

CONTRACT
(CSA Landscape Maintenance Services)

The COUNTY OF SAN BENITO ("COUNTY") and Lee Landscaping.
("CONTRACTOR") enter into this contract which shall be effective on the date stated in Paragraph 1.

1. Duration of Contract.

This contract shall commence on April 1, 2017, and end on April 30, 2020, unless sooner terminated as specified herein.

2. Scope of Services.

CONTRACTOR, for COUNTY's benefit shall perform the services specified on Attachment A to this contract. Attachment A is made a part of this contract.

3. Compensation for Services.

In consideration for CONTRACTOR's performance, COUNTY shall pay compensation to CONTRACTOR according to the terms specified in Attachment B. Attachment B is made a part of this contract.

4. General Terms and Conditions.

The rights and duties of the parties to this contract are governed by the general terms and conditions mutually agreed to and listed in Attachment C. Attachment C is made a part of this contract.

5. Insurance Limits.

CONTRACTOR shall maintain the following insurance policy limits of coverage consistent with the further insurance requirements specified in Attachment C.

- (a) Comprehensive general liability insurance: \$1,000,000
- (b) Professional liability insurance: \$1,000,000
- (c) Comprehensive motor vehicle liability insurance: \$1,000,000

6. Termination.

The number of days of advance written notice required for termination of this contract is 30.

7. Specific Terms and Conditions (check one)

- ☐ There are no additional provisions to this contract.
- ☒ The rights and duties of the parties to this contract are additionally governed by the specific, additional terms mutually agreed to and listed in Attachment D. Attachment D is made a part of this contract.
- ☐ The rights and duties of the parties to this contract are additionally governed by the specific, additional terms mutually agreed to and listed in Attachment E. Attachment E is made a part of this contract.

8. Information about Contract Administrators.

The following names, titles, addresses, and telephone numbers are the pertinent information for the respective contract administrators for the parties.

Contract Administrator for COUNTY:

Name: Brent Barnes

Title: Resource Management Agency Director

Address: 2301 Technology Parkway

Hollister, California 95023

Telephone No.: 831-636-4170

Telephone No.: 831-636-4176

Contract Administrator for CONTRACTOR:

Name: Mary Ann Lee

Title: Owner/Operator

Address: P.O. Box 2409

Hollister, California 95023

Telephone No.: (831) 636-4810

Telephone No.: _____

Signatures

APPROVED BY COUNTY:

Name: Jaime De La Cruz

Title: Chair, San Benito County Board of Supervisors

Date: _____

APPROVED BY CONTRACTOR:

Mary Ann Lee

Name: Mary Ann Lee

Title: Owner/Operator

Date: 3-14-2017

APPROVED AS TO LEGAL FORM:

San Benito County Counsel's Office

Shirley L. Murphy

By: Shirley L. Murphy, Deputy County Counsel

Date: March 15, 2017

ATTACHMENT A
SCOPE OF WORK
(C S A L a n d s c a p e M a i n t e n a n c e S e r v i c e s)

CONTRACTOR, for COUNTY'S benefit, will perform the following landscape maintenance services within County Services Areas 46, 47 and 53, as more specifically described below:

General Description

The specifications described below set forth the minimum requirements for the quantity and quality of work to be provided hereunder.

Scope

The CONTRACTOR will provide all the routine grounds maintenance and landscaping services for County Service Areas (CSAs) #46-Quail Hollow, #47-Oak Creek, and #53- Riverview Estates as described on the location maps below. Services will include all necessary personnel, equipment, tools, materials, and expertise necessary to maintain healthy grass, trees, shrubs, and plants within each CSA. Services will be provided in a manner that will present and maintain a clean, neat, pest- and disease-free environment and appearance of each CSA as follows:

- a. CSA 46 – Quail Hollow
Approximately 3.5 acres, including sound wall along Enterprise Road & drainage ditch, between Quail Hollow & Oak Creek
- b. CSA 47 - OakCreek
Approximately 1.6 acres, including sound wall along Enterprise Road
- c. CSA 53 - Riverview Estates
Approximately .47 acres, including sound wall along Hospital Road

Specifications

General

Proper landscape maintenance sustains the quality and health of a landscaped area and preserves the intended design concept. Landscaping is intended to provide overall aesthetically pleasing appearance for the community. Plants are to be chosen for their natural shape and growth habit. All cultural practices should encourage and enhance the natural form of the plant material. Trimming and pruning should not alter this form appreciably.

