

Mayor
William Siegel
Mayor Pro Tem
Lois Wynne
Council Members
John Gordon
Eddie Neal
Willard Rodarmel



**Public Works
Department**

711 W. Cinnamon Drive
Lemoore ♦ CA 93245
Phone ♦ (559) 924-6735
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Staff Report

ITEM 4-1

To: Lemoore City Council
From: David Wlaschin, Director of Public Works/Planning 
Date: March 26, 2014
Subject: Bid Award – Landscape Maintenance of Public Facilities Maintenance Districts (PFMD) and Lighting and Landscaping Maintenance Districts (LLMD)

Discussion:

Staff accepted bids for the maintenance of the PFMD zones and LLMD zones. Six bids were received. The zones were bid into three different packages as follows:

Bid Packet One

- PFMD Zone 2 – Davante/Lennar
- LLMD Zone 3 – Silva Estates
- LLMD Zone 6 – Capistrano
- LLMD Zone 7 – Silverado
- LLMD Zone 8 – Country Club Villas
- LLMD Zone 11 – Self Help Enterprises

Bid Packet Two

- PFMD Zone 3 – Silva Estates No. 10
- LLMD Zones 1 & 2 – Westfield

Bid Packet Three

- PFMD Zone 1 – The Landing
- PFMD Zone 4 – Parkview Estates
- PFMD Zone 5 – East Village
- LLMD Zone 5 – Wildflower
- LLMD Zone 9 – La Dante
- LLMD Zones 10 & 12 – Avalon/Summerwind
- LLMD Zone 13 – Covington

The following bids were received:

Bid Packet One

EMTS, Inc	\$ 52,836
Clean Cut Landscape	\$ 60,002
Primow Landscape	\$ 92,925
Shinen Landscape	\$101,860
Westscapes Inc	\$106,900

Bid Packet Two	
Primow Landscape	\$56,000
Perfect Care Landscape	\$76,968
EMTS Inc	\$79,968
Westscapes Inc	\$89,200
Clean Cut Landscape	\$94,562

Bid Packet Three	
Clean Cut Landscape	\$ 90,762
EMTS Inc	\$101,388
Shinen Landscape	\$117,000
Primow	\$118,350
Westscapes Inc	\$139,150

Budget Impact:

The following shows the City's cost estimate and the low bid amount received:

Contract	Cost Estimate	Contract Amount
Bid Packet 1	\$123,900	\$52,836
Bid Packet 2	\$ 70,000	\$56,000
Bid Packet 3	\$157,800	\$90,762

Recommendation:

It is recommended that;

The City award two year contracts (See attached) to each of the low bidders beginning on May 1, 2014.

Bid Packet 1, consisting of PFMD Zone 2 (Davante and Lennar), LLMD Zone 3 (Silva Estates), LLMD Zone 6 (Capistrano), LLMD Zone 7 (Silverado), LLMD Zone 8 (Country Club), and LLMD Zone 11 (Self Help) be awarded to Elite Maintenance & Tree Service, Inc. (EMTS) in the amount of \$52,836.

Bid Packet 2, consisting of PFMD Zone 3 (Silva Estates 10) and LLMD Zones 1 and 2 (Westfield), be awarded to Primow Landscape in the amount of \$56,000.

Bid Packet 3, consisting of PFMD Zone 1 (The Landing), PFMD Zone 4 (Parkview Estates), PFMD Zone 5 (East Village), LLMD Zone 5 (Wildflower), LLMD Zone 9 (La Dante), LLMD Zones 10 & 12 (Avalon/Summerwind), and LLMD Zone 13 (Covington) be awarded to Clean Cut Landscape in the amount of \$90,762.

Council, by motion, authorize the City Manager to sign the agreements.

CITY OF LEMOORE

Lighting, Landscaping & Maintenance Location One and PFMD District One
AGREEMENT FOR PERFORMANCE OF MAINTENANCE SERVICES

This Agreement is entered into this ____ day of _____, 2014, by and between, EMTS INC hereinafter referred to as "Contractor" and the City of Lemoore, a chartered city of the State of California, hereinafter referred to as "City."

