

AGREEMENT BETWEEN COUNTY OF MONTEREY AND TOWN & COUNTRY GARDENING AND LANDSCAPING

This AGREEMENT is made and entered into by and between the County of Monterey, a political subdivision of the State of California, hereinafter referred to as “County”, and **Town & Country Gardening and Landscaping**, hereinafter referred to as “CONTRACTOR” (collectively referred to as “the parties”) as of the last date opposite the respective signatures below.

RECITALS

WHEREAS, County has invited proposals through the Request for Proposals (RFP # 10411) for Landscape and Open Space Maintenance Services: CSA 15-Toro Park & Serra Village, in accordance with the specifications set forth in this AGREEMENT; and

WHEREAS, CONTRACTOR has submitted a responsive and responsible proposal to perform such services; and

WHEREAS, CONTRACTOR has the expertise and capabilities necessary to provide the services requested.

NOW THEREFORE, County and CONTRACTOR, for the consideration hereinafter named, agree as follows:

1.0 PERFORMANCE OF THE AGREEMENT

- 1.1 After consideration and evaluation of the CONTRACTOR’S proposal, the County hereby engages CONTRACTOR to provide the services set forth in RFP #10411 and in this AGREEMENT on the terms and conditions contained herein and in RFP #10411. The intent of this AGREEMENT is to summarize the contractual obligations of the parties. This AGREEMENT is based on the following supporting documents which are hereby incorporated into this AGREEMENT by reference as though fully attached hereto:

AGREEMENT

APPENDIX 1: LANDSCAPE MAINTENANCE SCHEDULE

APPENDIX 2: GREENBELT AREAS - WORK LOCATION MAPS

RFP # 10411 dated March 18, 2013, including all attachments and exhibits

CONTRACTOR’S Proposal dated April 12, 2013

Addendum #1

- 1.2 These documents are on file with the Contracts/Purchasing Division and are incorporated by this reference.

- 1.3 All of the above-referenced documents are intended to be complementary. Work required by one of the above-referenced documents and not by others shall be done as if required by all. In the event of a conflict between or among component parts of this AGREEMENT, the documents shall be construed in the following order: AGREEMENT, APPENDIX 1: LANDSCAPE MAINTENANCE SCHEDULE, APPENDIX 2: GREENBELT AREAS - WORK LOCATION MAPS, RFP #10411 including all attachments and exhibits, CONTRACTOR'S Proposal, Addendum #1.
- 1.4 CONTRACTOR warrants that CONTRACTOR and CONTRACTOR's agents, employees, and subcontractors performing services under this AGREEMENT are specially trained, experienced, competent, and appropriately licensed to perform the work and deliver the services required under this AGREEMENT and are not employees of the County, or immediate family of an employee of the County.
- 1.5 CONTRACTOR, its agents, employees, and subcontractors shall perform all work in a safe and skillful manner and in compliance with all applicable laws and regulations. All work performed under this AGREEMENT that is required by law to be performed or supervised by licensed personnel shall be performed in accordance with such licensing requirements.
 - 1.5.1 CONTRACTOR must maintain all licenses throughout the term of the AGREEMENT.
- 1.6 CONTRACTOR shall furnish, at its own expense, all materials, equipment, and personnel necessary to carry out the terms of this AGREEMENT, except as otherwise specified in this AGREEMENT. CONTRACTOR shall not use County premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this AGREEMENT.

2.0 SCOPE OF SERVICE

- 2.1 MAINTENANCE OF OPEN SPACE AREAS – PORTOLA DRIVE AND HIGHWAY 68**
 - 2.1.1 CONTRACTOR shall maintain the native grasses in the greenbelt areas located in the Toro Park Estates, Serra Village, Toro Creek Estates and Toro Sunshine Subdivisions. The specific locations of the greenbelt areas are shown in APPENDIX 2: GREENBELT AREAS - WORK LOCATION MAPS.
 - 2.1.2 Open space maintenance shall include but is not limited to:
 - 2.1.2.1 Native grass mowing.
 - 2.1.2.2 Weed abatement along residential fence lines, drip lines of trees and shrubs and entry signs.
 - 2.1.2.3 Pickup and removal of litter
 - 2.1.2.4 Maintenance of sidewalks and entryways leading into the open space areas.

- 2.1.3 CONTRACTOR shall, during each of the regularly scheduled mowing periods, mow native grasses to a height of approximately three (3) inches.
- 2.1.4 CONTRACTOR shall complete the open space mowing operation within a two-week period from the start date given to CONTRACTOR by the County.
- 2.1.5 CONTRACTOR shall pick up and remove all litter material, including bottles, cans and paper, which comes into the path of the mowing equipment.
- 2.1.6 CONTRACTOR shall provide open space maintenance four (4) times during the AGREEMENT period as outlined in the APPENDIX 1: LANDSCAPE MAINTENANCE SCHEDULE.
- 2.1.7 CONTRACTOR shall complete work within a two-week period for the open space mowing operation from the start date given to CONTRACTOR by the County.
 - 2.1.7.1 Failure to complete the work within a two-week timeframe shall result in a reduction of payment by 25% for this service and the subsequent payment shall only be paid upon full completion of the work.

2.2 PARK MAINTENANCE

- 2.2.1 CONTRACTOR shall maintain the four (4) parks, sidewalks, entryways and frontage areas leading into the parks in a park-like manner. The specific locations of the four parks are located in the Toro Park Estates Subdivision as shown in APPENDIX 2: GREENBELT AREAS - WORK LOCATION MAPS.
- 2.2.2 The four (4) designated parks are as follows:
 - 2.2.2.1 Kelton Park
 - 2.2.2.2 Ferdinand Park
 - 2.2.2.3 Sutherland Park
 - 2.2.2.4 Lopp Park
- 2.2.3 CONTRACTOR shall:
 - 2.2.3.1 Regularly schedule turf-mowing operations.
 - 2.2.3.2 Trim trees, shrubbery and groundcover within the park on an as needed basis.
 - 2.2.3.3 Abate weeds around fence lines, signs, benches, play equipment and installed barriers.
 - 2.2.3.4 Edge the sidewalks, entryways and frontage areas leading into the parks with an edging machine which cuts below the surface of the ground to a minimum depth of one inch, but in no case, less than what is required to cut the plant or weed that is encroaching upon the sidewalk.
 - 2.2.3.5 Abate weeds by either mechanical or chemical means. CONTRACTOR shall not substitute chemical weed abatement in place of the edging operation.
 - 2.2.3.6 Fertilize turf
 - 2.2.3.7 Visually inspect the structural components of each park during the appointed task and notify the County if any component is in need of repair and/or maintenance.