Mowing

Turf areas (lawns) shall be mowed weekly during the growing season and as required during winter months. The mowing height shall be appropriate to the turf species and shall be maintained consistently to prevent scalping or burn. Grass clippings shall be removed so as not to be visible after mowing. Adjacent sidewalks and streets shall be clean of clippings. Mowing patterns shall be alternated each week to avoid creating ruts and compaction.

Bedding and Planted Areas

The CONTRACTOR shall maintain bedding and non-turf planted areas. All weeds shall be eradicated manually or mechanically, but not chemically.

Fertilization

All planted areas shall be fertilized at least three times per year. A fertilization schedule that includes type of fertilizer and schedule of application shall be included in the proposal.

Aeration

The CONTRACTOR shall, as conditions require, aerate the soil in improved areas to maintain grounds in a healthy state. Aeration shall take place at least once a year but not more than two times a year. Aeration shall occur at the optimum time of year according to the type of soil and turf.

Edging

Sidewalks, driveways, curbs and other concrete or asphalt edges shall be edged no less than every other mowing. Edging will include the removal of vegetation from cracks or expansion joints in sidewalks, driveways, and curbs. Clippings shall be removed.

Pruning

Trees and shrubs shall be selectively pruned, suckered and fertilized to promote plant health and shape. This scope of services does not include any tree topping or major pruning of trees or shrubs that are over 15 feet in height. Trees and shrubs along traffic areas or sound walls shall be trimmed to keep walkways and other traffic areas clear. All vegetation shall be trimmed around trees, shrubs, buildings, fence posts, fire hydrants, and any other areas where mowing equipment cannot reach. All trimming is to take place at the time of mowing. Any damaged trees, plants, shrubs, or facilities shall be repaired by the CONTRACTOR. Any plants, trees, or shrubs requiring replacement due to damage by the CONTRACTOR will be replaced with the same size and type of item, and will be replaced within 10 working days from the date of notice by Public Works.

Removal of Debris

The CONTRACTOR shall remove all natural debris, such as fallen branches, blown in brush or vegetation, and dead animals. The CONTRACTOR shall also remove all man-made debris and litter. During the fall months fallen leaves shall be removed and disposed of in accordance with local, state and federal laws.

Pest Control

The CONTRACTOR shall identify harmful pests, including insects and rodents, and perform necessary pest control in an approved environmentally sensitive manner. Efforts shall be made to eliminate harmful pests while sparing beneficial organisms. All chemical controls must be applied under the supervision of a licensed and qualified pest control applicator, following the procedures set forth in the labeling of the product, as required by law.

Annual and Perennial Planting/Replanting

CONTRACTOR will plant annual and perennial color, when directed by County staff, with the cost of plant materials billed at cost upon completion. CONTRACTOR shall replace damaged or dead plant material, as needed, with specimens of the same species and of equal or similar sizes as the plant material lost, with the cost of replacement plant materials billed at cost upon completion. Plant

material which dies through the fault or neglect of the CONTRACTOR, or due to preventable circumstances, shall be replaced with a specimen of the same species and of equal or similar size as the plant lost, at no cost to the owner.

