

**AGREEMENT FOR CONTRACTOR SERVICES**

THIS AGREEMENT ("AGREEMENT") is entered into on March 1, 2021 ("Effective Date") by and between the CITY OF POMONA ("the CITY") and Merchants Landscape Services, Inc. ("CONTRACTOR"), with its primary business location at 1510 S. Lyon St., Santa Ana, CA 92705. The CITY and CONTRACTOR may be individually referred to herein as the Party and collectively as the "PARTIES."

**RECITALS**

**WHEREAS**, the CITY desires to engage CONTRACTOR to provide Occupied Space Landscaping and Amenity Maintenance services;

**WHEREAS**, CONTRACTOR is willing to perform the services defined herein; and

**WHEREAS**, CONTRACTOR represents that the principal representative stated below is authorized to act as such on behalf of CONTRACTOR.

**NOW, THEREFORE**, the Parties agree as follows:

**1. TERM.** This AGREEMENT is entered into on the effective date of March 1, 2021 and shall continue, through February 28, 2024 with two optional one-year extensions. An amendment to extend the term of this AGREEMENT shall require a written amendment fully executed by the Parties at least 30 days prior the date the AGREEMENT expires.

**2. REPRESENTATIVES OF THE PARTIES AND SERVICE OF NOTICE.** The representatives of the Parties who are primarily responsible for the administration and performance of the AGREEMENT, and to whom formal notice, demands and communications must be given, are as follows:

**A.** The principal representative of the CITY is:

Rene Guerrero  
City of Pomona  
Public Work Department  
505 South Garey Avenue  
Pomona, CA 91766  
(909) 620-2482

**B.** The principal representative of the CONTRACTOR is:

Mark Brower, President  
Merchants Landscape Services, Inc.  
1510 S. Lyon St.  
Santa Ana, CA 92705  
(714) 972-8200

- C. Formal notices, demands and communications to be given hereunder by either party must be made in writing and effected by personal delivery or by mail. Formal notices and demands sent by E-mail or facsimile are not valid.
- D. If the name of the principal representative designated to receive the notices, demands or communications, or the address of such person, is changed, written notice shall be given within five calendar days of said change.

**3. RETENTION.** The CITY retains CONTRACTOR to provide Occupied Space Landscaping and Amenity Maintenance services in accordance with this AGREEMENT. CONTRACTOR agrees to render such services on the terms and conditions stated herein.

**4. SCOPE OF SERVICES.** The scope of services to be provided is set forth in the attached Scope of Services, which is made Exhibit "A" to this AGREEMENT.

**5. CITY INSPECTION OF WORK.**

- A. It is the intent of the City to maintain all City facilities at the highest level. In order to achieve this, periodic inspections of the landscaping and CONTRACTOR'S services under this Contract are made. These inspections are intended to provide both the City and the CONTRACTOR information pertaining to the CONTRACTOR'S performance at each location
- B. The City may inspect the CONTRACTOR'S performance of the terms of the contract at any time. In event the City determines that the CONTRACTOR'S performance of its duties or other terms of this contract are deficient in any manner, the City will notify the CONTRACTOR of such deficiency orally or in writing. If given orally, City shall provide written confirmation within five (5) days. CONTRACTOR shall remedy any deficiency within forty-eight (48) hours of such notification, or the City, at its option may terminate this Contract immediately upon written notice, or remedy the deficiency and offset the cost thereof from any amounts due the CONTRACTOR under this Contract or otherwise.

**6. COMPENSATION.** The CITY agrees to pay CONTRACTOR for the services set forth in the aforementioned Scope of Services.

- A. CONTRACTOR agrees that the fees for services may not exceed the authorized amount of \$1,625,212 annually, as set forth in Exhibit "B," for Frequency Level A attached hereto, unless the CITY has given specific advance approval in writing.
- B. Following the initial contract year and thereafter, the City reserves the

right, at its sole discretion, to adjust frequency levels for any site it determines needs a higher or lower level of frequency, thereby adjusting the pricing accordingly, as set forth in "Exhibit B."