- 2.2.3.8 Rake the depressed areas within each of the play equipment borders.
- 2.2.3.9 Re-level the areas to a common grade after each regularly scheduled turf grass mowing.
- 2.2.4 CONTRACTOR shall mow park turf grass as follows:
 - 2.2.4.1 Weekly 2013-14 July, August, September, October, November, March, April, May and June
 - 2.2.4.2 Bi-Weekly 2013-14 December, January and February
- 2.2.5 CONTRACTOR shall cut the turf grass at the lowest setting allowed by the mower that does not cause a scalping condition of the turf grass. CONTRACTOR shall not allow the turf grass to grow higher than 1 ½” in height.
- 2.2.6 CONTRACTOR shall establish a watering cycle that will sustain a green and healthy turf throughout the term of this AGREEMENT. During the winter or rainy periods, CONTRACTOR may be asked to reduce the watering schedule to prevent over watering of the turf grass or to place the irrigation control system on a standby position.
- 2.2.7 CONTRACTOR shall, at each park, implement a regularly scheduled inspection of the irrigation timers for proper operation and scheduled watering cycles.
- 2.2.8 CONTRACTOR shall do a walkover on the open space parcels immediately prior to the mowing operation and remove all litter material, including bottles, cans and paper from the site.
- 2.2.9 CONTRACTOR shall mow all parks on Friday during the weekly or biweekly scheduled maintenance period, unless otherwise agreed upon by the County or due to extenuating circumstances such as inclement weather.
 - 2.2.9.1 CONTRACTOR shall provide notice in writing by letter or email whenever any inclement conditions preclude mowing. The CONTRACTOR shall not be paid for such cancelled mowing.
- 2.2.10 CONTRACTOR shall leave, at the completion of the mowing operation, the surface of the parks free and clear of all large accumulations of grass clippings, and/or wet grass clumps leftover by the turf mowing equipment. CONTRACTOR is encouraged to use mowing equipment that has a front or rear mounted grass catcher that is capable of removing such clippings.
- 2.2.11 CONTRACTOR shall not leave the surface of the parks with a windrow effect of grass clippings or a visible accumulation of grass clippings after each mowing operation. The County retains the discretion to determine the degree to which the grass clippings must be removed; however, the County will make a reasonable judgment on the extent of grass clipping removal.

- 2.2.12 CONTRACTOR shall remove accumulated garbage, left in the trashcans from one mowing operation to another, from each park prior to the next scheduled mowing operation or at a minimum, once a week.
- 2.2.13 CONTRACTOR shall place appropriate sized trash liners in the trashcans after trash has been removed.
- 2.2.14 CONTRACTOR shall visually inspect the trashcans during the weekly/bi-weekly mowing operation to make sure the cans and lids are secure.
- 2.2.15 CONTRACTOR shall maintain the frontage areas between the sidewalks and Portola Drive at Kelton Park, Sutherland Park and Lopp Park as part of the park maintenance during each mowing operation.

2.3 MAINTENANCE OF OPEN SPACE PARCELS

- 2.3.1 CONTRACTOR shall maintain the six (6) open space parcels, sidewalks and entryways leading into the open space parcels that are located throughout the Toro Park Estates, Serra Village, Toro Creek Estates and Toro Sunshine Subdivisions. The specific locations of the open space parcels are shown in APPENDIX 2: GREENBELT AREAS - WORK LOCATION MAPS.
- 2.3.2 The six (6) designated open space parcels located in Service Area 15 are:
- 2.3.2.1 Serra Village
- No. 1: Immediately east of Rural Fire Station along Portola Drive.
 - No. 2: Immediately west of Rural Fire Station along Portola Drive.
 - No. 3: Between Darcie Lane and Sharon Lane.
 - No. 4: East entrance of Anza Drive off Portola Drive.
- 2.3.2.2 Toro Park Estates
- No. 5: Between Davenrich Drive and Veronica Drive.
 - No. 6: Between Cordoba Drive and Ordonez Drive.
- 2.3.3 CONTRACTOR shall:
- 2.3.3.1 Mow the six (6) open space areas to an approximate height of two (2) inches during the scheduled period.
- 2.3.3.2 Mow the baseline of trees, the drip line of shrubs, fence lines, signs and installed barriers.
- 2.3.3.3 Edge the sidewalks and entryways with an edging machine which cuts below the surface of the ground to a minimum depth of one inch, but, in no case, less than what is required to cut the plant or weed that is encroaching upon the sidewalk.
- 2.3.3.4 Sweep, blow free or remove the weed debris and/or dirt that accumulates on the sidewalks as a result of the edging operation from the sidewalk after each daily increment of edging before continuing on to the next segment of sidewalk maintenance.
- 2.3.4 CONTRACTOR shall remove all plant debris from the site immediately after the task has been completed.

