

ATTACHMENT A

AMENDMENT NO. ONE TO MAINTENANCE/REPAIR SERVICES AGREEMENT WITH MERCHANTS LANDSCAPE SERVICES, INC. FOR LANDSCAPE SERVICES FOR PARKS & FACILITIES

THIS AMENDMENT NO. ONE TO MAINTENANCE/REPAIR SERVICES AGREEMENT ("Amendment No. One") is made and entered into as of this 23rd day of September, 2025 ("Effective Date"), by and between the CITY OF NEWPORT BEACH, a California municipal corporation and charter city ("City"), and MERCHANTS LANDSCAPE SERVICES, INC., a California corporation ("Contractor"), whose address is 1190 Monterey Pass Rd, Monterey Park, CA 91754, and is made with reference to the following:

RECITALS

- A. On January 1, 2022, City and Contractor entered into a Maintenance/Repair Services Agreement (Contract No. C-8772-1) ("Agreement") to perform annual landscape maintenance services of City parks and facilities ("Project").
- B. The parties desire to enter into this Amendment No. One to confirm all extensions of the term of the Agreement have been utilized, to update the insurance requirements, and to increase the total compensation to cover on-call services through the end of the term.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

1. TERM

Section 1 of the Agreement is amended in its entirety and replaced with the following: "The term of this Agreement shall commence on the Effective Date, and shall terminate on December 31, 2026, unless terminated earlier as set forth herein."

2. COMPENSATION TO CONTRACTOR

Section 4.1 of the Agreement is amended in its entirety and replaced with the following: "City shall pay Consultant for the Services on a time and expense not-to-exceed basis in accordance with the provisions of this Section and the Schedule of Billing Rates attached hereto as Exhibit B and incorporated herein by this reference.

4.1.1 Contractor's compensation for all Services performed in accordance with this Agreement, including all reimbursable items, if any, shall not exceed One Million Nine Hundred Fifty Thousand Dollars and 00/100 (\$1,950,000.00) for the Original Term and for each Renewal Term (each twelve (12) month period from January 1 to December 31, commencing with the Effective Date).

4.1.2 Contractor's compensation for all On-Call Services during the course of this Agreement, including all reimbursable items, if any, shall not exceed Four Million Three Hundred Thousand Dollars and 00/100 (\$4,300,000.00),

4.1.3 Contractor's compensation for all Work performed in accordance with this Agreement, including all Services and all On-Call Services, and all reimbursable items and subconsultant fees, if any, shall not exceed **Fourteen Million Four Hundred Fifty Thousand Dollars and 00/100 (\$14,450,000.00)**, without prior written authorization from City. No billing rate changes shall be made during the term of this Agreement without the prior written approval of City."

The total amended compensation reflects Consultant's additional compensation for additional On-Call Services to be performed in accordance with this Amendment No. One, including all reimbursable items and subconsultant fees, if any, in an amount not to exceed **One Million Three Hundred Thousand Dollars and 00/100 (\$1,300,000.00)**.

3. INSURANCE

As of the Effective Date of this Amendment No. One, Exhibit H of the Agreement shall be deleted in its entirety and replaced with Exhibit H, attached hereto and incorporated herein by reference. Any reference to Exhibit H in the Agreement shall hereafter refer to Exhibit H attached hereto.

4. INTEGRATED CONTRACT

Except as expressly modified herein, all other provisions, terms, and covenants set forth in the Agreement shall remain unchanged and shall be in full force and effect.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused this Amendment No. One to be executed on the dates written below.

**APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE**

Date: 9/8/25

By: [Signature]
Aaron C. Harp
City Attorney

9.8.25
AF

ATTEST:

Date: _____

By: _____
Molly Perry
Interim City Clerk

CITY OF NEWPORT BEACH,
a California municipal corporation

Date: _____

By: _____
Joe Stapleton
Mayor

**CONTRACTOR: MERCHANTS
LANDSCAPE
SERVICES, INC.,** a California corporation

Date: _____

By: _____
Mark Brower
President

Date: _____

By: _____
Donna Brower
Secretary

[END OF SIGNATURES]

Attachments: Exhibit H – Insurance Requirements

EXHIBIT H

INSURANCE REQUIREMENTS – MAINTENANCE/REPAIR/JANITORIAL SERVICES

Provision of Insurance. Without limiting Contractor's indemnification of City, and prior to commencement of Work, Contractor shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to City. Contractor agrees to provide insurance in accordance with requirements set forth here. If Contractor uses existing coverage to comply and that coverage does not meet these requirements, Contractor agrees to amend, supplement or endorse the existing coverage.

