

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made this _____ day of _____, 2022, by the **CITY OF GARDEN GROVE**, a municipal corporation, ("CITY") and **Master Landscape & Maintenance, Inc.**, herein after referred to as "CONTRACTOR".

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Agreement is entered into pursuant to Garden Grove COUNCIL AUTHORIZATION, DATED _____.
2. CITY desires to utilize the services of CONTRACTOR to Provide all material, equipment, transportation, traffic control, and labor for trimming of Oleander Bushes and Storm Drain Maintenance at various locations for the City of Garden Grove per RFP S-1289.
3. CONTRACTOR is qualified by virtue of experience, training, education and expertise to accomplish services.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Term and Termination.** The initial term of the agreement shall be for period of three fiscal years, from July 1, 2022 through June 30, 2025, with an option to extend said agreement for an additional two fiscal (2) years, for a total performance period of five (5) fiscal years through June 30, 2027. This agreement may be terminated by the CITY without cause. In such event, the CITY will compensate CONTRACTOR for work performed to date in accordance with Contractors Proposal which is attached as Attachment B and is hereby incorporated by reference. Contractor is required to present evidence to support performed work. This agreement may be terminated by the CITY without cause. In such event, the CITY will compensate CONTRACTOR for work performed to date in accordance with PROPOSAL PRICING form (Attachment B). Contractor is required to present evidence to support performed work completion.
2. **Services to be Provided.** The services to be performed by CONTRACTOR shall consist of tasks as set forth in the Scope of Work. The Scope of Work is attached as Attachment A, and is incorporated herein by reference. The Scope of Work and this Agreement do not guarantee any specific amount of work.
3. **Compensation.** CONTRACTOR shall be compensated as follows:
 - 3.1 **AMOUNT.** Total Compensation under this agreement shall not exceed (NTE) amount of Eighty Five Thousand Nine Hundred Forty Six Dollars

and 70/100 (\$85,946.70), for the first three fiscal years, payable in arrears and in accordance with PROPOSAL PRICING form, Attachment B. All work shall be in accordance with RFP No. S-1289.

YEAR ONE	July 1, 2022-June 30, 2023	\$26,916.00
YEAR TWO	July 1, 2023-June 30, 2024	\$28,531.06
YEAR THREE	July 1, 2024-June 30, 2025	\$30,499.64
YEAR FOUR	July 1, 2025-June 30, 2026	\$32,329.61
YEAR FIVE	July 1, 2026-June 30, 2027	\$34,269.39
	FIVE YEAR TOTAL	\$152,545.70

- 3.2 Payment For work under this Agreement, payment shall be made per invoice for work completed. Within 45 day of delivery of goods or completion of performance of services, CONTRACTOR must promptly render an invoice to CITY or payment may be significantly delayed. For extra work not a part of this Agreement, a written authorization by CITY will be required, and payment shall be based on schedule included in PROPOSAL PRICING FORM, Attachment "B". For extra work not a part of this Agreement, a written authorization by CITY will be required, and payment shall be based on schedule included in PROPOSAL PRICING FORM, Attachment "B. All work shall be in accordance with RFP. No. S-1289.
- 3.3 Records of Expenses. CONTRACTOR shall keep complete and accurate records of all costs and expenses incidental to services covered by this Agreement. These records will be made available at reasonable times to CITY.
- 3.4 Termination. CITY shall have the right to terminate this agreement, without cause, by giving thirty (30) days written notice of termination. If the Agreement is terminated by CITY, then the provisions of paragraph 3 would apply to that portion of the work completed.

4. Insurance Requirements.

- 4.1 COMMENCEMENT OF WORK. CONTRACTOR shall not commence work under this Agreement until all certificates and endorsements have been received and approved by the CITY. All insurance required by this Agreement shall contain a Statement of Obligation on the part of the carrier to notify the CITY of any material change, cancellation, or termination at least thirty (30) days in advance and provide a Waiver of Subrogation in favor of the City.
- 4.2 WORKERS COMPENSATION INSURANCE. During the duration of this Agreement, CONTRACTOR shall maintain Workers Compensation Insurance in the amount and type required by law, if applicable.

4.3 INSURANCE AMOUNTS. CONTRACTOR shall maintain the following insurance for the duration of this Agreement:

- (a) Commercial general liability in an amount not less than of \$1,000,000.00 per occurrence (**claims made and modified occurrence policies are not acceptable**); Insurance companies must be acceptable to CITY and have a Best's Guide Rating of A-, Class VII or better, as approved by the CITY.
- (b) Automobile liability in an amount not less than \$1,000,000.00 combined single limit (**claims made and modified occurrence policies are not acceptable**); Insurance companies must be acceptable to CITY and have a Best's Guide Rating of A-, Class VII or better, as approved by the CITY.

An Additional Insured Endorsement, **ongoing and completed operations**, for the policy under section 4.3 (a) shall designate CITY, its officers, officials, employees, agents, and volunteers as additional insureds for liability arising out of work or operations performed by or on behalf of the CONTRACTOR. CONTRACTOR shall provide to CITY proof of insurance and endorsement forms that conform to city's requirements, as approved by the CITY.

An Additional Insured Endorsement for the policy under section 4.3 (b) shall designate CITY, its officers, officials, employees, agents, and volunteers as additional insureds for automobiles owned, leased, hired, or borrowed by the CONTRACTOR. CONTRACTOR shall provide to CITY proof of insurance and endorsement forms that conform to CITY's requirements, as approved by the CITY.

For any claims related to this Agreement, CONTRACTOR's insurance coverage shall be primary insurance as respects CITY, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, agents, or volunteers shall be in excess of the CONTRACTOR's insurance and shall not contribute with it.

If CONTRACTOR maintains higher insurance limits than the minimums shown above, CONTRACTOR shall provide coverage for the higher insurance limits otherwise maintained by the CONTRACTOR.

- 5. **Non-Liability of Officials and Employees of the CITY.** No official or employee of CITY shall be personally liable to CONTRACTOR in the event of any default or breach by CITY, or for any amount which may become due to CONTRACTOR.

6. **Non-Discrimination.** CONTRACTOR covenants there shall be no discrimination against any person or group due to race, color, creed, religion, sex, marital status, age, handicap, national origin, or ancestry, in any activity pursuant to this Agreement.
7. **Independent Contractor.** It is agreed to that CONTRACTOR shall act and be an independent contractor and not an agent or employee of the CITY, and shall obtain no rights to any benefits which accrue to CITY'S employees.
8. **Compliance with Law.** CONTRACTOR shall comply with all applicable laws, ordinances, codes, and regulations of the federal, state, and local government. CONTRACTOR shall comply with, and shall be responsible for causing all contractors and subcontractors performing any of the work pursuant to this Agreement to comply with, all applicable federal and state labor standards, including, to the extent applicable, the prevailing wage requirements promulgated by the Director of Industrial Relations of the State of California Department of Labor. The City makes no warranty or representation concerning whether any of the work performed pursuant to this Agreement constitutes public works subject to the prevailing wage requirements.
9. **Notices.** All notices shall be personally delivered or mailed to the below listed address, or to such other addresses as may be designated by written notice. These addresses shall be used for delivery of service of process.
 - a. (Contractor)
Master Landscape & Maintenance, Inc.
Attention: Robert Whitecotton,
14600 Goldenwest Street, Suite 210
Westminster, CA 92683
 - b. (Address of CITY) (with a copy to):
City of Garden Grove Garden Grove City Attorney
11222 Acacia Parkway 11222 Acacia Parkway
Garden Grove, CA 92840 Garden Grove, CA 92840
10. **CONTRACTOR'S PROPOSAL.** This Agreement shall include CONTRACTOR'S proposal or bid which shall be incorporated herein by reference. In the event of any inconsistency between the terms of the proposal and this Agreement, this Agreement shall govern.
11. **Licenses, Permits, and Fees.** At its sole expense, CONTRACTOR shall obtain a Garden Grove Business License, all permits, and licenses as may be required by this Agreement.

12. **Familiarity with Work.** By executing this Agreement, CONTRACTOR warrants that: (1) it has investigated the work to be performed; (2) it has investigated the site of the work and is aware of all conditions there; and (3) it understands the facilities, difficulties, and restrictions of the work under this Agreement. Should Contractor discover any latent or unknown conditions materially differing from those inherent in the work or as represented by CITY, it shall immediately inform CITY of this and shall not proceed, except at CONTRACTOR'S risk, until written instructions are received from CITY.
13. **Time of Essence.** Time is of the essence in the performance of this Agreement.
14. **Limitations Upon Subcontracting and Assignment.** The experience, knowledge, capability, and reputation of CONTRACTOR, its principals and employees were a substantial inducement for CITY to enter into this Agreement. CONTRACTOR shall not contract with any other entity to perform the services required without written approval of the CITY. This Agreement may not be assigned voluntarily or by operation of law, without the prior written approval of CITY. If CONTRACTOR is permitted to subcontract any part of this Agreement, CONTRACTOR shall be responsible to CITY for the acts and omissions of its subcontractor as it is for persons directly employed. Nothing contained in this Agreement shall create any contractual relationship between any subcontractor and CITY. All persons engaged in the work will be considered employees of CONTRACTOR. CITY will deal directly with and will make all payments to CONTRACTOR.
15. **Authority to Execute.** The persons executing this Agreement on behalf of the parties warrant that they are duly authorized to execute this Agreement and that by executing this Agreement, the parties are formally bound.
16. **Indemnification.** CONTRACTOR agrees to protect, defend, and hold harmless CITY and its elective or appointive boards, officers, agents, and employees from any and all claims, liabilities, expenses, or damages of any nature, including attorneys' fees, for injury or death of any person, or damage to property, or interference with use of property, arising out of, or in any way connected with performance of the Agreement by CONTRACTOR, CONTRACTOR'S agents, officers, employees, subcontractors, or independent contractors hired by CONTRACTOR. The only exception to CONTRACTOR'S responsibility to protect, defend, and hold harmless CITY, is due to the sole negligence of CITY, or any of its elective or appointive boards, officers, agents, or employees.

This hold harmless agreement shall apply to all liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by CONTRACTOR.
17. **Prevailing Wages.** The CITY has been advised that the Prevailing Wages Law applies to the work. CONTRACTOR and its subcontractors must be registered with the California Department of Industrial Relations pursuant to Labor Code Section 1725.5. This Agreement shall not be effective until

CONTRACTOR provides proof of registration to the CITY. CONTRACTOR shall be responsible for CONTRACTOR's compliance in all respects with the Prevailing Wage Law, including the payment of the prevailing wage rates to all the laborers involved, and with California Labor Code Section 1770 et seq., including the keeping of all records required by the provisions of Labor Code Section 1776 and the implementing administrative regulations. CONTRACTOR shall submit payroll records to the Labor Commissioner pursuant to Labor Code section 1771.4(a)(3) and shall comply with the job site notices posting requirements established by the Labor Commissioner pursuant to Title 8, California Code of Regulations Section 16461(e) or other regulation promulgated pursuant to Labor Code Section 1771.4(a)(2). Pursuant to Labor Code Section 1771.4, this Project is subject to compliance monitoring and enforcement by the California Department of Industrial Relations. The CITY shall be a third party beneficiary of the forgoing covenant with rights to enforce the same as against the CONTRACTOR.

18. **Appropriations.** This Agreement is subject to and contingent upon funds being appropriated therefor by the Garden Grove City Council for each fiscal year covered by the term of this Agreement. If such appropriations are not made, this Agreement shall automatically terminate without penalty to the CITY.

(Agreement Signature Block on Next Page)

IN WITNESS THEREOF, these parties have executed this Agreement on the day and year shown below.

Date: _____

"CITY"
CITY OF GARDEN GROVE

By: _____
City Manager

ATTESTED:

City Clerk

Date: _____

"CONTRACTOR"
Master Landscape & Maintenance, Inc.

By: _____

Name: _____

Title: _____

Date: _____

Tax ID No. _____

Contractor's License: _____

Expiration Date: _____

If CONTRACTOR is a corporation, a Corporate Resolution and/or Corporate Seal is required. If a partnership, Statement of Partnership must be submitted to CITY.

APPROVED AS TO FORM:

Garden Grove City Attorney

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**SPECIFICATIONS/SCOPE OF WORK
RFP S-1289**

**ATTACHMENT "A"
TRIMMING OF OLEANDER BUSHES**

(PART A)

**CITY OF GARDEN GROVE
RFP S-1289**

- I. It is the intent of the City of Garden Grove to enter into a multi-year contract for Oleander shrub trimming services. The prices quoted with the proposal shall be in effect for a period of three years. This contract will be subject to review and extension after the period of three years. At the City's option, this contract may be extended for an additional two years if it is in the best interest of the City. It is the intent of the City to renew this contract for successive years without any cost increase. However, the Contractor or the City may request a price escalation adjustment (price increase/decrease) in writing sixty (60) days prior to the contract renewal date.

A request for price increase/decrease shall be calculated upon United States Department of Labor, Bureau of labor Statistics Consumer Price Index, Subgroup "all items" entitled "Consumer Price Index, Los Angeles-Long Beach-Anaheim average."

- II. For general information as required, call (714) 741-5384, Streets Division.
- III. Type of Work: Provide complete trimming and debris pickup of Oleander bushes.
- IV. Awarding of the contract shall be contingent upon inspection of type and condition of equipment to be used to meet specifications.
- V. SPECIFICATIONS AND LOCATIONS OF WORK

A. Equipment:

Provide operator and 110 HP minimum tractor with hydrostatic transmission and Bomford Model 728, side arm drop capable of minimum 25 foot reach - flail slope mower with sharp dropped forged fail cutting blades.

B. Locations:

1.

- | | | |
|----|------------------------------------|---------------|
| a. | Chapman - Knott to Valley View N/S | 7,800 Ln. Ft. |
| b. | Chapman - Knott to Valley View S/S | 6,980 Ln. Ft. |
| c. | Springdale - N/O Chapman | 640 Ln. Ft. |
| d. | Springdale - S/O Chapman | 640 Ln. Ft. |

Specifications: Remove side and end growth to a depth of 2 to 2-1/2 feet from the average extending edge of the bush, or 2 to 2-1/2 feet in from the face of the curb; based on City supervisor's direction. Top growth down to 8 feet from top of curb level.

2.

- a. Garden Grove Blvd. - Shackelford to Gilbert 3,200 Ln. Ft.
- b. Garden Grove Boulevard at Casa Linda 55 Ln. Ft. section of Oleanders shall be 30 inches in height.
- c. West end of Oleanders 153 Lt. Ft. section shall be 30 inches in height.
- d. Katella Avenue - Fay to Stratford 800 Ln. Ft.
- e. Katella Avenue-Yana to Mac Murray 1200 Ln. Ft

Specifications: Remove side and end growth to a depth of 2 to 2-1/2 feet from the average extending edge of the bush, or 2 to 2-1/2 feet in from the face of the curb; based on City supervisor's direction. Top growth down to 9 feet from top of curb level.

VI. All work shall begin on the date and time determined by the Trees Division Supervisor or his duly appointed representative and completed within 15 working days of the starting date.

VII. ADDITIONAL SCHEDULE OF SPECIFICATIONS

A. Specifications:

- 1. Side and end trimming shall be vertical, and top trimming shall be horizontal unless otherwise specified. The area where the top and sides of the Oleander meet shall be trimmed to form a rounded edge rather than a right angle. The radius of the angle shall be approximately two to three feet, which will make that section of the Oleander bush more rounded rather than a square edge.
- 2. The Contractor shall consider and make adjustments from the original contract specification to provide necessary trimming of any section of the Oleander bushes, so that visual clearness has met City Traffic Control's ordinance requirements.
- 3. The Contractor shall provide trimming around all wires, poles, buildings, or stationary objects by whatever means necessary to maintain a symmetrical-shaped, trimmed appearing Oleander.
- 4. When the Oleander bush is protruding through or beyond a fence, those branches shall be trimmed to within 3 inches of the face of the fence.

5. A symmetrical form with no extending branches or foliage with a tolerance of three (3) inches shall be maintained.
6. Contractor will provide traffic control in accordance with specifications of the work area Traffic Control Handbook, latest edition, which has been approved by the Southern California Chapter of the Public Works Association.
7. Storm Water Protection: Trimming activity Best Management shall be adhered to all times. Trimming work activity shall be in compliance with the **City of Garden Grove Local Implementation Plan (LIP)**, Adoption storm water quality municipal codes and ordinances. ***This document is posted on the City's Planet Bid website as a separate document.***

B. Specifications Involving Cleanup by Contractor:

All specifications in this contract are to be included, in addition to the following:

1. Trimming and removal of all brush and debris under, in and around the Oleander including the street and walkway areas.
2. Contractor will provide traffic control in accordance with specifications of the work area Traffic Control Handbook, latest edition, which has been approved by the Southern California Chapter of the Public Works Association.
3. Removal of parked vehicles shall be the responsibility of the Contractor and shall be dealt with in accordance with the Garden Grove Municipal Code and the approval of the Trees Division Supervisor.
4. Removal: All debris and other vegetation resulting from Oleander trimming operations shall be promptly removed from the worksite and properly disposed of at the Contractor's expense. All laws and ordinances that are applicable to and governing such disposal shall be fully complied with.
5. Daily Clean Up: The street, gutter, parkway, sidewalk, and yard areas of all property shall be left free of debris at the close of each day's operation.
6. Sharp drop flail blades shall be used. Dull drop flail blades which cause ripping of stems and foliage will not be acceptable.
7. The Contractor shall make an additional pruning cut, beginning three feet above curb level at the trimmed vertical face of the Oleander

bush; a downward tapering cut will begin, reaching an inward length of 12 inches at curb level.

VIII. CONDUCT OF OPERATION

- A. Cooperation with Others: The Contractor shall endeavor to maintain good public relations at all times. The work shall be conducted in a manner that will cause no interference with or annoyance to the public.
- B. Supervision: The Contractor will assure that a qualified supervisor is present at all times when work is being performed. If a citizen has a complaint or concern about work being performed, the Contractor's Supervisor shall make initial contact with the citizen and endeavor to resolve the problem. The supervisor shall report each daily work schedule on the preceding afternoon before 3 p.m.
- C. Inclement Weather: Work shall be suspended during periods of inclement weather, as determined by the Trees Division Supervisor.
- D. Preservation of Property: The Contractor shall carefully protect from damage all existing trees, shrubs, plants, or other growth and fixtures that remain. The Contractor shall be liable for any and all damaged trees, plants, shrubs, other growth, irrigation, public utility boxes lines, etc., any damaged said property shall be replaced or restored to their original condition within a 48-hour period, to the satisfaction of the Trees Division Supervisor or his duly appointed representative.
- E. The Contractor shall notify the Parks Supervisor or his duly appointed representative 24 hours in advance before starting his work required by the contract.
- F. If the Contractor, after having officially started said contract, should discontinue work of any cause, he shall notify the Trees Division Supervisor or his duly appointed representative of the date of the restarting of operations.
- G. Parking of the Contractor's vehicles at any given location on City residential streets for more than 24 hours shall not be permitted.
- H. All work shall be completed to the satisfaction of the Trees Division Supervisor or his duly appointed representative of the Public Works Department.
- I. Work outside regular hours will not be permitted: Normal working hours shall be between the hours of 7 a.m. and 4 p.m., Monday through Friday, excluding holidays recognized by the City of Garden Grove and City's Friday off. The City may allow the Contractor to work overtime in order that he may finish within his time limit for completion, but the expense for such work shall be included in his bid prices, and will not be considered as

an addition to the contract. The Contractor shall reimburse the City for the actual cost or overtime inspection.

IX. VARIATION IN QUANTITY

City reserves the right to increase or decrease the quantity to be trimmed under such contract by as much as 10%.

X. INSPECTION

When work is completed and ready for final inspection, the Contractor shall so notify the Trees Division Supervisor. As soon as possible thereafter, the Trees Division Supervisor or his duly appointed representative will make the necessary inspection and if he finds that the work has been properly performed and completed in accordance with all terms of the specifications and contract, he will accept it and notify the City Controller to that effect.

XI. PAYMENT TO THE CITY

- A. The City has reserved the right to make increases or decreases in the quantities of items of work to be performed or furnished under such contract. In the event of any such increases or decreases in the quantity of work to be performed or furnished are so ordered, payment shall be proportionate to the changes.
- B. The City shall make payment only after the entire job has been completed and the contract specifications have been met, to the satisfaction of the Trees Division Supervisor or his duly appointed representative.

XII. OTHER CONTRACTOR REQUIREMENTS

- A. The Contractor must provide proof of a valid C-27 Landscaping Contractor License and be in good standing.
- B. The Contractor must provide proof of registration with the Department of Industrial Relations (DIR) for the company as well as all sub-contractors listed. Proof of current registration must also be provided in the proposal package.
- C. Contractor must have a minimum of five (5) years of experience performing the same type of work.