Irrigation

The irrigation system shall be operated at an appropriate seasonal schedule, using the least amount of water necessary to maintain the growth, health, and vigor of all landscape plant material. Irrigation controllers shall be programmed in order to match plant material water needs to the irrigation applied, as necessary to prevent any browning or barren areas resulting from lack of irrigation. When a sufficient amount of rainfall has occurred, the CONTRACTOR will turn off the irrigation system until it is necessary to water again. A properly adjusted automatic rain shut-off device may be used for this purpose. CONTRACTOR shall regularly check the irrigation system. In the event of a water break, the CONTRACTOR shall isolate and turn off the control valve and notify the COUNTY'S Contract Administrator immediately. This scope of services does not include repairs to the irrigation system, but repairs to sprinkler equipment damaged by mowers or equipment operated by the CONTRACTOR shall be the responsibility of the CONTRACTOR, at no cost to the owner. If repair work is not accomplished in a timely manner, the Public Works department shall have the work completed and deduct the loss from the monthly payment.

Delivery and Storage

Delivery and storage of all equipment and materials shall be the responsibility of the CONTRACTOR.

Warranty

The CONTRACTOR shall warrant all work and materials for a period of one (1) year.

License

At all times during the performance of this contract, the CONTRACTOR shall possess a current and valid Landscaping Contractor's license issued by the State of California, and shall comply with all terms and conditions of such license. The CONTRACTOR and the CONTRACTOR'S employees shall possess and maintain all other business and professional licenses, registrations, and permits that may be required by Federal, State and/or local law.

LOCATION MAPS

(CSA Landscape Maintenance Services)

Location Map: CSA #46 (Quail Hollow) and #47 (Oak Creek)



CSA #46 (Quail Hollow) consists of Area 4, Area 5 and Area 6

CSA #47 (Oak Creek) consists of Area 1, Area 2, and Area 3 (NOTE: The red line through Area 1 represents a storm drain easement that is maintained by County staff and is not included in the Landscaping Maintenance Services scope of work)

Location Map: CSA #53 (Riverview Estates)



END OF ATTACHMENT A

ATTACHMENT B
Payment Schedule
(C S A L a n d s c a p e M a i n t e n a n c e S e r v i c e s)

B-1. BILLING

Charges for services rendered pursuant to the terms and conditions of this contract shall be invoiced on the following basis: (check one)

- ☒ One month in arrears.
- ☐ Upon the complete performance of the services specified in Attachment A.
- ☐ The basis specified in paragraph B-4.

B-2. PAYMENT

Payment shall be made by COUNTY to CONTRACTOR at the address specified in paragraph 8 of this contract, net thirty (30) days from the invoice date.

B-3. COMPENSATION

COUNTY shall pay to CONTRACTOR: (check one)

- ☐ a total lump sum payment of \$ _____, or
- ☒ a total sum not to exceed \$ 55,100.00 per year; total contract amount not
to exceed \$165,300.00

for services rendered pursuant to the terms and conditions of this contract and pursuant to any special compensation terms specified in this attachment, Attachment B.

B-4. SPECIAL COMPENSATION TERMS: (check one)

- ☐ There are no additional terms of compensation.
- ☒ The following specific terms of compensation shall apply:
 - A.
 - CSA 46 – Quail Hollow Maintenance - \$27,600.00 annually
 - CSA 46 – Quail Hollow Chemical - \$1,000.00 annually
 - CSA 47 – Oak Creek Maintenance - \$16,800.00 annually
 - CSA 47 – Oak Creek Chemical - \$700.00 annually
 - CSA 53 – Riverview Estates Maintenance - \$8,400.00 annually
 - CSA 53 – Riverview Estates Chemical - \$600.00 annually
 - B. Annual or perennial plant materials authorized by County staff shall be billed at cost upon completion of planting/replanting as described in Attachment A to this contract.
 - C. The CONTRACTOR shall itemize all applicable service and labor

charges. Each invoice shall clearly identify the following information: County Contract or Purchase Order number; service location; time and date of service; a summary of work performed in the invoiced period and the signature of the COUNTY's Contract Administrator or designee.

