

**CITY OF YORBA LINDA**  
**CONTRACT SERVICES AGREEMENT**  
**FOR**  
**VILLAGE CENTER DRIVE RESTORATION PROJECT**  
**(LI231001)**

THIS CONTRACT SERVICES AGREEMENT (“Agreement”), is made and effective this 17<sup>th</sup> day of January, 2023 by and between the CITY OF YORBA LINDA, a California municipal corporation, (“City”) and MERCHANTS LANDSCAPE SERVICES, INC., a Corporation, (“Contractor”). City and Contractor are sometimes hereinafter individually referred to as “Party” and hereinafter collectively referred to as the “Parties”.

**R E C I T A L S**

A. City requires construction services. Contractor has represented to City that Contractor is qualified to perform said services and has submitted a proposal to City for same.

B. City desires to have Contractor perform said services on the terms and conditions set forth herein.

NOW, THEREFORE, based on the foregoing Recitals and for good and valuable consideration, the receipt and sufficiency of which is acknowledged by both Parties, City and Contractor hereby agree as follows:

**1) SERVICES OF CONTRACTOR.**

1.1 Scope of Services. In compliance with all terms and conditions of this Agreement, the Contractor shall provide those services specified in the Bid Documents and Plans and Specifications (“Bid Specifications”) attached hereto as Exhibit A and incorporated herein by this reference, which services may be referred to herein as the “Services.” As a material inducement to City entering into this Agreement, Contractor represents and warrants that Contractor is a provider of first-class work and services and Contractor is experienced in performing the Services contemplated herein and, in light of such status and experience, Contractor covenants that it shall follow the highest professional standards in performing the Services required hereunder and that all materials will be of good quality, fit for the purpose intended. For purposes of this Agreement, the phrase “highest professional standards” shall mean those standards of practice recognized by one or more first-class firms performing similar work under similar circumstances.

1.2 Documents Included in Contract. ~~Documents Included in Contract.~~ This contract consists of the Noncollusion Affidavit Certification of Principal, Supplemental Information, General and Special Specifications, plans, drawings, all responsible bidding documents (including but not limited to the bid proposal and corrected bid quantities document), the Notice Inviting Sealed Bids, Instructions to Bidders, this Contract Services Agreement, and all required bonds, insurance policies, endorsements, and certificates, permits, notices, and affidavits, any Addenda or supplemental agreements or change orders issued by City, as well as any and all referenced specifications, details, schedules, appendices, and

attachments, which are incorporated as if fully set forth herein. In the event of an inconsistency, this Agreement shall govern.

1.3 Compliance with Law. Contractor and any subcontractor shall comply with all applicable local, state, and federal laws and regulations applicable to the performance of the work hereunder. Contractor is aware of the requirements of California Labor Code Sections 1720, *et seq.*, and 1770, *et seq.*, as well as California Code of Regulations, Title 8, Sections 1600, *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. Ready-mix suppliers and haulers delivering materials to public works projects must also comply with Labor Code Section 1720. Both suppliers and haulers of ready-mix materials will need to register with the Department of Industrial Relations as required under Labor Code Section 1725.5. 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 ONE THOUSAND DOLLARS (\$1,000) or more, Contractor agrees to fully comply with such Prevailing Wage Laws including, but not limited to, requirements related to the maintenance of payroll records and the employment of apprentices. Contractor will maintain and will require all subcontractors to maintain valid and current California Department of Industrial Relations (“DIR”) Public Works Contractor registration during the term of this Agreement. Contractor shall notify the City in writing immediately, and in no case more than twenty-four (24) hours, after receiving any information that Contractor’s or any of its subcontractor’s DIR registration status has been suspended, revoked, expired, or otherwise changed. It is understood that it is the responsibility of Contractor to determine the correct salary scale. The State Prevailing Wage Rates may be obtained from the DIR pursuant to California Public Utilities Code, Sections 465, 466, and 467 by calling 415-703-4774. 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 Contractor’s principal place of business and at the project site, if any. The statutory penalties for failure to pay prevailing wage or to comply with State wage and hour laws will be enforced. Contractor must forfeit to City TWENTY FIVE DOLLARS (\$25.00) per day for each worker who works in excess of the minimum working hours when Contractor does not pay overtime. In accordance with the provisions of Labor Code Sections 1810 *et seq.*, eight (8) hours is the legal working day. Contractor also shall comply with State law requirements to maintain payroll records and shall provide for certified records and inspection of records as required by California Labor Code Section 1770 *et seq.*, including Section 1776. Contractor shall comply with all statutory requirements relating to the employment of apprentices. Contractor shall defend (with counsel selected by City), indemnify, and hold City, its elected officials, officers, employees, and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It is agreed by the Parties that, in connection with performance of the Services, including, without limitation, any and all “Public Works” (as defined by the Prevailing Wage Laws), Contractor shall bear all risks of payment or non-payment of prevailing wages under California law and/or the implementation of Labor Code Section 1781, as the same may be amended from time to time, and/or any other similar law. Contractor acknowledges and agrees that it shall be independently responsible for reviewing the applicable laws and regulations and effectuating compliance with such laws. Contractor shall require the same of all subcontractors.

1.4 Licenses, Permits, Fees and Assessments. Contractor shall obtain at its sole cost and expense such licenses, permits and approvals as may be required by law for the performance of the

Services required by this Agreement, including a City of Yorba Linda business license. Contractor and its employees, agents, and subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required for the performance of the Services required by this Agreement. Contractor shall have the sole obligation to pay for any fees, assessments, and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for Contractor's performance of the Services required by this Agreement, and shall indemnify, defend and hold harmless City, its officers, employees or agents of City, against any such fees, assessments, taxes, penalties or interest levied, assessed, or imposed against City hereunder. Contractor shall be responsible for all subcontractors' compliance with this Section 1.4.

