activities, Contractor shall re-establish an appropriate grade to the satisfaction of Authority.

3.7.4 Using pressure-wash equipment at a minimum pressure rating of 3000 PSI, Contractor shall pressure-wash playground equipment, monuments and signs, sidewalks, curbs, gutters, drains, benches, fixtures, drinking fountains, picnic tables and miscellaneous hardscape fixtures as outlined in the Frequency Schedule. The Contractor shall use, as directed by the Authority, a scrub brush and a Authority-approved non-toxic biodegradable cleaning agent to adequately clean the aforementioned items, as deemed acceptable by Authority. Contractor will also remove any tape, banners, and party supplies from playground shelters and pavilions in conjunction with the pressure washing duties. This process shall be considered as included in the contract lump sum bid price, and no additional compensation shall be allowed therefor.

3.7.5 Contractor shall remove litter and debris obstructing spillways and their associated drain grates. This activity shall take place according to the Frequency Schedule, and after a rain event as determined by Authority staff.

### **3.8 Irrigation System Maintenance**

3.8.1 The operation, maintenance, and scheduling of all irrigation controllers and attached sensors shall be the responsibility of Contractor. Contractor will make adjustments to the controllers, sensor equipment, and schedules based on property microclimates, evapotranspiration, rain events, and overseeding schedules. Contractor will schedule irrigation to provide adequate irrigation to plant material while conserving water as much as possible. NOTE: Irrigation systems currently are not Smart Controllers and will require manual adjusting.

3.8.2 All irrigation systems and their individual components shall be kept in adjustment to ensure proper water coverage and prevent unacceptable conditions such as insufficient water distribution (plant death), overspray, excessive runoff, and erosion.

3.8.3 Repairs or replacements to the irrigation system shall be made with like parts.

3.8.4 Contractual irrigation system maintenance includes all labor for system inspections, adjustments, repairs and installations for all system components, in-line irrigation valves, including internal and electrical components, irrigation wires from the timer to the valve, and all mainline and lateral line repairs two inches (2") and smaller in diameter, unless damage is caused by vandalism. Should vandalism occur, the Contractor is to notify Authority staff immediately and prior to the repair work. All irrigation rotors, bubblers, emitters, associated fittings, and valve boxes shall also be included under contractual system maintenance. Any repair work outside of this scope will be considered extra work and paid accordingly. All parts shall be provided by the Contractor and will be reimbursed by the Authority at actual cost plus a fifteen percent (15%) mark-up, unless the replacement is due to damage caused by the Contractor's operation, in such case the Contractor shall bear the entire cost. Adjustments, repairs and installations shall include:

3.8.4.1 Valves: electrically actuated irrigation control valves, quick coupler valves, end line flush valves, lateral line flush valves, and master valves. All valves will be checked for proper operation, leaks, and solenoid function and connections (where applicable). Automatic valves will be activated from the irrigation controller, not from the bleeder valve.

3.8.4.2 The electrical circuit from the irrigation controller to the valve will be checked for proper operation. Labor cost for the actuators replacement shall be included in the contract lump sum bid price, and no additional compensation shall be allowed therefor.

3.8.4.3 Filter, filter screen, and filter valve box cleaning.

3.8.4.4 Lateral lines will be checked for breaks and leaks, and will be flushed at least yearly and additionally when necessary to ensure proper system performance.

3.8.4.5 Emission device and valve box checks, adjustments, installation, maintenance and repairs shall include: sprinkler head and valve box height adjustment and replacement; nozzle spray pattern adjustment; nozzle cleaning and replacement; bubbler head height adjustment, cleaning, and replacement; tree well repair; and drip emitter cleaning, replacement, removal and plugging if no plant material is present. Installation of new emitters, or bubblers, as required to ensure the health of plant material, shall be included in the contract lump sum bid price and no additional compensation shall be allowed therefor.

3.8.4.6 The Contractor shall perform, at a minimum, a weekly visual irrigation inspection, within the designated landscape maintenance area, for leaks, dry areas, and vandalism. Contractor shall take appropriate action to immediately stabilize the system. Such actions shall be reported to the Authority within twenty-four (24) hours of discovery and performance of necessary repairs.

3.8.4.7 Contractor shall maintain an adequate supply of irrigation parts readily available to Contractor's irrigation technician for making routine repairs of main and lateral lines two inch (2") in diameter and smaller without leaving the irrigation site.

3.8.5 Non-contractual irrigation system repairs:

3.8.5.1 No non-contractual work will be initiated without an approved Authority Work Order.

3.8.5.2 When irrigation system malfunction or damage is detected, the repair of which is non-contractual in nature, Contractor will flag the location and notify Authority before the close of business the same work day.

3.8.5.3 Upon receipt of an approved Work Order, repairs to a non-operational and/or damaged irrigation system shall be completed within 24 hours, or as otherwise indicated on the Work Order.

3.8.5.4 All repairs deemed non-contractual will be paid on a time-and-materials basis.

3.8.5.5 Labor will be billed per the rates under the Performance of Extra Work heading.

3.8.5.6 Materials will be billed at "cost plus 15%" or, at Authority's discretion; materials may be supplied to Contractor by Authority.

3.8.5.7 Contractor shall return to Authority all irrigation parts that have been replaced.

3.8.5.8 Authority will perform regular inspections of irrigation systems to ensure accuracy of Contractor's irrigation reports. If discrepancies are found, Authority shall consider this a performance deficiency.

**EXHIBIT "B"**  
**SCHEDULE OF SERVICES**

**Contractor to perform scope of work according to schedule listed in Exhibit "F".**

**EXHIBIT "C"**  
**COMPENSATION**

**\$418,680.00 Annually**  
**Not to Exceed \$85,000 for Authorized Extra Work Annually**

**EXHIBIT "D"**  
**PAYMENT AND PERFORMANCE BONDS**

**PERFORMANCE BOND**

KNOW ALL PERSONS BY THESE PRESENTS:

THAT WHEREAS, the Palm Desert Housing Authority (hereinafter referred to as "Authority") has awarded to \_\_\_\_\_, (hereinafter referred to as the "Contractor") \_\_\_\_\_ an agreement for \_\_\_\_\_ (hereinafter referred to as the "Project").

WHEREAS, the work to be performed by the Contractor is more particularly set forth in the Contract Documents for the Project dated \_\_\_\_\_, (hereinafter referred to as "Contract Documents"), the terms and conditions of which are expressly incorporated herein by reference; and

WHEREAS, the Contractor is required by said Contract Documents to perform the terms thereof and to furnish a bond for the faithful performance of said Contract Documents.