1. WORK TO BE PERFORMED. Contractor shall perform the maintenance services as set forth in the SPECIFICATIONS AND CONDITIONS FOR LANDSCAPE MAINTENANCE SERVICES AND LANDSCAPING TASK SPECIFICATIONS in Exhibit "A", the bid proposal submitted to City by Contractor including all attachments thereto, attached as Exhibit B, and in accordance with and as specified in this Agreement. Exhibit A and B are attached hereto and incorporated as part of this Agreement.
2. PLACE OF PERFORMANCE. Contractor shall perform all required services at the following location(s): LLMD Location One and PFMD Zone Two which are depicted in the attached maps as Exhibit C and incorporated as part of this Agreement.
3. CHANGES IN WORK TO BE PERFORMED OR PLACES OF PERFORMANCE. City may make changes in the work to be performed, or place of performance or both, by giving thirty (30) days written notice to Contractor of the effective date of any such change. In the event that City makes a change or changes pursuant to this paragraph, the matter of any increased or decreased compensation that may be due to Contractor shall be negotiated between the parties and will be based in part on similar proposal situations in Exhibit B to this Agreement, if such situations exist. Any change in work and negotiated compensation amount shall be memorialized in writing as an amendment to this Agreement.
4. LICENSES. The Contractor shall obtain and keep current a City of Lemoore Business License.
5. RECORDS. The Contractor shall keep accurate financial and time records concerning all work or operations performed under this Agreement and, at the time this Agreement is signed, provide the City with names, addresses and telephone numbers of appropriate persons to be called in the event of an emergency. Said records shall be available for City inspection upon reasonable notice.
6. MEETINGS. The Contractor shall meet with the Public Works Director or a designated representative as scheduled in the frequency bid in Exhibit B for a walk-through of all areas of work to review Contractor's performance under this Agreement and to discuss any problems or matters of concern as determined by the City or Contractor.
7. REPORTING REQUIREMENTS FOR HAZARDS, DEFECTS, SPECIAL MAINTENANCE, EMERGENCY MEASURE. Contractor shall verbally notify City immediately of any hazardous conditions or defects on, in, or affecting the use of City property that would reasonably be found or become known during the performance of work or operations under this Agreement. Contractor shall notify City promptly verbally and in writing of any specific maintenance items which are known to Contractor and

which require correction by City personnel because the same are items not within Contractor's maintenance responsibilities under this Agreement. When any hazardous condition, defect, or other situation requiring immediate maintenance attention is observed, Contractor shall take reasonable steps to alleviate any immediate hazard, defect, or danger and then, or concurrently, promptly notify the City and any appropriate authorities. Contractor shall be compensated for any such unscheduled work in accordance with the unscheduled or additional work rate set forth in Paragraph 11B.

8. FAITHFUL PERFORMANCE BOND. Contractor shall provide the City with a faithful performance bond issued by an admitted California corporate surety, or other security for performance in a form acceptable to the City, in City's sole discretion, in an amount equal to one hundred percent (100%) of the contract amount, the bond or other security to remain in full force and effect for the duration of this Agreement and for sixty (60) days after the termination of this Agreement. This security shall guarantee faithful performance by the Contractor of all of Contractor's obligations and responsibilities under this Agreement.
9. PAYMENT BOND. Contractor shall provide City with a payment bond issued by an admitted California corporate surety in the amount of fifty percent (50%) of the contract amount to secure the payment of claims for labor and materials. The bond or other security shall remain in full force and effect for the duration of this Agreement and for sixty (60) days after the termination of this Agreement.
10. WORK DEFICIENCIES AND CORRECTIONS. All deficiencies in work or materials provided by Contractor shall be corrected within two (2) days of written notification from City. Failure to comply within two (2) days may, in City's sole discretion, result in action being taken by City, including, but not limited to, correcting the deficiency and deducting any associated costs incurred thereby from the total monthly compensation due the Contractor. Serious violations in this regard may result in deletion of site(s) from work under this Agreement and/or, the termination of this Agreement.
11. COMPENSATION.
 - A. Yearly Compensation. The total yearly compensation payable to Contractor for performance of maintenance services pursuant to this Agreement shall be \$ 52,836 for 12 months.
 - B. Additional Work. Any additional work to be done by Contractor shall be authorized in writing by the City's Public Works Director or a designated representative and shall be performed by the Contractor at a rate of \$ _____ per hour, plus actual material costs. Material costs shall be determined based on actual invoices submitted by suppliers. City shall have the option of supplying necessary material.
 - C. Manner and Time of Payment. Payment shall occur during the month following services. By the second Tuesday of each month, Contractor shall submit to the City an invoice for one-twelfth (1/12) of the yearly compensation and for such additional authorized work as shall have been performed within the preceding months. For months in which there is only partial performance under this

Agreement, the monthly compensation shall be prorated. Payment shall be made, in accordance with the City's normal invoice payment process, before the last day of each month that an invoice is submitted and approved.

12. SATISFACTION OF CITY. Maintenance services performed by Contractor shall be performed to the satisfaction of the Public Works Director or a designated representative, thereof.
13. AUTHORITY OF THE DIRECTOR OF LIGHTING, LANDSCAPING AND MAINTENANCE. The Public Works Director or other person designated by the City Manager, shall have the authority to take such action as is reasonably necessary to administer this Agreement. The Public Works Director shall also have the power to make decisions and determinations as provided for in this Agreement.
14. TERM OF AGREEMENT. The term of this Agreement shall be for 24 months from the date the City Manager executes the Agreement, unless this Agreement is terminated sooner for cause or as elsewhere provided in this Agreement. The Agreement may be extended to a maximum of three (3) twelve (12) month terms at the City's option and upon mutually agreeable terms and conditions.
15. CONTRACTOR IS AN INDEPENDENT CONTRACTOR. The Contractor in performing the services herein specified is an independent contractor and shall have control of the work and the manner in which it is performed, subject to all requirements of this Agreement. Contractor is not to be considered an agent or employee of the City, and neither Contractor nor any of its agents or employees is entitled to any employee benefits of any kind provided to City employees.
16. SUBCONTRACTING. Subcontractors can only be used with prior authorization from the Public Works Director or other person designated by the City Manager. All terms and conditions in item 15 of this Agreement apply to all authorized subcontractors as well. No subcontract shall relieve the Contractor from any of its obligations under this Agreement.
17. MINIMUM LIABILITY AND INSURANCE.
 - A. Liability. Contractor shall take all precautions necessary for the safety of and prevention of damage to property on or adjacent to the work site, and for the safety of and prevention of injury to persons, including City employees, Contractor's employees, and third persons, on or adjacent to the work site. All work shall be performed according to the law and entirely at Contractor's risk.
 - B. Hold Harmless and Indemnification. To the fullest extent permitted by law, Contractor expressly undertakes to and shall defend, indemnify and save City, its officers, agents and employees free and harmless from and against any and all claims, demands, damages, actions, expenses, suits, losses, liabilities, or proceedings and other costs, including attorney's fees, arising out of or in connection with any act, omission, work, duties, operations or negligence of Contractor or any of Contractor's subcontractors, agents, servants, employees, or assignees under this Agreement. Without limiting the generality of the foregoing, the foregoing shall specifically include the obligation to defend,