D. Prevailing Wage:

1. Pursuant to the provisions of section 1770 et seq. of the Labor Code, if said provisions are applicable to the work being performed, the CONTRACTOR and any subcontractors shall pay each laborer or mechanic engaged in work on the project not less than the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations, regardless of any contractual relationship which may be alleged to exist between the CONTRACTOR or any subcontractor and such laborers and mechanics. The statement of prevailing wages appearing in the General Prevailing Wage Rates, as established by the California Department of Industrial Relations, is hereby specifically referred to and by this reference is made a part of this contract. Copies of the Prevailing Wage Scale are available at the following website: http://www.dir.ca.gov/DLSR/statistics_research.html#PWD. Those copies shall be made available to any interested party upon request. Failure to pay such prevailing wages shall subject the employer to the penalties set forth in Labor Code section 1775.
2. Any laborer or mechanic employed to perform work on the project which work is not covered by any of the foregoing classifications, shall be paid not less than the prevailing rate of per diem wages specified herein for the classification which most nearly corresponds to the work to be performed by such laborer or mechanic.
3. The foregoing specified prevailing wage rates are minimum rates only, and the CONTRACTOR or any subcontractor may pay any wage rate in excess of the applicable rate.
4. An error on the part of the COUNTY does not relieve the CONTRACTOR or any subcontractor from responsibility for payment of the prevailing rate of per diem wages and penalties pursuant to Labor Code sections 1770 through 1775.

END OF ATTACHMENT B

ATTACHMENT C

General Terms and Conditions

C-1. INDEMNIFICATION.

CONTRACTOR and COUNTY each agree to indemnify, defend and save harmless the other party and the other party's officers and employees, from and against any and all claims and losses whatsoever arising out of, or in any way related to, the indemnifying party's performance under this contract, including, but not limited to, claims for property damage, personal injury, death, and any legal expenses (such as attorneys' fees, court costs, investigation costs, and experts' fees) incurred by the indemnitee in connection with such claims or losses. A party's "performance" includes the party's action or inaction and the action or inaction of that party's officers and employees.

C-2. GENERAL INSURANCE REQUIREMENTS.

Without limiting CONTRACTOR's duty to indemnify COUNTY, CONTRACTOR shall comply with the insurance coverage requirements set forth in the contract and in this attachment. Those insurance policies mandated by Paragraph C-3 shall satisfy the following requirements:

- (a) Each policy shall be issued by a company authorized by law to transact business in the State of California.
- (b) Each policy shall provide that COUNTY shall be given notice in writing at least thirty (30) days in advance of any change, cancellation, or nonrenewal thereof.
- (c) The comprehensive motor vehicle and comprehensive general liability policies shall each provide an endorsement naming the County of San Benito and its officers, agents and employees as additional insureds.
- (d) The required coverage shall be maintained in effect throughout the term of this contract.

CONTRACTOR shall require all subcontractors performing work under this contract to obtain substantially the identical insurance coverage required of CONTRACTOR pursuant to this agreement.

C-3. INSURANCE COVERAGE REQUIREMENTS.

If required by paragraph 5 of the contract, CONTRACTOR shall maintain the following insurance policies in full force and effect during the term of this contract:

- (a) Comprehensive general liability insurance. CONTRACTOR shall maintain comprehensive general liability insurance, covering all of CONTRACTOR's operations with a combined single limit of not less than the amount set out in paragraph 5 of this contract.
- (b) Professional liability insurance. CONTRACTOR shall maintain professional liability insurance with liability limits of not less than the amount set out in paragraph 5 of this contract.

- (c) Comprehensive motor vehicle liability insurance. CONTRACTOR shall maintain comprehensive motor vehicle insurance covering all motor vehicles (including owned, non-owned and hired) used in providing services under this contract, with a combined single limit of not less than the amount set out in Paragraph 5 of this contract.
- (d) Workers' compensation insurance. CONTRACTOR shall maintain a workers' compensation plan covering all of its employees as required by California Labor Code Section 3700, either through workers' compensation insurance issued by an insurance company or through a plan of self-insurance certified by the State Director of Industrial Relations. If CONTRACTOR elects to be self-insured, the certificate of insurance otherwise required by this contract shall be replaced with a consent to self-insure issued by the State Director of Industrial Relations.