1.5 Familiarity with Work. By executing this Agreement, Contractor warrants that Contractor (i) has thoroughly investigated and considered the Scope of Services to be performed, (ii) has carefully considered how the Services should be performed, and (iii) fully understands the facilities, difficulties, and restrictions attending performance of the Services under this Agreement. If the Services involve work upon any site, Contractor warrants that Contractor has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of the Services hereunder. Should Contractor discover any latent or unknown conditions, which will materially affect the performance of the Services hereunder, Contractor shall immediately inform City of such fact and shall not proceed until written instructions are received from the Contract Officer.

1.6 Care of Services. Contractor shall adopt reasonable methods during the life of this Agreement to furnish continuous protection to the Services, and the equipment, materials, papers, documents, plans, studies, and/or other components thereof to prevent losses or damages, and shall be responsible for all such damages, to persons or property, until acceptance of the Services by City, except such losses or damages as may be caused by City's own negligence.

1.7 Further Responsibilities of Parties. Both Parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Both Parties agree to act in good faith to execute all instruments, prepare all documents, and take all actions as may be reasonably necessary to carry out the purposes of this Agreement. Unless hereafter specified, neither Party shall be responsible for the service of the other. Contractor shall require all subcontractors to comply with the provisions of this agreement.

1.8 Additional Services. City shall have the right at any time during the performance of the Services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to or deducting from said work. No such extra work may be undertaken unless a written change order is first given by the Contract Officer to Contractor, incorporating therein any adjustment in (i) the Contract Sum, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval of Contractor. It is expressly understood by Contractor that the provisions of this Section shall not apply to the Services specifically set forth in the Scope of Services or reasonably contemplated therein. Contractor hereby acknowledges that it accepts the risk that the Services to be provided pursuant to the Scope of Services may be more costly or time consuming than Contractor anticipates and that Contractor shall not be entitled to additional compensation therefore.

## 2. COMPENSATION.

2.1 Contract Sum. For the Services rendered pursuant to this Agreement, the Contractor shall be compensated as specified herein, but not exceeding the maximum contract amount of One Hundred Twelve Thousand Seven Hundred Seventy-Five and 52/100 Dollars (\$112,775.52) except as provided in Section 1.8. The Contract Sum shall include the attendance of Contractor at all project meetings reasonably deemed necessary by City; Contractor shall not be entitled to any additional compensation for attending said meetings.

2.2 Progress Payments. Prior to the first day of the month, during the progress of the Services, commencing on the day and month specified in this Agreement, Contractor shall submit to the Contract Officer a complete itemized statement of all labor and materials incorporated into the Services during the preceding month and the portion of the Contract Sum applicable thereto. Upon approval in writing by the Contract Officer, payment shall be made to Contractor from City within thirty (30) days.

City shall pay Contractor a sum based upon ninety-five percent (95%) of the Contract Sum apportionment of the labor and materials incorporated into the Services under this Agreement during the month covered by said statement. The remaining five percent (5%) thereof shall be retained as performance security. Refer to Section 7.4 of this Agreement for retention of funds.

## 3. PERFORMANCE SCHEDULE.

3.1 Time of Essence. Time is of the essence in the performance of this Agreement. If the work is not completed within **forty-five (45)** working days, it is understood that the AGENCY will suffer damage.

3.2 Schedule of Performance. Contractor shall commence the Services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all services within **forty-five (45)** working days. When requested by Contractor, extensions to the time period(s) specified in the Schedule of Performance may be approved in writing by the Contract Officer.

3.3 Force Majeure. The time period(s) specified in the Schedule of Performance for performance of the Services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of Contractor, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including City, if Contractor shall within ten (10) days of the commencement of such delay notify the Contract Officer in writing of the causes of the delay. The Contract Officer shall ascertain the facts and the extent of delay, and extend the time for performing the Services for the period of the enforced delay when and if in the judgment of the Contract Officer such delay is justified. The Contract Officer's determination shall be final and conclusive upon the Parties to this Agreement. In no event shall Contractor be entitled to recover damages against City for any delay in the performance of this Agreement, however caused, Contractor's sole remedy being extension of this Agreement pursuant to this Section.

3.4 Term. The term of this Agreement shall begin on the date that the contract becomes fully executed and shall end upon project completion as described in the Bid Specifications unless the term of the Agreement is otherwise terminated or extended as provided for at City's sole discretion to award multiple years. The time provided to Contractor to complete the Services required by this Agreement shall not affect City's right to terminate the Agreement, as provided in Section 7.9.

#### 4. COORDINATION OF WORK.

4.1 Representative of Contractor. The following principals of Contractor ("Principals") are hereby designated as being the principals and representatives of Contractor authorized to act in its behalf with respect to the work specified herein and make all decisions in connection therewith:

Martin Herrera, Branch Manager

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It is expressly understood that the experience, knowledge, capability and reputation of the Principals were a substantial inducement for City to enter into this Agreement. Therefore, the Principals shall be responsible during the term of this Agreement for directing all activities of Contractor and devoting sufficient time to personally supervise the Services hereunder. For purposes of this Agreement, the Principals may not be replaced nor may their responsibilities be substantially reduced by Contractor without the express written approval of City.