indemnify and save harmless City, its officers, agents, employees or independent contractors, even if the claim, suit, action, expense, accident, injury, or damage has been caused partially by what may be characterized as, constitute or be the equivalent of independent or passive negligence in any proportion, whether partial, concurrent or otherwise, on behalf of the City, or any of its officers, agents employees, contractor or subcontractors. Moreover, Contractor hereby agrees to defend, indemnify, and save the City, its officers, agents, employees and independent contractors harmless from any and all claims, demands, damages, actions, expenses, attorney's fees, and other costs that may arise out of or in connection with any failure of Contractor or any subcontractor to take out or maintain such insurance or the insurance referred to in this Agreement.

C. Insurance. During the term of the Agreement, Contractor shall maintain, keep in force and pay all premiums required to maintain and keep in force the following insurance:

(1) Public Liability and Property Damage.

Contractor shall maintain public liability and property damage insurance at all times during the term of this Agreement from a company or companies that are California admitted carriers with a 1998 AM Best Rating of "A:7" or better. The City of Lemoore and all officers, agents, and employees of the City of Lemoore are to be named as additional insureds in such insurance. This insurance coverage shall be and shall state that it is primary with respect to all other insurance coverage or retention limits of the City of Lemoore, its officers, agents and employees, and that such other insurance that may be carried by City shall be excess thereto. Such insurance shall be on an "occurrence" and not a "claims made" basis and shall not be cancelable or subject to reduction except upon thirty (30) days prior hand-delivered written notice to the Lemoore Risk Manager. Best efforts, "shall endeavor" or similar qualifiers on the notice requirement are not acceptable. Work, duties, or operations by Contractor shall not commence until appropriate certificates of insurance (and copies of the policy or policies) have been presented the City showing that all required insurance is in full force and effect. Notwithstanding any disclaimer or provision to the contrary relief upon by such carrier, issuance of such certificates of insurance and/or policies shall constitute a certification by the carrier(s) that a duly authorized representative of the carrier(s) issuing the insurance required hereunder has read the insurance requirements of this Agreement, that the provisions of this Agreement are controlling, and that requirements herein provided shall appear either in the body of the insurance policies or as endorsements and, whether or not contained herein, shall specifically bind the insurance carrier.

All liability insurance shall provide coverage of no less than \$1,000,000 for each person injured, \$1,000,000 for any one accident and \$500,000 for property damage. If any liability insurance should, at any time, cease to be in full force and effect, Contractor's use of the

subject premises shall cease until such insurance or its equivalent is restored to the full satisfaction of the City.

D. Workers Compensation Insurance. Contractor shall maintain Worker's Compensation Insurance for all its employees and agents during the life of this Agreement. Such insurance shall comply with all applicable State laws. Contractor shall provide City with a Certificate of Insurance showing proof of insurance acceptable to City.

18. PERMITS. The Contractor shall obtain and, when requested, provide verification of any and all permits necessary to do the work required under this Agreement.

19. CONTRACTOR'S RESPONSIBILITY FOR COMPLIANCE. Contractor shall at all times observe and comply with, and shall cause all of its agents, employees and subcontractors to observe and comply with, all applicable existing and future laws, ordinances, regulations, orders and decrees of all public authorities having jurisdiction over any operation under this Agreement.

20. NOTICES. Any notice to be given or made pursuant to this Agreement, including a notice of change in the address to which notices or payments are to be sent, shall be given by personal delivery to the other party or by mail addressed as follows:

TO CONTRACTOR:

TO CITY: City of Lemoore
Attention: Russell Giron, Public Works Superintendent
711 West Cinnamon Avenue
Lemoore, CA 93245

All notices shall be in writing. All payments shall be made by check or warrant. Notices given or made by mail shall be deemed given or made upon the earliest of receipt or three days after deposit of the notice, postage prepaid, in the United States mail addressed in accordance with this paragraph, or to such other changed address as to which notice has been given pursuant to this paragraph.

21. MODIFICATION OF AGREEMENT. Except as expressly or otherwise provided, this Agreement may be amended only by the mutual consent of the parties hereto, in writing.

22. COVENANTS AND CONDITIONS. Each term and each provision of this Agreement shall be construed to be both a covenant and condition.

23. WAIVER OF COVENANT OR CONDITION. One or more waivers of any breach of any covenant or condition must be in writing, signed by the waiving party, and shall not be construed as a waiver or a subsequent breach of the same or any other covenant or condition.

24. ENTIRE AGREEMENT. This Agreement comprises the entire agreement and understanding of the parties concerning the matters described herein and supersedes all negotiations, representations and understandings concerning such matters.
25. ASSIGNMENT. Any assignment of the rights or obligations under this Agreement without prior written consent of the City is prohibited and shall be null and void.
26. TERMINATION OF AGREEMENT. The Agreement may be terminated by City without cause, at any time, by giving thirty (30) days written notice to the Contractor. If the Contractor breaches this Agreement or fails to perform the work and services as required by this Agreement, the City may terminate this Agreement immediately on written notice to the Contractor. In the event of termination pursuant to this paragraph, Contractor shall be entitled only to payment for work performed to date, based on appropriate prorating of the yearly rate, or, in the event termination is for cause, to such amount as may be appropriate in accordance with applicable laws.

DATED: _____
 City of Lemoore

BY: _____
 City Manager

ATTEST:

 City Clerk

CONTRACTOR:
 BY: _____
 President or Owner

APPROVED AS TO FORM:

BY: _____
 Lemoore City Attorney

BY: _____
 Owner Representative

CITY OF LEMOORE

Lighting, Landscaping & Maintenance Location One and PFMD District One
AGREEMENT FOR PERFORMANCE OF MAINTENANCE SERVICES

This Agreement is entered into this ____ day of _____, 2014, by and between, PRIMOW LANDSCAPE hereinafter referred to as "Contractor" and the City of Lemoore, a chartered city of the State of California, hereinafter referred to as "City."

1. WORK TO BE PERFORMED. Contractor shall perform the maintenance services as set forth in the SPECIFICATIONS AND CONDITIONS FOR LANDSCAPE MAINTENANCE SERVICES AND LANDSCAPING TASK SPECIFICATIONS in Exhibit "A", the bid proposal submitted to City by Contractor including all attachments thereto, attached as Exhibit B, and in accordance with and as specified in this Agreement. Exhibit A and B are attached hereto and incorporated as part of this Agreement.
2. PLACE OF PERFORMANCE. Contractor shall perform all required services at the following location(s): LLMD Location One and PFMD Zone Two which are depicted in the attached maps as Exhibit C and incorporated as part of this Agreement.
3. CHANGES IN WORK TO BE PERFORMED OR PLACES OF PERFORMANCE. City may make changes in the work to be performed, or place of performance or both, by giving thirty (30) days written notice to Contractor of the effective date of any such change. In the event that City makes a change or changes pursuant to this paragraph, the matter of any increased or decreased compensation that may be due to Contractor shall be negotiated between the parties and will be based in part on similar proposal situations in Exhibit B to this Agreement, if such situations exist. Any change in work and negotiated compensation amount shall be memorialized in writing as an amendment to this Agreement.
4. LICENSES. The Contractor shall obtain and keep current a City of Lemoore Business License.
5. RECORDS. The Contractor shall keep accurate financial and time records concerning all work or operations performed under this Agreement and, at the time this Agreement is signed, provide the City with names, addresses and telephone numbers of appropriate persons to be called in the event of an emergency. Said records shall be available for City inspection upon reasonable notice.
6. MEETINGS. The Contractor shall meet with the Public Works Director or a designated representative as scheduled in the frequency bid in Exhibit B for a walk-through of all areas of work to review Contractor's performance under this Agreement and to discuss any problems or matters of concern as determined by the City or Contractor.
7. REPORTING REQUIREMENTS FOR HAZARDS, DEFECTS, SPECIAL MAINTENANCE, EMERGENCY MEASURE. Contractor shall verbally notify City immediately of any hazardous conditions or defects on, in, or affecting the use of City property that would reasonably be found or become known during the performance of work or operations under this Agreement. Contractor shall notify City promptly verbally and in writing of any specific maintenance items which are known to Contractor and

which require correction by City personnel because the same are items not within Contractor's maintenance responsibilities under this Agreement. When any hazardous condition, defect, or other situation requiring immediate maintenance attention is observed, Contractor shall take reasonable steps to alleviate any immediate hazard, defect, or danger and then, or concurrently, promptly notify the City and any appropriate authorities. Contractor shall be compensated for any such unscheduled work in accordance with the unscheduled or additional work rate set forth in Paragraph 11B.