- 2.3.5 CONTRACTOR shall do a walkover on the open space parcel immediately prior to the mowing operation and remove all downed minor limbs that interfere with the mowing operation, as well as litter material, including bottles, cans and paper from site.
- 2.3.6 CONTRACTOR may remove a major accumulation of plant or other waste material that interferes with the mowing operation as an extra work item.
- 2.3.7 CONTRACTOR shall mow the open space parcels four (4) times during the AGREEMENT period as outlined in APPENDIX 1: LANDSCAPE MAINTENANCE SCHEDULE.
- 2.3.8 CONTRACTOR shall complete the work within the two-week period for the open space mowing operation from the start date given to CONTRACTOR by County.
 - 2.3.8.1 Failure to complete the work within a two-week timeframe shall result in a reduction of payment by 25% for this service and the subsequent payment shall only be paid upon full completion of the work

2.4 MAINTENANCE OF SIDEWALKS AND PLANT MATERIALS

- 2.4.1 CONTRACTOR shall maintain the sidewalks and trim the plant material along the entire length of Portola Drive in Serra Village and Toro Parks Estates to the extent that the sidewalks cross over the greenbelt areas as shown on APPENDIX 2: GREENBELT AREAS - WORK LOCATION MAPS.
- 2.4.2 CONTRACTOR, in the course of sidewalk maintenance, shall:
 - 2.4.2.1 Edge the entire length of the sidewalks along Portola Drive with an edging machine which cuts below the surface of the ground to a minimum depth of one inch, but in no case, less than what is required to cut the plant or weed that is encroaching upon the sidewalk.
 - 2.4.2.2 Sweep, blow free or remove the weed debris and/or dirt that accumulates on the sidewalks as a result of the edging operation from the sidewalk after each daily increment of edging before continuing on to the next segment of sidewalk maintenance.
 - 2.4.2.3 Remove all accumulated plant debris and/or dirt from overhanging trees or animal casting, not associated with the edging operation.
- 2.4.3 CONTRACTOR shall provide sidewalk maintenance four (4) times during the AGREEMENT period as outlined in APPENDIX 1: LANDSCAPE MAINTENANCE SCHEDULE.
- 2.4.4 CONTRACTOR, in the course of plant material maintenance and clearance, shall:
 - 2.4.4.1 Prune all trees and/or shrubs planted between the sidewalks and residential fence lines to a minimum height of eight (8') feet and thin all trees and/or shrubs in a manner that does not create a canopy effect.

- 2.4.4.2 Prune any plant material that is found to be encroaching onto the sidewalk tread width, providing a clearance of twelve (12”) inches on either side of the sidewalk unless otherwise directed by the County.
 - 2.4.4.3 Prune all plant material according to accepted and best landscape maintenance practices.
 - 2.4.4.4 Immediately remove all cut limbs that have the potential to cause injury to persons using the normal tread width of the sidewalks.
 - 2.4.4.5 Sweep, blow free or remove the weed debris and/or dirt that accumulates on the sidewalks as a result of the edging operation from the sidewalk after each daily increment of edging before continuing on to the next segment of sidewalk maintenance.
 - 2.4.4.6 Remove all accumulated plant debris and/or dirt from overhanging trees or animal casting, not associated with the plant maintenance and clearance.
 - 2.4.4.7 Remove all plant debris from the site immediately after the task has been completed.
- 2.4.5 CONTRACTOR shall provide plant material maintenance four (4) times during the AGREEMENT period as outlined in APPENDIX 1: LANDSCAPE MAINTENANCE SCHEDULE.

2.5 MAINTENANCE OF TOREADOR MEDIAN ISLAND

- 2.5.1 CONTRACTOR shall maintain the Toreador Median Island in a weed free condition.
- 2.5.2 CONTRACTOR shall:
- 2.5.2.1 Thoroughly weed the median island by mechanical means. At the discretion of the County, CONTRACTOR may apply an appropriate chemical herbicide for maintenance purposes.
 - 2.5.2.2 Prune the existing plant material and underbrush during the maintenance period to keep the plants from protruding beyond the median island curb line.
 - 2.5.2.3 Remove dead or dying underbrush as required during the maintenance period.
 - 2.5.2.4 Remove all plant debris from the site immediately after the task has been completed.
 - 2.5.2.5 Prune all plant material according to accepted and best landscape maintenance practices.
- 2.5.3 CONTRACTOR shall provide maintenance of the Toreador median island four (4) times during the AGREEMENT period as outlined in APPENDIX 1 - Landscape Maintenance Schedule.

2.6 SIDEWALK WEED CONTROL THROUGH CHEMICAL APPLICATION

- 2.6.1 CONTRACTOR shall maintain the edges of sidewalks along Portola Drive in Toro Park Estates, and curbs along open spaces in Serra Village through two chemical applications of herbicides that are acceptable to the County.

- 2.6.2 CONTRACTOR shall apply, in accordance with the manufacturer's recommendations, a combination of post and pre-emergent herbicides in the first application. CONTRACTOR shall advise the County as to the most appropriate time to apply the herbicides.
- 2.6.3 CONTRACTOR shall apply, in accordance with the manufacturer's recommendations, the post-emergent herbicide in the second application. CONTRACTOR shall advise the County as to the most appropriate time to apply the herbicide.
- 2.6.4 CONTRACTOR shall submit a written schedule that lists the type and brand name of herbicides and the date the chemicals will be applied.
- 2.6.5 CONTRACTOR shall notify the County a minimum of seven (7) days in advance of the chemical applications.
- 2.6.5.1 CONTRACTOR's failure to submit such written notification shall be grounds for non-payment for this service.
- 2.6.5.2 CONTRACTOR shall secure confirmation from County that written notice was properly delivered to County prior to making the chemical applications.
- 2.6.6 CONTRACTOR shall apply the chemical herbicides on both sides of the sidewalks, in Toro Park Estates and Serra Village that are located within the County's greenbelt area.
- 2.6.7 CONTRACTOR shall extend the application of herbicides to a uniform width of twelve (12) inches from each edge of the sidewalks.
- 2.6.8 CONTRACTOR shall apply the selected chemical in accordance with the manufacturer's recommendations and will exercise due caution and care when applying the chemicals in and around public places.
- 2.6.9 The CONTRACTOR shall possess a valid Pest Control Operators license as issued by the Department of Pesticide Regulation, State of California, during the term of this AGREEMENT. CONTRACTOR shall perform all safety functions in accordance with these regulations.