NOW, THEREFORE, we, \_\_\_\_\_, the undersigned Contractor and \_\_\_\_\_ as Surety, a corporation organized and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto the Authority in the sum of \_\_\_\_\_ DOLLARS, (\$\_\_\_\_\_), said sum being not less than one hundred percent (100%) of the total amount of the Contract, for which amount well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that, if the Contractor, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the Contract Documents and any alteration thereof made as therein provided, on its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their intent and meaning; and shall faithfully fulfill all obligations including the one-year guarantee of all materials and workmanship; and shall indemnify and save harmless the Authority, its officers and agents, as stipulated in said Contract Documents, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a condition precedent to the satisfactory completion of the Contract Documents, unless otherwise provided for in the Contract Documents, the above obligation shall hold good for a period of one (1) year after the acceptance of the work by Authority, during which time if Contractor shall fail to make full, complete, and satisfactory repair and replacements and totally protect the Authority from loss or damage resulting from or caused by defective materials or faulty workmanship, Surety shall undertake and faithfully fulfill all such obligations. The obligations of Surety hereunder shall continue so long as any obligation of Contractor remains. Nothing herein shall limit the Authority's rights or the Contractor or Surety's obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure section 337.15.

Whenever Contractor shall be, and is declared by the Authority to be, in default under the Contract Documents, the Surety shall remedy the default pursuant to the Contract Documents, or shall promptly, at the Authority's option:

- (1) Take over and complete the Project in accordance with all terms and conditions in the Contract Documents; or
- (2) Obtain a bid or bids for completing the Project in accordance with all terms and conditions in the Contract Documents and upon determination by Surety of the lowest responsive and responsible bidder, arrange for a Contract between such bidder, the Surety and the Authority, and make available as work progresses

sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by the Authority under the Contract and any modification thereto, less any amount previously paid by the Authority to the Contractor and any other set offs pursuant to the Contract Documents.

- (3) Permit the Authority to complete the Project in any manner consistent with local, California and federal law and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by the Authority under the Contract and any modification thereto, less any amount previously paid by the Authority to the Contractor and any other set offs pursuant to the Contract Documents.

Surety expressly agrees that the Authority may reject any contractor or subcontractor which may be proposed by Surety in fulfillment of its obligations in the event of default by the Contractor.

Surety shall not utilize Contractor in completing the Project nor shall Surety accept a bid from Contractor for completion of the Project if the Authority, when declaring the Contractor in default, notifies Surety of the Authority's objection to Contractor's further participation in the completion of the Project.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project to be performed thereunder shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project, including but not limited to the provisions of sections 2819 and 2845 of the California Civil Code.

[SIGNATURE ON NEXT PAGE]

IN WITNESS WHEREOF, we have hereunto set our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_).

(Corporate Seal)

\_\_\_\_\_  
Contractor/ Principal  
By \_\_\_\_\_  
Title \_\_\_\_\_

(Corporate Seal)

Surety  
By \_\_\_\_\_  
Attorney-in-Fact

Signatures of those signing for the Contractor and Surety must be notarized and evidence of corporate authority attached.

(Attach Attorney-in-Fact Certificate) Title \_\_\_\_\_  
The rate of premium on this bond is \_\_\_\_\_ per thousand. The total amount of premium charges, \$\_\_\_\_\_.  
(The above must be filled in by corporate attorney.)

**THIS IS A REQUIRED FORM**

Any claims under this bond may be addressed to:

(Name and Address of Surety) \_\_\_\_\_

\_\_\_\_\_

(Name and Address of Agent or Representative for service of process in California, if different from above) \_\_\_\_\_

\_\_\_\_\_

(Telephone number of Surety and Agent or Representative for service of process in California) \_\_\_\_\_

\_\_\_\_\_

NOTE: A copy of the Power-of-Attorney authorizing the person signing on behalf of the Surety to do so must be attached hereto.

**Notary Acknowledgment**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, 20\_\_\_\_, before me, \_\_\_\_\_, Notary Public, personally

appeared \_\_\_\_\_, who proved to me on the basis of satisfactory

evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) 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 of Notary Public

\_\_\_\_\_

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**CAPACITY CLAIMED BY SIGNER**

**DESCRIPTION OF ATTACHED DOCUMENT**

- Individual
- Corporate Officer

- |   |                                  |          |
|---|----------------------------------|----------|
| _____   |                                  | Title(s) |
| <input type="checkbox"/> Partner(s)           | <input type="checkbox"/> Limited |          |
|   | <input type="checkbox"/> General |          |
| <input type="checkbox"/> Attorney-In-Fact     |                                  |          |
| <input type="checkbox"/> Trustee(s)           |                                  |          |
| <input type="checkbox"/> Guardian/Conservator |                                  |          |
| <input type="checkbox"/> Other:               |                                  |          |

	Title or Type of Document
_____	
Number of Pages	
_____	
Date of Document	
_____	

Signer is representing:  
Name Of Person(s) Or Entity(ies)

\_\_\_\_\_

Signer(s) Other Than Named Above

NOTE: This acknowledgment is to be completed for Contractor/Principal.

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Signature of Notary Public

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- Individual
- Corporate Officer

\_\_\_\_\_ Title(s)

- Partner(s)  Limited
- General

- Attorney-In-Fact
- Trustee(s)
- Guardian/Conservator
- Other:

Signer is representing:  
Name Of Person(s) Or Entity(ies)

\_\_\_\_\_

\_\_\_\_\_ Title or Type of Document

\_\_\_\_\_ Number of Pages

\_\_\_\_\_ Date of Document

\_\_\_\_\_ Signer(s) Other Than Named Above

NOTE: This acknowledgment is to be completed for the Attorney-in-Fact. The Power-of-Attorney to local representatives of the bonding company must also be attached.

**PAYMENT BOND**

KNOW ALL MEN BY THESE PRESENTS That

WHEREAS, the Palm Desert Housing Authority (hereinafter designated as the "Authority"), by action taken or a resolution passed \_\_\_\_\_, 20\_\_\_\_ has awarded to \_\_\_\_\_ hereinafter designated as the "Principal," a contract for the work described as follows:

\_\_\_\_\_ (the "Project"); and  
WHEREAS, the work to be performed by the Principal is more particularly set forth in the Contract Documents for the Project dated \_\_\_\_\_ ("Contract Documents"), the terms and conditions of which are expressly incorporated by reference; and

WHEREAS, said Principal is required to furnish a bond in connection with said contract; providing that if said Principal or any of its Subcontractors shall fail to pay for any materials, provisions, provender, equipment, or other supplies used in, upon, for or about the performance of the work contracted to be done, or for any work or labor done thereon of any kind, or for amounts due under the Unemployment Insurance Code or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of said Principal and its Subcontractors with respect to such work or labor the Surety on this bond will pay for the same to the extent hereinafter set forth.

