



MEETING DATE: 6/2/08

ITEM NO: 7

COUNCIL AGENDA REPORT

DATE: MAY 14, 2008

TO: MAYOR AND TOWN COUNCIL

FROM: GREG LARSON, TOWN MANAGER 

SUBJECT: LANDSCAPE MAINTENANCE SERVICES FOR LANDSCAPE AND LIGHTING DISTRICTS

ADOPT RESOLUTION AUTHORIZING THE TOWN MANAGER TO EXECUTE AN AMENDMENT TO THE CONTRACT AGREEMENT WITH LANDSCAPE MANAGEMENT SERVICES TO EXTEND THE CONTRACT FOR ONE MORE YEAR TO PERFORM LANDSCAPE MAINTENANCE SERVICES FOR SIX LANDSCAPE AND LIGHTING DISTRICTS IN THE TOWN OF LOS GATOS

RECOMMENDATION:

Adopt resolution (Attachment 1) authorizing the Town Manager to execute an amendment (Exhibit A) to the contract agreement (Attachment 2) with Landscape Management Services to extend the contract for one more year to perform Landscape Maintenance Services for six Landscape and Lighting Districts in the Town of Los Gatos.

BACKGROUND:

The Town of Los Gatos has been using contractors to perform maintenance services for all of the Lighting and Landscape Districts in Town. The property owners in each Lighting and Landscape District pay for this service and the Town only administers the maintenance contracts.

On June 27, 2007, the Town entered into a contract agreement with Landscape Management Services to provide Landscape Maintenance Services for a one year period effective until June 30, 2008 - (Attachment 3).

PREPARED BY: KEVIN ROHANI


Interim Director of Parks and Public Works

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Reviewed by: PLS Assistant Town Manager OK Town Attorney
____ Clerk Administrator se Finance ____ Community Development

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MAYOR AND TOWN COUNCIL

SUBJECT: LANDSCAPE MAINTENANCE SERVICES FOR LANDSCAPE AND
LIGHTING DISTRICTS

MAY 14, 2008

DISCUSSION:

Landscape Management Services has been providing landscape maintenance services for Landscape and Lighting Districts Blackwell Drive, Gemini Court, Kennedy Meadows, Santa Rosa Heights, Hillbrook Drive, and Vasona Heights, and staff is satisfied with their services and desires to continue working with this company.

CONCLUSION:

Staff recommends that Council adopt the attached Resolution authorizing the Town Manager to execute an amendment to the contract agreement with Landscape Management Services for one more year from July 1, 2008 through June 30, 2009.

ENVIRONMENTAL ASSESSMENT:

The project is Categorically Exempt pursuant to Sections 15301 (c), 15303(e) and 15304(b) of the State CEQA guidelines.

FISCAL IMPACT:

Funding for Landscape Management Services is available in the Landscape and Lighting Budget Program 5501-63363 (Blackwell), 5502-63363 (Kennedy Meadows), 5503-63363 (Gemini Court), 5504-63363 (Santa Rosa Heights), 5505-63363 (Vasona Heights), and 5506-63363 (Hillbrook Drive).

Attachments:

1. Resolution approving an Amendment to the Contract Agreement (Exhibit A) with Landscape Management Services
2. Original Agreement dated June 27, 2007
3. New Schedule of Charges

RESOLUTION

**RESOLUTION OF THE TOWN COUNCIL
OF THE TOWN OF LOS GATOS
APPROVING AN AMENDMENT TO THE CONTRACT AGREEMENT WITH
LANDSCAPE MANAGEMENT SERVICES
TO EXTEND THE MAINTENANCE SERVICES AGREEMENT
FOR ONE MORE YEAR
TO PERFORM LANDSCAPE MAINTENANCE SERVICES
FOR THE SIX LANDSCAPE AND LIGHTING DISTRICTS
IN THE TOWN OF LOS GATOS**

WHEREAS, it is necessary for the Council to secure a landscape maintenance contractor to provide landscape maintenance services for Landscape and Lighting Districts Blackwell Drive, Gemini Court, Kennedy Meadows, Santa Rosa Heights, Hillbrook Drive, and Vasona Heights in the Town of Los Gatos; and

WHEREAS, the Town Council has selected the firm of Landscape Management Services to provide landscape maintenance services and desires to extend the maintenance services contract agreement with this company for one more year from July 1, 2008 through June 30, 2009; and

NOW, THEREFORE, IT IS RESOLVED that the Town Council of the Town of Los Gatos hereby approves the attached Amendment to extend to the maintenance services agreement (Exhibit A) with Landscape Management Services for one more year to provide landscape maintenance services in connection with the maintenance of the six Landscape and Lighting Districts; and

BE IT FURTHER RESOLVED that the Town Manager is hereby authorized and directed to execute an Amendment to the Agreement on behalf of the Council.

PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Los Gatos held on the 2nd day of June, 2008, by the following vote:

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

**MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA**

ATTEST:

**CLERK ADMINISTRATOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA**

AMENDMENT TO CONTRACT AGREEMENT

THIS AMENDMENT TO AGREEMENT is entered into this ____ day of _____, 2008, by and between the **Town of Los Gatos**, State of California, herein called "Town," and , **Landscape Management Services**, herein called "Contractor."

RECITALS

- A. Town and Contractor entered into a Landscape Maintenance Agreement ("Agreement") on June 27, 2007 to perform Landscape Maintenance Services for the six Landscape and Lighting Districts, a copy of which is attached hereto as (Attachment 2) and incorporated herein by reference.
- B. An Amendment to the Agreement is necessary to assist the Town in performing Landscape Maintenance Services.

AMENDMENT

- 1. The Agreement is hereby amended to extend the agreement for a period of one more year from July1, 2008 through June 30, 2009.
- 2. The Agreement is hereby amended to include the new schedule of charges (Attachment 3).
- 3. All other items and conditions of the Agreement of June 27, 2007 remain in full force and effect.

IN WITNESS WHEREOF, the Town and Contractor have executed this Amendment to the Agreement as of the date indicated on page one (1).

Town of Los Gatos, by:

Landscape Management Services

Greg Larson, Town Manager
Town of Los Gatos

(Signature)

Recommended by:

(Print Name)

Kevin Rohani
Interim Director of Parks and Public Works

(Address)

ATTEST:

Approved as to Form:

Town of Los Gatos, California

Jackie Rose, Clerk Administrator

Orry P. Korb, Town Attorney

CONTRACT

THIS AGREEMENT is between the Town of Los Gatos (hereinafter referred to as "Owner") and Landscape Management (hereinafter referred to as "Contractor"). Owner and Contractor, for the consideration hereinafter named, agree as follows:

1. SCOPE OF WORK

Contractor shall furnish all materials and perform Landscape Maintenance services for the locations outlined in (Exhibit C) attached.

A. Scope of Services:

Contractor shall furnish all labor, materials, and supervision to maintain the locations to the satisfaction of the Parks Superintendent.

B. Design Standards:

Director of Parks and Public Works, or his designee, shall periodically inspect the work areas to determine the Contractor's compliance with the terms of this agreement. Owner shall notify contractor of defects in performance, which Contractor agrees to correct within ten days of said notice.

C. Other Requirements:

- 1) Work cooperatively with Town and residents
- 2) Secure Town of Los Gatos Permits
- 3) Obtain a Town business license
- 4) Attend pre-construction and weekly job meetings as scheduled
- 5) Maintain production levels to match schedule
- 6) Satisfy insurance requirements - Exhibit A
- 7) Satisfy Equal Opportunity Employment Conditions - Exhibit B
- 8) Follow Best Management practices for Nonpoint Source Pollution Elimination

D. Term of Agreement:

Contractor shall commence work on July 1, 2007 upon execution of this Agreement and issuance of a Town Purchase Order. This Agreement shall remain in full force and in effect until June 30, 2008, with yearly renewal based on performance evaluation.

2. CONTRACT PRICE

As full compensation for furnishing all materials and for doing all the work contemplated and embraced in this agreement to the satisfaction of Owner, Owner shall pay amount specified as follows: \$24,233.76 for one year.

- Blackwell Drive \$143.58 per month
- Hillbrook Drive \$258.66 per month
- Santa Rosa Heights \$661.08 per month
- Gemini Court \$202.08 per month
- Kennedy Meadows \$382.75 per month
- Vasona Heights \$371.33 per month

One year from the date of this agreement and each anniversary thereafter, the monthly price paid for such services shall be adjusted upward or downward, increased or decreased, according to the percent change in the U. S. Department of Labor, Bureau of Labor Statistics Consumer Price Index, all items, all urban consumers, San Francisco-Oakland -San Jose, 1982-84-100 Index. The contractor shall be responsible to submit written notice 60 days in advance requesting an adjustment to the current index. The index used shall be that issued for all items of each year.