C-4. CERTIFICATE OF INSURANCE.

Prior to the commencement of performance of services by CONTRACTOR and prior to any obligations of COUNTY, CONTRACTOR shall file certificates of insurance with COUNTY, showing that CONTRACTOR has in effect the insurance required by this contract. CONTRACTOR shall file a new or amended certificate promptly after any change is made in any insurance policy which would alter the information on the certificate then on file. In lieu of providing proof of insurance, CONTRACTOR may provide proof of self-insurance meeting requirements equivalent to those imposed herein. CONTRACTOR warrants that CONTRACTOR's self-insurance provides substantially the same protection to COUNTY as the insurance required herein. CONTRACTOR further agrees to notify COUNTY in the event any change in self-insurance occurs that would alter the obligations undertaken in this contract within thirty (30) days of such change.

C-5. RECORDS TO BE MAINTAINED.

CONTRACTOR shall keep and maintain accurate records of all costs incurred and all time expended for work under this contract. CONTRACTOR shall contractually require that all of CONTRACTOR's subcontractors performing work called for under this contract also keep and maintain such records. All such records, whether kept by CONTRACTOR or any subcontractor, shall be made available to COUNTY or its authorized representative, or officials of the State of California for review or audit during normal business hours, upon reasonable advance notice given by COUNTY, its authorized representative, or officials of the State of California.

C-6. RETENTION OF RECORDS.

CONTRACTOR shall maintain and preserve all records related to this contract for a period of three years from the close of the fiscal year in which final payment under this contract is made. CONTRACTOR shall also contractually require the maintenance of such records in the possession of any third party performing work related to this contract for the same period of time. Such records shall be retained beyond the three-year period, if any audit involving such records is then pending, until the audit findings are resolved. The obligation to insure the maintenance of the records beyond the initial three year period shall arise only if the COUNTY notifies CONTRACTOR of the commencement of an audit prior to the expiration of the three year period.

C-7. TITLE TO DOCUMENTS; COPYRIGHT.

All reports and other materials collected or produced by the CONTRACTOR or any subcontractor of CONTRACTOR shall, after completion and acceptance of the contract, become the property of COUNTY, and shall not be subject to any copyright claimed by the CONTRACTOR, subcontractor, or their agents or employees. CONTRACTOR may retain copies of all such materials exclusively for administrative purposes. Any use of completed or uncompleted documents for other projects by CONTRACTOR, any subcontractor, or any of their agents or employees, without the prior written consent of COUNTY is prohibited.

C-8. INDEPENDENT CONTRACTOR.

CONTRACTOR and its officers and employees, in the performance of this contract, are independent contractors in relation to COUNTY and not officers or employees of COUNTY. Nothing in this contract shall create any of the rights, powers, privileges or immunities of any officer or employee of COUNTY. CONTRACTOR shall be solely liable for all applicable taxes or benefits, including, but not limited to, federal and state income taxes, Social Security taxes, or ERISA retirement benefits, which taxes or benefits arise out of the performance of this contract. CONTRACTOR further represents to COUNTY that CONTRACTOR has no expectation of receiving any benefits incidental to employment.

C-9. CONFLICT OF INTEREST.

CONTRACTOR covenants that it presently has no interest and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the services hereunder. CONTRACTOR further covenants that, in the performance of this contract, no subcontractor or person having such an interest shall be used or employed.

C-10. COMPLIANCE WITH APPLICABLE LAWS.

CONTRACTOR shall comply with all applicable federal, state and local laws now, or hereafter, in force, and with any applicable regulations, in performing the work and providing the services specified in this contract. This obligation includes, without limitation, the acquisition, and maintenance of any permits, licenses, or other entitlements necessary to perform the duties imposed expressly or impliedly under this contract.

C-11. NONDISCRIMINATION.