NOW THEREFORE, we, the Principal and \_\_\_\_\_ as Surety, are held and firmly bound unto the Authority in the penal sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if said Principal, his or its subcontractors, heirs, executors, administrators, successors or assigns, shall fail to pay any of the persons named in Section 9100 of the Civil Code, fail to pay for any materials, provisions or other supplies, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or amounts due under the Unemployment Insurance Code with respect to work or labor performed under the contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department or Franchise Tax Board from the wages of employees of the contractor and his subcontractors pursuant to Section 18663 of the Revenue and Taxation Code, with respect to such work and labor the Surety or Sureties will pay for the same, in an amount not exceeding the sum herein above specified, and also, in case suit is brought upon this bond, all litigation expenses incurred by Authority in such suit, including reasonable attorneys' fees, court costs, expert witness fees and investigation expenses.

This bond shall inure to the benefit of any of the persons named in Section 9100 of the Civil Code so as to give a right of action to such persons or their assigns in any suit brought upon this bond.

It is further stipulated and agreed that the Surety on this bond shall not be exonerated or released from the obligation of this bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, plans, specifications, or agreement pertaining or relating to any scheme or work of improvement herein above described, or pertaining or relating to the furnishing of labor, materials, or equipment therefore, nor by any change or modification of any terms of payment or extension of the time for any payment pertaining or relating to any scheme or work of improvement herein above described, nor by any rescission or attempted rescission of the contract, agreement or bond, nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement or under the bond, nor by any fraud practiced by any person other than the claimant seeking to recover on the bond and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given,

and under no circumstances shall Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between the owner or Authority and original contractor or on the part of any obligee named in such bond, but the sole conditions of recovery shall be that claimant is a person described in Section 9100 of the Civil Code, and has not been paid the full amount of his claim and that Surety does hereby waive notice of any such change, extension of time, addition, alteration or modification herein mentioned and the provisions of sections 2819 and 2845 of the California Civil Code.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

(Corporate Seal)\_\_\_\_\_

Contractor/ Principal

By \_\_\_\_\_  
Title \_\_\_\_\_  
\_\_\_\_\_

(Corporate Seal)

Surety  
By \_\_\_\_\_  
  
Attorney-in-Fact  
Title \_\_\_\_\_

Signatures of those signing for the Contractor and Surety must be notarized and evidence of corporate authority attached. A Power-of-Attorney authorizing the person signing on behalf of the Surety to do so much be attached hereto.

NOTE: A copy of the Power-of-Attorney authorizing the person signing on behalf of the Surety to do so must be attached hereto.

**Notary Acknowledgment**

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STATE OF CALIFORNIA

COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, 20\_\_\_\_, before me, \_\_\_\_\_, Notary Public, personally

appeared \_\_\_\_\_, who proved to me on the basis of satisfactory

evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) 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 of Notary Public

\_\_\_\_\_

**OPTIONAL**

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**CAPACITY CLAIMED BY SIGNER**

**DESCRIPTION OF ATTACHED DOCUMENT**

- Individual
- Corporate Officer

- \_\_\_\_\_ Title(s)
- Partner(s)
    - Limited
    - General
  - Attorney-In-Fact
  - Trustee(s)
  - Guardian/Conservator
  - Other:

\_\_\_\_\_ Title or Type of Document

\_\_\_\_\_ Number of Pages

\_\_\_\_\_ Date of Document

Signer is representing:  
Name Of Person(s) Or Entity(ies)

\_\_\_\_\_  
\_\_\_\_\_

Signer(s) Other Than Named Above

NOTE: This acknowledgment is to be completed for Contractor/Principal

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STATE OF CALIFORNIA

COUNTY OF \_\_\_\_\_

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\_\_\_\_\_

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\_\_\_\_\_ Number of Pages

\_\_\_\_\_ Date of Document

\_\_\_\_\_ Signer(s) Other Than Named Above

NOTE: This acknowledgment is to be completed for the Attorney-in-Fact. The Power-of-Attorney to local representatives of the bonding company must also be attached.

**EXHIBIT "E"**  
**SPECIAL PROVISIONS**

**1. PRE-COMMENCEMENT CONFERENCE**

A pre-commencement conference shall be conducted at the Palm Desert City Hall, 73-510 Fred Waring Drive, Palm Desert, California, 92260 prior to the start of construction. The job-site foreman or superintendent assigned by the Contractor for this project shall be present at the Pre-commencement Meeting. The Contractor shall prepare a tentative maintenance schedule for submission and review at the Pre-Construction Meeting. The discussion shall include but not be limited to: project supervision; progress schedules and reports; payments to Contractor; safety; and other anticipated issues pertinent to the contract.

At this conference, the Contractor shall designate, in writing, a representative who shall have complete authority to act for the Contractor. An alternate representative may be designated. The representative or alternate shall be present at the job site whenever work is in progress or whenever actions of the elements necessitate its presence to take measures necessary to protect the project, persons, or property. Any order or communication given to this representative shall be deemed delivered to the Contractor.

In the absence of the Contractor or its designated representative, necessary or desirable directions or instructions may be given by the Engineer to the superintendent or person having charge of the specific work to which the order applies. Such order shall be complied with promptly and referred to the Contractor or its representative.

Those attending the meeting shall include, but not be limited to the following:

1. Contractor
2. City of Palm Desert Department Project Manager
3. Palm Desert Housing Authority Staff
4. Falkenberg/Gilliam & Associates Property Management Staff
5. Pertinent Subcontractor(s)

**2. PUBLIC CONVENIENCE**

The Contractor shall conduct operations as to offer the least possible obstruction and inconvenience to the public and shall have under active maintenance no greater length or amount of work than can be prosecuted properly with due regard to the rights of the public. Contractor must obey Housing directives.

Pedestrian paths of travel must be maintained free of obstructions and hazardous conditions, except where the condition is necessary for completion of the work. To the extent any portion of the work requires obstructing pedestrian paths of travel, the work shall be performed so as to minimize the extent of the obstruction. Where Contractor's operations may create hazardous conditions to pedestrian paths of travel, appropriate

signing and barricades shall be installed to safely route pedestrians around the impacted area.

### 3. HOURS OF WORK

Unless otherwise approved by Authority, Contractor shall not work outside the established hours of operation under this contract:

May 1 through September 30

Weekdays (MTWTF):	6:00 AM to 7:00 PM
Weekends (Saturday):	*8:00 AM to 5:00 PM
Weekends (Sunday):	No Work
Government Code Holidays:	No Work

October 1 through April 30

Weekdays (MTWTF):	7:00 AM to 5:30 PM
Weekends (Saturday):	*8:00 AM to 5:00 PM
Weekends (Sunday):	No Work
Government Code Holidays:	No Work

**Contractor may ONLY use or operate any motorized equipment within the hours specified by Palm Desert Municipal Code 9.24.075.**

\*Work is permitted on Saturdays only with prior approval by Authority or its agent.

Work is not permitted on Sundays and during Authority holidays.