C. Within 30 days of receipt of invoices, the CITY will pay undisputed invoice balances. Within 30 days of receipt of invoices the CITY will notify CONTRACTOR of any disputed amount.

D. Withholding Compensation.

- After the CITY gives CONTRACTOR a notice of a performance deficiency, including a time for correcting deficient performance, the CITY may, in its sole option, withhold compensation for nonperformance when CONTRACTOR fails to correct performance deficiencies.
- Ongoing or recurring deficiencies are considered separate non-performance events each time CONTRACTOR fails to correct deficiencies, after which each day is an additional occurrence subject to withholding of compensation.

## **6. INDEPENDENT CONTRACTOR.**

A. CONTRACTOR is an independent contractor. As such, CONTRACTOR has no power or authority to incur any debt, obligation or liability on behalf of the CITY, unless such authority is expressly conferred under this AGREEMENT. Further, CONTRACTOR is not entitled to any benefit typically associated with an employee such as medical, sick leave, retirement, or vacation benefit. CONTRACTOR expressly waives any claim to any such right.

B. The personnel performing services under this AGREEMENT on behalf of CONTRACTOR will, at all-times be under CONTRACTOR's exclusive direction and control. Neither the CITY, nor any of its employees, have any control over the manner, mode, or means by which CONTRACTOR, its agents, or its employees, perform the services required herein, except as otherwise stated in this AGREEMENT. The CITY has no voice in the selection, discharge, supervision or control of CONTRACTOR's employees, representatives, or agents, or in fixing their number, compensation, or hours of service.

C. CONTRACTOR will perform services under this AGREEMENT as an independent contractor and will, at all times, remain a wholly independent contractor. The CITY does not, in any way or for any purpose, become, nor may it be deemed a partner of CONTRACTOR in the latter's business or otherwise a joint venture or member of any joint enterprise with CONTRACTOR.

## **7. ECONOMIC INTEREST STATEMENT.**

CONTRACTOR hereby acknowledges that, in accordance with Government Code Section 87300 and the Conflict of Interest Code adopted by the CITY hereunder, CONTRACTOR is designated in said Conflict of Interest Code and is therefore required

to file an Economic Interest Statement (Form 700) with the City Clerk, for each employee providing advice under this Agreement, prior to the commencement of work.

#### **8. PERS INDEMNITY.**

A. In the event CONTRACTOR or any employee, agent, or subcontractor of CONTRACTOR providing services under this Agreement claims or is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the CITY, CONTRACTOR will indemnify, defend, and hold harmless the City for the payment of any employee and/or employer contributions for PERS benefits on behalf of CONTRACTOR or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

B. Notwithstanding any other agency, state or federal policy, rule, regulation, law, or ordinance to the contrary, CONTRACTOR and any of its employees, agents, and subcontractors providing service under this Agreement do not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by the CITY, including but not limited to eligibility to enroll in PERS as an employee of the CITY and entitlement to any contribution to be paid by the CITY for employer contribution or employee contributions for PERS benefits.

C. CONTRACTOR is solely responsible for compliance with PERS restrictions applicable to any of CONTRACTOR's employees, agents, or subcontractors.

#### **9. INDEMNITY AND INSURANCE.**

A. INDEMNITY. CONTRACTOR hereby agrees to protect, indemnify and hold the CITY and its employees, officers and servants free and harmless from any and all losses, claims, liens, demands and causes of action of every kind and character including, but not limited to, the amounts of judgment, interests, court costs, legal fees, expert costs, expert fees and all other expenses incurred by the CITY to the maximum extent allowed by law arising in favor of any party, including claims, liens, debts, personal injuries including employees of the CITY, death or damages injuries, including employees of the CITY, death or damages to property (including property of the CITY) and without limitation by enumeration, all other claims or demands of every character occurring or arising directly out of or as a consequence of the performance of the work performed hereunder, except only such injury to persons or damage to property due or claimed to be due to the sole negligence of the CITY. This provision is not intended to create any cause of action in favor of any third party against CONTRACTOR or the CITY or to enlarge in any way the CONTRACTOR's liability but is intended solely to provide for indemnification of the CITY for liability for damages or injuries to third persons or property arising from CONTRACTOR's negligent performance hereunder.

