

**CITY OF PALM DESERT
MAINTENANCE SERVICES AGREEMENT**

1. Parties and Date. This Agreement is made and entered into this **24th** day of **April, 2025**, by and between the City of Palm Desert, a municipal corporation 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, ("City") and **Mariposa Landscapes, Inc., an S Corporation**, with its principal place of business at **6232 Santos Diaz St. Irwindale, CA 91702** ("Vendor"). The City and Vendor are sometimes individually referred to herein as "Party" and collectively as "Parties."

2. Recitals.

2.1 Contractor.

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

2.2 Project.

The City is a public agency of the State of California and is in need of services for the following project:

**Landscape Maintenance Area No. 1
Project No. MLS00008**
(hereinafter referred to as "the Project").

3. Terms.

3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Contractor promises and agrees to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the 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, 2025, to June 30, 2028, unless earlier terminated as provided herein. The City shall have the unilateral option, at its sole discretion, to renew this Agreement automatically for no more than 2 additional one-year terms. Contractor shall complete the 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.

3.2 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. City retains Contractor on an independent contractor basis and not as an employee. Any personnel performing the Services under this Agreement on behalf of Contractor shall not be employees of City 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 in a prompt and timely manner 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. Upon request of City, 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 City.

3.2.4 City's Representative. The City hereby designates **Brad Chuck, Public Works Superintendent**, or his or her designee, to act as its representative for the performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for all purposes under this Agreement except for increasing compensation. Contractor shall not accept direction or orders from any person other than the City's Representative or his or her designee.

3.2.5 Contractor's Representative. Contractor hereby designates **Terry Noriega, 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. 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.

3.2.6 Coordination of Services. Contractor agrees to work closely with City staff in the performance of Services and shall be available to City'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 Business License, and that such licenses and approvals shall be maintained throughout the term of this Agreement. Contractor shall perform, at its own cost and expense and without reimbursement from the City, 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 City 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 City, 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 and Liquidated Damages. 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 "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 City will suffer damage. Pursuant to Government Code Section 53069.85, Contractor shall pay to the City as fixed and liquidated damages, and not as a penalty, the sum of Two Hundred Fifty Dollars (\$250.00) per day for each and every calendar day of delay beyond the Performance Time or beyond any completion schedule or Project milestones established pursuant to this Agreement.

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 City. If Contractor disputes the City'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 the Services and this Agreement. All violations of such laws and regulations shall be grounds for the City to terminate the Agreement for cause. City 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.

3.2.10.1 Employment Eligibility; Contractor. Contractor certifies 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 and shall require all subconsultants and sub-subconsultants to comply with the same. Contractor certifies 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.

3.2.10.2 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.

3.2.10.3 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 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.

3.2.10.4 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 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.

3.2.10.5 Water Quality 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'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. Failure to comply with the laws, regulations and policies described in this Section is a violation of law that may subject Contractor to penalties, fines, or additional regulatory requirements.

3.2.11 Insurance.

3.2.11.1 Minimum Requirements. Without limiting Contractor's indemnification of City, and prior to commencement of the Services, 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 City.

(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 City'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 City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of the City, its elected or appointed officers, and their respective agents, officials, employees, volunteers, and representatives.

(E) Fidelity Coverage. (Reserved)

(F) Cyber Liability Insurance. (Reserved)

(G) Pollution Liability Insurance. Environmental Impairment Liability Insurance shall be written on a Contractor's Pollution Liability form or other form acceptable to the City providing coverage for liability arising out of sudden, accidental, and gradual pollution and remediation. The policy limit shall be no less than \$1,000,000 dollars per claim and in the aggregate. All activities contemplated in this Agreement shall be specifically scheduled on the policy as "covered operations". The policy shall provide coverage for the hauling of waste from the Project site to the final disposal location, including non-owned disposal sites

3.2.11.2 Other Provisions and Requirements.

(A) Proof of Insurance. Contractor shall provide certificates of insurance to City 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 City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this contract.