A. Payment Schedule:

Payment schedule shall be net 30 days from the end of the monthly maintenance performed.

B. Invoices/Statements:

All invoices and statements to the Town shall reference the Town's purchase order number and be addressed as follows:

INVOICES:

Town of Los Gatos
Attn: Accounts Payable
P.O. Box 655
Los Gatos, CA 95030

STATEMENTS:

Town of Los Gatos
Attn: Finance Department
P.O. Box 655
Los Gatos, CA 95030

3. WORK SCHEDULE

Contractor shall notify owner what day maintenance will take place at the locations described in Section 1, Scope of Work.

4. CHANGE ORDERS

All changes to this contract shall be in writing and signed by the Owner and the Contractor.

5. BEGINNING OF WORK

Following the execution of this agreement, the approval of insurance policies and certificates and issuance of a Town purchase order, Owner shall issue a notice to proceed with the work. Commencing work or the entrance of equipment or materials on the site of the work by Contractor before receipt of the notice to proceed is at the sole risk and expense of Contractor, and the Contractor shall be fully liable for any damage or injury sustained by Owner or third persons resulting therefrom.

6. **CORRECTION OF WORK AFTER ACCEPTANCE AND FINAL PAYMENT BY TOWN**

Contractor shall remedy any defects due to faulty materials and/or workmanship and pay for any damages to other work and/or existing facilities resulting therefrom which shall appear within a period of one year from the date of the Notice of Completion.

7. **LIQUIDATED DAMAGES**

Failure to complete the work on time:

If the work is not completed by Contractor in the time specified herein above, or within any period of extension as above authorized, it is understood that Owner will suffer damage; and it being impracticable and infeasible to determine the amount of actual damage, it is agreed that Contractor shall pay to Owner, as fixed and liquidated damages, and not as a penalty, the sum of \$100.00 per day, and Contractor shall be liable for the amount thereof; provided, however, that Contractor shall not be charged liquidated damages because of any delays in the completion of the work due to unforeseeable causes beyond the control and without the fault or negligence of Contractor (including, but not restricted to, Acts of God or of the public enemy, acts of the Government, acts of the Owner, fires, floods, epidemics, quarantine restrictions, strikes and freight embargoes).

Contractor shall, within 10 calendar days from the beginning of any such delay, notify Owner in writing of the cause of the delay and the amount of time extension requested, if any; whereupon Owner shall ascertain the facts and the extent of the delay and extend the time for completing the work when, in its judgment and for the amount of time if any, the findings of fact justify such an extension. The Director of Parks & Public Works determination shall be final and binding on the parties hereto.

8. **LICENSE**

The undersigned is licensed in accordance with State Law providing for the registration of Contractors, License No. 616375 (A "B" License is required.). The **License expiration date** is 2/21/09. No payment for work or material under this Contract will be made by Owner unless and until the Owner receives verification from the State Registrar of Contractors that the records of the Contractor's State License Board indicate the Contractor was properly licensed at the time the Contract was awarded.

Any Contractor not so licensed shall be subject to all legal penalties imposed by law, including, but not limited to, an appropriate disciplinary action by the Contractor's State License Board.

In addition, failure of the Contractor to obtain and maintain proper and adequate licensing for the term of the Contract shall constitute a failure to execute or perform this Contract and shall result in the forfeiture of the security of the bidder. The representations made by Contractor regarding the license are under penalty of perjury.

9. **NOTICES**

Notices regarding this Contract shall be given as follows and shall be considered effective upon either personal delivery or five days following deposit in the U.S. mail:

To Contractor:

Landscape Management
2598 Wyandotte Street
Mountain View, CA 94043

To Owner:

Kevin Rohani, Interim Director
Parks and Public Works Department
41 Miles Avenue
Los Gatos, CA 95031

10. **SUBCONTRACTORS**

In compliance with the provisions of Sections 4100-4107 of the Public Contract Code of the State of California, and any amendments thereof, the Contractor has set forth below the name and the location of the place of business of each subcontractor who will perform work or labor or render service to the undersigned in or about the construction of the work to be performed under the Contract Documents to which the Contract applies, or of a person who will, off the job site, specially fabricate a portion of the work or improvement and the portion of the work which will be done by each such subcontractor or person that will be in an amount in excess of one-half of one percent of the Contractor's total bid, or \$10,000, whichever is greater. If none, so indicate.