B. INSURANCE. CONTRACTOR will procure and maintain at all times during the term of this AGREEMENT insurance as set forth in Exhibit "C" attached hereto.

**10. PREVAILING WAGE LAW.** CONTRACTOR is aware of the requirements of California Labor Code Section 1720, et seq. and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, 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. If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and the total compensation is \$1,000 or more, CONTRACTOR agrees to fully comply with such Prevailing Wage Laws. Moreover, as required by Labor Code 1860, CONTRACTOR shall secure the payment of compensation to CONTRACTOR's employees in accordance with the provisions of Labor Code Section 3700. CONTRACTOR shall obtain a copy of the prevailing rates of per diem wages at the commencement of the Agreement from the website of the Division of Labor Statistics and Research of the Department of Industrial Relations located at [www.dir.ca.gov/dlsr/](http://www.dir.ca.gov/dlsr/). 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. CONTRACTOR shall defend, indemnify and hold the CITY, its officials, officers, employees, agents, and volunteers free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

**REGISTRATION.** If the Services are being performed as part of an applicable "public works" or "maintenance" project, then under Labor Sections 1725.5 and 1771.1, the CONTRACTOR and all sub CONTRACTORS must be registered with the Department of Industrial Relations, CONTRACTOR shall maintain registration for the duration of the project and require the same of any sub CONTRACTORS, and this project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be CONTRACTOR's sole responsibility to comply with all applicable registration and labor compliance requirements. Notwithstanding the foregoing, the registration requirements mandated by Labor Code sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code sections 1725.1 and 1771.1.

**11. OWNERSHIP OF WORK PRODUCT.** All reports, documents, or other written material developed by CONTRACTOR in the performance of this AGREEMENT are and remain the property of the CITY without restriction or limitation on their use or dissemination by the CITY. Such material may not be the subject of a copyright application by CONTRACTOR. Any re-use by CITY of any such materials on any project other than the project for which they were prepared is at the sole risk of CITY unless CITY compensates CONTRACTOR for such use.

**12. CONFIDENTIALITY** Employees of CONTRACTOR, in the course of their duties, might have access to financial, accounting, statistical, and personnel data of

private individuals and employees of the CITY. CONTRACTOR covenants that all data, documents, discussion, or other information developed or received by CONTRACTOR or provided for performance of this AGREEMENT are deemed confidential and shall not be disclosed by CONTRACTOR without written authorization by the CITY. The CITY shall grant such authorization if disclosure is required by law. All CITY data shall be returned to the CITY upon the termination of this AGREEMENT. CONTRACTOR's covenant under this Section survives the termination of this AGREEMENT.

**13. TERMINATION FOR CONVENIENCE.** The CITY may terminate this AGREEMENT at any time without cause by giving 30 calendar days written notice to CONTRACTOR of such termination and specifying the effective date thereof. If this AGREEMENT is terminated as provided herein, CONTRACTOR will be paid only the total amount equal to the service that CONTRACTOR has provided, to the CITY's satisfaction, as determined solely by the CITY, as of the termination date. In no event may the amount payable upon termination exceed the total maximum compensation provided for in this AGREEMENT or the value of services provided as of date of termination.

**14. TERMINATION FOR CAUSE.** If for any reason, CONTRACTOR fails to fulfill in a timely and proper manner its obligation under this AGREEMENT, or if CONTRACTOR violates any of the covenants or stipulations of this AGREEMENT, the CITY then has the right to terminate this AGREEMENT by giving a five-calendar-day written notice to CONTRACTOR. The notice must refer to this clause, specify the nature of the alleged default, and specify the effective date of the termination. CONTRACTOR will be paid a total amount equal to the service CONTRACTOR has provided, to the CITY's satisfaction, as determined solely by the CITY, as of the termination date. In no event may the amount payable upon termination exceed the total maximum compensation provided in this AGREEMENT.