4.2 Contract Officer. The "Contract Officer" shall be such person as may be designated by the City Manager of City. It shall be the Contractor's responsibility to assure that the Contract Officer is kept informed of the progress of the performance of the Services and Contractor shall refer any decisions which must be made by City to the Contract Officer. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Contract Officer. The Contract Officer shall have authority to sign all documents on behalf of City required hereunder to carry out the terms of this Agreement.

4.3 Prohibition Against Assignment. The experience, knowledge, capability, and reputation of Contractor, its principals, and employees were a substantial inducement for City to enter into this Agreement. Therefore, Contractor shall not contract with any other entity to perform in whole or in part the Services required hereunder in excess of one-half of 1 percent of Contractor's total bid as to which Contractor's original bid did not designate a subcontractor in addition, neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated, or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of City. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty five percent (25%) of the present ownership and/or control of Contractor, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release Contractor or any surety of Contractor of any liability hereunder without the express consent of City.

4.4 Independent Contractor. Neither City nor any of its employees shall have any control over the manner, mode, or means by which Contractor, its agents, or employees, perform the Services required herein, except as otherwise set forth herein. City shall have no voice in the selection, discharge, supervision, or control of Contractor's employees, servants, representatives, or agents, or in fixing their

number, compensation, or hours of service. Contractor shall perform all Services required herein as an independent contractor of City and shall remain at all times as to City a wholly independent contractor with only such obligations as are consistent with that role. Contractor shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City. City shall not in any way or for any purpose become or be deemed to be a partner of Contractor in its business or otherwise or a joint venturer or a member of any joint enterprise with Contractor. Contractor shall not incur or have the power to incur any debt, obligation, or liability whatever against City, or bind City in any manner. Except for the Contract Sum paid to Contractor as provided in this Agreement, City shall not pay salaries, wages, or other compensation to Contractor for performing the Services hereunder for City. City shall not be liable for compensation or indemnification to Contractor for injury or sickness arising out of performing the Services hereunder. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Contractor and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System ("PERS") as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.

4.5 Identity of Persons Performing Work. Contractor represents that it employs or will employ at its own expense all personnel required for the satisfactory performance of any and all of the Services set forth herein. Contractor represents that the Services required herein will be performed by Contractor or under its direct supervision, and that all personnel engaged in such work shall be fully qualified and shall be authorized and permitted under applicable State and local law to perform such tasks and services.

4.6 Utility Relocation. City is responsible for removal, relocation, or protection of existing main or trunkline utilities to the extent such utilities were not identified in the invitation for bids or specifications. City shall reimburse Contractor for any costs incurred in locating, repairing damage not caused by Contractor, and removing or relocating such unidentified utility facilities. Contractor shall not be assessed liquidated damages for delay arising from the removal or relocation of such unidentified utility facilities.

4.7 Trenches or Excavations. Pursuant to California Public Contract Code Section 7104, in the event the work included in this Agreement requires excavations more than four (4) feet in depth, the following shall apply.

(a) Contractor shall promptly, and before the following conditions are disturbed, notify City, in writing, of any: (1) material that Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law; (2) subsurface or latent physical conditions at the site different from those indicated by information about the site made available to bidders prior to the deadline for submitting bids; or (3) unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Agreement.

(b) City shall promptly investigate the conditions, and if it finds that the conditions do

materially so differ, or do involve hazardous waste, and cause a decrease or increase in Contractor's cost of, or the time required for, performance of any part of the work shall issue a change order per Section 1.8 of this Agreement.

(c) That, in the event that a dispute arises between City and Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in Contractor's cost of, or time required for, performance of any part of the work, Contractor shall not be excused from any scheduled completion date provided for by this Agreement, but shall proceed with all work to be performed under this Agreement. Contractor shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the contracting Parties.

4.8 Safety. Contractor shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out the Services, 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 as applicable shall include, but shall not be limited to: (A) adequate life protection and life saving 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.

## 5. INSURANCE, INDEMNIFICATION AND BONDS.

5.1 Insurance. Contractor shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City, during the entire term of this Agreement including any extension thereof, the following policies of insurance which shall cover all elected and appointed officers, employees, and agents of City:

Coverage (Check if applicable)	Minimum Limits
(X) Comprehensive General Liability Insurance (including premises and operations)	<ul style="list-style-type: none"> <li>Commercial General Liability no less broad than ISO form CG 0001.</li> <li>Coverage must be on a standard Occurrence form. Claims-made not acceptable. Minimum limits: ONE MILLION DOLLARS (\$1,000,000.00) per occurrence; TWO MILLION DOLLARS (\$2,000,000.00) General Aggregate; TWO MILLION DOLLARS (\$2,000,000.00) Products/Completed Operations Aggregate. General Aggregate must apply separately to the Services performed under this Agreement.</li> <li>Prior written consent is required if the insurance has a deductible or self-insured retention in excess of TWENTY-FIVE THOUSAND DOLLARS (\$25,000).</li> </ul>