DIVISION OF WORK

SUBCONTRACTOR

ADDRESS

11. **WARRANTY**

Contractor shall remedy any defects due to faulty materials and/or workmanship and pay for any damages to other work and/or existing facilities resulting therefrom which shall appear within a period of one year from the date of recording of final acceptance.

12. **ADDITIONS TO WORK**

Owner, without invalidating the Contract, may order additions to or deductions from the work, the Contract Sum being adjusted accordingly. Any claim for extension of time cause thereby shall be adjusted at the time of ordering such change.

13. **DELAYS**

Any provision in the Contract which limits the Owner's liability to an extension of time for delay for which the Owner is responsible and which delay is unreasonable under contemplation of the circumstances involved, and not within the parties', shall not be construed to preclude the recovery of damages by the Contractor or subcontractor. This section shall not be construed to void any provision in this Contract which requires notice of delays, provides for arbitration or other procedure for settlement, or provides for liquidated damages.

14. INDEMNIFICATION

The Contractor shall save, keep and hold harmless, indemnify and defend the Town its officers, agent, employees and volunteers from all damages, liabilities, penalties, costs, or expenses in law or equity that may at any time arise or be set up because of damages to property or personal injury received by reason of, or in the course of performing work which may be occasioned by a willful or negligent act or omissions of the Contractor, or any of the Consultant's officers, employees, or agents or any subcontractor.

15. INSURANCE

Contractor shall procure and maintain for the duration of the Contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, Contractor's agents, representatives, employees or subcontractors, as stated in Exhibit A to this Contract. The cost of such insurance is included in the Contract price.

16. ASSIGNMENT TO AWARDING BODY

- A. In accordance with Section 7103.5 of the California Public Contract Code, the Contractor and subcontractors shall conform to the following requirements. The Contractor and its subcontractors offer and agree to assign to the Owner all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act [Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code], arising from purchases of goods services, or materials pursuant to the public works Contract or its subcontracts. This assignment shall be made and become effective at the time the Owner tenders final payment to the Contractor, without further acknowledgment by the parties.
- B. In accordance with Section 4552 of the Government Code, the Contractor shall conform to the following requirements. In submitting an offer to a public purchasing body, the Contractor offers and agrees that if the bid is accepted, he/she/it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act [Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code], arising from purchase of goods, materials, or services by the Contractor for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the Contractor.

17. EQUAL EMPLOYMENT OPPORTUNITY

Contractor shall conform its conduct to the Owner's Equal Opportunity Program set forth in Exhibit B.

18. HOURS OF WORK

Hours of work shall be limited to 8:00 a.m. to 5:00 p.m. on Monday through Friday. Other hours must be specifically approved by the Director of Parks and Public Works.

19. BUSINESS LICENSE

All Contractors, whether they be general Contractors or subcontractors, who transact or carry on business in the Town of Los Gatos, shall acquire a Business License in conformance with Section 14.20.115 of the Los Gatos Town Code.

20. PREVAILING WAGES

Workers employed in the work must be paid at rates at least equal to the then current prevailing wage scale as determined by the State Director of the Department of Industrial Relations. A copy is usually on file in the Office of the Director of Parks and Public Works.

Pursuant to Section 1770 of the California Labor Code, any Contractor who is awarded a public works project and intends to use a craft of classification not shown on the general prevailing wage determinations, may be required to pay the wage rate of that craft of classification most closely related to it as shown in the general determinations effective at the time of the calls for bids.

21. WAIVER

Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of the Agreement.

22. SEVERABILITY

If any term of this Agreement is held invalid by a court of competent jurisdiction, the remainder of this Agreement shall remain in effect.

23. ENTIRE AGREEMENT AND AMENDMENT

This Agreement including Exhibits A, B, and C, which are attached and incorporated herein, constitutes the entire agreement between the parties and supersedes all prior agreements and understandings, whether oral or in writing, and shall not be amended except in writing approved the Owner and Contractor.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the ____ day
of June 27, 2007.

TOWN OF LOS GATOS, by:

Debra J. Figone
Debra J. Figone, Town Manager

by: Landscape Management

RECOMMENDED BY:

Kevin Rohani
Kevin Rohani
Interim Director of Parks and Public Works

Jim
(Signature)
President
(Title)

APPROVED AS TO FORM:

Orry P. Korb
Orry P. Korb, Town Attorney

2598 C Wyandover St.
(Business Address Here)

Mt. View, CA 94043

ATTEST:

Jackie Rose 6-28-07
Jackie Rose
Clerk Administrator

616375 C-27
(Contractor's License Number)

EXHIBIT A
INSURANCE REQUIRED

A. MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. Insurance Services Office form number GL 0002 (Ed. 1/73) covering Comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability; or Insurance Services Office Commercial General Liability coverage ("occurrence" form GC 0001).
2. Insurance Services Office form number CA 0001 (Ed. 1/78) covering Automobile Liability, code 1 "any auto" and endorsement CA 0025.
3. Worker's Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance.