2.7 TURF FERTILIZATION APPLICATIONS

- 2.7.1 CONTRACTOR shall fertilize all parks in County Service Area 15 on a scheduled basis to provide for a healthy and viable turf growing condition. CONTRACTOR shall fertilize the parks through two (2) applications that are acceptable to the County.
- 2.7.2 CONTRACTOR shall:
- 2.7.2.1 Use an all-purpose turf fertilizer, such as 21-7-14, in the first application, in accordance with the manufacturer's recommendations. CONTRACTOR shall advise the County as to the most appropriate time to apply the fertilizer.
- 2.7.2.2 Use an appropriate fertilizer that continues to provide for a healthy and viable turf growing condition in the second application, in accordance with the

manufacturer's recommendations. CONTRACTOR shall advise the County as to the most appropriate time to apply the fertilizer.

- 2.7.3 CONTRACTOR shall submit a written schedule that lists the type and brand name of fertilizer to be used and the date when the fertilizer will be applied.
- 2.7.4 CONTRACTOR shall notify the County a minimum of seven (7) days in advance of the fertilizer application.
- 2.7.4.1 Failure to submit such written notification shall be grounds for non-payment for this service. It shall be the responsibility of the CONTRACTOR to secure confirmation from County that written notice was properly delivered to County prior to making the fertilizer applications.
- 2.7.5 CONTRACTOR shall apply the selected turf fertilizer in accordance with the manufacturer's recommendations and shall exercise due caution and care when applying chemicals in and around public places.

2.8 IRRIGATION SYSTEM MAINTENANCE

- 2.8.1 CONTRACTOR shall inspect irrigation system components of the four mini-parks (Kelton, Ferdinand, Sutherland and Lopp Parks) and the open-spaced component of Serra Village (major mowing area and OS-4 identified in APPENDIX 2: GREENBELT AREAS - WORK LOCATION MAPS, Sheet 1) on a regular basis.
- 2.8.2 CONTRACTOR shall notify County of any minor maintenance work identified as being necessary as a result of inspections, including a proposed cost of repair. Upon written approval of County CONTRACTOR shall complete all minor maintenance work identified as being necessary as a result of inspections or, otherwise, brought to the attention of the CONTRACTOR. Such maintenance work shall include, but shall not be limited to replacement of broken or defective irrigation pipe sections, sprinkler heads, timers or minor valves.

2.9 ADDITIONAL WORK PROVISIONS

- 2.9.1 The County shall pay for all utilities. The County will arrange for access to water and power, if required.
- 2.9.2 CONTRACTOR shall furnish all labor and equipment required to fulfill the AGREEMENT at no additional expense to the County.
- 2.9.3 Emergency Work:
- 2.9.3.1 The County, occasionally, when authorizing emergency work that effects the health and safety of the local residents, requires additional work to be performed and/or materials to

be purchased and is not within the scope of this AGREEMENT. Such authorization for services may include, but is not limited to:

- 2.9.3.1.1 Tree and brush trimming/removal;
- 2.9.3.1.2 Debris removal including dump fees;
- 2.9.3.1.3 Installation of minor structural projects and landscape improvements and enhancements to the open space area;
- 2.9.3.1.4 The County and CONTRACTOR shall negotiate all costs related to the above items prior to the approval of the project. Payment shall be made through a separate purchase order.

3.0 TERM OF AGREEMENT

- 3.1 The initial term shall commence with the signing of the AGREEMENT through and including September 30, 2014, with the option to extend the AGREEMENT for two (2) additional one (1) year periods. County is not required to state a reason if it elects not to renew this AGREEMENT.
- 3.2 If County exercises its option to extend, all applicable parties shall mutually agree upon the extension, including any changes in rate and/or terms and conditions in writing.
- 3.3 County reserves the right to cancel the AGREEMENT, or any extension of the AGREEMENT, without cause, with a thirty (30) day written notice, or immediately with cause.
- 3.4 If the AGREEMENT includes options for renewal or extension, CONTRACTOR must commence negotiations for any desired rate changes a minimum of ninety days (90) prior to the expiration of the AGREEMENT.
 - 3.4.1 Both parties shall agree upon rate extension(s) or changes in writing.
 - 3.4.2 The County is not required to state a reason if it elects not to renew.

4.0 COMPENSATION AND PAYMENTS

- 4.1 It is mutually understood and agreed by both parties that CONTRACTOR shall be compensated under this AGREEMENT in accordance with the pricing sheet attached hereto in APPENDIX 1 – LANDSCAPE MAINTENANCE SCHEDULE.
- 4.2 Prices shall remain firm for the initial term of this AGREEMENT and, thereafter, may be adjusted annually as provided in this paragraph. County does not guarantee any minimum or maximum amount of dollars to be spent under this AGREEMENT.
- 4.3 Negotiations for rate changes shall be commenced, by CONTRACTOR, a minimum of ninety days (90) prior to the expiration of this AGREEMENT.

- 4.4 Any discount offered by the CONTRACTOR must allow for payment after receipt and acceptance of services, material or equipment and correct invoice, whichever is later. In no case will a discount be considered that requires payment in less than 30 days.
- 4.5 CONTRACTOR shall levy no additional fees or surcharges of any kind during the term of this AGREEMENT without first obtaining approval from County in writing.
- 4.6 Tax:
- 4.6.1 Pricing as per this AGREEMENT is inclusive of all applicable taxes.
- 4.6.2 County is registered with the Internal Revenue Service, San Francisco Office. County's Tax Identification Number is 94-6000524. The County is exempt from Federal Transportation Tax; an exemption certificate is not required where shipping documents show Monterey County as consignee.