	<ul style="list-style-type: none"> <li>• Coverage shall be continued for one (1) year after completion of the Services or the expiration or termination of this Agreement.</li> <li>• City, its elected and appointed officers, employees, agents, and authorized volunteers must be additional insureds for liability arising out of the Services performed by or on behalf of Contractor, including the insured's general supervision of Contractor, and liability arising out of products and ongoing and completed operations by or on behalf of Contractor. City, its elected and appointed officers, employees, agents, and authorized volunteers shall continue to be an additional insured for completed operations for two (2) years after completion of the work or the expiration or termination of this Agreement.</li> <li>• The policy definition of "insured contract" must include assumptions of liability arising out of both ongoing operations and the products-completed operations hazard ("P" definition of insured contract in ISO form CG 0001, or equivalent).</li> <li>• The insurance provided to City and its officers, employees, agents, and authorized volunteers as an additional insured must apply on a primary and non-contributory basis with respect to any insurance of self-insurance program maintained by City.</li> <li>• Contractor shall provide written notice to City within ten (10) working days if: <ul style="list-style-type: none"> <li>(1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; or (3) the deductible or self-insured retention is increased. In the event any of said policies of insurance are cancelled, Contractor shall, prior to the cancellation date, submit new evidence of insurance in conformance with Section 5.1 to the Contract Officer.</li> </ul> </li> <li>• The policy must cover inter-insured suits and include a "Separation of Insureds" or "severability" clause which treats each insured separately.</li> </ul>
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Coverage (Check if applicable)	Minimum Limits
	<ul style="list-style-type: none"> <li>The policy shall contain no endorsements or provisions limiting coverage for (1) explosion, collapse or underground hazard (XCU); (2) products and completed operations; (3) contractual liability; (4)</li> <li>third party action over claims; (5) cross liability exclusion for claims or suits by one insured against another; or (6) contain any exclusions contrary to the Contract.</li> <li>Required Evidence of Coverage: <ul style="list-style-type: none"> <li>Copy of the additional insured endorsement or policy language granting additional insured status.</li> <li>Copy of the endorsement or policy language indicating that coverage applicable to City is primary and non-contributory; and</li> <li>Properly completed Certificate of Insurance.</li> </ul> </li> </ul>
Coverage (Check if applicable)	Minimum Limits
(X) Comprehensive Automobile Liability Insurance (includes owned, non-owned, and hired automobile hazards)	<ul style="list-style-type: none"> <li>ONE MILLION DOLLARS (\$1,000,000.00) per occurrence combined single limit per accident.</li> <li>Coverage must apply to all owned, hired, and non-owned vehicles.</li> <li>City must qualify as an insured.</li> <li>Required Evidence of Coverage: <ul style="list-style-type: none"> <li>Copy of the endorsement or policy language indicating that City of Yorba Linda is an insured for its vicarious liability.</li> <li>Properly completed Certificate of Insurance.</li> </ul> </li> </ul>
Coverage (Check if applicable)	Minimum Limits

(X) Workers' Compensation/Employers' Liability Insurance	<ul style="list-style-type: none"> <li>• Statutory limits as required by the Labor Code of the State of California, including Section 3700 of the California Labor Code.</li> <li>• Employers Liability Statutory with limits of ONE MILLION DOLLARS (\$1,000,000.00) per Accident; ONE MILLION DOLLARS (\$1,000,000.00) disease per employee; ONE MILLION DOLLARS (\$1,000,000.00) disease per policy.</li> <li>• Policy must include a written waiver of the insurer's right to subrogate against City.</li> <li>• Required evidence of coverage: <ul style="list-style-type: none"> <li>○ Subrogation waiver endorsement.</li> <li>○ Properly completed Certificate of Insurance.</li> </ul> </li> </ul>
( ) Builder's Risk Insurance (for property constructed on behalf of City)	<ul style="list-style-type: none"> <li>• Must cover "all risk" of physical loss providing coverage, including collapse from design error.</li> <li>• Value insured shall cover 100% of completed Agreement cost.</li> <li>• Policy maintained until full acceptance of Work.</li> <li>• Required evidence of coverage: <ul style="list-style-type: none"> <li>○ Subrogation waiver endorsement.</li> <li>○ Copy of the endorsement of policy language indicating that coverage applicable to City is primary and non-contributory; and</li> <li>○ Properly completed Certificate of Insurance.</li> </ul> </li> </ul>

## 5.2 General Insurance Requirements

In accordance with Public Code Section 20170, the insurance of surety companies who provide or issue the policy shall have been admitted to do business in the State of California with a credit rating of A- or better.

Insurance policies must be issued by an insurer with an A.M. Best's rating of at least A:VII.

Contractor shall provide written notice to City within ten (10) working days if: (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; or (3) the deductible or self-insured retention is increased. In the event any of said policies of insurance are cancelled, Contractor shall, prior to the cancellation date, submit new evidence of insurance in conformance with Section 5.1 to the Contract Officer. Any insurance maintained by the City shall apply in excess of and not combined with insurance provided by this policy. City, its officers, employees, representatives, attorneys, and authorized volunteers shall be named as additional named insureds.

No Services under this Agreement shall commence until Contractor has provided City with original endorsements effecting coverage set forth in this Article 5. Such endorsements shall be signed by an authorized representative of the insurance company and shall include the signator's company affiliation and title. Should it be deemed necessary by City, it shall be Contractor's responsibility to see that City receives documentation, acceptable to City, which sustains that the individual signing said endorsements is indeed authorized to do so by the insurance company. Current Evidence of Coverage must be provided for the entire required period of insurance. City reserves the right to inspect complete, certified copies of all required insurance policies at any time. Upon written request, certified copies of required insurance policies must be provided within thirty (30) days. Any failure to comply with the reporting or other provisions of the policies including breaches or warranties shall not affect coverage provided to City.

If the Contractor fails to maintain the aforementioned insurance, or secure and maintain the aforementioned endorsement, the City may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under this Agreement. However, procuring of said insurance by City is an alternative to other remedies City may have, and is not the exclusive remedy for failure of Contractor to maintain said insurance or secure said endorsement. In addition to any other remedies City may have upon Contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, City shall have the right to order Contractor to stop work hereunder, and/or withhold any payment(s) which became due to Contractor hereunder until Contractor demonstrates compliance with the requirements hereof.

Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for the payment of damages to any persons or property resulting from Contractor's activities or the activities of any person or persons for which Contractor is otherwise responsible nor shall it limit Contractor's indemnification liabilities as provided in Section 5.3

The name and address for Additional Insured endorsements, Certificates and Notice of Cancellation is: City of Yorba Linda, 4845 Casa Loma Avenue, Yorba Linda, California, 92886.

Certificate of Insurance must include the following reference:

In the event Contractor subcontracts any portion of the Services in compliance with this Agreement, the contract between Contractor and such subcontractor shall require the subcontractor to maintain the same policies of insurance that Contractor is required to maintain pursuant to Section 5.1, and such certificates and endorsements shall be provided to City.

**5.3 Indemnification.** To the full extent permitted by law, Contractor agrees to indemnify, defend, and hold harmless City, its officers, employees, agents, and volunteers ("Indemnified Parties") from and against any and all actions, either judicial, administrative, arbitration, or regulatory, damages to persons or property, losses, costs, penalties, obligations, errors, omissions, or liabilities whether actual or threatened ("Claims or Liabilities") that may be asserted or claimed by any person, firm, or entity arising out of or in connection with the performance of the Services, operations, or activities provided herein of Contractor, its officers, employees, agents, subcontractors, or invitees, or any individual or entity for which Contractor is legally liable ("Indemnors"), or arising from Contractor's reckless or willful misconduct, or arising from Contractor's or Indemnors' negligent performance of or failure to perform any term, provision, covenant, or condition of this Agreement, and in connection therewith:

(a) Contractor shall defend (with counsel selected by City) any action or actions filed in connection with any of said Claims or Liabilities and will pay all costs and expenses, including legal costs and attorneys' fees incurred in connection therewith;

(b) Contractor will promptly pay any judgment rendered against City, its officers, agents, or employees for any such Claims or Liabilities arising out of or in connection with the performance of or failure to perform such Services, operations or activities of Contractor hereunder; and Contractor agrees to save and hold City, its officers, agents, and employees harmless therefrom;

(c) In the event City, its officers, agents, or employees is made a party to any action or proceeding filed or prosecuted against Contractor for such damages or other claims arising out of or in connection with the performance of or failure to perform the Services, operation or activities of Contractor hereunder, Contractor agrees to pay to City, its officers, agents, or employees, any and all costs and expenses incurred by City, its officers, agents, or employees in such action or proceeding, including but not limited to, legal costs and attorneys' fees.

(d) Contractor's duty to defend and indemnify as set out in this Section 5.3 shall include any claims, liabilities, obligations, losses, demands, actions, penalties, suits, costs, expenses or damages or injury to persons or property arising or alleged to arise from, in connection with, as a consequence of or pursuant to any state or federal law or regulation regarding hazardous substances, including but not limited to the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA"), Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), Resource Conservation and Recovery Act of 1976 ("RCRA"), the Hazardous and Solid Waste Amendments of 1984, the Hazardous Material Transportation Act, the Toxic Substances control Act, the Clean Air Act, the Clean Water Act, the California Hazardous Substance Account Act, the California Hazardous Waste Control Law or the Porter-Cologne Water Quality Control Act, as any of those statutes may be amended from time to time.

The provisions of this Section do not apply to Claims or Liabilities occurring as a result of City's sole negligence or willful acts or omissions, but to the fullest extent permitted by law, shall apply to claims and liabilities resulting in part from City's negligence, except that design professionals' indemnity hereunder shall be limited to claims and liabilities arising out of the negligence, recklessness, or willful misconduct of the design professional. Contractor's indemnification obligations pursuant to this Section 5.3 shall be binding on successors and assigns of Contractor and shall survive termination of this Agreement. Contractor shall incorporate similar indemnity agreements with its subcontractors and if it fails to do so Contractor shall be fully responsible to indemnify City, and failure of City to monitor compliance with these provisions shall not be a waiver hereof.

5.4 Labor and Materials and Performance Bonds. Concurrently with execution of this agreement, Contractor shall deliver to City a payment (labor and materials) bond and a performance bond, each in the sum of the amount of this Agreement, in the forms provided by the City Clerk, which secures the faithful performance of this Agreement. The bonds shall contain the original notarized signature of an authorized officer of the surety and affixed thereto shall be a certified and current copy of his power of attorney. The bonds shall be unconditional and remain in force during the entire term of this Agreement and shall be null and void only if Contractor promptly and faithfully performs all terms and conditions of this Agreement.

5.5 Sufficiency of Insurer or Surety. Insurance or bonds required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated "A" or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VU or better, unless such requirements are waived by the Risk Manager of City ("Risk Manager") due to unique circumstances. In the event the Risk Manager determines that the Services to be performed under this Agreement creates an increased risk of loss to City, Contractor agrees that the minimum limits of the insurance policies and the performance bond

required by this Section 5 may be changed accordingly upon receipt of written notice from the Risk Manager; provided that Contractor shall have the right to appeal a determination of increased coverage by the Risk Manager to the City Council of City within ten (10) days of receipt of notice from the Risk Manager.

5.6 Substitution of Securities. Pursuant to Public Contract Code Section 22300, substitution of eligible equivalent securities for any moneys withheld to ensure performance under this Agreement may be permitted at the request and expense of Contractor.