**15. ASSIGNMENT AND SUBCONTRACTING.** Neither party may assign or subcontract the rights or responsibilities under this AGREEMENT without the express, written consent of the other party, which may be withheld for any reason or for no reason.

**16. STANDARD.** CONTRACTOR agrees that the services to be rendered pursuant to this AGREEMENT shall be performed in accordance with the standards customarily provided by an experienced and competent professional organization rendering the same or similar services. CONTRACTOR will re-perform any of said services that are not in conformity with industry standards, as determined solely by the CITY. CONTRACTOR will be relieved of its obligation to re-perform said services if the CITY does not notify CONTRACTOR within 180 days after the completion of the non-conforming service.

**17. RESOLUTION OF DISPUTES.**

A. Disputes regarding the interpretation or application of any provisions of this AGREEMENT must, to the extent reasonably feasible, be resolved through good faith negotiations between the Parties.

B. If any action, at law or in equity, is brought to enforce or to interpret any provisions of this AGREEMENT, the prevailing party in such action shall be entitled to recover reasonable attorney's fees, costs and necessary disbursements, in addition to such other relief as may be sought and awarded.

**18. FORCE MAJEURE.** The respective duties and obligations of the Parties hereunder are suspended while and so long as performance hereto is prevented or impeded by strikes, disturbances, riots, fire, severe weather, government action, war acts, acts of God, or any other cause similar or dissimilar to the foregoing which are beyond the control of the party from whom the affected performance was due.

**19. NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY.** In the performance of this AGREEMENT, CONTRACTOR may not discriminate against any employee, subcontractor, or applicant for employment because of race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental handicap, medical condition, or sexual orientation. CONTRACTOR will take affirmative action to ensure that subcontractors and applicants are employed without regard to their race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental handicap, medical condition, or sexual orientation.

**20. SEVERABILITY.** If any provision of this AGREEMENT is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions nevertheless continue in full force and effect without being impaired or invalidated in anyway.

**21. GOVERNING LAW.** This AGREEMENT is governed by and must be construed in accordance with laws of the State of California. In the event of litigation between the parties, venue of state trial courts lies exclusively in the County of Los Angeles. In the event of litigation in a U.S. District Court, exclusive venue lies in the Central District of California.

**22. COMPLIANCE WITH LAWS.**

A. CONTRACTOR shall keep informed of, and comply with, State, Federal, and local laws, ordinances, codes, and regulations that in any manner affect the CONTRACTOR's performance of this AGREEMENT. CONTRACTOR shall at all times comply with such laws, ordinances, codes and regulations.

B. CONTRACTOR shall obtain a CITY Business License prior to commencing performance under this AGREEMENT.

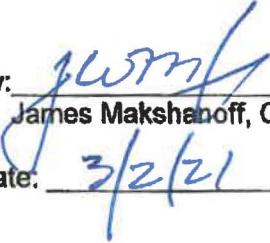
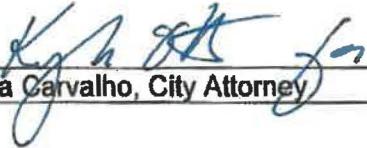
C. If CONTRACTOR is an out-of-state corporation or LLC, it must be qualified or registered to do business in the State of California pursuant to the California Corporations Code.

D. The CITY, its officers, and employees, shall not be liable at law or in equity occasioned by CONTRACTOR's failure to comply with this Section.

**23. NON-WAIVER.** The CITY's waiver of any breach of any provision of this AGREEMENT shall not be deemed a waiver of any other provision of this AGREEMENT, and shall not be deemed a waiver of any subsequent breach of the same provision or any other provision. The CITY's payment to CONTRACTOR shall not constitute a waiver of any breach or default which may then exist on the part of the CONTRACTOR. The CITY's payment to CONTRACTOR shall not impair or prejudice any right or remedy available to the CITY with regard to such breach or default.