8. FAITHFUL PERFORMANCE BOND. Contractor shall provide the City with a faithful performance bond issued by an admitted California corporate surety, or other security for performance in a form acceptable to the City, in City's sole discretion, in an amount equal to one hundred percent (100%) of the contract amount, the bond or other security to remain in full force and effect for the duration of this Agreement and for sixty (60) days after the termination of this Agreement. This security shall guarantee faithful performance by the Contractor of all of Contractor's obligations and responsibilities under this Agreement.
9. PAYMENT BOND. Contractor shall provide City with a payment bond issued by an admitted California corporate surety in the amount of fifty percent (50%) of the contract amount to secure the payment of claims for labor and materials. The bond or other security shall remain in full force and effect for the duration of this Agreement and for sixty (60) days after the termination of this Agreement.
10. WORK DEFICIENCIES AND CORRECTIONS. All deficiencies in work or materials provided by Contractor shall be corrected within two (2) days of written notification from City. Failure to comply within two (2) days may, in City's sole discretion, result in action being taken by City, including, but not limited to, correcting the deficiency and deducting any associated costs incurred thereby from the total monthly compensation due the Contractor. Serious violations in this regard may result in deletion of site(s) from work under this Agreement and/or, the termination of this Agreement.
11. COMPENSATION.
 - A. Yearly Compensation. The total yearly compensation payable to Contractor for performance of maintenance services pursuant to this Agreement shall be \$ 56,000 for 12 months.
 - B. Additional Work. Any additional work to be done by Contractor shall be authorized in writing by the City's Public Works Director or a designated representative and shall be performed by the Contractor at a rate of \$ ____ per hour, plus actual material costs. Material costs shall be determined based on actual invoices submitted by suppliers. City shall have the option of supplying necessary material.
 - C. Manner and Time of Payment. Payment shall occur during the month following services. By the second Tuesday of each month, Contractor shall submit to the City an invoice for one-twelfth (1/12) of the yearly compensation and for such additional authorized work as shall have been performed within the preceding months. For months in which there is only partial performance under this

Agreement, the monthly compensation shall be prorated. Payment shall be made, in accordance with the City's normal invoice payment process, before the last day of each month that an invoice is submitted and approved.

12. SATISFACTION OF CITY. Maintenance services performed by Contractor shall be performed to the satisfaction of the Public Works Director or a designated representative, thereof.
13. AUTHORITY OF THE DIRECTOR OF LIGHTING, LANDSCAPING AND MAINTENANCE. The Public Works Director or other person designated by the City Manager, shall have the authority to take such action as is reasonably necessary to administer this Agreement. The Public Works Director shall also have the power to make decisions and determinations as provided for in this Agreement.
14. TERM OF AGREEMENT. The term of this Agreement shall be for 24 months from the date the City Manager executes the Agreement, unless this Agreement is terminated sooner for cause or as elsewhere provided in this Agreement. The Agreement may be extended to a maximum of three (3) twelve (12) month terms at the City's option and upon mutually agreeable terms and conditions.
15. CONTRACTOR IS AN INDEPENDENT CONTRACTOR. The Contractor in performing the services herein specified is an independent contractor and shall have control of the work and the manner in which it is performed, subject to all requirements of this Agreement. Contractor is not to be considered an agent or employee of the City, and neither Contractor nor any of its agents or employees is entitled to any employee benefits of any kind provided to City employees.
16. SUBCONTRACTING. Subcontractors can only be used with prior authorization from the Public Works Director or other person designated by the City Manager. All terms and conditions in item 15 of this Agreement apply to all authorized subcontractors as well. No subcontract shall relieve the Contractor from any of its obligations under this Agreement.
17. MINIMUM LIABILITY AND INSURANCE.
 - A. Liability. Contractor shall take all precautions necessary for the safety of and prevention of damage to property on or adjacent to the work site, and for the safety of and prevention of injury to persons, including City employees, Contractor's employees, and third persons, on or adjacent to the work site. All work shall be performed according to the law and entirely at Contractor's risk.
 - B. Hold Harmless and Indemnification. To the fullest extent permitted by law, Contractor expressly undertakes to and shall defend, indemnify and save City, its officers, agents and employees free and harmless from and against any and all claims, demands, damages, actions, expenses, suits, losses, liabilities, or proceedings and other costs, including attorney's fees, arising out of or in connection with any act, omission, work, duties, operations or negligence of Contractor or any of Contractor's subcontractors, agents, servants, employees, or assignees under this Agreement. Without limiting the generality of the foregoing, the foregoing shall specifically include the obligation to defend,

indemnify and save harmless City, its officers, agents, employees or independent contractors, even if the claim, suit, action, expense, accident, injury, or damage has been caused partially by what may be characterized as, constitute or be the equivalent of independent or passive negligence in any proportion, whether partial, concurrent or otherwise, on behalf of the City, or any of its officers, agents employees, contractor or subcontractors. Moreover, Contractor hereby agrees to defend, indemnify, and save the City, its officers, agents, employees and independent contractors harmless from any and all claims, demands, damages, actions, expenses, attorney's fees, and other costs that may arise out of or in connection with any failure of Contractor or any subcontractor to take out or maintain such insurance or the insurance referred to in this Agreement.

C. Insurance. During the term of the Agreement, Contractor shall maintain, keep in force and pay all premiums required to maintain and keep in force the following insurance:

(1) Public Liability and Property Damage.

Contractor shall maintain public liability and property damage insurance at all times during the term of this Agreement from a company or companies that are California admitted carriers with a 1998 AM Best Rating of "A:7" or better. The City of Lemoore and all officers, agents, and employees of the City of Lemoore are to be named as additional insureds in such insurance. This insurance coverage shall be and shall state that it is primary with respect to all other insurance coverage or retention limits of the City of Lemoore, its officers, agents and employees, and that such other insurance that may be carried by City shall be excess thereto. Such insurance shall be on an "occurrence" and not a "claims made" basis and shall not be cancelable or subject to reduction except upon thirty (30) days prior hand-delivered written notice to the Lemoore Risk Manager. Best efforts, "shall endeavor" or similar qualifiers on the notice requirement are not acceptable. Work, duties, or operations by Contractor shall not commence until appropriate certificates of insurance (and copies of the policy or policies) have been presented the City showing that all required insurance is in full force and effect. Notwithstanding any disclaimer or provision to the contrary relief upon by such carrier, issuance of such certificates of insurance and/or policies shall constitute a certification by the carrier(s) that a duly authorized representative of the carrier(s) issuing the insurance required hereunder has read the insurance requirements of this Agreement, that the provisions of this Agreement are controlling, and that requirements herein provided shall appear either in the body of the insurance policies or as endorsements and, whether or not contained herein, shall specifically bind the insurance carrier.

All liability insurance shall provide coverage of no less than \$1,000,000 for each person injured, \$1,000,000 for any one accident and \$500,000 for property damage. If any liability insurance should, at any time, cease to be in full force and effect, Contractor's use of the

subject premises shall cease until such insurance or its equivalent is restored to the full satisfaction of the City.

- D. Workers Compensation Insurance. Contractor shall maintain Worker's Compensation Insurance for all its employees and agents during the life of this Agreement. Such insurance shall comply with all applicable State laws. Contractor shall provide City with a Certificate of Insurance showing proof of insurance acceptable to City.
18. PERMITS. The Contractor shall obtain and, when requested, provide verification of any and all permits necessary to do the work required under this Agreement.
19. CONTRACTOR'S RESPONSIBILITY FOR COMPLIANCE. Contractor shall at all times observe and comply with, and shall cause all of its agents, employees and subcontractors to observe and comply with, all applicable existing and future laws, ordinances, regulations, orders and decrees of all public authorities having jurisdiction over any operation under this Agreement.
20. NOTICES. Any notice to be given or made pursuant to this Agreement, including a notice of change in the address to which notices or payments are to be sent, shall be given by personal delivery to the other party or by mail addressed as follows:

TO CONTRACTOR:

TO CITY: City of Lemoore
Attention: Russell Giron, Public Works Superintendent
711 West Cinnamon Avenue
Lemoore, CA 93245

All notices shall be in writing. All payments shall be made by check or warrant. Notices given or made by mail shall be deemed given or made upon the earliest of receipt or three days after deposit of the notice, postage prepaid, in the United States mail addressed in accordance with this paragraph, or to such other changed address as to which notice has been given pursuant to this paragraph.

21. MODIFICATION OF AGREEMENT. Except as expressly or otherwise provided, this Agreement may be amended only by the mutual consent of the parties hereto, in writing.
22. COVENANTS AND CONDITIONS. Each term and each provision of this Agreement shall be construed to be both a covenant and condition.
23. WAIVER OF COVENANT OR CONDITION. One or more waivers of any breach of any covenant or condition must be in writing, signed by the waiving party, and shall not be construed as a waiver or a subsequent breach of the same or any other covenant or condition.

CITY OF LEMOORE
Lighting, Landscaping & Maintenance Location One and PFMD District One
AGREEMENT FOR PERFORMANCE OF MAINTENANCE SERVICES

This Agreement is entered into this ____ day of _____, 2014, by and between, CLEAN CUT LANDSCAPE hereinafter referred to as "Contractor" and the City of Lemoore, a chartered city of the State of California, hereinafter referred to as "City."

1. WORK TO BE PERFORMED. Contractor shall perform the maintenance services as set forth in the SPECIFICATIONS AND CONDITIONS FOR LANDSCAPE MAINTENANCE SERVICES AND LANDSCAPING TASK SPECIFICATIONS in Exhibit "A", the bid proposal submitted to City by Contractor including all attachments thereto, attached as Exhibit B, and in accordance with and as specified in this Agreement. Exhibit A and B are attached hereto and incorporated as part of this Agreement.
2. PLACE OF PERFORMANCE. Contractor shall perform all required services at the following location(s): LLMD Location One and PFMD Zone Two which are depicted in the attached maps as Exhibit C and incorporated as part of this Agreement.
3. CHANGES IN WORK TO BE PERFORMED OR PLACES OF PERFORMANCE. City may make changes in the work to be performed, or place of performance or both, by giving thirty (30) days written notice to Contractor of the effective date of any such change. In the event that City makes a change or changes pursuant to this paragraph, the matter of any increased or decreased compensation that may be due to Contractor shall be negotiated between the parties and will be based in part on similar proposal situations in Exhibit B to this Agreement, if such situations exist. Any change in work and negotiated compensation amount shall be memorialized in writing as an amendment to this Agreement.
4. LICENSES. The Contractor shall obtain and keep current a City of Lemoore Business License.
5. RECORDS. The Contractor shall keep accurate financial and time records concerning all work or operations performed under this Agreement and, at the time this Agreement is signed, provide the City with names, addresses and telephone numbers of appropriate persons to be called in the event of an emergency. Said records shall be available for City inspection upon reasonable notice.
6. MEETINGS. The Contractor shall meet with the Public Works Director or a designated representative as scheduled in the frequency bid in Exhibit B for a walk-through of all areas of work to review Contractor's performance under this Agreement and to discuss any problems or matters of concern as determined by the City or Contractor.
7. REPORTING REQUIREMENTS FOR HAZARDS, DEFECTS, SPECIAL MAINTENANCE, EMERGENCY MEASURE. Contractor shall verbally notify City immediately of any hazardous conditions or defects on, in, or affecting the use of City property that would reasonably be found or become known during the performance of work or operations under this Agreement. Contractor shall notify City promptly verbally and in writing of any specific maintenance items which are known to Contractor and

which require correction by City personnel because the same are items not within Contractor's maintenance responsibilities under this Agreement. When any hazardous condition, defect, or other situation requiring immediate maintenance attention is observed, Contractor shall take reasonable steps to alleviate any immediate hazard, defect, or danger and then, or concurrently, promptly notify the City and any appropriate authorities. Contractor shall be compensated for any such unscheduled work in accordance with the unscheduled or additional work rate set forth in Paragraph 11B.

8. FAITHFUL PERFORMANCE BOND. Contractor shall provide the City with a faithful performance bond issued by an admitted California corporate surety, or other security for performance in a form acceptable to the City, in City's sole discretion, in an amount equal to one hundred percent (100%) of the contract amount, the bond or other security to remain in full force and effect for the duration of this Agreement and for sixty (60) days after the termination of this Agreement. This security shall guarantee faithful performance by the Contractor of all of Contractor's obligations and responsibilities under this Agreement.
9. PAYMENT BOND. Contractor shall provide City with a payment bond issued by an admitted California corporate surety in the amount of fifty percent (50%) of the contract amount to secure the payment of claims for labor and materials. The bond or other security shall remain in full force and effect for the duration of this Agreement and for sixty (60) days after the termination of this Agreement.
10. WORK DEFICIENCIES AND CORRECTIONS. All deficiencies in work or materials provided by Contractor shall be corrected within two (2) days of written notification from City. Failure to comply within two (2) days may, in City's sole discretion, result in action being taken by City, including, but not limited to, correcting the deficiency and deducting any associated costs incurred thereby from the total monthly compensation due the Contractor. Serious violations in this regard may result in deletion of site(s) from work under this Agreement and/or, the termination of this Agreement.
11. COMPENSATION.
 - A. Yearly Compensation. The total yearly compensation payable to Contractor for performance of maintenance services pursuant to this Agreement shall be \$ 90,762 for 12 months.
 - B. Additional Work. Any additional work to be done by Contractor shall be authorized in writing by the City's Public Works Director or a designated representative and shall be performed by the Contractor at a rate of \$ 35 per hour, plus actual material costs. Material costs shall be determined based on actual invoices submitted by suppliers. City shall have the option of supplying necessary material.
 - C. Manner and Time of Payment. Payment shall occur during the month following services. By the second Tuesday of each month, Contractor shall submit to the City an invoice for one-twelfth (1/12) of the yearly compensation and for such additional authorized work as shall have been performed within the preceding months. For months in which there is only partial performance under this

Agreement, the monthly compensation shall be prorated. Payment shall be made, in accordance with the City's normal invoice payment process, before the last day of each month that an invoice is submitted and approved.

12. SATISFACTION OF CITY. Maintenance services performed by Contractor shall be performed to the satisfaction of the Public Works Director or a designated representative, thereof.
13. AUTHORITY OF THE DIRECTOR OF LIGHTING, LANDSCAPING AND MAINTENANCE. The Public Works Director or other person designated by the City Manager, shall have the authority to take such action as is reasonably necessary to administer this Agreement. The Public Works Director shall also have the power to make decisions and determinations as provided for in this Agreement.
14. TERM OF AGREEMENT. The term of this Agreement shall be for 24 months from the date the City Manager executes the Agreement, unless this Agreement is terminated sooner for cause or as elsewhere provided in this Agreement. The Agreement may be extended to a maximum of three (3) twelve (12) month terms at the City's option and upon mutually agreeable terms and conditions.
15. CONTRACTOR IS AN INDEPENDENT CONTRACTOR. The Contractor in performing the services herein specified is an independent contractor and shall have control of the work and the manner in which it is performed, subject to all requirements of this Agreement. Contractor is not to be considered an agent or employee of the City, and neither Contractor nor any of its agents or employees is entitled to any employee benefits of any kind provided to City employees.
16. SUBCONTRACTING. Subcontractors can only be used with prior authorization from the Public Works Director or other person designated by the City Manager. All terms and conditions in item 15 of this Agreement apply to all authorized subcontractors as well. No subcontract shall relieve the Contractor from any of its obligations under this Agreement.
17. MINIMUM LIABILITY AND INSURANCE.
 - A. Liability. Contractor shall take all precautions necessary for the safety of and prevention of damage to property on or adjacent to the work site, and for the safety of and prevention of injury to persons, including City employees, Contractor's employees, and third persons, on or adjacent to the work site. All work shall be performed according to the law and entirely at Contractor's risk.
 - B. Hold Harmless and Indemnification. To the fullest extent permitted by law, Contractor expressly undertakes to and shall defend, indemnify and save City, its officers, agents and employees free and harmless from and against any and all claims, demands, damages, actions, expenses, suits, losses, liabilities, or proceedings and other costs, including attorney's fees, arising out of or in connection with any act, omission, work, duties, operations or negligence of Contractor or any of Contractor's subcontractors, agents, servants, employees, or assignees under this Agreement. Without limiting the generality of the foregoing, the foregoing shall specifically include the obligation to defend,

indemnify and save harmless City, its officers, agents, employees or independent contractors, even if the claim, suit, action, expense, accident, injury, or damage has been caused partially by what may be characterized as, constitute or be the equivalent of independent or passive negligence in any proportion, whether partial, concurrent or otherwise, on behalf of the City, or any of its officers, agents employees, contractor or subcontractors. Moreover, Contractor hereby agrees to defend, indemnify, and save the City, its officers, agents, employees and independent contractors harmless from any and all claims, demands, damages, actions, expenses, attorney's fees, and other costs that may arise out of or in connection with any failure of Contractor or any subcontractor to take out or maintain such insurance or the insurance referred to in this Agreement.

C. Insurance. During the term of the Agreement, Contractor shall maintain, keep in force and pay all premiums required to maintain and keep in force the following insurance:

(1) Public Liability and Property Damage.

Contractor shall maintain public liability and property damage insurance at all times during the term of this Agreement from a company or companies that are California admitted carriers with a 1998 AM Best Rating of "A:7" or better. The City of Lemoore and all officers, agents, and employees of the City of Lemoore are to be named as additional insureds in such insurance. This insurance coverage shall be and shall state that it is primary with respect to all other insurance coverage or retention limits of the City of Lemoore, its officers, agents and employees, and that such other insurance that may be carried by City shall be excess thereto. Such insurance shall be on an "occurrence" and not a "claims made" basis and shall not be cancelable or subject to reduction except upon thirty (30) days prior hand-delivered written notice to the Lemoore Risk Manager. Best efforts, "shall endeavor" or similar qualifiers on the notice requirement are not acceptable. Work, duties, or operations by Contractor shall not commence until appropriate certificates of insurance (and copies of the policy or policies) have been presented the City showing that all required insurance is in full force and effect. Notwithstanding any disclaimer or provision to the contrary relief upon by such carrier, issuance of such certificates of insurance and/or policies shall constitute a certification by the carrier(s) that a duly authorized representative of the carrier(s) issuing the insurance required hereunder has read the insurance requirements of this Agreement, that the provisions of this Agreement are controlling, and that requirements herein provided shall appear either in the body of the insurance policies or as endorsements and, whether or not contained herein, shall specifically bind the insurance carrier.

All liability insurance shall provide coverage of no less than \$1,000,000 for each person injured, \$1,000,000 for any one accident and \$500,000 for property damage. If any liability insurance should, at any time, cease to be in full force and effect, Contractor's use of the

subject premises shall cease until such insurance or its equivalent is restored to the full satisfaction of the City.

D. Workers Compensation Insurance. Contractor shall maintain Worker's Compensation Insurance for all its employees and agents during the life of this Agreement. Such insurance shall comply with all applicable State laws. Contractor shall provide City with a Certificate of Insurance showing proof of insurance acceptable to City.

18. PERMITS. The Contractor shall obtain and, when requested, provide verification of any and all permits necessary to do the work required under this Agreement.

19. CONTRACTOR'S RESPONSIBILITY FOR COMPLIANCE. Contractor shall at all times observe and comply with, and shall cause all of its agents, employees and subcontractors to observe and comply with, all applicable existing and future laws, ordinances, regulations, orders and decrees of all public authorities having jurisdiction over any operation under this Agreement.

20. NOTICES. Any notice to be given or made pursuant to this Agreement, including a notice of change in the address to which notices or payments are to be sent, shall be given by personal delivery to the other party or by mail addressed as follows:

TO CONTRACTOR:

TO CITY: City of Lemoore
Attention: Russell Giron, Public Works Superintendent
711 West Cinnamon Avenue
Lemoore, CA 93245

All notices shall be in writing. All payments shall be made by check or warrant. Notices given or made by mail shall be deemed given or made upon the earliest of receipt or three days after deposit of the notice, postage prepaid, in the United States mail addressed in accordance with this paragraph, or to such other changed address as to which notice has been given pursuant to this paragraph.

21. MODIFICATION OF AGREEMENT. Except as expressly or otherwise provided, this Agreement may be amended only by the mutual consent of the parties hereto, in writing.

22. COVENANTS AND CONDITIONS. Each term and each provision of this Agreement shall be construed to be both a covenant and condition.

23. WAIVER OF COVENANT OR CONDITION. One or more waivers of any breach of any covenant or condition must be in writing, signed by the waiving party, and shall not be construed as a waiver or a subsequent breach of the same or any other covenant or condition.