Failure to observe these work hours may result in a citation being issued to the offenders by the police department. (***Emergency work directed by Authority is not held to these restrictions.***)

Contractor shall provide twenty-four- (24) hour emergency service, with prompt correction of mitigation of emergency damage, when notified of an occurrence. An emergency that is causing a hazard to the public or property must be responded to within one-half (½) hour. Failure to do so may result in monetary deductions from the monthly billing. Response to emergency service shall be paid at the contract rate for additional work. Work should be limited to the level required to mitigate an emergency and further repairs shall be completed during normal working hours.

#### 4. UTILITY REQUIREMENTS

The Contractor is advised of the existence of the utility notification service provided by UNDERGROUND SERVICE ALERT (USA). USA member utilities will provide the Contractor with the precise locations of their substructures in the construction area when the Contractor gives at least 48-hours' notice to the Underground Service Alert by calling 1-800-227-2600. The location and existence of utilities and improvements shown on the plans are approximate and taken from available records. The Contractor shall verify the location of existing improvements and shall take all precautions to protect them whether shown or not.

The Contractor shall notify the following agencies at least 48 hours in advance of excavating around any of their structures. The utility companies listed below can be contacted as indicated. It shall be the responsibility of the Contractor to coordinate all phases of construction with the various utility companies involved.

1. The Gas Company  
Protection of existing facilities by Contractor.  
1981 West Lugonia Avenue  
Redlands, CA 92374  
Contact: Michael Jacob  
Tel: (909) 335-7755  
Fax: (909) 335-7527  
mgjacob@semprautilities.com
2. Southern California Edison Company (SCE)  
Protection of existing facilities by Contractor.  
Adjustment or relocation of facilities as shown on the plans by SCE.  
36-100 Cathedral Canyon Drive  
Cathedral City, CA 92234  
Contact: Jeffery Goad  
Tel: (760) 202-4221  
Fax: (760) 202-4294  
Jeffrey.goad@sce.com
3. Verizon  
Protection of existing facilities by Contractor.  
Adjustment or relocation of facilities as shown on the plans by Verizon.  
295 N. Sunrise Way  
Palm Springs, CA 92262  
Contact: Larry Moore  
Tel: 760-778-3603  
Fax: 760-325-2536
4. Coachella Valley Water District  
Protection of existing facilities.

Adjustment or relocation of facilities by the Contractor.  
P.O. Box 1058  
Coachella, CA 92236  
Contact: Tyler Hull  
Tel: 760-398-2651  
Fax: 760-398-3711  
thull@cvwd.org

5. Time-Warner Cable  
Protection of existing facilities by Contractor.  
Adjustment or relocation of facilities as shown on the plans by Time Warner  
83473 Avenue 45  
Indio, CA 92201-7333  
Contact: Ramon Hernandez  
Tel: 760-904-5448  
ramon.hernandez@twcable.com
6. City of Palm Desert
  - a. Protection of existing traffic signal and interconnect facilities
  - b. 760-776-6363

The California Public Utilities Commission mandates that, in the interest of public safety, main line gas valves be maintained in a manner to be readily accessible and in good operating condition. The Contractor shall notify the Southern California Gas Company's Headquarters Planning Office at (909) 335-7581 at least two (2) working days prior to the start of construction.

The Contractor shall coordinate installation of utility facilities within the project with the inspector listed above as contact. Requests for information not shown on the specific utility installation plan shall be directed to the contact for that utility. The exact location and identification of all existing utilities shall be determined by the Contractor prior to the start of any work. The Contractor shall protect-in-place all utilities unless otherwise noted on the plans.

All existing city-owned utilities located in sidewalk, driveway approach, access ramp or any area requiring grade adjustment due to the proposed improvements shall be considered appurtenant to the bid item for which the adjustment is required.

## **5. ENGINEER**

The City of Palm Desert Engineer shall act as the Housing's representative during the construction period. The Engineer shall determine the amount, quality, acceptability and fitness of all parts of the work, and interpret the Contract Documents. The Engineer shall make visits to the site and determine if the work is proceeding in accordance with the Contract Documents. No act or omission of the Engineer relieves Contractor of the duty to proceed with the work in strict conformity with the Contract Documents.

Upon request, Engineer shall reduce to writing any oral order, objection, requirement or determination. Wherever Engineer's approval is required it shall be in writing only. All communications to City by Contractor shall be via Engineer. No work shall be performed on site other than during normal working hours without the knowledge and consent of Engineer. The Contractor, and not the Engineer, will be responsible for the construction means, controls, techniques, sequences, procedures, and construction safety. As stated elsewhere, amounts shown in the Bid and Agreement as to quantities are but estimates only.

Engineer shall direct Contractor as to the prosecution of the work in such a manner as to increase or decrease such estimates as to the work actually to be done. Contractor shall comply with such instructions and shall be paid only for work actually done based on the unit price set out in the Agreement.

## **6. EXISTING FACILITIES AND CONTRACTOR PROCEDURE**

Elsewhere in the Contract Documents reference may be made graphically, descriptively or both - to the existence or possible existence of other improvements affecting the site and the prosecution of the work such as surface and subsurface utilities, drainage ditches and courses, buildings, fencing, retaining walls, roadways, curbs, trees, shrubs, and similar matters. Such matters are included to be used by Contractor to the extent it deems appropriate. However it is expressly understood and agreed:

1. Showing or describing such items does not mean that it is an exhaustive and complete presentation and that as to matters shown or described that they necessarily exist and no responsibility is assumed by Authority as to their exact location. The Contractor shall be responsible for locating and protecting all utilities during the course of the work. Damage caused by Contractor's operations to facilities that are shown or otherwise indicated to Contractor by Engineer or Utility Company, shall be repaired or replaced by and at the expense of Contractor.
2. All graphic presentations are schematic only unless the contrary is clearly set out elsewhere as to a particular matter.  
All improvements whether elsewhere shown or described or not - shall, unless the contrary is elsewhere specifically directed, remain in place, undisturbed and suitably protected during the course of the work.  
Whenever, during the course of the work, a subsurface improvement is discovered which Contractor believes is unknown to Authority, it shall immediately so inform Engineer. Except as elsewhere provided, whenever in the course of the work it becomes apparent that the work cannot proceed without the destruction or relocation of any improvement whether shown or described or not - Contractor shall immediately cease work affecting such improvements and notify Engineer as to such circumstance and await instruction as to how to proceed. Engineer may provide for such relocation work to be performed by other forces, or direct that it may be performed by Contractor as a change in the work.