**24. ENTIRE AGREEMENT.** This AGREEMENT, together with Exhibits "A," "B," and "C" supersede any and all other agreements, either oral or in writing, between the parties with respect to the subject matter herein. Each party to this AGREEMENT acknowledges that no representation by any party, which is not embodied herein, nor any other agreement statement or promise not contained in this AGREEMENT shall be valid and binding. Any modification of the AGREEMENT shall be effective only if it is in writing and signed by all Parties.

IN WITNESS WHEREOF this Agreement is entered into by the Parties hereto on the dates set forth below.

CITY OF POMONA		CONTRACTOR
By:  James Makshanoff, City Manager	By:  Print: MARK BROWER	
Date: 3/2/21	Its: PRESIDENT Date: 2/10/21	
ATTEST  Rosalia Butler, City Clerk		
APPROVED AS TO FORM:  By: Sonia Carvalho, City Attorney		

Approved by City Council on February 8, 2021

## CITY OF POMONA

### FIRST AMENDMENT TO MAINTENANCE SERVICES AGREEMENT

This FIRST AMENDMENT to the Agreement for Occupied Space Landscaping and Amenity Maintenance Services ("FIRST AMENDMENT") is entered into on the 29<sup>th</sup> day of February 2024, by and between the City of Pomona (the "CITY") and Merchants Landscape Services, Inc. ("CONTRACTOR"), hereinafter referred to collectively as the "Parties."

#### RECITALS

**Whereas**, on March 1, 2021, the Parties entered into Agreement for Occupied Space Landscaping and Amenity Maintenance Services for an initial term of three years (the "AGREEMENT"), with two, one-year extension options of the AGREEMENT Term.

**Whereas**, the Agreement was for a term of 3 years, commencing March 1, 2021, to February 28, 2024.

**Whereas**, the Parties now wish to enter into this FIRST AMENDMENT in order to extend the AGREEMENT through February 28, 2025, pursuant to the City's first extension option as outlined in Section 1 of the AGREEMENT, provide terms to authorize Extra Work if needed, increase the total not-to-exceed compensation amount with a 2.8% Consumer Price Index adjustment, and increase frequency of restroom maintenance services.

#### AMENDMENTS

**1. Incorporation of Recitals.** The recitals listed above are true and correct and are hereby incorporated herein by this reference.

**2. Term.** The term of the AGREEMENT shall be extended through February 28, 2025, unless earlier terminated.

**3. Addition of Section 3(A) to the Agreement.** Section 3(A) is hereby added to the AGREEMENT to read as follows:

"A. At any time during the term of this AGREEMENT, CITY may request that CONTRACTOR perform Extra Work. As used herein, "Extra Work" means any work which is determined by CITY to be necessary for the proper completion of the Project, but which PARTIES did not reasonably anticipate would be necessary at the execution of this AGREEMENT. Contractor shall not perform, nor be compensated for Extra Work without written authorization from City's Representative. All Extra Work shall be compensated at the rates and manner set forth in this AGREEMENT."

**4. Compensation.** Pursuant to Section 6(A) of the AGREEMENT, the annual compensation amount shall be increased by Forty-Five Thousand Five Hundred Five Dollars and Ninety Four Cents (\$45,505.94) based on the Consumer Price Index adjustment of 2.8% for existing services. Pursuant to Section 6(B) of the AGREEMENT, the annual compensation amount shall be increased by (\$127,596.00) for a higher level of frequency of restroom

maintenance services. As a result, the total not-to-exceed annual compensation of the AGREEMENT will increase to the amount of One Million Seven Hundred Ninety Eight Thousand Three Hundred Thirteen Dollars and Ninety Cents (\$1,798,313.90).

**5. No Other Changes.** Except as amended by this FIRST AMENDMENT, all provisions of the AGREEMENT, as previously amended, shall remain in full force and effect and shall govern the actions of the Parties under this FIRST AMENDMENT.

**6. Counterparts.** A manually signed copy of this FIRST AMENDMENT which is transmitted by facsimile, email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this FIRST AMENDMENT for all purposes.