## 6. RECORDS AND REPORTS.

6.1 Reports. Contractor shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the Services required by this Agreement as the Contract Officer shall require. Contractor hereby acknowledges that City is greatly concerned about the cost of the Services to be performed pursuant to this Agreement. For this reason, Contractor agrees that if Contractor becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the Services contemplated herein or, if Contractor is providing design services, the cost of the project being designed, Contractor shall promptly notify the Contract Officer of said fact, circumstance, technique, or event and the estimated increased or decreased cost related thereto and, if Contractor is providing design services, the estimated increased or decreased cost estimate for the project being designed.

6.2 Records. Contractor shall keep, and require subcontractors to keep, such ledgers books of accounts, invoices, vouchers, canceled checks, reports (including but not limited to payroll reports), studies, or other documents relating to the disbursements charged to City and the Services performed hereunder (the "Books and Records"), as shall be necessary to perform the Services required by this Agreement and enable the Contract Officer to evaluate the performance of such Services. Any and all such Books and Records shall be maintained in accordance with generally accepted accounting principles and shall be complete and detailed. The Contract Officer shall have full and free access to such Books and Records at all times during normal business hours of City, including the right to inspect, copy, audit, and make records and transcripts from such Books and Records. Such Books and Records shall be maintained for a period of three (3) years following completion of the Services hereunder, and City shall have access to such Books and Records in the event any audit is required. In the event of dissolution of Contractor's business, custody of the Books and Records may be given to City, and access shall be provided by Contractor's successor in interest. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds TEN THOUSAND DOLLARS (\$10,000.00), this Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of City, for a period of three (3) years after final payment under this Agreement.

6.3 Ownership of Documents. All drawings, specifications, maps, designs, photographs, studies, surveys, data, notes, computer files, reports, records, documents, and other materials plans, drawings, estimates, test data, survey results, models, renderings, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings, digital renderings, or data stored digitally, magnetically, or in any other medium (the "Documents and Materials") prepared or caused to be prepared by Contractor, its employees, subcontractors, and agents

in the performance of this Agreement shall be the property of City and shall be delivered to City upon request of the Contract Officer or upon the expiration or termination of this Agreement, and Contractor shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership use, reuse, or assignment of the Documents and Materials hereunder. Any use, reuse or assignment of such completed Documents and Materials for other projects and/or use of uncompleted documents without specific written authorization by Contractor will be at City's sole risk and without liability to Contractor, and Contractor's guarantee and warranties shall not extend to such use, revise, or assignment. Contractor may retain copies of such Documents and Materials for its own use. Contractor shall have an unrestricted right to use the concepts embodied therein. All subcontractors shall provide for assignment to City of any Documents and Materials prepared by them, and in the event Contractor fails to secure such assignment, Contractor shall indemnify City for all damages resulting therefrom.

6.4 Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify, reuse, or sublicense any and all copyrights, designs, rights of reproduction, and other intellectual property embodied in the Documents and Materials. Contractor shall require all subcontractors to agree in writing that City is granted a non-exclusive and perpetual license for the Documents and Materials the subcontractor prepares under this Agreement. Contractor represents and warrants that Contractor has the legal right to license any and all of the Documents and Materials. Contractor makes no such representation and warranty in regard to the Documents and Materials which were prepared by design professionals other than Contractor or provided to Contractor by City. City shall not be limited in any way in its use of the Documents and Materials at any time, provided that any such use not within the purposes intended by this Agreement shall be at City's sole risk.

## 7. ENFORCEMENT OF AGREEMENT.

7.1 California Law. This Agreement shall be interpreted, construed, and governed both as to validity and to performance of the Parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim, or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Orange, State of California, or any other appropriate court in such county, and Contractor covenants and agrees to submit to the personal jurisdiction of such court in the event of such action. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in Santa Ana.

7.2 Disputes. In the event either Party fails to perform its obligations hereunder, the nondefaulting Party shall provide the defaulting Party written notice of such default. The defaulting Party shall have ten (10) days to cure the default; provided that, if the default is not reasonably susceptible to being cured within said ten (10) day period, the defaulting Party shall have a reasonable time to cure the default, not to exceed a maximum of thirty (30) days, so long as the defaulting Party commences to cure such default within ten (10) days of service of such notice and diligently prosecutes the cure to completion; provided further that if the default is an immediate danger to the health, safety, and general welfare, the defaulting Party shall take such immediate action as may be necessary. Notwithstanding the foregoing, the nondefaulting Party may, in its sole and absolute discretion, grant a longer cure period. Should the defaulting Party fail to cure the default within the time period provided in this Section, the nondefaulting Party shall have the right, in addition to any other rights the nondefaulting Party may have at law or in equity, to terminate this Agreement. Compliance with the provisions of this Section 7.2 shall

be a condition precedent to bringing any legal action, and such compliance shall not be a waiver of any Party's right to take legal action in the event that the dispute is not cured. During the period of time that Contractor is in default, City shall hold all invoices and shall, when the default is cured, proceed with payment on the invoices. In the alternative, City may, in its sole discretion, elect to pay some or all of the outstanding invoices during the period of default.

7.3 Claims. Notwithstanding Article 1.5 (commencing with Section 20104) of Chapter 1 of Part 3, Section 9204 of the Public Contract Code shall apply to any claim by the Contractor in connection with the Project.

(a) Upon receipt of a claim pursuant to Section 9204 of the Public Contract Code, the City will conduct a reasonable review of the claim and, within a period not to exceed 45 Days, provide the Contractor a written statement identifying what portion of the claim is disputed and what portion is undisputed. Upon receipt of a claim, the Contractor and the City may, by mutual agreement, extend the aforementioned time period.