Acceptable Insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.

Coverage Requirements.

Workers' Compensation Insurance. Contractor shall maintain Workers' Compensation Insurance, statutory limits, and Employer's Liability Insurance with limits of at least one million dollars (\$1,000,000) each accident for bodily injury by accident and each employee for bodily injury by disease in accordance with the laws of the State of California, Section 3700 of the Labor Code.

Contractor shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its City Council, boards and commissions, officers, agents, volunteers and employees.

General Liability Insurance. Contractor shall maintain commercial general liability insurance and, if necessary, umbrella liability insurance, with coverage at least as broad as provided by Insurance Services Office form CG 00 01, in an amount not less than two million dollars (\$2,000,000) per occurrence, four million dollars (\$4,000,000) general aggregate. The policy shall cover liability arising from premises, operations, products-completed operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

Automobile Liability Insurance. Contractor shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of Contractor arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount

not less than one million dollars (\$1,000,000) combined single limit each accident.

Umbrella or Excess Liability Insurance. Contractor shall obtain and maintain an umbrella or excess liability insurance policy with limits of not less than one million dollars (\$1,000,000) that will provide bodily injury, personal injury and property damage liability coverage at least as broad as the primary coverages set forth above. Such policy or policies shall include the following terms and conditions:

- A drop down feature requiring the policy to respond in the event that any primary insurance limits are exhausted by paid claims;
- Pay on behalf of wording as opposed to reimbursement;
- Concurrence of effective dates with primary policies;
- Policies shall "follow form" to the underlying primary policies; and
- Insureds under primary policies shall also be insureds under the umbrella or excess policies.

Other Insurance Requirements. The policies are to contain, or be endorsed to contain, the following provisions:

Waiver of Subrogation. All insurance coverage maintained or procured pursuant to this Agreement shall be endorsed to waive subrogation against City, its City Council, boards and commissions, officers, agents, volunteers and employees or shall specifically allow Contractor or others providing insurance evidence in compliance with these requirements to waive their right of recovery prior to a loss. Contractor hereby waives its own right of recovery against City, and shall require similar written express waivers from each of its subcontractors.

Additional Insured Status. All liability policies including general liability, products and completed operations, excess liability, pollution liability, and automobile liability, if required, shall provide or be endorsed to provide that City, its City Council, boards and commissions, officers, agents, volunteers and employees shall be included as insureds under such policies.

Primary and Non Contributory. All liability coverage shall apply on a primary basis and shall not require contribution from any insurance or self-insurance maintained by City.

Notice of Cancellation. All policies shall provide City with thirty (30) calendar days notice of cancellation (except for nonpayment for which ten (10) calendar days notice is required) or nonrenewal of coverage for each required coverage.

Additional Agreements Between the Parties. The parties hereby agree to the following:

Evidence of Insurance. Contractor shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation and other endorsements as specified herein for each coverage. Insurance certificates and endorsement must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this Agreement. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15) days prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or reduced, Contractor shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

City's Right to Revise Requirements. City reserves the right at any time during the term of the Agreement to change the amounts and types of insurance required by giving Contractor sixty (60) calendar days advance written notice of such change. If such change results in substantial additional cost to Contractor, City and Contractor may renegotiate Contractor's compensation.

Right to Review Subcontracts. Contractor agrees that upon request, all agreements with subcontractors or others with whom Contractor enters into contracts with on behalf of City will be submitted to City for review. Failure of City to request copies of such agreements will not impose any liability on City, or its employees. Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors. For CGL coverage, subcontractors shall provide coverage with a format at least as broad as CG 20 38 04 13.

Enforcement of Agreement Provisions. Contractor acknowledges and agrees that any actual or alleged failure on the part of City to inform Contractor of non-compliance with any requirement imposes no additional obligations on City nor does it waive any rights hereunder.

Requirements not Limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not

intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Contractor maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

Self-insured Retentions. Any self-insured retentions must be declared to and approved by City. City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these requirements unless approved by City.

City Remedies for Non-Compliance. If Contractor or any subcontractor fails to provide and maintain insurance as required herein, then City shall have the right but not the obligation, to purchase such insurance, to terminate this Agreement, or to suspend Contractor's right to proceed until proper evidence of insurance is provided. Any amounts paid by City shall, at City's sole option, be deducted from amounts payable to Contractor or reimbursed by Contractor upon demand.

Timely Notice of Claims. Contractor shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from Contractor's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City.

Contractor's Insurance. Contractor shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the Work.