B. BEGINNING OF WORK

Contractor shall maintain limits no less than:

1. General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this Project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.
3. Workers' Compensation and Employers Liability: Worker's compensation limits as required by the Labor Code of the State of California and Employers Liability limits of \$1,000,000 per accident.

C. DEDUCTIBLES AND SELF-INSURED RETENTIONS

Any deductibles or self-insured retentions must be declared to and approved by the Town of Los Gatos. At the option of the Town of Los Gatos, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Town of Los Gatos, its officers, officials, employees and volunteers; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

D. OTHER INSURANCE PROVISION

The policies are to contain, or be endorsed to contain the following provision:

1. General Liability and Automobile Liability Coverages

- a. The Town of Los Gatos, its officers, officials, employees and volunteers are to be covered as insureds as respects: liability arising out of activities performed by or on behalf of the Contractor, products and completed operations of the Contracts, premises owned, occupied or used by the Contractor, or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the Town of Los Gatos, its officers, officials, employees, or volunteers.
- b. The Contractor's insurance coverage shall be primary insurance as respects the Town of Los Gatos, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Town of Los Gatos, its officers, officials, employees, or volunteers shall be excess of the Contractors Insurance and shall not contribute with it.
- c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Town of Los Gatos, its officers, officials, employees, or volunteers.
- d. The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2. Workers' Compensation and Employers Liability Coverage

The insurer shall agree to waive all rights of subrogation against the Town of Los Gatos, its officers, officials, employees, or volunteers for losses arising from work performed by the Contractor for the Town of Los Gatos.

3. All Coverages

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt required, has been given to the Town of Los Gatos.

E. ACCEPTABILITY OF INSURERS

Insurance is to be placed with insurers with a Best's rating of no less than B+.

F. VERIFICATION OF COVERAGE

Contractor shall furnish the Town of Los Gatos with certificates of insurance and with original endorsements effecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

The certificates and endorsements are to be on forms provided by the Town of Los Gatos. Where by statute, the Town of Los Gatos's workers' compensation-related forms cannot be used, equivalent forms approved by the State Insurance Commissioner are to be substituted. All certificates and endorsements are to be received and approved by the Town of Los Gatos before work commences. The Town of Los Gatos reserves the right to require complete, certified copies of all required insurance policies, at any time.

G. SUBCONTRACTORS

Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

EXHIBIT B
EQUAL EMPLOYMENT OPPORTUNITY CONDITIONS

1. GENERAL

From and after the award of the Contract and during the course of the work on the project, the Contractor shall comply with the following Equal Employment Opportunity Conditions.

2. EQUAL EMPLOYMENT OPPORTUNITY POLICY

Contractor adopts and accepts as its operating policy the following statement:

"It is the policy of this company to assure that applicants are employed and that employees are treated during employment without regard to their race, religion, sex, color, or national origin. Such action shall include employment, upgrading, demotion, transfer, recruitment and recruitment advertising, termination, pay, and selection for training, including apprenticeship."

3. EQUAL EMPLOYMENT OPPORTUNITY OFFICER

Contractor shall designate and make known to the Director of Parks & Public Works an Equal Employment Opportunity Officer capable of administering and promoting an active Contractor program of equal opportunity who will be assigned adequate authority and responsibility to do so.

4. DISSEMINATION OF POLICY

All members of Contractor's organization with authority to hire, supervise, promote, and terminate employees, or who recommend such action, shall be made fully cognizant of and shall implement the Contractor's Equal Employment Opportunity policy: The following actions shall be taken as a minimum:

- A. Periodic meetings of supervisory personnel shall be conducted before start of work and at least once every three (3) months for the purpose of reviewing and explaining the Contractor's Equal Employment Opportunity Policy and its implementation. The meetings shall be conducted by the Equal Employment Opportunity Officer or other knowledgeable company officials.
- B. All new supervisory employees shall be indoctrinated as to the Contractor's Equal Employment Opportunity obligations within thirty (30) calendar days following their reporting for duty with the Contractor.
- C. The Equal Employment Opportunity Officer or appropriate company official will instruct all employees engaged in recruitment and hiring as to the methods followed by the Contractor in recruiting and hiring qualified employees.