CONTRACTOR shall not discriminate in the employment of persons necessary to perform this contract on any legally impermissible basis, including on the basis of the race, color, national origin, ancestry, religion, age, sex, or disability of such person.

C-12. BANKRUPTCY.

CONTRACTOR shall immediately notify COUNTY in the event that CONTRACTOR ceases conducting business in the normal manner, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, or avails itself of, or becomes subject to, any proceeding under the Federal Bankruptcy Act or any other statute of any state relating to insolvency or protection of the rights of creditors.

C-13. PROHIBITION AGAINST ASSIGNMENT AND DELEGATION OF DUTIES.

Except as specifically authorized herein, no rights under this contract may be assigned and no duties under this contract may be delegated by CONTRACTOR without the prior written consent of COUNTY, and any attempted assignment or delegation without such consent shall be void.

C-14. NEGOTIATED CONTRACT.

This contract has been arrived at through negotiation between the parties. Neither party is to be deemed the party which prepared this contract within the meaning of California Civil Code Section 1654.

C-15. SEVERABILITY.

Should any provision herein be found or deemed to be invalid, this contract shall be construed as not containing such provision, and all other provisions which are otherwise lawful shall remain in full force and effect. To this end, the provisions of this contract are declared to be severable.

C-16. ENTIRE CONTRACT.

This contract is the entire agreement of the parties. There are no understandings or agreements pertaining to this contract except as are expressly stated in writing in this contract or in any document attached hereto or incorporated herein by reference.

C-17. TIME IS OF THE ESSENCE.

Time is of the essence in the performance of this contract.

C-18. TERMINATION.

Either party may terminate this contract, with or without cause, at any time. In order to terminate this contract, the terminating party shall give advance written notice to the other party. The termination shall be effective no earlier than the expiration of the number of days specified in paragraph 6 of this contract. The termination notice shall be made as specified in paragraph C-19, below. In the event of termination, COUNTY shall pay CONTRACTOR for all work satisfactorily performed prior to the effective date of the termination.

C-19. NOTICES.

Notices to the parties in connection with the administration of this contract shall be given to the parties' contract administrator personally, by regular mail, or by facsimile transmission as more particularly specified in this paragraph. Notices will be deemed given on:

- (a) The day the notice is personally delivered to the contract administrator or the office of the party's contract administrator; or
- (b) Five days after the date the notice is deposited in the United States mail, addressed to a party's contract administrator as indicated in this contract, with first-class postage fully prepaid; or

- (c) On the day that the notice is transmitted by facsimile to a party's facsimile number specified in paragraph 8 of this contract, provided that an original of such notice is deposited in the United States mail, addressed to a party's contract administrator as indicated in this contract, on the same day as the facsimile transmission is made.

C-20. RESPONSIBILITY OF CONTRACT ADMINISTRATORS.

All matters concerning this contract which are within the responsibility of the parties shall be under the direction of, or shall be submitted to, the respective contract administrators or to the party's employee specified, in writing, by the contract administrator. A party may, in its sole discretion, change its designation of its contract administrator and shall promptly give written notice to the other party of any such change.

C-21. MATERIALITY.

The parties consider each and every term, covenant, and provision of this contract to be material and reasonable.

C-22. WAIVER.

Waiver by either party of a breach of any covenant of this contract will not be construed to be a continuing waiver of any subsequent breach. COUNTY's receipt of consideration with knowledge of CONTRACTOR's violation of a covenant does not waive its right to enforce any covenant of this contract. The parties shall not waive any provisions of this contract unless the waiver is in writing and signed by all parties.

C-23. AUTHORITY AND CAPACITY.

CONTRACTOR and CONTRACTOR's signatory each warrant and represent that each has full authority and capacity to enter into this contract.

C-24. BINDING ON SUCCESSORS.

All of the conditions, covenants and terms herein contained shall apply to, and bind, the heirs, successors, executors, administrators and assigns of CONTRACTOR. CONTRACTOR and all of CONTRACTOR's heirs, successors, executors, administrators, and assigns shall be jointly and severally liable under this contract.