5.0 INVOICES AND PURCHASE ORDERS

- 5.1 Invoices for all services rendered per this AGREEMENT shall be billed directly to the Resource Management Agency department at the following address:
- County of Monterey
Resource Management Agency
168 W. Alisal Street, 2nd Floor
Salinas, CA 93901
- 5.2 CONTRACTOR shall reference RFP #10411 on all invoices submitted to County. CONTRACTOR shall submit such invoices periodically or at the completion of services, but in any event, not later than 30 days after completion of services. The invoice shall set forth the amounts claimed by CONTRACTOR for the previous period, together with an itemized basis for the amounts claimed, and such other information pertinent to the invoice. County shall certify the invoice, either in the requested amount or in such other amount as County approves in conformity with this AGREEMENT, and shall promptly submit such invoice to County Auditor-Controller for payment. County Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice.
- 5.3 All County of Monterey Purchase Orders issued for the AGREEMENT are valid only during the fiscal year in which they are issued (the fiscal year is defined as July 1 through June 30).
- 5.4 Unauthorized Surcharges or Fees: Invoices containing unauthorized surcharges or unauthorized fees of any kind shall be rejected by County. Surcharges and additional fees not included the AGREEMENT must be approved by County in writing via an Amendment.

6.0 INDEMNIFICATION

- 6.1 CONTRACTOR shall indemnify, defend, and hold harmless County, its officers, agents, and employees, from and against any and all claims, liabilities, and losses whatsoever (including damages to property and injuries to or death of persons, court costs, and reasonable attorneys' fees) occurring or resulting to any and all persons, firms or corporations furnishing or supplying work, services, materials, or supplies in connection with the performance of this AGREEMENT, and from any and all claims, liabilities, and losses occurring or resulting to any person, firm, or corporation for damage, injury, or death arising out of or connected with CONTRACTOR's performance of this AGREEMENT, unless such claims, liabilities, or losses arise out of the sole negligence or willful misconduct of County. "CONTRACTOR's performance" includes CONTRACTOR's action or inaction and the action or inaction of CONTRACTOR's officers, employees, agents and subcontractors.

7.0 INSURANCE REQUIREMENTS

7.1 Evidence of Coverage:

- 7.1.1 Prior to commencement of this AGREEMENT, CONTRACTOR shall provide a "Certificate of Insurance" certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition CONTRACTOR upon request shall provide a certified copy of the policy or policies.
- 7.1.2 This verification of coverage shall be sent to the County's Contracts/Purchasing Department, unless otherwise directed. CONTRACTOR shall not receive a "Notice to Proceed" with the work under this AGREEMENT until it has obtained all insurance required and such, insurance has been approved by County. This approval of insurance shall neither relieve nor decrease the liability of CONTRACTOR.

- 7.2 Qualifying Insurers: All coverage's, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A-VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by County's Purchasing Officer.

7.3 Insurance Coverage Requirements:

- 7.3.1 Without limiting CONTRACTOR's duty to indemnify, CONTRACTOR shall maintain in effect throughout the term of this AGREEMENT a policy or policies of insurance with the following minimum limits of liability:
- 7.3.1.1 Commercial general liability insurance, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broadform Property Damage, Independent Contractors, Products and Completed

Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

- 7.3.2 Business automobile liability insurance, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this AGREEMENT, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.
- 7.3.3 Workers' Compensation Insurance, if CONTRACTOR employs others in the performance of this AGREEMENT, in accordance with California Labor Code Section 3700 and with Employer's Liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease.
- 7.3.4 Professional liability insurance, if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a "claims-made" basis rather than an occurrence basis, CONTRACTOR shall, upon the expiration or earlier termination of this AGREEMENT, obtain extended reporting coverage ("tail coverage") with the same liability limits. Any such tail coverage shall continue for at least three years following the expiration or earlier termination of this AGREEMENT.

7.4 Other Insurance Requirements:

- 7.4.1 All insurance required by this AGREEMENT shall be with a company acceptable to County and issued and executed by an admitted insurer authorized to transact Insurance business in the State of California. Unless otherwise specified by this AGREEMENT, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date CONTRACTOR completes its performance of services under this AGREEMENT.
- 7.4.2 Each liability policy shall provide that County shall be given notice in writing at least thirty days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for CONTRACTOR and additional insureds with respect to claims arising from each subcontractor, if any, performing work under this AGREEMENT, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.

- 7.4.3 Commercial general liability and automobile liability policies shall provide an endorsement naming the County of Monterey, its officers, agents, and employees as Additional Insureds with respect to liability arising out of the CONTRACTOR'S work, including ongoing and completed operations, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the County and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the CONTRACTOR'S insurance. The required endorsement form for Commercial General Liability Additional Insured is ISO Form CG 20 10 11-85 or CG 20 10 10 01 in tandem with CG 20 37 10 01 (2000). The required endorsement form for Automobile Additional Insured endorsement is ISO Form CA 20 48 02 99.
- 7.4.4 Prior to the execution of this AGREEMENT by County, CONTRACTOR shall file certificates of insurance with County's contract administrator and County's Contracts/Purchasing Division, showing that CONTRACTOR has in effect the insurance required by this AGREEMENT. CONTRACTOR shall file a new or amended certificate of insurance within five (5) calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this AGREEMENT, which shall continue in full force and effect.
- 7.4.5 CONTRACTOR shall at all times during the term of this AGREEMENT maintain in force the insurance coverage required under this AGREEMENT and shall send, without demand by County, annual certificates to County's Contract Administrator and County's Contracts/Purchasing Division. If the certificate is not received by the expiration date, County shall notify CONTRACTOR and CONTRACTOR shall have five (5) calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by CONTRACTOR to maintain such insurance is a default of this AGREEMENT, which entitles County, at its sole discretion, to terminate this AGREEMENT immediately.

8.0 RECORDS AND CONFIDENTIALITY

- 8.1 Confidentiality: CONTRACTOR and its officers, employees, agents, and subcontractors shall comply with any and all federal, state, and local laws, which provide for the confidentiality of records and other information. CONTRACTOR shall not disclose any confidential records or other confidential information received from the County or prepared in connection with the performance of this AGREEMENT, unless County specifically permits CONTRACTOR to disclose such records or information. CONTRACTOR shall promptly transmit to County any and all requests for disclosure of any such confidential records or information. CONTRACTOR shall not use any confidential information gained by CONTRACTOR in the performance of this

AGREEMENT except for the sole purpose of carrying out CONTRACTOR's obligations under this AGREEMENT.