(b) The Contractor shall furnish reasonable documentation to support the claim.

(c) If City Council approval is needed to provide the Contractor a written statement identifying the disputed portion and the undisputed portion of the claim, and the City Council does not meet within the 45 Days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, the City will have up to 3 Days following the next duly publicly noticed meeting of the City Council after the 45-Day period, or extension, expires to provide the Contractor a written statement identifying the disputed portion and the undisputed portion.

(d) Any payment due on an undisputed portion of the claim will be processed and made within 60 Days after the City issues its written statement. If the City fails to issue a written statement, paragraph (i) shall apply.

(e) If the Contractor disputes the City's written response, or if the City fails to respond to a claim issued pursuant to Section 9204 within the time prescribed, the Contractor may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, the City will schedule a meet and confer conference within 30 Days for settlement of the dispute.

(f) Within 10 business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the City will provide the Contractor a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim will be processed and made within 60 Days after the City issues its written statement. Any disputed portion of the claim, as identified by the Contractor in writing, shall be submitted to nonbinding mediation, with the City and the Contractor sharing the associated costs equally. The City and the Contractor shall mutually agree to a mediator within 10 business days after the disputed portion of the claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the claim remaining in dispute shall be subject to applicable procedures outside those established in Section 9204.

(g) Mediation may include any nonbinding process, including, but not limited to, neutral

evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in Section 9204.

(h) Unless otherwise agreed to by the City and the Contractor in writing, the mediation conducted pursuant to Section 9204 shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.

(i) Failure by the City to respond to a claim from the Contractor within the time periods described in this subdivision or to otherwise meet the time requirements of Section 9204 shall result in the claim being deemed rejected in its entirety.

(j) Amounts not paid in a timely manner as required by Section 9204 will bear interest at 7 percent per annum.

(k) If a Subcontractor or a lower tier Subcontractor lacks legal standing to assert a claim against the City because privity of the Contract does not exist, the Contractor may present to the City a claim on behalf of a Subcontractor or lower tier Subcontractor. A Subcontractor may request in writing, either on its own behalf or on behalf of a lower tier Subcontractor, that the Contractor present a claim for work which was performed by the Subcontractor or by a lower tier Subcontractor on behalf of the Subcontractor. The Subcontractor requesting that the claim be presented to the City shall furnish reasonable documentation to support the claim. Within 45 Days of receipt of this written request, the Contractor shall notify the Subcontractor in writing as to whether the Contractor presented the claim to the City and, if the original Contractor did not present the claim, provide the Subcontractor with a statement of the reasons for not having done so.

(l) A waiver of the rights granted by Section 9204 is void and contrary to public policy, provided, however, that (1) upon receipt of a claim, the Contractor and the City may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration, as applicable; and (2) the City may prescribe reasonable change order, claim, and dispute resolution procedures and requirements in addition to the provisions of Section 9204, so long as the contractual provisions do not conflict with or otherwise impair the timeframes and procedures set forth in Section 9204.

**7.4 Retention of Funds.** Progress payments shall be made in accordance with the provisions of Section 2.2 of this agreement. In accordance with said section, City shall pay Contractor a sum based upon ninety-five percent (95%) of the Contract Sum apportionment of the labor and materials incorporated into the Services under this Agreement during the month covered by said statement. The remaining five percent (5%) thereof shall be retained as performance security to be paid to Contractor within sixty (60) days after final acceptance of the Services by the City Council of City, after Contractor has furnished City with a full release of all undisputed payments under this Agreement, if required by City. In the event there are any claims specifically excluded by Contractor from the operation of the release, City may retain proceeds (per Public Contract Code § 7107) of up to one hundred fifty percent (150%) of the amount in dispute. City's failure to deduct or withhold shall not affect Contractor's obligations hereunder.

**7.5 Waiver.** No delay or omission in the exercise of any right or remedy by a nondefaulting Party on any default shall impair such right or remedy or be construed as a waiver. A Party's consent to or approval of any act by the other Party requiring the Party's consent or approval shall not be deemed to waive or render unnecessary the other Party's consent to or approval of any subsequent act. Any waiver by either Party of any default must be in writing and shall not be a waiver of any other default



concerning the same or any other provision of this Agreement.

7.6 Rights and Remedies are Cumulative. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the Parties are cumulative and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party.

7.7 Legal Action. In addition to any other rights or remedies, either Party may take legal action, in law or in equity, to cure, correct, or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement.

7.8 Liquidated Damages. Since the determination of actual damages for any delay in performance of this Agreement would be extremely difficult or impractical to determine in the event of a breach of this Agreement, Contractor and its sureties shall be liable for and shall pay to City the sum of EIGHT HUNDRED AND FIFTH DOLLARS (\$850.00) as liquidated damages for each working day of delay in the performance of any of the Services required hereunder, as specified in the Schedule of Performance. In addition, liquidated damages may be assessed for failure to comply with the emergency call out requirements described in the Scope of Services. City may withhold from any moneys payable on account of the Services performed by Contractor any accrued liquidated damages.

7.9 Termination for Default of Contractor. If termination is due to the failure of Contractor to fulfill its obligations under this Agreement, Contractor shall vacate any City-owned property which Contractor is permitted to occupy hereunder and City may, after compliance with the provisions of Section 7.2, take over the Services and prosecute the same to completion by contract or otherwise, and the Contractor shall be liable to the extent that the total cost for completion of the Services required hereunder exceeds the compensation herein stipulated (provided that City shall use reasonable efforts to mitigate such damages), and City may withhold any payments to the Contractor for the purpose of setoff or partial payment of the amounts owed the City as previously stated.