C-25. CUMULATION OF REMEDIES.

All of the various rights, options, elections, powers and remedies of the parties shall be construed as cumulative, and no one of them exclusive of any other or of any other legal or equitable remedy which a party might otherwise have in the event of a breach or default of any condition, covenant or term by the other party. The exercise of any single right, option, election, power or remedy shall not, in any way, impair any other right, option, election, power or remedy until all duties and obligations imposed shall have been fully performed.

C-26. INDEPENDENT ADVICE.

Each party hereby represents and warrants that in executing this contract it does so with full knowledge of the rights and duties it may have with respect to the other. Each party also

represents and warrants that it has received independent legal advice from its attorney with respect to the matters set forth in this contract and the rights and duties arising out of this contract, or that such party willingly foregoes any such consultation.

C-27. NO RELIANCE ON REPRESENTATIONS.

Each party hereby represents and warrants that it is not relying, and has not relied, upon any representation or statement made by the other party with respect to the facts involved or its rights or duties. Each party understands and agrees that the facts relevant, or believed to be relevant to this contract may hereunder turn out to be other than, or different from the facts now known to such party as true, or believed by such party to be true. The parties expressly assume the risk of the facts turning out to be different and agree that this contract shall be effective in all respects and shall not be subject to rescission by reason of any such difference in facts.

C-28. REDUCTION OF CONSIDERATION.

CONTRACTOR agrees that COUNTY shall have the right to deduct from any payments specified in Attachment B any amount owed to COUNTY by CONTRACTOR as a result of any obligation arising prior to, or after, the execution of this contract. For purposes of this paragraph, obligations arising prior to, or after, the execution of this contract may include, without limitation, any property tax, secured or unsecured, which tax is in arrears. If COUNTY exercises the right to reduce the consideration specified in Attachment B, COUNTY, at the time of making a reduced payment, shall give CONTRACTOR notice of the amount of any off-set and the reason for the reduction.

C-29. COUNTERPARTS.

This contract may be executed in any number of counterparts, each of which so executed shall be deemed to be an original. The counterparts shall together constitute one contract.

END OF ATTACHMENT C.

ATTACHMENT D
Specific Terms and Conditions
(C S A L a n d s c a p e M a i n t e n a n c e S e r v i c e s)

D-1. FORCE MAJEURE. The CONTRACTOR shall not be liable for any delays with respect to the contract due to causes beyond its reasonable control, such as acts of God, epidemics, war, terrorism or riots.

D-2. CONTROLLING LAW. This contract shall be governed and construed in accordance with the laws of the State of California and proper venue for legal action regarding this contract shall be the County of San Benito.

D-3. DEFAULT.

- a. The COUNTY may, by a written Notice of Default to the CONTRACTOR, terminate the whole or any part of a contract in any one of the following circumstances:
 - 1. If the CONTRACTOR fails to make delivery of the supplies or to perform within the time specified herein or promised, or any extension thereof; or
 - 2. If the CONTRACTOR fails to perform any of the other provisions of this contract.
- b. In the event the COUNTY terminates the contract in whole or in part, as provided in Subparagraph (a)(1) of this clause, the COUNTY may procure, upon such terms and in such manner as may deem appropriate, supplies, services or work similar to those so terminated, and the CONTRACTOR shall be liable to the COUNTY for any excess costs for such similar supplies, services or work; PROVIDED, that the CONTRACTOR shall continue the performance of this contract to the extent not terminated under the provisions of this clause. The CONTRACTOR shall not be liable for any excess costs if the failure to perform the contract arises out of causes beyond the control and without the fault and negligence of the CONTRACTOR, pursuant to paragraph D-2 of this Attachment D to this contract.

D-6. INDEPENDENT CONTRACTOR.

Paragraph C-8 of Attachment C to this contract is hereby modified to read as follows:

The CONTRACTOR and the COUNTY have reviewed and considered the principal test and secondary factors below and agree that the CONTRACTOR is an independent contractor and not an employee of the COUNTY. The CONTRACTOR is responsible for all insurance (workers compensation, unemployment, etc.) and all payroll related taxes. The CONTRACTOR is not entitled to any employee benefits. The COUNTY agrees that the CONTRACTOR shall have the right to control the manner and means of accomplishing the result contracted for herein.

- a. Principal Test: The CONTRACTOR rather than the COUNTY has the right to control the manner and means of accomplishing the result contracted for.
- b. Secondary Factors: (a) The extent of control which, by agreement, the COUNTY may exercise over the details of the work is slight rather than substantial; (b) the CONTRACTOR is engaged in a distinct occupation or business; (c) In the locality, the work to be done by the CONTRACTOR is usually done by a specialist without supervision, rather than under the direction of an employer; (d) The skill required in the particular occupation is substantial rather than slight; (e) The CONTRACTOR rather than the COUNTY supplies the instrumentalities, tools and work place; (f) The length of time for which the CONTRACTOR is engaged is of limited duration rather than indefinite; (g) The method of payment of the CONTRACTOR is by the job rather than by the time; (h) The work is part of a special or permissive activity, program, or project, rather than part of the regular business of the COUNTY; (i) the CONTRACTOR and the COUNTY believe they are creating an independent contractor relationship rather than an employer-employee relationship; and U) The COUNTY conducts public business. It is recognized that it is not necessary that all secondary factors support creation of an independent contractor relationship, but rather that overall there are significant secondary factors that indicate that the CONTRACTOR is an independent contractor.

D-7. EQUAL OPPORTUNITY EMPLOYMENT.

Paragraph C-11 of Attachment C to this contract is hereby modified to read as follows:

During and in relation to the performance of this contract, the CONTRACTOR agrees as follows:

- a. The CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, physical or mental disability, medical condition (cancer related), marital status, sexual orientation, age (over 18), veteran status, gender, pregnancy, or any other non-merit factor unrelated to job duties. Such action shall include, but not be limited to, the following: recruitment; advertising, layoff or termination; rates of pay or

other forms of compensation; and selection for training (including apprenticeship), employment, upgrading, demotion, or transfer. The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notice setting forth the provisions of this non-discrimination clause.

- b. If this contract provides compensation in excess of \$50,000 to the CONTRACTOR and if the CONTRACTOR employs fifteen (15) or more employees, the following requirements shall apply:
 1. The CONTRACTOR shall, in all solicitations or advertisements for employees placed by or on behalf of the CONTRACTOR, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, ancestry, physical or mental disability, medical condition (cancer related), marital status, sexual orientation, age (over 18), veteran status, gender, pregnancy, or any other non-merit factor unrelated to job duties. Such action shall include, but not be limited to, the following: recruitment; advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training (including apprenticeship), employment, upgrading, demotion, or transfer. In addition, the CONTRACTOR shall make a good faith effort to consider Minority/Women/Disabled Owned Business Enterprises in the CONTRACTOR'S solicitation of goods and services, Definitions for Minority/Women/Disabled Business Enterprises are available from the County General Services Purchasing Division.
 2. In the event of the CONTRACTOR'S non-compliance with the non-discrimination clauses of this contract or with any of the said rules, regulations, or orders said CONTRACTOR may be declared ineligible for further agreements with the COUNTY.
 3. The CONTRACTOR shall cause the foregoing provisions of this Subparagraph (b) to be inserted in all subcontracts for any work covered under this contract by a sub-contractor compensated more than \$50,000 and employing more than fifteen (15) employees, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

D-8. HARMONIZATION OF CONTRACT TERMS. Where the specific terms and conditions set forth in this Attachment D specifically conflict with the general terms and conditions set forth in Attachment C to this contract, the more specific terms and conditions shall be deemed to control. However, the general terms and conditions in Attachment C shall remain in full force and effect, to the extent they do not specifically conflict with the specific terms and conditions set forth in this Attachment D.

END OF ATTACHMENT D.