3. Prior to the start of any excavation the Contractor shall coordinate his work with all utility companies having services in the area and shall request that they mark all their locations on the ground. The Contractor shall be required to cooperate fully with all utility forces or forces of other public agencies engaged in relocation, lowering, or otherwise rearranging any facilities interfacing with the progress of work or installing any facilities thereon.  
The Contractor will also be required to cooperate fully with any City, County or State forces working on or near the project, or requiring access to the work in the performance of their duties.
4. Where underground main distribution conduits such as water, gas, sewer, electric, telephone or cable television are shown on the Plans, the Contractor, for the purpose of preparing a bid, shall assume that every adjacent property will be served by a service connection for each type of utility.
5. Electric Power, Communications, and Gas: Engineer will make arrangements, in advance of construction, for all required modifications to electric power, communications and natural gas facilities to be performed by the Owner or operators of such facilities. To this end, Contractor shall indicate in its construction schedule the latest dates for completion of such modifications for the locations where they will be encountered during the course of the work.
6. Water Supply, Sewerage and Drainage: Contractor shall make all modifications to existing water supply, sewerage and drainage facilities as required to permit performance of the construction work. Temporary facilities and diversions will be permitted to the extent that they assure continuity in the service, and quality of service provided by the existing facilities.  
The hydraulic capacity of drainage facilities, which serve the project area during construction, shall be equal to or greater than the hydraulic capacity that existed prior to construction.
7. Walls, Fences, Gates and Enclosures: Contractor shall remove, modify and reconstruct all walls, fences, gates, and enclosures as necessary for construction. The relocation and reconstruction of such structures shall in general be performed at or adjacent to the limits of the rights-of-way unless directed otherwise.
8. When existing sidewalk is removed, entire panels shall be removed and replaced to the nearest joint. The Contractor shall take all precautions to protect all existing improvements unless otherwise noted.
9. When joining existing pavement, Contractor shall feather a minimum of 10 feet or that, which is shown on the construction plan. New construction joining existing paving shall be done with no dangerous or noticeable joints as determined by the Engineer.
10. Roads, Culverts and Associated Structures: Contractor shall make all necessary modifications, relocations and reconstruction of existing roads, and associated structures such as culverts, drainage facilities and the like as necessary for construction of works described in these specifications.
11. General: All modifications, relocations and reconstruction work shall conform with the designs of the existing facilities to the extent practicable, and the finished work and structures shall be equal to or better in all respects than the original facilities.

12. Salvage: To the extent practicable, suitable materials shall be salvaged from existing facilities that are to be moved from the rights-of-way and shall be reused in constructing relocated or modified facilities. The salvaged materials shall be cleaned, painted or renovated as necessary to meet the quality requirements specified in the preceding paragraph. All foreign matter shall be disposed of in designated waste areas.

## **7. USE OF AND PROTECTION OF PREMISES AND REMOVAL OF DEBRIS**

The Contractor shall be responsible for all damages to persons or property that occurs as a result of the work. Contractor shall be responsible for the proper care and protection of all materials delivered and work performed until completion and final acceptance by the Authority. All work shall be solely at the Contractor's risk. Contractor shall adequately protect adjacent property from settlement or loss of lateral support as necessary. Contractor shall comply with all applicable safety laws and building codes to prevent accidents or injury to persons on, about, or adjacent to the Project site where work is being performed. Contractor shall erect and properly maintain at all times, as required by field conditions and progress of work, all necessary safeguards, signs, barriers, lights, and watchmen for protection of workers and the public, and shall post danger signs warning against hazards created in the course of construction.

Contractor shall remove at its own expense all rubbish and waste materials resulting from its operations, including any material that may fall in swimming pools, lagoons, or other water features. If on private property, Contractor must obtain permission from the property owner prior to removing debris. All debris must be removed before the end of the day unless otherwise directed by Authority or Authority's agent.

## **8. CHANGES IN THE WORK**

Contractor shall make no changes in the work without written direction from Authority. Contractor shall not be compensated for any change made without Authority's written direction. No changes in the work covered by this Agreement shall exonerate any surety or any bond given in connection with this Agreement. All such changes in the work authorized by change order shall be performed under the applicable conditions of the Contract Documents. Contractor must give written notice of a proposed change order required for compliance with the Contract Documents within seven (7) days of discovery of the facts giving rise to the proposed change order.

If Authority directs the Contractor in writing to make changes in the work that materially affect the cost of performing the work, the Agreement price will be adjusted based on one of the following:

1. Where the work involved is covered by unit prices contained in the Contract Documents, by application of unit prices to the quantities involved in the changed work;
2. By a combination of existing and new unit prices and related quantities for the changed work;
3. Time and Materials, calculated as set forth below; or

4. By mutual acceptance of a lump sum.  
The cost for extra or changed work performed on a Time and Materials basis shall be determined as follows:

1. Labor: Contractor will be paid cost of labor for workers used in actual and direct performance of extra work, including only the actual wages paid which shall include any employer payments to or on behalf of workers for health and welfare, pension, vacation, and similar purposes.
2. Material: Only materials furnished by Contractor and necessarily used in performance of extra Work will be paid for. Cost of such materials will be cost, including sales tax and delivery charges.
3. Equipment: For Contractor-owned equipment, payment will be made at rental rates listed for equipment in California Department of Transportation official equipment rental rate schedule which is in effect on the date upon which the extra Work is accomplished and which schedule is incorporated herein by reference as though fully set forth herein.
  - (a) For rented equipment, payment will be made based on actual rental invoices. Equipment used on extra work shall be of proper size and type.
  - (b) Rental rates paid shall be deemed to cover cost of fuel, oil, lubrication, supplies, small tools, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance, and all incidentals. Unless otherwise specified, manufacturer's ratings, and manufacturer-approved modifications, shall be used to classify equipment for determination of applicable rental rates. Rental time will not be allowed while equipment is inoperative due to breakdowns.
  - (c) Individual pieces of equipment or tools having a replacement value of \$100 or less, whether or not consumed by use, shall be considered to be small tools.
4. Overhead And Profit For Time And Materials. For work Contractor performs on Time and Materials at Authority's direction, the following markups will be added to the cost of labor, materials and equipment, calculated as described above.
  - (a) Overhead and profit on labor shall be fifteen percent (15%).
  - (b) Overhead and profit on materials shall cost plus fifteen percent (15%).
  - (c) Overhead and profit on equipment rental shall be ten percent (10%).
  - (d) On proposals covering both increases and decreases in Agreement price, overhead and profit shall be allowed on the net increase only as determined in this paragraph. When the net difference is a deletion, no percentage for overhead or profit will be allowed, but rather a deduction shall apply.
  - (e) The markup shall include profit, small tools, cleanup, supervision, warranties, cost of preparing the cost proposal, jobsite overhead,

and home office overhead. No markup will be allowed on taxes, insurance, and bonds.

If no agreement can be reached on a change order, Authority shall have the right to issue a unilateral change order setting forth its determination of the reasonable additions or savings in costs and time attributable to the extra or deleted work. Such determination shall become final and binding if the Contractor fails to submit a claim in writing to Authority within seven (7) days of the issuance of the unilateral change order, disputing the terms of the unilateral change order and providing sufficient supporting documentation for its position as Authority may reasonably require.