City 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 City 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 City before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

(D) City'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, City has the right, but not the duty, to obtain the insurance it deems necessary, and any premium paid by City will be promptly reimbursed by Contractor, or City will withhold amounts sufficient to pay premium from Contractor payments. In the alternative, City 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 City'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, its elected or appointed officers, and their respective agents, officials, employees, volunteers, and representatives, 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, its elected or appointed officers, and their respective agents, officials, employees, volunteers, and representatives, 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 City to inform Contractor of non-compliance with any requirement imposes no additional obligations on the City 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 City 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 City.

(I) Notice of Cancellation. Contractor agrees to oblige its insurance agent or broker and insurers to provide City 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, its elected or appointed officers, and their respective agents, officials, employees, volunteers, and representatives, 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 City 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 City for review.

(N) City's Right to Revise Specifications. The City 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 cost to the Contractor, the City and Contractor may renegotiate Contractor's compensation. If the City 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 City. City 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 City.

(P) Timely Notice of Claims. Contractor shall give City 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 City in Exhibit "C" attached hereto and incorporated herein by reference, Contractor shall execute and provide to City 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 City. If such bond is required, no payment will be made to Contractor until it has been received and approved by the City.

3.2.13.2 Payment Bond. If required by law or otherwise specifically requested by City in Exhibit "C" attached hereto and incorporated herein by reference, Contractor shall execute and provide to City 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 City. If such bond is required, no payment will be made to Contractor until it has been received and approved by the City.

3.2.13.3 Bond Provisions. Should, in City's sole opinion, any bond become insufficient, or any surety be found to be unsatisfactory, Contractor shall renew or replace the affected bond within ten (10) days of receiving notice from City. 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 City, 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 City. To the extent, if any, that the total compensation is increased in accordance with the Agreement, the Contractor shall, upon request of the City, cause the amount of the bonds to be increased accordingly and shall promptly deliver satisfactory evidence of such increase to the City. 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 City 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 City. 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 City.

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 City 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 Sites.

3.2.15.1 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.

3.2.15.2 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, including any plans, specifications, or scope of work before commencing Services. Errors, inconsistencies, or omissions discovered shall be reported to the City immediately and prior to performing any Services or altering the condition.

3.2.15.3 Hazardous Materials and Differing Conditions. Should Contractor encounter material reasonably believed to be polychlorinated biphenyl (PCB) or other toxic wastes, hazardous substances 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 City in writing. The City 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 City and Contractor.

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 City.

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 City 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 City 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 (1) year period, commencing with the date of acceptance of such corrected work. Contractor shall perform such tests as the City 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 reinstitution 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 City, regardless of whether or not such warranties and guarantees have been transferred or assigned to the City by separate agreement and Contractor agrees to enforce such warranties and guarantees, if necessary, on behalf of the City. 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 City, the City 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 City 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 annual compensation shall not exceed **Three Hundred Sixty-Seven Thousand Seven Hundred Sixty Four Dollars (\$367,764.00)** for monthly landscape services without written approval of the City Council or City Manager, as applicable. The City may request additional work at the same rates and manner as set forth in this Agreement on an as needed basis as specified in Section 3.3.5. Contractor shall not perform Extra Work, **presume Extra Work will be guaranteed**, nor be compensated for Extra Work without written authorization from the City. Work performed **as Extra Work shall not exceed** the amount of **Ninety-Five Thousand Dollars (\$95,000.00)**. Contractor shall not be reimbursed for any expenses unless authorized by the City Council or City Manager, as applicable.

3.3.2 Payment of Compensation. Contractor shall submit to City monthly invoices which provides a detailed description of the Services and hours rendered by Contractor. City shall, within thirty (30) days of receiving such statement, review the statement and pay all non-disputed and approved charges. Contractor shall submit its final invoice to City within thirty (30) days from the last date of provided Services or termination of this Agreement and failure by the Contractor to submit a timely invoice shall constitute a waiver of its right to final payment. Payment shall not constitute acceptance of any Services completed by Contractor. The making of final payment shall not constitute a waiver of any claims by the City for any reason whatsoever.