5. RECRUITMENT

- A. When advertising for employees, the Contractor shall include in all advertisements for employees the notation: "An Equal Opportunity Employer". It shall insert all such advertisements in newspapers or other publications having a large circulation among minority groups in the area from which the project work force would normally be derived.
- B. If the Contractor does not restrict individuals who are hired as employees exclusively to those who are related by blood or marriage to persons possessing an Ownership interest in the Contractor's business, in those case where the Contractor is not precluded therefor by a valid collective bargaining agreement, systematic and direct recruitment shall be conducted through public and private employee referral sources likely to yield qualified minority group applicants, including, but not limited to State employment agencies, schools, colleges and minority group organizations. To meet this requirement, the Contractor shall, through its Equal Employment Opportunity Officer, identify sources of potential minority group employees and establish with such identified sources procedures whereby minority group applicants may be referred to the Contractor for employment consideration.
- C. If the Contractor does not restrict individuals who are hired as employees exclusively to those who are related by blood or marriage to persons possessing an Ownership interest in the Contractor's business, the Contractor shall encourage present employees to refer minority group applicants for employment. Information and procedures with regard to referring minority group applicants shall be provided to such employees.

6. PERSONNEL ACTIONS

- A. Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination shall be taken without regard to race, color, religion, sex, or national origin. The following procedures shall be followed:
 - 1. The Contractor shall conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.
 - 2. The Contractor shall periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.
 - 3. The Contractor shall periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the Contractor shall promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

4. The Contractor shall investigate all complaints of alleged discrimination made to the Contractor in connection with its obligations under this contract, shall attempt to resolve such complaints, and shall take appropriate corrective action. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the Contractor shall inform every complainant of all of his/her avenues of appeal.

7. TRAINING AND PROMOTION

- A. If the Contractor does not restrict individuals who are hired as employees exclusively to those who are related by blood or marriage to persons possessing an Ownership interest in the Contractor's business, programs designed to increase the skills of all employees and applicants for employment shall be promoted as follows:
 1. Consistent with its manpower requirements and as permissible under Federal and State regulations, the Contractor shall make full use of training programs, such as pre-apprenticeship, apprenticeship, and/or on-the-job training programs for the geographical area of contract performance.
 2. The Contractor shall advise employees and applicants for employment of available training programs and entrance requirements for each.
 3. The Contractor shall periodically review the training and promotion potential of employees and shall encourage eligible employees to apply for such training and promotion.

8. UNIONS

If the Contractor relies in whole or in part upon unions as a source of Contractor's work force, the Contractor shall use its best efforts to incorporate an Equal Employment Opportunity clause into all union agreements which defines responsibilities for non-discrimination in hiring, referral, up-grading and training, and otherwise implements an affirmative anti-discrimination program in terms of the union's specific areas of skill and geography, to the end that all qualified workers will be available and given an equal opportunity for employment, and such unions will be contractually bound to refer applicants without regard to their race, color, religion, sex or national origin. In the event a union is unable to refer applicants as requested by the Contractor within the time limit set forth within the union agreement, the Contractor shall, through its recruitment procedures, fill the employment vacancies without regard to race, color, religion, sex or national origin, making full efforts to obtain qualified persons.

9. SUBCONTRACTING

The Contractor shall use its best efforts to assure subcontractor compliance with their Equal Employment Opportunity obligations.

10. NOTICES AND POSTERS

Contractor shall make known its Equal Employment Opportunity responsibilities under this Contract by the following methods:

- A. Executed copies of the Contractor's "Fair Employment Practices Statement" shall be:
1. Conspicuously posted in all areas where job applicants and potential employees appear for purposes of gaining employment by the Contractor;
 2. Conspicuously posted on all employee bulletin boards and in other areas where employees of the Contractor congregate; and
 3. Transmitted to each labor union or representative of workers with which the Contractor has a collective bargaining agreement or other contract or understanding, and to all other sources or employee referrals, including schools and employment agencies.
- B. Posters containing the following wording shall be conspicuously posted in all areas where job applicants and potential employees appear for purposes of gaining employment by the Contractor "Landscape Mgmt Svcs" is an Equal Employment Employer."
- C. The Contractor's Equal Employment Opportunity policy, as described in Section(b) shall be distributed in written form to all employees.