## **9. CLAIMS**

The Contractor will indemnify and save the Authority, City and their agents harmless from all claims growing out of the lawful demand of Subcontractors, laborers, workmen, mechanics, material supplier, and furnishers of machinery and parts thereof, equipment tools, and supplies, incurred in the furtherance of the performance of the work. The Contractor shall, at the Authority's request, furnish satisfactory evidence that all obligations of the nature designated above have been paid, discharged, or waived. If the Contractor fails to do so the Authority may, after having notified the Contractor, either pay unpaid bills or withhold from the Contractor's unpaid compensation a sum of money deemed reasonable and sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged whereupon payment to the Contractor shall be resumed, in accordance with the terms of the Contract Documents, but in no event shall the provisions of this sentence be constructed to impose any obligations upon the Authority to either the Contractor his Surety, or any third party. In paying any unpaid bills of the Contractor, any payment so made by the Authority shall be considered as a payment made under the Contract Documents by the Authority to the Contractor and the Authority shall not be liable to the Contractor for any such payment made in good faith.

## **10. DISPUTE RESOLUTION**

Notwithstanding any other provision herein, provisions and procedures in this Section, claims of \$375,000 or less shall be resolved pursuant to the procedures set forth in California Public Contract Code §§ 20104, et seq. Contractor shall comply with the claim procedures set forth in Government Code section 900 et seq. prior to filing any lawsuit against the Authority. If no such Government Code claim is submitted, or if the prerequisite contractual requirements are not otherwise satisfied as specified herein, Contractor shall be barred from bringing and maintaining a lawsuit against the Authority.

## **11. PROJECT SAFETY**

The Contractor shall take all responsible precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to:

1. All employees on the project and all other persons who may be affected thereby;

2. All the work and all materials and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of the Contractor or any of his Subcontractor or Sub-Subcontractors;
3. Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction; and
4. Vehicular and pedestrian traffic on or near the project site. This requirement shall apply continuously and not be limited to normal working hours.

The Contractor is responsible to design, construct and maintain all safety devices as required by law or manufacture. The Contractor shall give all notices and comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the safety of persons or property or their protection from damage, injury or loss. Neither the Authority nor the Authority's Representative shall enforce safety measures or regulations. The contractor must submit a comprehensive written safety program covering all aspects of onsite and applicable offsite operations and activities associated with the contract.

The Contractor shall erect and maintain, as required by existing conditions and progress of the work, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent utilities. The Contractor shall use proper safety signing and barricading as required by the California Manual on Uniform Traffic Control Devices (CA MUTCD) and the W.A.T.C.H. handbook.

The Contractor shall use such foresight and shall take such steps and precautions as operations make necessary to protect the public from danger or damage, or loss of life or property, which would result from the interruption or contamination of public water supply, irrigation or other public service or from the failure of partly completed work.

The Contractor shall take all necessary precautions to protect the public, especially children, from the hazards of open excavations. Trenches, slopes, and excavations requiring shoring shall either be covered or adequately fenced at night and on weekends or whenever operations are not in actual progress.

High visibility clothing shall be worn at all times when working on the project. It is the Contractor's responsibility to ensure that this requirement is enforced.

Contractor shall ensure that all working personnel are identified by a work uniform that, at a minimum, consists of a shirt that identifies the company. All work vehicles used on the project shall also be identified, at a minimum, with the company name adequately displayed on the vehicles.

All safety devices and all guards for equipment shall be in place and in proper working order during equipment use. No safety device or guards shall be removed, modified or altered in any way, except in strict accordance with the manufacturer's recommendation.

In case of an emergency, which threatens loss or injury to property or life, Contractor shall act without previous instructions as the situation may warrant. Contractor shall notify Engineer immediately thereafter. Any compensation for emergency work claimed by Contractor, together with substantiating documentation, shall be submitted to Authority.

Whenever, in the opinion of the Authority, an emergency exists against which the Contractor has not taken sufficient precaution for the safety of the public or the protection of utilities or of adjacent structures or property or if immediate action shall be considered necessary in order to protect public or private personnel or property interest, or prevent likely loss of human life or damage on account of the operations under the contract, then and in that event, the Authority may provide suitable protection to said interest by causing such work to be performed and material to be furnished, as, in the opinion of the Authority, may seem reasonable and necessary. The cost and expense of said labor and material together with the cost and expense of such repairs as may be deemed necessary shall be borne by the Contractor. If he shall not pay said cost and expense upon presentation of the bills therefor, duly certified by the Engineer, then said costs and expense will be paid by the Authority and shall thereafter be deducted from any amounts due, or which may become due said Contractor. Failure of the Authority to take such precautionary measure shall not relieve the Contractor of his full responsibility for public safety.

## **12. WORK AREA APPEARANCE**

The Contractor shall maintain the work area in a neat and orderly fashion. When practical, debris developed during maintenance operations shall be disposed of concurrently with its removal. If stockpiling is necessary, the material shall be removed or disposed of daily. No tarps shall be left unattended in parking areas without express permission from the Authority. No tarps shall be permitted in any area overnight. Contractor vehicle parking area will be coned off while in use. Contractor will take measures to ensure protection of private property of the residents (i.e. belongings or furniture on patios and outdoor areas) so as not to cause damage.

## **13. CLEANUP AND RESTORATION OF SURFACES**

The Contractor shall, as directed by the City, remove from all public and private property, at its own expense, all temporary structures, rubbish and waste materials resulting from its operations. This includes temporary work area(s) obtained by the Contractor.

All existing surfaces, whether asphaltic or concrete, Portland Cement concrete, permanent fencing and barriers, landscape material such as turf, trees, shrubs, gravel, etc., or other, shall, after operations, be restored to a condition at least equal to that which existed prior to landscape maintenance activity. All restoration shall be in-kind. Restoration shall include, but not be limited to, the replacement of landscape planting and

irrigation system, and pavement striping which are disturbed by the Contractor's operations in the course of work.

#### **14. RECYCLING SPECIFICATIONS**

Contractor shall segregate the following materials generated by this job and shall haul, or have the material hauled, to recycling, composting or other properly permitted and County-licensed, diversion facilities: Dirt; Sod; Grass; Wood; Concrete (with and without rebar); masonry; landscape irrigation piping and fittings; asphalt; gravel and rock.

Contractor shall submit weight tickets to the Authority on a monthly basis showing the quantity (tons) delivered to each diversion facility. Contractor shall also submit to Authority, on a monthly basis, all weight tickets showing the tons of all non-divertible material that have been delivered to landfill.

Contractor shall include the costs for the diversion of the above-listed materials in its bid for the job. All other debris generated that is beyond the scope of normal and routine maintenance shall be paid as an extra. Contractors are responsible for doing their own research in contacting the recycling, composting and other processing and diversion facilities to confirm the tipping fees for the various types of materials. Contractor may utilize any recyclers or processors provided that Contractor submits written evidence that said facilities are operating in compliance with all state, federal and local laws.