3.3.2.1 Retainer. (Reserved)

3.3.3 Deductions. City may deduct or withhold, as applicable, from each progress payment an amount necessary to protect City 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 City, incurred by the City for which Contractor is liable under the Agreement; and (4) any other sums which the City 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 City to deduct any of these sums from a progress payment shall not constitute a waiver of the City's right to such sums.

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

3.3.5 Extra Work. At any time during the term of this Agreement, City may request that Contractor perform Extra Work. As used herein, "Extra Work" means any work which is determined by City 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 City'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 \$15,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. City 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, its elected or appointed officers, and their respective agents, officials, employees, volunteers and representatives 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. 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 City. Contractor shall defend, indemnify, and hold the City, its elected or appointed officers, and their respective agents, officials, employees, volunteers, and representatives 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.

3.4.1 Grounds for Termination. City 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 City, 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, City may require Contractor to provide all finished or unfinished 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, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

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: Mariposa Landscapes, Inc.
6232 Santos Diaz Street
Irwindale, CA 91702
ATTN: **Terry Noriega, President**

City: City of Palm Desert
73-510 Fred Waring Drive
Palm Desert, CA 92260-2578
ATTN: **Brad Chuck, Public Works Superintendent**

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, its elected or appointed officers, and their respective agents, officials, employees, volunteers and representatives 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 Services, the Project or this Agreement, including without limitation the payment of all expert witness fees, attorneys' fees and other related costs and expenses except such Claims caused by the sole or active negligence or willful misconduct of the City.

3.5.2.2 Additional Indemnity Obligations. Contractor shall defend, with counsel of City'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 the City, its elected or appointed officers, and their respective agents, officials, employees, volunteers and representatives. In addition, Contractor shall pay and satisfy any judgment, award or decree that may be rendered against the City, its elected or appointed officers, and their respective agents, officials, employees, volunteers, and representatives as part of any such claim, suit, action, or other proceeding. Contractor shall also reimburse City for the cost of any settlement paid by the City, its elected or appointed officers, and their respective agents, officials, employees, volunteers, and representatives as part of any such claim, suit, action, or other proceeding. Such reimbursement shall include payment for City's attorney's fees and costs, including expert witness fees. Contractor shall reimburse the City, its elected or appointed officers, and their respective agents, officials, employees, volunteers, and representatives, 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 Contractor, the City, its elected or appointed officers, and their respective agents, officials, employees, volunteers, and representatives.

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 Agreement 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 City. 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 City.

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

3.5.5 City's Right to Employ Other Contractors. City 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 City. 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 workdays. All references to Contractor include all personnel, employees, agents, and subcontractors of Contractor, except as otherwise specified in this Agreement. All references to the City include its elected or appointed officers, and their respective agents, officials, employees, volunteers, and representatives 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. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer, or employee of City, during the term of his or her service with City, 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 Federal Provisions. (Reserved)

[SIGNATURES ON NEXT PAGE]

**SIGNATURE PAGE TO MAINTENANCE SERVICES AGREEMENT
BY AND BETWEEN THE CITY OF PALM DESERT
AND MARIPOSA LANDSCAPES, INC.**

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed on the day and year first above written.

CITY OF PALM DESERT

MARIPOSA LANDSCAPES, INC., AN S CORPORATION

By: _____

Chris Escobedo
Interim City Manager

By: _____

Terry Noriega
President

Attest:

By: _____

Antonio Valenzuela
Secretary

By: _____

Anthony J. Mejia
City Clerk

592268

Contractor's License Number and
Classification

1000005079

DIR Registration Number (*if applicable*)

Approved as to form:

By: _____

Isra Shah
Best Best & Krieger LLP
City Attorney

City Clerk QC: _____

Contracts QC: _____

Insurance:

Initial Review

Final Approval

Bonds

EXHIBIT "A"

SCOPE OF SERVICES

1. SCOPE OF WORK

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 and irrigation maintenance services for City of Palm Desert in accordance with the Contract Documents at the following locations:

1. LOCATIONS

1. HIGHWAY 111 MEDIANS AND PARKWAY:

- Medians between Hospitality Row and Painters Path Drive
- North frontage road parkways between De Anza and Monterey Avenue
- South Frontage Road parkways from 330 feet east of Shadow Hills Road to Larkspur Lane
- Planter area on South Frontage Road 50 feet east of San Pablo Avenue
- South Frontage Road parkways from Lupine Lane to Ocotillo Drive (Carl's Jr. restaurant)
- City of Palm Desert monument signs at both the East and West entry to the city on Highway 111

2. HIGHWAY 74 MEDIANS AND PARKWAY:

- East frontage road parkways from 400 feet south of El Paseo to Homestead Road
- Median between Highway 111 and El Paseo

3. CHARGER SCULPTURE: Landscape Art planter on Highway 74 between El Paseo and Highway 111

4. MESA VIEW FIRE STATION 67: 73-200 Mesa View Drive, West of Portola Avenue

5. MONTEREY AVENUE MEDIANS AND PLANTERS:

- All Medians from Highway 111 to Country
- Parkway planter at West end terminus of Guadalupe Ave (South to driveway & North to end of vacant lot)
- "Pork chop" planter on Northeast corner of intersection at Country Club Drive

6. FRED WARING DRIVE MEDIANS AND PARKWAY:

- * Deep Canyon Tennis Club Excluded
- All medians from Washington Street to Highway 111
- North parkway planters between Warner Trail and Tennessee Avenue, including planters and cobble areas West of Tennessee
- South parkway planters between Portola Avenue and Deep Canyon Road
- Monument entry sign planter at the Northwest corner of Washington Street and Fred Waring Drive

7. TOWN CENTER WAY: Medians between Highway 111 and Fred Waring Drive

8. COOK STREET MEDIANS: Medians between Merle Drive to Country Club

9. HOVLEY LANE EAST MEDIANS:

- Between Portola Avenue and Beacon Hill
- From Water Way to 600' east of Oasis Club Drive
- Kansas Street Retention Basin located at the Southwest corner of Hovley Lane East and Kansas Street

10. PORTOLA AVENUE MEDIANS AND PARKWAY:

- Median between Alessandro and El Cortez

- East side parkway planter between San Marino South and El Cortez
- Median between Chicory and Fairway Drive
- 11. VIA CINTA Median north of Hovley Lane East
- 12. PHYLLIS JACKSON PARKWAY Approximately 320 linear feet South of Fred Smith Way
- 13. CORPORATION YARD 74-705 42nd Avenue (Includes all interior and perimeter planters and perimeter planters at the storage yard East of the Corporation Yard)
- 14. MAGNESIA FALLS MEDIANS AND PARKWAY:
 - All medians between Monterey Avenue and Deep Canyon Road
 - Parkway planters northwest corner at Deep Canyon Road
 - North wall parkway planters from San Pascual Channel Bridge to Portola Avenue
 - South wall parkway planters from Rutledge Way to Deep Canyon Road
 - Bike path between Whitewater Channel and Canyon Crest development perimeter from
 - Deep Canyon Road to Cook Street including adjacent planters from black wall to chain link fence
- 15. TOWN CENTER WAY FIRE STATION 33: 44-400 Town Center Way, located between Hwy 111 and Fred Waring Drive
- 16. PORTOLA AVENUE FIRE STATION 71: 73-995 Country Club Drive, on the Southwest corner of Portola and Country Club Drive

2.2 GENERAL SERVICES TO BE PERFORMED

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 City of Palm Desert. 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.

2.1 Contractor shall provide appropriate equipment and labor for the execution of all maintenance activities. City of Palm Desert reserves the right to inspect and/or approve any equipment used in this contract. If City of Palm Desert deems the equipment to be in disrepair or inappropriate to the task at hand, City of Palm Desert may require that the equipment be removed from the job site and replaced with a different piece of equipment.

2.2 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 City of Palm Desert representatives. If City of Palm Desert deems personnel to be inadequate to accomplish the task at hand, City of Palm Desert 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.

2.3 Prior to commencement of the contract, designated City of Palm Desert representative(s) and the Contractor will perform a mandatory acceptance walk-through inspection of the contract area. It is Contractor's responsibility to identify to City of Palm Desert unacceptable conditions with plant material, trees, and/or irrigation systems at the time of the walk-through. At City of Palm Desert'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.

2.4 Contractor shall replace, at no additional cost to City of Palm Desert 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.

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

2.6 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 City of Palm Desert at actual cost plus 15% mark-up. City of Palm Desert reserves the right to purchase Standard fertilizer. The application of fungicides will be performed outside the scope of this contract.

2.7 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.

2.7.1 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.

2.7.2 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 City of Palm Desert's name.

2.7.3 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 City of Palm Desert.

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 and/or doggy stations are present, Contractor shall remove and dispose of their contents and replace the liners (City of Palm Desert may provide trash bags). Contractor shall wipe surfaces clean with a non-toxic cleaning solution.

3.2 Pest Control

3.2.1 Gophers will be controlled on an as-needed basis using City of Palm Desert-approved traps, within the scope of this contract. Ground squirrel control will be performed on an as-needed basis and is outside 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 City of Palm Desert prior to the end of the workday.

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

3.2.4 Aphids will be chemically controlled on oak trees in parking lots and along parkways. 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. Any recommended chemical treatment and the schedule for its application must be reviewed and approved in advance by City of Palm Desert. City of Palm Desert, 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.

3.2.5 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.

3.2.6 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.

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

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

3.3 Plant Maintenance

3.3.1 All plant material in the public right-of-way shall be maintained 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 City of Palm Desert 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 City of Palm Desert within one week of notification.

3.3.4 The City of Palm Desert encourages contractors to familiarize themselves with the City of Palm Desert's "Landscape Maintenance Guidelines" book. The book, intended to serve as a visual guide to contractors, also provides pruning techniques and a calendar for ideal maintenance timing. The City of Palm Desert may at its own discretion, alter time-lines or techniques and supply additional reference materials as the City of Palm Desert 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 City of Palm Desert 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 City of Palm Desert.

3.3.6 On occasion, high-profile areas will be seeded with wildflowers. City of Palm Desert staff will identify these areas to Contractor. It shall be Contractor's responsibility to maintain and preserve these wildflower population areas. Contractor shall be responsible to replace any wildflowers disturbed or destroyed by any of Contractor's maintenance activities.

3.3.7 Plant material installed by the Contractor shall be warrantied for a period of ninety days from the date of acceptance by the City's Representative.

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. City of Palm Desert 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 City of Palm Desert, 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 City of Palm Desert'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.

3.4.5 Trees planted by the Contractor shall be warrantied for a period of one-year from the date of the acceptance by the City's Representative.

3.5 Hardscape, and Decomposed Granite (DG) Planter Areas

3.5.1 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.

3.5.2 Daily sidewalk cleaning shall consist of removing debris from sidewalks by blowing or sweeping. Blower throttle to be maintained at the lowest practical setting possible.

3.5.3 Contractor shall rake planter areas. Contractor shall also rake underneath living plant material, unless directed not to do so by City of Palm Desert. 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 City of Palm Desert.

3.5.4 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, dog park fixtures, drinking fountains, picnic tables and miscellaneous hardscape fixtures as outlined in the Frequency Schedule. The Contractor shall use, as directed by the City of Palm Desert, a scrub brush and a City of Palm Desert-approved non-toxic biodegradable cleaning agent to adequately clean the aforementioned items, as deemed acceptable by City of Palm Desert. 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.

3.5.5 Pressure washing, at a minimum pressure rating of 3000 PSI, at dog parks must include the use of a City of Palm Desert-approved non-toxic biodegradable cleaning agent.

3.5.6 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 City of Palm Desert staff. Contractor may be required to use a bow rake.

3.6 Irrigation System Maintenance

3.6.1 The operation, maintenance, and scheduling of all irrigation controllers and attached sensors shall be the responsibility of Contractor. Contractor will make adjustments, per City's recommendations at a minimum of once every 30 days, to the controllers, sensor equipment, and schedules based on property microclimates, ET, 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 are not Smart Controllers and will require manual adjusting.

3.6.2 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. Contractor to check coverage weekly. Contractor to provide monthly irrigation report.

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

3.6.4 Contractual irrigation system maintenance includes all labor for system inspections, adjustments, repairs and installations for all system components, in-line irrigation valves, including

Exhibit "A"

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 City of Palm Desert 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 City of Palm Desert 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:

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

3.6.5 Non-contractual irrigation system repairs:

- No non-contractual work will be initiated without an approved City of Palm Desert Work Order.
- When irrigation system malfunction or damage is detected, the repair of which is non-contractual in nature, Contractor will flag the location and notify City of Palm Desert before the close of business the same workday.
- 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.
- All repairs deemed non-contractual will be paid on a time-and-materials basis.
- Labor will be billed per the rates under the Performance of Extra Work heading.
- Materials will be billed at "cost plus 15%" or, at City of Palm Desert's discretion; materials may be supplied to Contractor by City of Palm Desert.
- Contractor shall return to City of Palm Desert all irrigation parts that have been replaced.
- City of Palm Desert will perform regular inspections of irrigation systems to ensure accuracy of Contractor's irrigation reports. If discrepancies are found, City of Palm Desert shall consider this a performance deficiency.

EXHIBIT “B”

SCHEDULE OF SERVICES

The term of this Agreement shall be from July 1, 2025, to June 30, 2028, unless earlier terminated as provided herein. The City shall have the unilateral option, at its sole discretion, to renew this Agreement automatically for no more than two (2) additional one-year terms. Contractor shall complete the 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.

EXHIBIT “C”

COMPENSATION

The total annual compensation shall not exceed **Three Hundred Sixty-Seven Thousand Seven Hundred Sixty Four Dollars (\$367,764.00)** per fiscal year and may only be adjusted for Consumer Price Index for all Urban Consumers (CPI-U) for the Riverside-San Bernardino-Ontario, CA Region rate for the 12-month period ending May, with written approval from the City Council or City Manager following FY 2025-26, as applicable.

Payment and Performance Bonds apply and will follow after the compensation.

COMPENSATION

Line Item	Site Description	Quantity	Unit of Measure	Monthly Unit Price	Annual Total
1	Highway 111 Medians and Parkways	12	Months	\$5,210.00	\$62,520.00
2	Highway 74 Medians and Parkway	12	Months	\$2,145.00	\$25,740.00
3	Charger Sculpture	12	Months	\$123.00	\$1,476.00
4	Mesa View Fire Station 67: 73-200 Mesa View Drive	12	Months	\$582.00	\$6,984.00
5	Monterey Avenue Medians and Planters	12	Months	\$6,129.00	\$73,548.00
6	Fred Waring Drive Medians and Parkway	12	Months	\$5,210.00	\$62,520.00
7	Town Center Way Medians	12	Months	\$123.00	\$1,476.00
8	Cook Street Medians	12	Months	\$3,249.00	\$38,988.00
9	Hovley Lane East Medians	12	Months	\$2,728.00	\$32,736.00
10	Portola Avenue Medians and Parkway	12	Months	\$1,992.00	\$23,904.00
11	Via Cinta Median	12	Months	\$123.00	\$1,476.00
12	Phyllis Jackson Parkway	12	Months	\$123.00	\$1,476.00
13	Corporation Yard 74-705 42nd Avenue	12	Months	\$306.00	\$3,672.00
14	Magnesia Falls Medians and Parkway	12	Months	\$2,145.00	\$25,740.00
15	Town Center Way Fire Station 33: 44-400 Town Center Way	12	Months	\$306.00	\$3,672.00
16	Portola Avenue Fire Station 71: 73-995 Country Club Drive	12	Months	\$153.00	\$1,836.00
TOTAL					\$367,764.00

RIGHTS OF WAY MAINTENANCE RATES

From time to time, the Contractor may be called upon to assist with the maintenance of Rights of Way (ROW) in order to ensure public safety and maintain clear visibility. These requests will be made on an as-needed basis, with the scope of work determined by the specific requirements of each situation. Typical duties may include, but are not limited to, the removal of excessive blow sand, controlling the growth of weeds, trimming overgrown vegetation, clearing debris, and performing general maintenance to preserve the integrity and accessibility of the ROW. The Contractor will be expected to act promptly to address these concerns to ensure the area remains safe and navigable for the public.

Line Item	Description	Unit Cost	Unit Cost
1	Supervisor	Hourly Rate	\$80.00
2	Spray Tech	Hourly Rate	\$68.00
3	Foreman	Hourly Rate	\$65.00
4	Laborer	Hourly Rate	\$48.00
5	Traffic Control	Cost	\$1,320.00
6	Materials	Cost	\$500.00
7	Equipment Rentals	Cost	\$1,000.00
8	Dump Fees	Cost	\$1,000.00

EXHIBIT "C"

M A R I P O S A

L A N D S C A P E S I N C

February 21, 2025

Mariposa Landscapes, Inc. Extra Work Pricing Breakdown

Please see below for the Additional Pricing Schedule with notes in red:

ADDITIONAL WORK PRICING SCHEDULE

AMOUNTS **NOT** TO BE INCLUDED IN BASE BID

LABOR

Additional Laborer	\$48 _____ per hour
Additional Irrigator	\$70 _____ per hour
Additional Foreman	\$65 _____ per hour

At City's discretion, additional work may be paid for using the contractual hourly rate for labor listed above with a 15% mark up on materials or by using the unit pricing listed below.

PLANT MATERIAL REPLACEMENT

Unless otherwise described, replacement plant material will be whatever is normal and customary for the City of Palm Desert.

1-Gallon Shrub Installed	\$17.5 _____
5-Gallon Shrub Installed	\$45 _____
15-Gallon Tree Installed*	\$150 _____
24"-Box Tree Installed*	\$550 _____

Note: Anything over 24" box size will be paid at the contractual hourly rate for labor, and materials at cost plus a 15% mark-up.

*These prices are based on the maintenance wages as determined by the DIR.

*These prices are for standard plant materials excluding premium plant material.



Our Core Values – Safety • Teamwork • Quality • Integrity

Page 1

Exhibit "C"

EXHIBIT "C"

M A R I P O S A

L A N D S C A P E S I N C

February 21, 2025

Mariposa Landscapes, Inc. Rights of Way Maintenance Rates

Please see below for Rights of Way Maintenance Rates with notes in red:

Rights of Way Maintenance Rates

From time to time, the Contractor may be called upon to assist with the maintenance of Rights of Way (ROW) in order to ensure public safety and maintain clear visibility. These requests will be made on an as-needed basis, with the scope of work determined by the specific requirements of each situation. Typical duties may include, but are not limited to, the removal of excessive blow sand, controlling the growth of weeds, trimming overgrown vegetation, clearing debris, and performing general maintenance to preserve the integrity and accessibility of the ROW. The Contractor will be expected to act promptly to address these concerns to ensure the area remains safe and navigable for the public.

Line Item	Description	Unit Cost	Unit Cost
1	Supervisor	Hourly Rate	\$80.00
2	Spray Tech	Hourly Rate	\$68.00
3	Foreman	Hourly Rate	\$65.00
4	Laborer	Hourly Rate	\$48.00
5	Traffic Control	Cost	\$1,320.00 *Contingent upon job , please see below
6	Materials	Cost	\$500.00 *Contingent upon job , please see below
7	Equipment Rentals	Cost	\$1,000.00 *Contingent upon job , please see below
8	Dump Fees	Cost	\$1,000.00 *Contingent upon job , please see below

Regarding 5 - 8 above for the Rights of Way Maintenance:

The rates for Traffic Control, Materials, Equipment Rentals, and Dump Fees were submitted as placeholders due to the OpenGov submittal portal's requirement for numerical entries only. We remain committed to providing more accurate pricing for each additional work project assigned to us. For these projects, our pricing model will be based on actual costs plus a 15% markup.



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Page 2

Exhibit "C"