7.10 Attorneys' Fees. If either Party to this Agreement is required to initiate or defend or made a Party to any action or proceeding in any way connected with this Agreement, the prevailing Party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorneys' fees; provided, however, that the attorneys' fees awarded pursuant to this Section shall not exceed the hourly rate paid by City for legal services multiplied by the reasonable number of hours spent by the prevailing Party in the conduct of the litigation. Attorneys' fees shall include attorneys' fees on any appeal, and in addition a Party entitled to attorneys' fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery, and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment. The court may set such fees in the same action or in a separate action brought for that purpose.

## 8. CITY OFFICERS AND EMPLOYEES, NONDISCRIMINATION.

8.1 Non-liability of City Officers and Employees. No officer, official, employee, agent,

representative, or volunteer of City shall be personally liable to Contractor, or any successor in interest, in the event of any default or breach by City or for any amount which may become due to Contractor or to its successor, or for breach of any obligation of the terms of this Agreement.

8.2 Conflict of Interest. Contractor covenants that neither it, nor any officer or principal of it, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Contractor's performance of the Services under this Agreement. Contractor further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent, or subcontractor without the express written consent of the Contract Officer. Contractor agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Agreement.

No officer or employee of City shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to this Agreement which effects his financial interest or the financial interest of any corporation, partnership or association in which he is, directly or indirectly, interested, in violation of any State statute or regulation. Contractor warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.

8.3 Covenant Against Discrimination. Contractor covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any impermissible classification including, but not limited to, race, color, creed, religion, sex, marital status, sexual orientation, national origin, or ancestry in the performance of this Agreement. Contractor shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, marital status, sexual orientation, national origin, or ancestry.

## 9. MISCELLANEOUS PROVISIONS.

9.1 Notice. Any notice, demand, request, document, consent, approval, or communication either Party desires or is required to give to the other Party or any other person shall be in writing and shall be deemed to be given when served personally or deposited in the US Mail, prepaid, first- class mail, return receipt requested, addressed as follows:

To City:       City of Yorba Linda  
4845 Casa Loma Avenue Yorba  
Linda, California 92886  
Attention: Director of Public Works/City Engineer

To Contractor:   Merchants Landscape Services, Inc.  
1510 S. Lyon Street  
Santa Ana, CA 92705  
Attn: Mark Bower, President

Either Party may change its address by notifying the other Party of the change of address in writing. Notice shall be deemed communicated at the time personally delivered or in seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

9.2 Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either Party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

9.3 Article and Section Headings and Subheadings. The article and section headings and subheadings contained in this Agreement are included for convenience only and shall not limit or otherwise affect the terms of this Agreement.

9.4 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

9.5 Integration; Amendment. This Agreement including the attachments hereto is the entire, complete, and exclusive expression of the understanding of the Parties. It is understood that there are no oral agreements between the Parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements, and understandings, if any, between the Parties, and none shall be used to interpret this Agreement. No amendment to or modification of this Agreement shall be valid unless made in writing and approved by Contractor and by the City Council of City. The Parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

9.6 Severability. In the event that any one or more of the articles, phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable, such invalidity or unenforceability shall not affect any of the remaining articles, phrases, sentences, clauses, paragraphs, or sections of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the Parties hereunder unless the invalid provision is so material that its invalidity deprives either Party of the basic benefit of their bargain or renders this Agreement meaningless.

9.7 Unfair Business Practices Claims. In entering into this Agreement, Contractor offers and agrees to assign to City all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. § 15) or under the Cartwright Act (Chapter 2, (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials related to this Agreement. This assignment shall be made and become effective at the time City renders final payment to Contractor without further acknowledgment of the Parties.

9.8 Invoicing. Contractor shall submit invoices monthly during the term of this Agreement, based on the cost for the Services performed and reimbursable costs incurred prior to the invoice date.

Invoices shall be submitted to:

City of Yorba Linda  
4845 Casa Loma Avenue  
Yorba Linda, California 92886 Attention:  
Jesse Gutierrez, Assessment District Manager

9.9 No Third Party Beneficiaries. With the exception of the specific provisions set forth in this Agreement, there are no intended third-party beneficiaries under this Agreement and no such other third parties shall have any rights or obligations hereunder.

9.10 Execution of Contract. The persons executing this Agreement on behalf of each of the Parties hereto represent and warrant that (i) such Party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said Party, (iii) by so executing this Agreement, such Party is formally bound to the provisions of this Agreement, and (iv) that entering into this Agreement does not violate any provision of any other Agreement to which said Party is bound. This Agreement shall be binding upon the heirs, executors, administrators, successors, and assigns of the Parties.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have executed and entered into this Agreement as of the date first written above.

**CITY OF YORBA LINDA**

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
MARK A. PULONE  
CITY MANAGER

ATTEST:

\_\_\_\_\_  
Marcia Brown  
City Clerk

**CONTRACTOR:  
MERCHANTS LANDSCAPE SERVICES, INC.**

By: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Dianna Honeywell  
Finance Director

By: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

APPROVED AS TO FORM:  
RUTAN & TUCKER LLP

\_\_\_\_\_  
Todd Litfin  
City Attorney

Two signatures are required if a corporation.

NOTE: CONTRACTOR'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO CONTRACTOR'S BUSINESS ENTITY.