- 8.2 County Records: When this AGREEMENT expires or terminates, CONTRACTOR shall return to County any County records which CONTRACTOR used or received from County to perform services under this AGREEMENT.
- 8.3 Maintenance of Records: CONTRACTOR shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and County rules and regulations related to services performed under this AGREEMENT.
- 8.4 Access to and Audit of Records: County shall have the right to examine, monitor and audit all records, documents, conditions, and activities of CONTRACTOR and its subcontractors related to services provided under this AGREEMENT. The parties to this AGREEMENT may be subject, at the request of County or as part of any audit of County, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this AGREEMENT for a period of three (3) years after final payment under the AGREEMENT.

9.0 NON-DISCRIMINATION

- 9.1 During the performance of this AGREEMENT, CONTRACTOR and its subcontractors, shall not unlawfully discriminate against any person because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age (over 40), sex, or sexual orientation either in CONTRACTOR'S employment practices or in the furnishing of services to recipients. CONTRACTOR shall ensure that the evaluation and treatment of its employees and applicants for employment and all persons receiving and requesting services are free of such discrimination. CONTRACTOR and any subcontractor shall, in the performance of this AGREEMENT, fully comply with all federal, state, and local laws and regulations, which prohibit discrimination. The provision of services primarily or exclusively to such target populations as may be designated in this AGREEMENT shall not be deemed to be prohibited discrimination.
- 9.2 Independent Contractor: In the performance of work, duties, and obligations under this AGREEMENT, CONTRACTOR is at all times acting and performing as an independent contractor and not as an employee of the County. No offer or obligation of permanent employment with the County or particular County department or agency is intended in any manner, and CONTRACTOR shall not become entitled by virtue of this AGREEMENT to receive from County any form of employee benefits, including but not limited to, sick leave, vacation, retirement benefits, worker's compensation coverage, insurance or disability benefits. CONTRACTOR shall be solely liable for and obligated to pay directly all applicable taxes, including federal and state income taxes and social security, arising out of CONTRACTOR'S performance of this AGREEMENT. In connection therewith, CONTRACTOR shall defend, indemnify, and hold County

harmless from any and all liability, which County may incur because of CONTRACTOR'S failure to pay such taxes.

10.0 MISCELLANEOUS PROVISIONS

- 10.1 Conflict of Interest. CONTRACTOR represents that it presently has no interest and agrees not to acquire any interests during the term of this AGREEMENT, which would directly or indirectly conflict in any manner or degree with the full and complete performance of the professional services required to be rendered under this AGREEMENT.
- 10.2 Disputes. CONTRACTOR shall continue to perform under this AGREEMENT during any dispute.
- 10.3 Governing Law. This AGREEMENT shall be governed by and interpreted under the laws of the State of California.
- 10.4 Time is of the Essence. Time is of the essence in each and all the provisions of this AGREEMENT.
- 10.5 No Assignment. Neither party to this AGREEMENT shall assign this AGREEMENT without the written consent of the other, nor shall the CONTRACTOR assign any monies due or to become due to him hereunder, without the previous written consent of County. Should any money due, or to become due, under this AGREEMENT be assigned, it shall be subject to a prior lien for services rendered or material supplied for performance of work under this AGREEMENT in favor of all persons, firms, or corporations rendering such services or supplying such materials to the extent that claims are filed pursuant to the Civil Code, the Code of Civil Procedure, and/or the Government Code.
- 10.6 Deliveries. County Project Manager of Project Superintendent will not accept deliveries on behalf of CONTRACTOR.

11.0 FORCE MAJEURE

- 11.1 "Force Majeure" means any cause beyond the reasonable control of a party, including but not limited to acts of God, civil or military disruption, fire, strike, flood, riot, war, or inability due to the aforementioned causes to obtain necessary labor, materials or facilities.

If any party hereto is delayed or prevented from fulfilling its obligations under this AGREEMENT by Force Majeure, said party will not be liable under this AGREEMENT for said delay or failure, nor for damages or injuries resulting directly from the inability to perform scheduled work due to Force Majeure.

CONTRACTOR shall be granted an automatic extension of time commensurate with any delay in performing scheduled work arising from Force Majeure. CONTRACTOR agrees to resume such work within three (3) days after the Force Majeure has subsided enough to do so.

12.0 HAZARDOUS MATERIALS

- 12.1 HAZARDOUS MATERIALS: Transportation of any hazardous materials to County must be done so in conformance with the Superfund Amendments and Reauthorization Act (SARA) Title 3 as amended. Appropriate documentation must be provided in a Material Safety Data Sheet (MSDS) and other documentation as necessary relating to the traits, characteristics, and pervasive properties of any hazardous materials shipped to the County of Monterey. CONTRACTOR understands that County shall not accept any shipment of hazardous materials without complete documentation and safety information as required by law. County shall not take responsibility for the accidental or purposeful discharge or release of any hazardous material. County does not take responsibility for the improper packaging and/or transportation of any hazardous materials ordered by CONTRACTOR in the performance of this AGREEMENT while in transit or storage prior to delivery and acceptance by County.

13.0 CLEANUP

- 13.1 During performance and completion of work in the performance of this AGREEMENT CONTRACTOR shall remove all unused equipment and instruments of service, all excess or unsuitable material, trash, rubbish and debris, and legally dispose of same, unless otherwise directed by the AGREEMENT. CONTRACTOR shall leave entire area in a neat, clean and acceptable condition as approved by COUNTY.

14.0 DAMAGE

- 14.1 CONTRACTOR shall be held responsible for any breakage, loss of COUNTY's equipment or supplies through negligence of CONTRACTOR or his/her/its employee(s) while working on COUNTY's premises. CONTRACTOR shall be responsible for restoring/replacing any equipment, facilities, etc. so damaged. CONTRACTOR shall immediately report to COUNTY any damages to the premises resulting from services performed under this AGREEMENT.