Contractor is liable and responsible for any illegal dumping activities for any and all materials generated at the job site.

Contractor shall remove all green waste generated from maintenance operations on a daily basis. No green waste will be allowed to remain on site after work hours. Disposal of green waste shall not be allowed in any Authority trash can, bin or other Authority facility (i.e. corporation yard or satellite yards), or in any park refuse container unless other arrangements have been authorized by Authority. Contractor shall recycle all green waste removed from Authority landscaped areas at a County-licensed facility. If any compost is used in the execution of the landscape maintenance contract, it must be from a facility that receives and composts City or Authority green waste. Said products shall be approved by the Engineer or his designee before use. Contractor shall submit verification of green waste disposal in the Green Waste Monthly Report.

#### **15. PERMITS AND LICENSES**

**a.** Permits: Contractor, and any subcontractors shall obtain permits for all work within the City, Authority, and State public right-of-way, and the project area and will maintain proper safety and regulatory signs for such work. Contractor is responsible for permit costs.

**b.** Licenses: Contractor shall obtain and pay all costs incurred for licenses necessitated by his operations. Prior to starting any work, the Contractor and all subcontractors shall be required to have a City of Palm Desert Business Tax

Registration valid for the time they are engaged in work. The cost of these fees shall be included in the price and no additional compensation will be allowed therefor.

c. Fees: Contractor shall be responsible for all inspection and permit fees required by agencies necessitated by his operations for this project. This includes fees required for inspection work within the right-of-way of these other agencies and other public right-of-way. The cost of these fees shall be included in the lump sum contract bid price and no additional compensation will be allowed therefor.

## **16. POTHOLING**

Prior to commencement of any tree replacement or stump grinding, Contractor shall physically locate, verifying horizontal and vertical locations, and map existing underground facilities within the work area that are marked by Underground Service Alert (USA) or shown on the drawings. Contractor shall protect all such facilities from damage due to construction activities for the duration of the project. Contractor shall deliver a plan with the location of each potholed utility to the Engineer. Repair of damage to such facilities shall be at the Contractor's expense and shall be considered as integral to this item of work. Contractor shall be responsible for following all applicable rules and regulations concerning work in the vicinity of underground and/or overhead utilities. The cost for potholing shall be included in the unit prices bid for the various contract items, and no additional compensation will be allowed therefor.

## **17. RELOCATION**

In the event of Contractor negligence, it becomes necessary to alter or temporarily relocate service connections (including but not limited to: water, irrigation water, sewer, electrical, natural or manufactured gas, underground and/or overhead telephone, cable television, and electrical) it shall be the responsibility of the Contractor, The Contractor shall restore the service connections as soon as possible after any disruption in service. The Contractor shall make all arrangements with the utility owners regarding such work. The costs for such work on service connections shall be included in the lump sum contract bid price, and no additional compensation will be allowed therefor.

## **18. SURPLUS MATERIALS**

All material not suitable for stockpiling as outlined in Section 300-2.2 of the Standard Specifications, which contain debris, shrubbery, asphaltic concrete, Portland Cement concrete or other deleterious material shall become the property of the Contractor. Surplus material encountered in a manner not associated with regular on-going maintenance activities shall be subject to removal at time and material basis upon approval by the Authority.

Material shall be disposed of at a legally acceptable disposal site furnished by the Contractor and shall be considered as included in the lump sum contract bid price for and no additional compensation will be made therefor.

## **19. INSPECTION OF THE WORK**

There will be inspection of this work to ensure strict adherence to the specifications and work schedule submitted by the Contractor. It shall be the responsibility of the Contractor to notify the Authority should any deviation of said work schedule become necessary. Any work done in unauthorized areas or in a manner unacceptable to the inspector shall not be accepted or paid for by the Authority.

## **20. PROTECTION OF PUBLIC**

The Contractor shall take all necessary precautions to protect the public, especially children, from the hazards of their maintenance operations.

Unusual conditions may arise during the scope of work, which will require that immediate and special provisions be made to protect the public from danger or loss or damage to life and property, due directly or indirectly to the progression of the work. It is part of the service required of the Contractor to make such provisions and to furnish such protection.

Whenever, in the opinion of the Authority, an emergency exists against which the Contractor has not taken sufficient precaution for the safety of the public or the protection of utilities or of adjacent structures or property or if immediate action shall be considered necessary in order to protect public or private personnel or property interest, or prevent likely loss of human life or damage on account of the operations under the contract, then and in that event, the Authority may provide suitable protection to said interest by causing such work to be performed and material to be furnished, as, in the opinion of the Authority, may seem reasonable and necessary.

Materials and equipment shall be stored so as to not create a public nuisance and to ensure the preservation of their quality and fitness for the work. No materials or equipment shall be stored at the project site unless its use is imminent.

The Contractor is responsible to design, construct and maintain all safety devices and be responsible for conforming to all local, state and federal safety and health standard, laws and regulation

## **21. TRAFFIC CONTROL**

Contractor shall comply with the State of California and Cal-OSHA Safety Rules and Regulations and the American National Standards Institute (ANSI) 2133.1 standards. Contractor shall supply all delineation, signing and clothing as required by the State of California Department of Transportation. Contractor shall provide and maintain work zone traffic control devices at all times in accordance with the WATCH Manual, the California MUTCD, and as directed by the Authority's Representative or his/her designee. All roadway signs, delineators, channelizers, cones and barricades shall be in "like new" condition. All roadway signs used for nighttime traffic control shall have retroreflective sheeting that meet or exceed ASTM Standard D 4956 Type III.

When required by the Authority's Representative or when maintenance activities require a traffic control setup that does not conform to standard traffic control layouts as detailed in the previously referenced standard manuals, then the Contractor shall be required to submit project traffic control plans for review and approval by the City. Minor adjustments of the traffic control set up may be made in the field with prior approval from the City Inspector.

A minimum of one (1) 12-foot (12') travel lane in each direction shall be maintained at all times on residential, collector and arterial streets during maintenance operations. No reduction of the travel way width and/or travel lanes shall be permitted before 8:30 a.m., or after 4:30 p.m., unless prior approval from the City Engineer is obtained. If the closing or opening of a street (either partially or fully) within the City is approved by Engineer, Contractor shall notify the City Inspector assigned to the project and local authorities at least twenty-four (24) hours prior to the scheduled closing or opening.

A minimum of a four-foot (4') wide ADA compliant pedestrian path of travel must be maintained in the sidewalk area at all times. The area under maintenance in the sidewalk areas must be maintained free of hazardous conditions. The immediate area must be barricaded in such a manner that pedestrian traffic cannot enter.

Access to driveways shall be maintained from at least one end of the work area at all times. At no time is any business or residence to be without access unless otherwise approved by Engineer. Contractor shall notify residents or businesses of restricted access forty-eight (48) hours in advance of construction activities.