**7. Severability.** If any part of this FIRST AMENDMENT is held to be unlawful or void, all other parts of this FIRST AMENDMENT shall remain effective.

Now, therefore, the Parties hereto have executed this FIRST AMENDMENT as of the date set forth below:

**CITY OF POMONA**

By:   
Anita D. Gutierrez  
City Manager

2/8/24

Date:

**MERCHANTS LANDSCAPE SERVICES,  
INC.**

By:   
Mark Brower  
President

Mark Brower

PRINT:

February 8, 2024

DATE:

**ATTEST:**

By:   
Rosalia Butler, City Clerk

**APPROVED AS TO FORM:**

By:   
Best Best & Krieger LLP  
City Attorney

## CITY OF POMONA

### SECOND AMENDMENT TO MAINTENANCE SERVICES AGREEMENT

This SECOND AMENDMENT to the Agreement for Occupied Space Landscaping and Amenity Maintenance Services ("SECOND AMENDMENT") is entered into on the 1st day of March 2025, by and between the City of Pomona (the "CITY") and Merchants Landscape Services, Inc., ("CONTRACTOR"), hereinafter referred to collectively as the "Parties."

#### RECITALS

Whereas, on March 1, 2021, the Parties entered into Agreement for Occupied Space Landscaping and Amenity Maintenance Services for an initial term of three years (the "AGREEMENT"), with two, one-year extension options of the AGREEMENT Term.

Whereas, the Agreement was for a term of 3 years, commencing March 1, 2021, to February 28, 2024.

Whereas, the Parties entered into a FIRST AMENDMENT in order to extend the AGREEMENT through February 28, 2025, pursuant to the City's first extension option as outlined in Section 1 of the AGREEMENT, provide terms to authorize Extra Work if needed, increase the total not-to-exceed compensation amount with a 2.8% Consumer Price Index adjustment, and increase frequency of restroom maintenance services.

Whereas, on the Parties now wish to enter into this SECOND AMENDMENT in order to extend the AGREEMENT through February 28, 2026, pursuant to the City's second extension option as outlined in Section 1 of the AGREEMENT and increase the total not-to-exceed compensation amount with a 3% Consumer Price Index adjustment.

#### AMENDMENTS

**1. Incorporation of Recitals.** The recitals listed above are true and correct and are hereby incorporated herein by this reference.

**2. Term.** The term of the AGREEMENT shall be extended through February 28, 2026, unless earlier terminated.

**3. Compensation.** Pursuant to Section 6(A) of the AGREEMENT, the annual compensation amount shall be increased by Fifty Three Thousand Four Hundred Sixty-Seven Dollars and Twenty Cents (\$53,467.20) based on the Consumer Price Index adjustment of 3% for existing services. As a result, the total not-to-exceed annual compensation of the AGREEMENT will increase to the amount of One Million Eight Hundred Thirty-Five Thousand Seven Hundred Eight Dollars and Fifty Two Cents (\$1,835,708.52).

**4. No Other Changes.** Except as amended by this SECOND AMENDMENT, all provisions of the AGREEMENT, as previously amended, shall remain in full force and effect and shall govern the actions of the Parties under this SECOND AMENDMENT.

**5. Counterparts.** A manually signed copy of this SECOND AMENDMENT which is transmitted by facsimile, email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this SECOND AMENDMENT for all purposes.

**6. Severability.** If any part of this SECOND AMENDMENT is held to be unlawful or void, all other parts of this SECOND AMENDMENT shall remain effective.

Now, therefore, the Parties hereto have executed this SECOND AMENDMENT as of the date set forth below:

CITY OF POMONA

MERCHANTS LANDSCAPE SERVICES,  
INC.