15.0 PROTECTION OF PUBLIC

- 15.1 CONTRACTOR shall provide adequate warning devices, barricades, guards, flagmen, and other necessary precautions shall be taken by CONTRACTOR to give advice and

reasonable protection, safety and warning to persons and vehicular traffic concerned in the area(s) affected by this AGREEMENT.

16.0 NOTICES

- 16.1 Notices required to be given to the respective parties under this AGREEMENT shall be deemed given by any of the following means: (1) when personally delivered to County's contract administrator or to CONTRACTOR'S responsible officer; (2) when personally delivered to the party's principle place of business during normal business hours, by leaving notice with any person apparently in charge of the office and advising such person of the import and contents of the notice; (3) 24 hours after the notice is transmitted by FAX machine to the other party, at the party's FAX number specified pursuant to this AGREEMENT, provided that the party giving notice by FAX must promptly confirm receipt of the FAX by telephone to the receiving party's office; or, (4) three (3) days after the notice is deposited in the U. S. mail with first class or better postage fully prepaid, addressed to the party as indicated below.

Notices mailed or faxed to the parties shall be addressed as follows:

TO COUNTY:

Dirk Medema
Resource Management Agency
168 W. Alisal Street, 2nd Floor
Salinas, CA 93901-2439
Tel. No.: (831) 784-5647
FAX No.: (831) 755-4958
medemad@co.monterey.ca.us

TO CONTRACTOR:

Robert Luster
Town & Country Gardening and Landscape
26485 Carmel Rancho Blvd
Carmel, CA 93923
Tel. No.: (831) 625-3105
FAX No.: (831) 625.3105
contact@tncgardenscarmel.com

17.0 LEGAL DISPUTES

- 17.1 CONTRACTOR agrees that this AGREEMENT and any dispute arising from the relationship between the parties to this AGREEMENT, shall be governed and interpreted by the laws of the State of California, excluding any laws that direct the application of another jurisdiction's laws.

Any dispute that arises under or relates to this AGREEMENT (whether contract, tort, or both) shall be resolved in the Superior Court of California in Monterey County, California.

CONTRACTOR shall continue to perform under this AGREEMENT during any dispute.

The parties agree to waive their separate rights to a trial by jury. This waiver means that the trial will be before a judge.

IN WITNESS WHEREOF, County and CONTRACTOR execute this AGREEMENT as of the last date opposite the respective signatures below as follows:

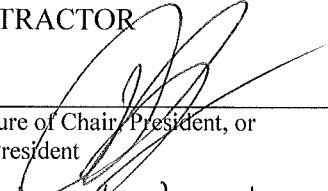
MONTEREY COUNTY

CONTRACTOR

Contracts/Purchasing Officer

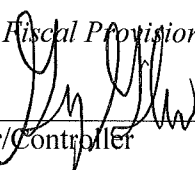
By: _____
Signature of Chair/President, or
Vice-President

Dated: _____



Robert Luster, owner
Printed Name and Title

Approved as to Fiscal Provisions:

Dated: 12-5-13



Deputy Auditor/Controller

By: 

(Signature of Secretary, Asst. Secretary, CFO,
Treasurer or Asst. Treasurer)*

Dated: 12-23-13

Approved as to Liability Provisions:

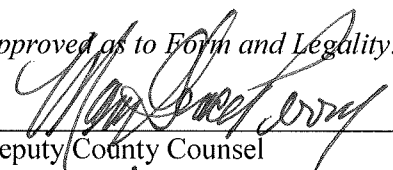
Wette D. Riley, Secretary
Printed Name and Title

Risk Management

Dated: 12-5-2013

Dated: _____

Approved as to Form and Legality:



Deputy County Counsel

Dated: 12-20-2013

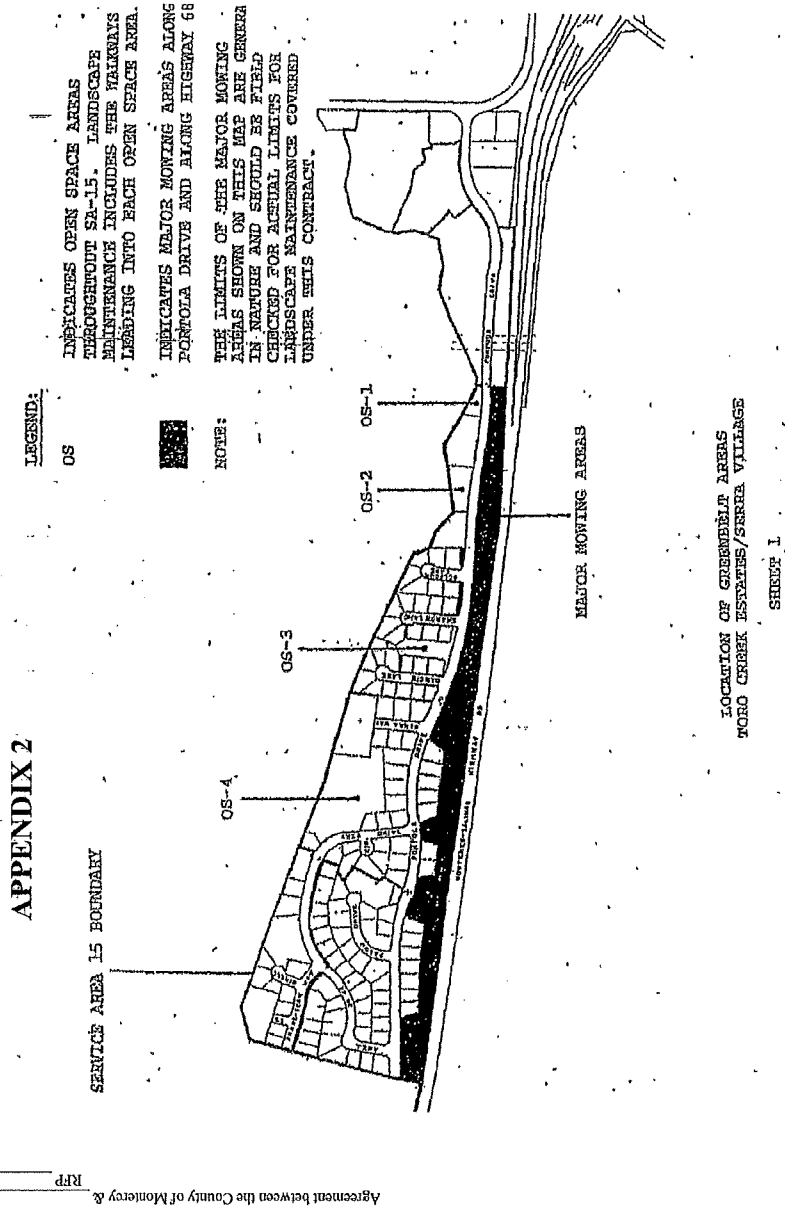
County Board of Supervisors' Agreement Number: _____.

*INSTRUCTIONS: If CONTRACTOR is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two (2) specified officers. If CONTRACTOR is a partnership, the name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership. If CONTRACTOR is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign the Agreement.

APPENDIX 1: LANDSCAPE MAINTENANCE SCHEDULE

ITEM	JOB DESCRIPTION	FREQUENCY	TOTAL COST
1.1	Maintenance of Open Space Areas on Portola Drive and Highway 68	September 2013	\$3906.00
		March 2014	\$3906.00
		May 2014	\$3906.00
		June 2014	\$3906.00
		Subtotal	\$15624.00
1.2	Park Maintenance	<u>Weekly 2013-2014</u> July, August, September, October, November, March, April, May, and June	\$9,021.00
		<u>Bi-Weekly 2013-2014</u> December, January, and February	\$2940.00
		Subtotal	\$11,961.00
1.3	Maintenance of Open Space Parcels Open Space Areas 1,2,3,4,5,6,and 7	September 2013	\$781.00
		March 2014	\$781.00
		May 2014	\$781.00
		June 2014	\$781.00
		Subtotal	\$3,124.00
1.4	Maintenance of Sidewalks and Plant Materials Serra Village Toro Park Subdivision	September 2013	\$872.00
		March 2014	\$872.00
		May 2014	\$872.00
		June 2014	\$872.00
		Subtotal	\$3,488.00
1.5	Maintenance of Toreador Median Island	September 2013	\$92.00
		March 2014	\$92.00
		May 2014	\$92.00
		June 2014	\$92.00
		Subtotal	\$368.00
1.6	Sidewalk Weed Control	March 2014	\$520.00
		June 2014	\$520.00
		Subtotal	\$1040.00
1.7	Turf Fertilization	October 2013	\$683.00
		April 2014	\$684.00
		Subtotal	\$1367.00
1.8	Irrigation System Maintenance	As Needed	\$1,000.00
		Subtotal	\$1000.00
		TOTAL COST	\$37,972.00

APPENDIX 2: GREENBELT AREAS - WORK LOCATION MAPS



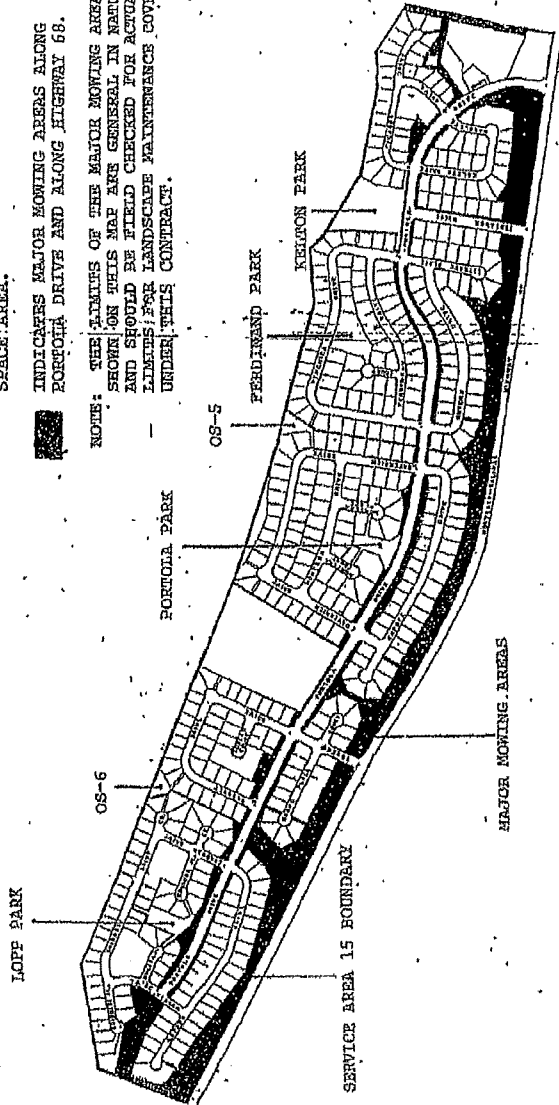
Agreement between the County of Monterey & RFP

APPENDIX 2

OS INDICATES OPEN SPACE AREAS THROUGHOUT SA-15. LANDSCAPE MAINTENANCE INCLUDES THE PARKWAYS LEADING INTO EACH OPEN SPACE AREA.

INDICATES MAJOR MOWING AREAS ALONG PORTOLA DRIVE AND ALONG HIGHWAY 68.

NOTE: THE LIMITS OF THE MAJOR MOWING AREA SHOWN ON THIS MAP ARE GENERAL IN NATURE AND SHOULD BE FIELD CHECKED FOR ACTUAL LIMITS FOR LANDSCAPE MAINTENANCE COVER UNDER THIS CONTRACT.



LOCATION OF GREENBELT AREAS
 TORO PARK ESTATES
 SHEET 2

Agreement between the County of Monterey & _____ RFP