The Contractor shall abate dust nuisance on traffic lanes, detours and work site by cleaning, sweeping and sprinkling with water or other means, as necessary, during and after the course of their work.

The compensation for furnishing, placing, maintaining and removing traffic cones, telescoping tree flags, advance warning signs, flagmen, barricades, temporary striping and other safety devices, as required for public safety or as directed by the City Engineer, shall be considered as included in the in the contract bid price, and no additional compensation will be made therefor.

## **22. DUST CONTROL/AIR CONTAMINANTS**

The Contractor must comply with the City of Palm Desert's Municipal Code, Chapter 8.20, "Public Nuisances" Chapter 27.12.140, and City of Palm Desert Ordinance 294. Contractor must also comply with Chapter 24.12 "Fugitive Dust (PM10) Control" of City of Palm Desert Municipal Code.

Dust generated by traffic, Contractor's operations, or wind are all included in the definition of "dust." The Contractor is responsible for monitoring all of the active maintenance areas during the life of the contract, and special attention shall be given to areas during over-seeding operation. The Contractor shall not discharge smoke, dust, or any other air contaminants into the atmosphere in such quantity as will violate the regulations of any legally constituted authority.

Payment for maintaining dust control and air contaminants within the project area shall be included in the lump sum contract proposal price, and no additional compensation will be allowed therefor.

### **23. WATER**

Water shall not be taken from any commercial or residential systems without the express written consent of the owner.

### **24. MEASUREMENT AND PAYMENT**

Authority has specific criteria by which to evaluate the performance of Contractor on a weekly basis. If performance by Contractor is deficient, Authority reserves the right to subtract an associated amount from the monthly billing. Since it is difficult to quantify and assess a value to every aspect of the work, Authority may implement liquidated damages of \$250 per day per incident until the deficiency is corrected. The following is a brief summary of possible deficiencies:

1. Failure to comply with Contract Documents.
2. Failure to comply in a timely manner with contractually legitimate requests made by Authority.
3. Failure to provide specified reports or falsification of reports.
4. Failure to supply adequate equipment, labor or supervision.
5. Failure to repair deficiencies in the allotted time frame.
6. Failure to comply with schedules.
7. Failure to protect public health and safety.
8. Failure to provide adequate identification on vehicles or employees.

In the event Contractor fails to perform contractual obligations to the satisfaction of Authority, Authority may choose to obtain the services of a separate landscape maintenance provider to fulfill Contractor's obligations, and any and all associated charges shall be the responsibility of the Contractor.

### **25. VEHICLES ON SIDEWALK AND TURF**

Contractor vehicles shall not drive on sidewalks or turf without prior Authority approval.

### **26. REFUSE DISPOSAL**

All refuse collected shall be removed and taken to a sanitary landfill at Contractor's expense. Disposal of debris shall not be allowed in any Authority trash can, bin or other City facility (i.e., corporation yard or satellite yards), or in any park refuse container unless other arrangements have been authorized by Authority.

### **27. GREEN WASTE**

Contractor shall remove all green waste generated from maintenance operations on a daily basis. No green waste will be allowed to remain on site after work hours. Disposal of green waste shall not be allowed in any Authority trash can, bin or other City facility (i.e., Corporation Yard or satellite yards), or in any park refuse container unless other

arrangements have been authorized by Authority. Contractor shall recycle all green waste removed from Authority landscaped areas at a County-licensed compost facility. If any compost is used in the execution of the landscape maintenance contract, it must be from a facility that receives and composts City of Palm Desert green waste. Said products shall be approved by the Authority or his designee before use. Contractor shall submit verification of green waste disposal in the Green Waste Monthly Report.

## **28. SCHEDULES**

At the pre-commencement conference, Contractor and Authority staff will review the Work Schedule submitted by the Contractor. This schedule will be considered the permanent schedule. If, during the first thirty (30) days, an adjustment in the schedule needs to be made, Contractor may submit a revised schedule for approval. In addition, Contractor shall submit a weekly report by 1:00 p.m. every Friday showing work performed in the current week and work scheduled for the following week. Failure to submit the required report by 1:00 p.m. every Friday may result in a \$250 fine. Contractor shall adhere to the schedule. Authority must receive notification of changes at least 24 hours in advance. Reports may be transmitted electronically to [bchuck@palmdesert.gov](mailto:bchuck@palmdesert.gov) or [smuir@palmdesert.gov](mailto:smuir@palmdesert.gov).

## **29. LICENSE AND CERTIFICATION REQUIREMENTS**

Contractor shall possess all permits and licenses required to comply with city, county, state or federal laws for the work activities performed, including the use of chemicals. Contractor assumes responsibility and liability for use of all chemical controls and shall at all times perform chemical applications in accordance with governmental regulations and industry standards for their safe and appropriate use.

At the time that the Proposal is submitted, Contractor shall possess current licensure and certification as follows, and the same shall be maintained current and valid for the term of the contract:

1. C-27 Landscape Contractor License
2. California State Pest Control Applicators License (QAL) for chemical applications category B for the person(s) supervising or performing herbicide applications
3. Riverside County Pesticide Business License
4. International Society of Arboriculture (ISA) Certificate

**EXHIBIT "F"**  
**PALM DESERT HOUSING AUTHORITY**  
**LANDSCAPE MAINTENANCE**

**FREQUENCY SCHEDULE LEGEND**

A	Daily, 7 days per week
B	Daily, Monday through Friday
C	Daily, before close of business (5:00 p.m.), Monday through Friday
D	Weekly, before close of business (5:00 p.m.) on Friday
E	Three times weekly (Monday, Wednesday, Friday)
F	Bi-weekly (every 2 weeks)
G	Monthly (12 times per year, every month)
H	Bi-monthly (6 times per year, every two months)
I	Quarterly (4 times per year)
J	Semi-annually (2 times per year)
K	Annually (1 time per year)
L	Seasonal
M	As needed to maintain plant material health and/or public safety
N	As needed
O	October 1 to April 30, once monthly; May 1 to September 30, every 2 weeks; Except turf and annual color areas which are always weekly
P	Monthly, from May to October (6 times)
Q	October 1 to April 30 every other week; May 1 to September 30 weekly
R	October 1 to May 30, three times weekly (Monday, Wednesday, Friday), before 10:00 a.m.; June 1 to September 30, once a week
S	Daily, before 7:00 a.m., 7 days per week
T	Weekly, on Friday, by 6:00 a.m.
U	Continuously November 1 - March 31; monthly April 1 - October 31
V	Weekly April 1 - October 31; monthly November 1 - March 31
W	Daily, by 1:00 PM, 7 days per week
X	Daily, by 1:00 PM, Monday through Friday
Y	Twice weekly on non-consecutive days
Z	Twice weekly on non-consecutive days, by 1:00 p.m.