11. FAIR EMPLOYMENT PRACTICES STATEMENT

The Contractor shall execute the following Fair Employment Practices Statement:

"Fair Employment Practices Statement": Landscape Mgmt Svcs (name of Contractor) is an Equal Employment Opportunity Employer, as such has adopted the policy and will take affirmative action to employment without regard to their race, color, religion, ancestry or national origin. on 6/11/07.

(date)

(Name of Contractor) Landscape Management Services

was awarded a public works contract by the Town of Los Gatos, a municipal corporation situated in the County of Santa Clara, State of California, for the work of Landscape + Lighting Dist. (Name of Contract). Under said Contract, LMS has agreed to comply with those Equal Employment Opportunity Conditions described in Exhibit B of the Contract said project, and has agreed, among other things, that damages will be paid to the Town in event it is found that the requirements of said Conditions have not been satisfied.

Dated: 6/11/07

Signed: [Signature]

12. RECORDS

The Contractor shall keep such records as are necessary to determine compliance with its Equal Employment Opportunity obligations under this Contract. Such records shall be retained for a period of one year following completion of the project. Such records show:

- A. The number of minority and non-minority group members employed in each work classification on the project.
- B. The efforts and progress being made in cooperation with unions to increase minority group employment opportunities. (Applicable only to Contractors who rely in whole or in part on unions as a source of their work force).
- C. The efforts and progress being made in locating, hiring, training, qualifying, and upgrading employees.

The above-described records, together with the Contractor's records of employment, employment advertisements, application forms, and other pertinent data shall, upon request, be opened to inspection and copying by the Director of Parks & Public Works or the authorized representative, or any other agency of the State of California designated by the Director of Parks & Public Works, for purposes of investigating whether the Contractor has complied with the Equal Employment Opportunity conditions of this Contract.

13. REPORTS

Between the date of the award of the Contract and the date of the commencement of work on the project, the Contractor shall in conformity and compliance with the directions of the Director of Parks & Public Works, submit a basic compliance report which shall include the following:

- A. The name, business address and telephone number of the Contractor's Equal Employment Opportunity Officer.
- B. An executed copy of the Contractor's Fair Employment Practices Statement.
- C. A description of the Contractor's sources of potential employees, and the identity of the person or persons who have responsibility for determining who the Contractor will hire and whether or not to hire.
- D. Such evidence as is required by the Director of Parks & Public Works, showing that the Contractor has notified all supervisors, foremen, and other personnel officers, in writing, of the content of the Contractor's Equal Employment Opportunity policy.

- E. Such evidence as is required by the Director of Parks & Public Works showing that the Contractor has transmitted its "Statement of Fair Employment Practices" to all sources of employee referrals.
- F. Such evidence as is required by the Director of Parks & Public Works showing that the Contractor has posted bulletins, posters, and the "Fair Employment Practices Statement" in the manner required by these Equal Employment Opportunity Conditions.

14. BREACH:

In the event the Director of Parks & Public Works, as a result of supervising the Contractor's performance under the Contract or after investigating a complaint by a third party, finds that the Contractor is or has been in violation of its agreement to comply with these Equal Employment Opportunity Conditions, notice of such violations shall be filed with the Director of Parks & Public Works of the Owner and given to the Contractor by depositing same in the United States mail, postage prepaid, addressed to the last known business address of the Contractor, with return receipt requested. Not later than fifteen (15) calendar days after the filing of said notice with the Director of Parks & Public Works, a hearing shall be held by the Town Council of the Owner for the purpose of ascertaining whether the charges contained in the notice are true, and, if true, whether the Contractor has failed to make a reasonable and substantial effort to comply with these Equal Employment Opportunity Conditions. Notice of the time and place of said hearing shall be given the Contractor not less than five (5) days prior thereto in the same manner as the notice of violations is given. During said hearing, the Council shall receive and consider any evidence offered by the Director of Parks & Public Works, the Contractor, and any third party. At the conclusion of said hearing, the Council shall determine the matter and its determination shall be final.

If after the hearing above described the Town Council of the Owner determines that the Contractor has failed to comply with these Equal Employment Opportunity Conditions, and has failed to make a reasonable and substantial effort to comply with said conditions, the Contractor shall be deemed in material breach of the Contract. It is understood that the Owner will have suffered damage by virtue of said breach; and it being impractical and unfeasible to determine the amount of actual damage, it is agreed that the Contractor shall pay to Owner, as fixed and liquidated damages, and not as a penalty, the sum of Fifty Dollars (\$50.00) for each calendar day during which the Contractor is found to have been in noncompliance. Such monies may be recovered from the Contractor and its surety. The Owner may deduct any such damages from monies due the Contractor.

15. DISQUALIFICATION FROM FUTURE CONTRACTS

A finding by the Town Council of the Owner that the Contractor has failed to comply with these Equal Employment Opportunity Conditions and has failed to make a reasonable and substantial effort to so comply, or a finding of willful violation of the nondiscrimination provisions of the State of California Fair Employment Practices Act, or similar provisions of Federal law or Executive Order, in the performance of work on the project shall be deemed a basis for determining the Contractor to be not a "responsible bidder" as to future contracts for

which the Contractor may submit bids. A finding of willful violation of the nondiscrimination provisions of the State of California Fair Employment Practices Act shall be deemed to have occurred upon receipt by the Owner of written notice from the California Fair Employment Practices Commission that it has investigated and determined that the Contractor has violated said Fair Employment Practices Act and has issued an order under Government Code Section 12970, or obtained judgment and order of enforcement under Government Code Section 12973.

16. OTHER REMEDIES:

Nothing contained in these Equal Employment Opportunity Conditions shall be construed in any manner or fashion so as to prevent the Owner from pursuing any other remedies that may be available at law or in equity.

LANDSCAPE AND LIGHTING DISTRICT - SCOPE OF SERVICES

Blackwell Drive

Trash and weed control shall be performed on a bi-weekly basis. Irrigation shall be kept in working order. Perform any irrigation repairs. Shrubbery shall be pruned to maintain structural integrity and promote aesthetics.

Gemini Court

Trash and weed control shall be performed on a bi-weekly basis. Irrigation shall be kept in working order. Perform any irrigation repairs. Blow all hardscape areas. Keep trees 8 feet above sidewalk. Shrubbery shall be pruned to maintain structural integrity and promote aesthetics. Maintain pathway lighting.

Kennedy Meadows

On a bi-weekly basis maintain the trail free of debris, raise trees over the trail, keep weeds at least two feet from the trail, and mow all open space weed areas so the weeds are no taller than 3 inches high. Keep brush and weeds 10 feet away from fence at 101 Forrester Court. Fill dogi-pot dispenser as needed.

Santa Rosa Heights

Maintain the trail safe and free of debris. Keep trees at least 8 feet above trail. Keep weeds and brush at least 2 feet off the trail. See trail aerial. Maintain a safe fire safety zone as required on the enclosed attachment.

Hillbrook

Trash and weed control shall be performed on a bi-weekly basis. Irrigation shall be kept in working order. Perform any irrigation repairs. Mow and edge turf. Shrubbery shall be pruned to maintain structural integrity and promote aesthetics.

Blossom Hill Road at Roberts Road (Vasona Heights)

Blossom Hill Road Section

Keep all landscape areas trash and weed free. Shrubbery shall be pruned to maintain structural integrity and promote aesthetics. The contractor is responsible for maintaining the irrigation system in working order. Blow all hardscape areas. Maintain pathway lighting.

Los Gatos Creek Trail Section

Keep trail trash free. Maintain at least a two foot area off the trail weed free. Keep all trees 8 feet above trail. Blow trail.



May 9, 2008

Town of Los Gatos
Public Works Department
C/O Mr. Tim Boyer
41 Miles Avenue
Los Gatos, CA 95031

RE: Lighting and Landscaping District Maintenance

Dear Mr. Buyer:

This letter is in response to your request for a breakdown of price by location. Thank you for allowing Landscape Management Services to bid your project.

Our fee* to perform the work as specified in the Scope of Services dated May 9, 2008

For:

Blackwell Drive	\$1723.00
Gemini Court	\$2425.00
Kennedy Meadows	\$4593.00
Santa Rosa Heights	\$7933.00
Hillbrook	\$3104.00
Blossom Hill Road at Roberts Road (Vanessa Heights)	\$4456.00
Total Annual Cost	\$24,234.00

*All prices are fixed for the term of July 1 2008 to June 30 2009

If you have any questions or concerns, please feel free to give me a call at your convenience. I am happy to clarify any item.

Sincerely,

A handwritten signature in black ink, appearing to read 'Zachary Smith', is written over the word 'Sincerely,'.

Zachary Smith
Horticulturist