By:

Anita D. Scott  
City Manager

3/10/25

Date:

By:

Mark Brower  
President

MARK BROWER

PRINT:

3/10/25

DATE:

ATTEST:

By:

Rosalia Butler, City Clerk

3/11/2025

APPROVED AS TO FORM:

By:

Best Best & Krieger LLP  
City Attorney

## CITY OF POMONA

### **THIRD AMENDMENT TO MAINTENANCE SERVICES AGREEMENT**

This THIRD AMENDMENT to the Agreement for Occupied Space Landscaping and Amenity Maintenance Services ("THIRD AMENDMENT") is entered into on the 19th day of May 2025, by and between the City of Pomona (the "CITY") and Merchants Landscape Services, Inc., ("CONTRACTOR"), hereinafter referred to collectively as the "Parties."

#### **RECITALS**

**Whereas**, on March 1, 2021, the Parties entered into Agreement for Occupied Space Landscaping and Amenity Maintenance Services for an initial term of three years (the "AGREEMENT"), with two, one-year extension options of the AGREEMENT Term.

**Whereas**, the Agreement was for a term of 3 years, commencing March 1, 2021, to February 28, 2024.

**Whereas**, the Parties entered into a FIRST AMENDMENT in order to extend the AGREEMENT through February 28, 2025, pursuant to the City's first extension option as outlined in Section 1 of the AGREEMENT, provide terms to authorize Extra Work if needed, increase the total not-to-exceed compensation amount with a 2.8% Consumer Price Index adjustment, and increase frequency of restroom maintenance services.

**Whereas**, the Parties entered into a SECOND AMENDMENT in order to extend the AGREEMENT through February 28, 2026, pursuant to the City's second extension option as outlined in Section 1 of the AGREEMENT and increase the total not-to-exceed compensation amount with a 3% Consumer Price Index adjustment.

**Whereas**, the parties now desire to enter into this THIRD AMENDMENT in order to provide Level "A" Landscape Maintenance Service for Meadow View Park effective May 1, 2025 and Phillips Ranch Greenbelt effective July 1, 2025.

#### **AMENDMENTS**

**1. Incorporation of Recitals.** The recitals listed above are true and correct and are hereby incorporated herein by this reference.

**2. Bid Sheet.** Bid Sheet A, attached hereto to this THIRD AMENDMENT, is incorporated by this reference into the Scope of Services of the Agreement. Level "A" Landscape Maintenance Services are extended to Meadow View Park area and Phillips Ranch Greenbelt areas: Site 24 – Silverwood Ln / Village Loop Rd Greenbelt, Site 25 – Falcon Ridge Dr / Village Loop Rd Greenbelt; Section 1, and Site 26 – Falcon Ridge Dr / Village Loop Rd Greenbelt; Section 2.

**3. Compensation.** The annual compensation amount shall be increased by Eight Thousand Nine Hundred Seventy-Six Dollars (\$8,976.00) for services rendered at Meadow View Park. The annual compensation amount shall be further increased by One Hundred Two Thousand

Dollars (\$102,000.00) for services rendered at Phillips Ranch Greenbelt areas. As a result, the total not-to-exceed annual compensation of the AGREEMENT will increase to the amount of One Million Nine Hundred and Nine Thousand Two Hundred Eighty-Nine Dollars and Ninety Cents (\$1,909,289.90).

**4. No Other Changes.** Except as amended by this THIRD AMENDMENT, all provisions of the AGREEMENT, as previously amended, shall remain in full force and effect and shall govern the actions of the Parties under this THIRD AMENDMENT.

**5. Counterparts.** A manually signed copy of this THIRD AMENDMENT which is transmitted by facsimile, email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this THIRD AMENDMENT for all purposes.

**6. Severability.** If any part of this THIRD AMENDMENT is held to be unlawful or void, all other parts of this THIRD AMENDMENT shall remain effective.

Now, therefore, the Parties hereto have executed this THIRD AMENDMENT as of the date set forth below:

**CITY OF POMONA**

By:

Amita D. Scott  
City Manager

5/21/25

Date:

**ATTEST:**

By:

Rosalia Butler, City Clerk

**APPROVED AS TO FORM:**

By:

Best Best & Krieger LLP  
City Attorney

**MERCHANTS LANDSCAPE SERVICES,  
INC.**

By:

Mark Brower  
President

MARK BROWER

PRINT:

5/15/25

DATE: