




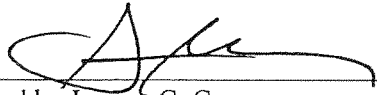
City of Carson

Report to Mayor and City Council

June 15, 2010
New Business Consent

SUBJECT: AWARD OF CONTRACT - LANDSCAPED MEDIAN MAINTENANCE CONTRACT


Submitted by M. Victor Rohlfinger
Economic Development General Manager


Approved by Jerome G. Groomes
City Manager

I. SUMMARY

On April 6, 2010, the City Council authorized staff to issue a Request for Proposals (RFP) for the landscaped median maintenance contract (Exhibit No. 1). The City Clerk received ten proposals on May 17, 2010. Staff has reviewed and evaluated the proposals and recommends that the City Council award a three-year contract for Landscaped Median Maintenance to Swayzer's, Inc.

II. RECOMMENDATION

TAKE the following actions:

1. AWARD Swayzer's, Inc. a three-year Landscaped Median Maintenance Contract, in the amount of \$198,000.00
2. AUTHORIZE the Mayor to execute the agreement, following approval as to form by the City Attorney.

III. ALTERNATIVES

TAKE another action the City Council deems appropriate.

IV. BACKGROUND

The city is responsible for the care of more than 44.5 acres of landscaped medians along major streets within the city. The current contractor, Swayzer's, Inc., has satisfactorily performed the City's median maintenance since 1994.

Staff advertised for median maintenance proposals on April 27, 2010. On May 18, 2010, ten proposals were received and opened by the City Clerk as shown on Exhibit No. 2 and as listed below:

No.	Company	City	Total Proposal Amount
1.	Swayzer's, Inc.	Carson	\$198,000.00
2.	Marina Landscape Inc.	Anaheim	\$235,788.00
3.	TruGreen LandCare LLC	Gardena	\$278,100.00
4.	S.C. Yamamoto, Inc.	La Habra	\$282,000.00
5.	Bennett Landscape	Harbor City	\$288,000.00

6.	TrimmingLand Co., Inc.	South Gate	\$308,637.12
7.	Mariposa Landscapes Inc.	Irvindale	\$321,588.00
8.	Midori Gardens	Santa Ana	\$324,863.64
9.	Azteca Landscape	Ontario	\$463,435.92
10.	Merchants Landscape Services, Inc.	Sun Valley	\$526,800.00

The evaluation of the bids received was based on a point system for the following categories: Cost of services, aerating, fertilizing, labor, planting, staffing and completeness of bid package (Exhibit No. 3). Swayzer's, Inc. ranked first with a total score of 139 points and Marina Landscape Inc. ranked second with 113 points.

The bids were evaluated by Public Works management staff, and it was concluded that the bid submitted by Swayzer's, Inc. is the lowest, most comprehensive and best meets the city's needs. Swayzer's, Inc. will provide all necessary labor, equipment and material required for regular median island maintenance.

Swayzer's, Inc. has provided median island maintenance for the city of Carson since 1994, and in that time, city staff has received a minimal number of complaints and has found the contractor to be reliable and dependable.

V. FISCAL IMPACT

Funds for this item were included in the FY 2010/11 budget in account no. 01-80-840-108-6005.

VI. EXHIBITS

1. City Council Meeting Minutes April 6, 2010, Item No. 10. (pg. 4)
2. City of Carson Bid Register. (pg. 5)
3. Bid Scoring and Comparison. (pgs. 6-7)
4. Median Island Maintenance Services Contract. (pgs. 8-28)

Prepared by: Denny Bacon, Public Works Program Administrator

City of Carson

Report to Mayor and City Council

June 15, 2010

City Clerk	City Treasurer
<u>Administrative Services</u>	<u>Development Services</u>
<u>Economic Development Services</u>	<u>Public Services</u>

[Handwritten signature]

Action taken by City Council

Date _____ Action _____

ITEM NO. (11) CONSIDERATION OF RESOLUTION NO. 10-058, SUPPORTING AN EXTENDED PRODUCER RESPONSIBILITY SYSTEM (DEVELOPMENT SERVICES)

RECOMMENDATION for the City Council:

TAKE the following actions:

1. WAIVE further reading and ADOPT Resolution No. 10-058, "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA, SUPPORTING AN EXTENDED PRODUCER RESPONSIBILITY SYSTEM."
2. DIRECT staff to forward a copy of the adopted resolution to the California Product Stewardship Council.

ACTION: Item No. 11 was approved on the New Business Consent Calendar on motion of Dear, seconded by Santarina and unanimously carried by the following vote:

Ayes: Mayor/Chairman Dear, Mayor Pro Tem/Chairman Pro Tem Santarina, Council/Agency Member Gipson, Council/Agency Member Davis Holmes, and Council/Agency Member Ruiz-Raber
Noes: None
Abstain: None
Absent: None

ITEM NO. (12) AWARD OF CONTRACT - LANDSCAPED MEDIAN MAINTENANCE CONTRACT (ECONOMIC DEVELOPMENT)

This item was heard after the New Business Consent Calendar.

City Manager Groomes summarized the staff report and recommendation.

RECOMMENDATION for the City Council:

TAKE the following actions:

1. AWARD Swayzer's, Inc. a three-year Landscaped Median Maintenance Contract, in the amount of \$198,000.00.
2. AUTHORIZE the Mayor to execute the agreement, following approval as to form by the City Attorney.

ACTION: It was moved to approve the staff recommendation on motion of Gipson, Santarina and unanimously carried by the following vote:

Ayes: Mayor Dear, Mayor Pro Tem Santarina, Council Member Gipson, Council Member Davis-Holmes, and Council Member Ruiz-Raber
Noes: None

LANDSCAPE MAINTENANCE SERVICES AGREEMENT
(City of Carson/Swayzer's, Inc.)

RECEIVED
CITY OF CARSON
JUL 12 2010

THIS LANDSCAPE MAINTENANCE SERVICES AGREEMENT (AGREEMENT) is made and entered into as of July 1, 2010 by and between the City of Carson (CITY) and Swayzer's, Inc. (Contractor).

RECITALS

A. CONTRACTOR represents that it is qualified and able to perform landscape maintenance services as set forth in the PROPOSAL.

B. CITY desires to engage the services of CONTRACTOR to conduct landscape maintenance services as set forth below and in accordance with the PROPOSAL, and CONTRACTOR desires to accept such engagement.

NOW, THEREFORE, in consideration of performance by the parties of the promises, covenants and conditions herein contained, the parties hereto agree as follows:

1.0 REPRESENTATIVES AND RELATIONSHIP OF THE PARTIES

1.1 Representative of Contractor. The President of Swayzer's Inc. is hereby designated as being the principal and representative of CONTRACTOR authorized to act in its behalf with respect to the work specified herein, and to make all decision in connection therewith. It is expressly understood that the experience, knowledge, capability and reputation of the foregoing principal were a substantial inducement for City to enter into this Agreement. Therefore, the foregoing principal may not be changed by CONTRACTOR without the express written approval of the Contract Officer.

1.2 Contract Officer. The Contract Officer and CITY'S representative shall be the Public Works Superintendent of the Public Works Services Division or, in his or her absence, as designated in writing by the City Manager of CITY. If no Contract Officer is so designated, the City Manager shall be the Contract Officer. It shall be CONTRACTOR'S responsibility to assure that the Contract Officer is kept informed of the progress of the performance of the services and CONTRACTOR shall refer any decisions which must be made by CITY to the Contract Officer. Unless otherwise specified herein, any approval of CITY required hereunder shall mean the approval of the Contract Officer.

1.3 Independent Contractor. CONTRACTOR is, and shall at all times remain as to CITY a wholly independent contractor. CONTRACTOR shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise act on behalf of CITY as an agent. Neither CITY nor any of its agents shall have control over the conduct of CONTRACTOR or of any of CONTRACTOR'S employees, except as set forth in this AGREEMENT. CONTRACTOR shall not, at any time or in any manner, represent that it or any of its agents or employees are in any manner employees of CITY. CONTRACTOR agrees to pay all required taxes on amounts paid

to CONTRACTOR under this AGREEMENT, and to indemnify and hold CITY harmless from any and all taxes, assessments, penalties and interest asserted against CITY by reason of the independent contractor relationship created by this AGREEMENT. CONTRACTOR shall fully comply with the worker's compensation law regarding CONTRACTOR and CONTRACTOR'S employees. CONTRACTOR further agrees to indemnify and hold harmless CITY from any failure of CONTRACTOR to comply with the worker's compensation law. CITY shall have the right to offset against the amount of any fees due to CONTRACTOR under this agreement any amount due to CITY from CONTRACTOR as a result of CONTRACTOR'S failure to promptly pay to CITY any reimbursement or indemnification arising under this section.

1.4 Prohibition Against Subcontracting or Assignment. The experience, knowledge capability and reputation of CONTRACTOR and its principals and employees were a substantial inducement for CITY to enter into this AGREEMENT. Therefore, CONTRACTOR shall not contract with any entity to perform in whole or in part the services required hereunder without the express written approval of the City Manager. In addition, neither this AGREEMENT nor any interest herein may be assigned or transferred, voluntarily or by operation of law, without the prior written approval of the City Manager. For the purposes hereof, an assignment shall include a change in any entity that is the controlling shareholder of CONTRACTOR, or the merger or dissolution of CONTRACTOR.

SUPPLEMENTARY GENERAL CONDITIONS

1. SCOPE OF WORK

The intent of these documents is to secure a contractor to provide all labor, tools, materials, equipment, and services necessary for the proper performance of landscape maintenance in accordance with the contract documents. The contract documents shall consist of the Supplementary Contract General Conditions, landscape Maintenance Specifications, and Terms in the Final Contract Issued by the Owner or his designated representative. All work shall be in accordance to good maintenance practices. During and at the end of the maintenance period, all plant material shall be in a healthy, growing condition.

2. CONTRACT DURATION

The contractor shall maintain all work under this contract for three (3) years from date of award, subject to a three (3) year extension, upon the mutual written agreement of Contractor and City. Contract is subject to extension or termination as described in these Supplementary General Conditions, at including, but not limited to, Items 9 and 16.

3. ABILITY TO PERFORM

- A. Prior to contract award, any bidder may be required at any time to demonstrate to the Superintendent of Public Works that he can successfully perform maintenance work of the type involved in this contract and that he possess suitable equipment to perform the work.

B. Each bidder shall visit the site of the proposed work to fully acquaint himself or herself with the conditions and difficulties affecting the performance of the contract. No additional compensation or relief from any obligations of the contract will be granted because of lack of knowledge of the site or conditions under which the work will be accomplished.

C. Bond Submittals:

1. "Labor and Materials Bond" for not less than one hundred percent (100%) of the annual contract price.
2. "Faithful Performance Bond" for one hundred percent (100%) of the annual contract price.

4. QUALITY OF WORK

All work shall be performed in accordance with the best landscape maintenance and horticultural practices to attain the highest aesthetic level possible. The Superintendent of Public Works or his designated representative shall periodically inspect all maintenance operations and approve or reject the work performed and methods or materials used.

5. DEFINITIONS

Where "as directed", "as required", "as permitted", "approved", "acceptance", or words of similar importance are used, it shall be understood that the direction, requirement, permission, approval or acceptance of the Superintendent of Public Works is intended unless otherwise stated. As used herein, "provide" shall be understood to mean "provide complete", "in place", "furnish and install", the work "site" as used hereinafter shall be understood to mean the location receiving the service. The use of the word "Superintendent" shall be construed to mean the Superintendent of Public Works or his designated representative(s). The use of the word "Contractor" shall be held to mean the Contractor and/or any person employed by him and working under this contract.

The use of the words "shall" and "may" shall be held to mean "mandatory" and "permissive" respectively. The use of the word "pruning" shall include the practices sometimes referred to as "trimming".

6. FUNCTIONS AND RESPONSIBILITIES

A. SUPERINTENDENT OF PUBLIC WORKS

The City of Carson's Superintendent of Public Works or his authorized representative shall have the authority to accept/reject materials or workmanship and to make minor changes in work or schedule. When the performance of the work or completion per schedule is determined to be substandard, he/she may (1) recommend that all or a portion of payment be withheld, and/or forfeiture for delay be assessed; (2) direct the work be accomplished by either City forces or separate contractor, in order to

complete the necessary work as close to schedule as possible, and the resulting costs be deducted from the next monthly payment due the Contractor, or if the amount is insufficient to cover payment, the Contractor shall be liable and will be billed accordingly.

The Superintendent or his authorized representative shall decide all questions which may arise as to the manner of performance and completion per schedule, acceptable fulfillment of the contract by the Contractor, interpretation of the specifications and compensation to include completion of work by alternate sources.

B. CONTRACTOR

1) Review of Job Site

The Contractor shall be responsible for carefully reviewing the site and verifying all areas to include the square footage of each location of the proposed work.

2) Personnel

The Contractor shall furnish sufficient supervisory and working personnel capable of promptly accomplishing on schedule, to the satisfaction of the Superintendent, all work required under this contract during the regular and prescribed hours. The contractor shall estimate on the bid form the number of employees and supervisors that will be furnished for the contract and the days and hours will be worked.

All such personnel shall be physically able to do their assigned work. The Contractor and his/her employees shall conduct themselves in a proper and efficient manner at all times and shall cause the least possible annoyance to the public. They shall be fully clothed in suitable attire. The Superintendent may require the Contractor to remove from the work site any employee(s) whose continued employment on the job is considered to be contrary to the best interest of the City of Carson.

The Contractor shall have competent supervisors, who may be working supervisors, on the job at all times work is being performed who capable to communicate effectively both in written and oral English and discuss matters to demonstrate to the satisfaction of the Superintendent that they possess adequate technical background. Adequate and competent supervision shall be provided for all work done by the Contractor's employees to ensure accomplishment of high quality work, which will be acceptable to the Superintendent. Any order or communication given to the supervisor shall be deemed as delivered to the Contractor.

3) Submittals

The Contractor shall submit to the Superintendent, on a monthly basis, a detailed job schedule and a list of materials and/or chemicals to be used on the project for approval. The Superintendent shall be immediately notified of any deviation from schedule or material usage.

4) Uniforms/Identification

The Contractor shall provide to all field personnel a standard uniform with company identification and employee name badges. All vehicles and equipment on the project site shall also be properly marked with company identification.

5) License and Permits

The Contractor shall, at the time of submitting his bid, and without additional expenses to the City, possess all licenses and permits required for the performance of the work required by this contract, except that the successful bidder and all subcontractors shall be required to obtain or have in his possession without additional expense to the City a valid business license from the City of Carson prior to contract execution. (Carson Municipal Code, Section 6310). Failure to obtain a business license may result in the appropriate deduction from the contractor's first month's demand for payment.

6) Compliance with the Law

The Contractor agrees that its performance under the contract shall comply with all applicable laws of the United States of America, the State of California, the County of Los Angeles, the City of Carson and any other political entity having jurisdiction over his activities of the Contractor.

C. SUBCONTRACTOR/ASSIGNMENT OF CONTRACT

The Contractor shall not subcontract any portion of the work contemplated by this contract without prior written consent by the Superintendent of Public Works. All persons engaged in the work shall be considered employees of the Contractor and the Contractor shall be directly responsible for their work.

7. RESPONSIBILITY FOR WORK

- A. The Contractor shall be responsible for all damages to people and/or property that occur as a result of the fault or negligence of said Contractor or his employees in connection with the performance of this work.

8. REPAIRS TO EXISTING FACILITIES

- A. All portions of existing medians and miscellaneous landscaped areas, including irrigation systems, which are damaged or altered in any way as a result of the performance of work under this specification during the term of the contract, shall be repaired or replaced in kind and in an approved manner.

Such repairs or replacement shall be performed by the Contractor at no cost to the City, and shall accomplish as directed by the Superintendent. Repairs shall be made immediately after damage or alteration occurs, unless otherwise directed. Comprehensive testing and check of all irrigation systems shall be made by the Contractor to the satisfaction of the Superintendent. Deductions shall be made from the contract payment in the amount necessary to compensate the City for such repairs in the event such repair work is done by the City forces or otherwise. Damage to the turf shall be repaired by replacement with sod (not reseeding). Damage to trees such as removal of bark from impact from mowing equipment shall be remedied immediately and inspected and accepted by the City. If damage results in loss of tree, Contractor shall remove and replace the dead tree with the same species tree of comparable size. Damage from use of chemicals for edging, whether from spray drift or lateral leaching, shall be repaired as stated above. All work shall be completed to the satisfaction of the Superintendent, or his designated representative.

- B. Repairs to existing medians and miscellaneous landscaped areas including irrigation systems, which are damaged or altered in any way as a result of acts of God, vehicular damage, theft or mysterious damages that do not result from the performance of the work by the Contractor shall be repaired by the Contractor as extraordinary maintenance and compensated as defined in Section 14.
- C. The Contractor shall notify the Superintendent within 24 hours after discovery of any damage caused by accident, theft, act of God or mysterious causes.
- D. The Contractor shall keep controller and valve boxes clear of soil and debris, and shall maintain the irrigation at no cost to the City. The Contractor shall adjust, raise, lower or straighten facilities, and perform any other operation required for continued proper operation of the irrigation system from the water meter throughout the work site.

9. FAILURE TO PERFORM SATISFACTORILLY

- A. It is agreed and understood that if the Contractor fails to perform the work as specified herein, the Superintendent (1) will only pay for the amount of service received as determined by the Superintendent with an appropriate downward adjustment in the contract price, or (2) may have such required work done by City forces or otherwise, and charge the cost thereof to the Contractor.

Such adjustments will be the estimated cost for performance by City forces plus City overhead and will include overtime pay as required to complete the work.

- B. The Superintendent may make a billing adjustment in monthly payments for insufficiencies in service rendered by the Contractor. Billing adjustments for this unsatisfactory service may be permanent retention of 100% of the estimated monthly cost for work that is incomplete or deficient as stated herein.
- C. If the Contractor performs the work in such a manner that the amount of payment withheld due to substandard performance, non-performance and forfeiture for non-completion per schedule totals five (5) percent of the total contract price, preliminary notice shall be given to the Surety. If the Contractor continues to perform the work in such a manner that the amount of payment withheld due to substandard performance, nonperformance, and forfeiture for non-completion per schedule totals ten (10) percent of the total contract price for Surety shall be notified to assume control of the work and provide an alternate Contractor to complete the term of the contract.
- D. See Item 16 for termination of contract clause.

10. SAFETY REQUIREMENTS

- A. All work performed under this contract shall be performed in such a manner as to provide maximum safety to the public where applicable, comply with all safety standards required by CAL-OSHA. The Superintendent reserves the right to issue restraint or cease and desist orders to the Contractor when unsafe or harmful acts are observed or reported relative to the performance of the work under this contract.
- B. The Contractor shall so conduct its operations as to cause the least possible obstruction and inconvenience to public traffic. The Contractor shall furnish, erect and maintain such fences, barriers, lights, warning and signs as deemed necessary by the Superintendent. Contractor must abide by the provisions of the "Work Area Traffic Control Handbook" published by Buildings News Inc., 3055 Overland Avenue, Los Angeles.

11. HAZARDOUS CONDITIONS

The Contractor shall maintain all work sites free of hazards to persons and/or property resulting from his operations. Any hazardous condition noted by the Contractor, which is not a result of his operations, shall be immediately reported to the Public Works Operations Division, Development Services Work Group.

12. USE OF CHEMICALS

The Contractor shall submit a list of all chemical herbicides, rodenticides and pesticides proposed for use under this contract for approval by the Superintendent. Materials included on this list shall be limited to chemicals approved by the State of California Department of

Agriculture, and shall include the exact brand name and generic formulation. The use of any restricted chemical must be applied by a licensed pest control operator under advice from a licensed pest control advisor. The license numbers of the PCO and PCA must be included on the bid form, 9 a. If the contractor intends to contract out the application of restricted chemicals, then the company's name, license number and expiration date must be furnished on the bid form under Item 9 b.

The use of chemicals shall conform to the current Los Angeles County Department of Agriculture regulations. No chemical herbicide, rodenticide, or pesticide shall be applied until its use is approved in writing, by the Superintendent as appropriate for the purpose and area proposed.

13. LITTER

The Contractor shall promptly remove from the work area, all debris and loose soil generated by his performance of pruning, trimming, weeding, edging and other work required in the specifications. All areas in the work sites shall be kept free of, but not limited to the following items: bottles, glass, cans, paper, cardboard, metallic items and other debris. Those areas that may on occasion be exceptionally littered shall be cleared of litter before the close of business day after the litter is reported to the Contractor. Litter picked-up from lawns, shrub beds, perimeter walks, etc. shall be removed from the site. Broken glass and other material or litter which the Superintendent may declare a hazard shall be picked up and removed from the site the Contractor on a daily basis.

14. PAYMENTS

A. Payments Withheld

The City may withhold payment to such extent as may be necessary to protect the City from loss due to:

- a) Work required in the specifications, which is defective, incomplete or not performed.
- b) Claims filed or reasonable evidence indicating probable filing claims.
- c) Failure of the Contractor to make payments properly to subcontractors or for materials or labor.

B. Method of Payment/Monthly Reports

The contractor will be paid monthly for work performed satisfactorily under this contract. By the first of each month the Contractor shall submit a billing in accordance with the contract price for the work performed, which provides a detailed report of maintenance performed and materials used in the prior month. Such invoice shall become the basis for payment for services rendered pursuant to the Schedule of Compensation, which is attached as Exhibit B. The City may require the Contractor to submit a certified payroll.

C. Compensation for Extraordinary Maintenance

City shall compensate Contractor for extraordinary maintenance repairs to existing medians and miscellaneous landscaped areas which are altered or damaged as defined under Section 8, Supplementary General Conditions at the rates provided in Exhibit B or mutually agreed upon by the Superintendent and Contractor.

15. UTILITIES – WATER AND ELECTRICITY

The City shall bear all the costs for water and electricity used in the sites covered by the contract.

16. CONTRACT TERMINATION

The City reserves the right to terminate the contract, without penalty, for cause immediately or without cause after 30 days written notice thereof is delivered to the Contractor either personally or by mail addressed as shown on the purchase order form. In the event of such termination, the bonds required shall remain in effect for six (6) months after the date of termination to provide surety that any remedial work required at the time of termination will be completed.

17. ADDITIONAL MEDIANS/MINOR MODIFICATIONS

The Superintendent may modify these specifications to incorporate additional medians or similarly landscaped areas.

Contractor shall maintain, at a unit price comparable to other existing medians, additional medians or landscaped areas that the City adds to this contract. In the event that notification is made of a new installation at other than the beginning of a monthly period, the unit cost negotiated and agreed upon by the parties shall be prorated from the day the Contractor is notified.

18. CONTRACTOR IS AN INDEPENDENT CONTRACTOR

The Contractor shall act under the contract as an independent contractor vis-à-vis the City of Carson and will not be an agent or employee of the City. The Contractor shall not represent or otherwise hold out itself or any of its subcontractors, officers, partners, employees or agents to be an agent or employee of the City. The parties agree to cooperate fully in the resolution of any claims for such liability, loss, or damage.

19. LABOR CODE REQUIREMENTS AND PROVISIONS

A. Labor Discrimination

Attention is directed to Section 1735 of the Labor Code, as added by Chapter 643, Statutes of 1939, which reads as follows:

"No discrimination shall be made in the employment of persons upon public works because of the race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, or sex of such persons, except as provided in Section 12940 of the Government Code, and every contractor for public works violating this section is subject to all the penalties imposed for a violation of this chapter."

A copy of the Certification of Labor Non-Discrimination form as provided with this specification shall be executed and submitted prior to starting work.

B. Labor Standards Provision

In accordance with the provisions of the California Labor Code, not less than the general prevailing rate of per diem wages for each craft or type of workman and mechanic needed to execute the contract in the locality in which the work is to be performed, and not less than the general prevailing rate of per diem wages for holidays and overtime work as determined by the Director Industrial Relations of the State of California shall be paid to all workmen employed. A copy of the determination of prevailing wage rates is attached to Contract as Exhibit D.

C. Apprenticeship Standards

Where required under law, the prime contractor on this project shall assume full responsibility for compliance with apprenticeship standards as established by Section 1777.5 of the California State Labor Code.

D. E.E.O. Officer

Section 1776, Chapter of Division 2, from the California Labor Code relating to apprentices on Public Works, requires that each Contractor and subcontractor keep an accurate payroll, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and each week, and the actual per diem wages paid each journeyman, apprentice or worker employed by him. The employee's own payroll records shall be available for inspection, and a copy shall be made available to the employee or his authorized representative, the Division of Labor Standards Enforcement and the Division of apprenticeship standards.

Pursuant to Labor code S1778.8, the Contractor agrees to pay travel and subsistence payments to each workman needed to execute the work in accordance with the applicable collective bargaining agreement filed with the Department of Industrial Relations.

20. DISCREPANCIES OR OMISSIONS

Should a bidder find discrepancies in or omissions from the specifications or other documents or should be in doubt as to their meaning, he may request interpretation from the Superintendent of Public Works in writing. Any interpretation or change in the proposed documents will be made only by addendum issued to each person to whom bid forms have been issued and shall become a part of the bid.

21. PARKING

Contractor shall park his vehicles and equipment within designated parking areas or in such a location as not to interfere with normal vehicular traffic. Contractor's vehicles and equipment shall not be parked or set in such a manner that they block pedestrian access or vehicular right of way except as required to comply with safety standards required by CAL-OSHA.

22. LABOR STRIKE

It shall be the responsibility of the Contractor to provide continuous maintenance services, without any interruption, of all landscaped areas as specified. In case of any labor strikes, the Contractor shall provide other means, at its own cost, to provide a comparable continuous service as if there were no strike. Upon failure to do so, the City may at its option take whatever action is deemed necessary to provide such service and the cost will be borne by the Contractor.

23. PATENTS

The Contractor shall assume all responsibilities arising from the use of patented materials, equipment, devices, or processes used in or incorporated in the work.

24. OPERATION OF AUTOMATIC IRRIGATION CONTROLLERS

Where the operation of automatic irrigation controllers is required as part of this contract, the Contractor shall:

- (a) Not duplicate any coded City key furnished by the Public Works Operations Division for access and operation of the controller.
- (b) Surrender all keys furnished by the Public Works Operations Division promptly at the end of the contract period, or at any time deemed necessary by the Superintendent to prevent a loss to the City of Carson.
- (c) Protect the security of City property by keeping controller cabinets and enclosure doors locked at all times.
- (d) Refrain from using enclosures designated for irrigation systems for the storage of materials, supplies or tools except as approved by the Superintendent.

25. CALL BACK – EXTRAORDINARY SERVICES

- A. The Contractor shall be responsible for providing extraordinary maintenance repairs to existing medians and miscellaneous landscaped areas as defined in Section 8 B & C. Extraordinary maintenance shall include answering to emergency calls as required. Contractor shall respond to an emergency call within two (2) hours. Contractor shall maintain a 24-hour per day on call service for emergency calls. The Contractor shall notify the Superintendent or his representative by telephone in advance before any emergency extraordinary work is commenced. Non-emergency extraordinary maintenance work requires written approval before the work is performed.
- B. In situations involving emergency repair work after normal work hours, the Contractor shall dispatch qualified personnel and equipment to reach the site within two (2) hours. Contractor's vehicle shall carry sufficient equipment to effect safe control of traffic. When the Contractor arrives at the site, the Contractor shall set up traffic warning and control devices, if deemed necessary, and proceed to repair the system on a temporary basis.
- C. If a Sheriff's Deputy is at the site when the Contractor arrives, the Contractor shall quickly examine the system, evaluate the situation and discuss with the Deputy. If the repair will take only a few minutes, the Deputy may stay to continue to direct traffic while the Contractor repairs the system. If the repair will take longer than the Deputy can wait, the Contractor shall immediately set up temporary traffic control devices and all other necessary warning devices and relieve the Deputy.
- D. An emergency may be called by the following individuals or agencies at any time for extraordinary services involving repair work as defined under Section 8 B & C, Supplementary General Conditions.
 - 1. City Manager
 - 2. Sheriff's Department
 - 3. Development Services General Manager
 - 4. Superintendent of Public Works
 - 5. Public Safety General Manager
 - 6. Senior Civil Engineer
 - 7. Construction Inspector Supervisor
 - 8. Construction Inspector
 - 9. Public Works Maint. Supervisor

26. INSURANCE/HOLD HARMLESS

The Contractor shall, at his expense, maintain in effect at all times during the performance of work under the Contract not less than the following coverage and limits of insurance, which shall be maintained with insurers licensed to sell insurance in the State of California and having a "A" or higher rating in the latest edition of Best's Insurance Guide, and shall be subject to approval by the City's Risk Manager:

Workers' Compensation and Employer's Liability

- Workers' Compensation - coverage as required by law
- Employer's Liability - limits of at least \$100,000.00 per occurrence

Comprehensive General Liability

- Combined Single Limit - \$1,000,000.00

Automobile Liability

- Combined Single Limit - \$1,000,000.00

The automobile and general comprehensive liability policies may be combined in a single policy with a combined single limit of \$1,000,000.00.

All of the Contractor's policies shall contain an endorsement providing written notice shall be given to the Owner at least 30 calendar days prior to termination, cancellation, or reduction of coverage in the policy.

The Bodily Injury and Property Damage Liability policies shall contain the following:

1. An endorsement extending coverage to the Owner as an insured, in the same manner as the named insured as respects liabilities arising out of the performance of any work under the Contract. Such insurance shall be primary insurance as respects the interest of the Owner, and any other insurance maintained by the Owner shall be excess and not contributing insurance with the insurance required hereunder.
2. "Severability of Interest" clause.
3. Elimination of any exclusion regarding loss or damage to property caused by explosion or resulting from collapse of buildings or structures or damage to property underground, commonly referred to by insurers as the "XCU" hazards.
4. Provision or endorsement stating that such insurance, subject to all of its other terms and conditions, applies to the liability assumed by the Contractor under the Contract.

Promptly on execution of the Contract and prior to commencement of any work the Contractor shall deliver to the Owner copies of all required policies and endorsements thereto on the forms supplied by the Owner.

The Contractor shall require and verify similar insurance on the part of its Subcontractors.

The foregoing requirements as to the types, limits and Owner approval of insurance coverage to be maintained by the Contractor are not intended to and shall not in any

manner limit or qualify the liabilities and obligations assumed by the Contractor under the Contract.

Any policy or policies of insurance that the Contractor or his Subcontractors elects to carry as insurance against loss or damage to their construction equipment and tools or other personal property used in fulfillment of this contract shall include a provision waiving the insurer's right of subrogation against the Owner.

The cost of all insurance shall be included in the contractor's bid.

Indemnification/Hold Harmless Agreement

Contractor shall defend, indemnify and hold harmless the City of Carson and its component units from and against any and all claims and liabilities arising from or related to Contractor's work or other things done, caused to be done, permitted or suffered by Contractor in connection with performance or efforts to perform under this contract, and from all costs, attorney's fees, and liabilities incurred in the defense of any claim or action or proceeding brought thereon. Contractor shall further defend, indemnify and hold harmless the City of Carson and its component units from and against any and all claims and liabilities arising from or related to any breach or default by Contractor in the performance of any obligation to be performed under this contract, or arising from any act or omission or negligence of Contractor, or any officer, agent, employee, guest, or invitee of Contractor regardless of whether or not there exists any negligence, either active or passive, on the part of the City of Carson and its component units and from all costs, attorneys' fees, and liabilities incurred in the defense of any claim or action or proceeding brought thereon. In the event any action or proceeding is brought against the City of Carson and its component units by reason of any claim or liability, Contractor shall defend the same at Contractor's expense by counsel reasonably satisfactory to the City of Carson and its component units. Contractor, as a material part of the condition to the City of Carson and its component unit under this contract, hereby assumes all risk of damage to property or injury to persons, from any cause other than the City of Carson and its components units' sole negligence; and Contractor hereby waives all claims in respect thereof against the City of Carson and its component units including claims based upon negligence of the City of Carson and its component units, other than the City of Carson and its component units' sole negligence, whether active or passive. Contractor shall give promptly notice to the City of Carson and its component units in case of casualty or accidents in connection with the work performed under this contract.

LANDSCAPE MAINTENANCE SPECIFICATIONS

1. SCOPE

Complete landscape maintenance of all work sites described at Exhibit C, including, but not limited to, maintenance of shrubs, and ground cover plants; weed control; control of all plant diseases and pests; mowing; pathways; and drainage systems; irrigation systems; and other maintenance required to maintain the work sites in safe, attractive and usable condition and maintain all plant material in good condition with horticulturally acceptable growth and color. Tree trimming will be completed by the City and is excluded from this scope of work.

2. SCHEDULING OF WORK

The Contractor shall accomplish all normal landscape maintenance required under this contract between the hours of 6:00 a.m. and 6:00 p.m. Monday through Friday. Exceptions may be made to normal working hours, where incidences of use may be too great during the hours specified to allow for proper maintenance. The Superintendent may grant, on an individual basis, permission to perform contract maintenance at other hours. No maintenance functions that generate excess noise which would cause annoyance to residents of any area shall be commenced before 8:00 a.m. The Contractor shall establish a schedule of routine work to be followed in the performance of this contract. A copy of this schedule shall be provided to the Superintendent. Any changes in scheduling shall be reported, in writing, to the Superintendent immediately.

3. METHOD OF PERFORMING WORK

NOTE: All irrigating (described below) must be done in accordance with any and all water conservation mandates imposed on the City by governing agencies and coordinated with the Superintendent.

a. Irrigation

- 1) Irrigation shall be done by the use of automatic or manual sprinkler systems where available and operable; however, failure of the existing irrigation system to provide full and proper coverage shall not relieve the Contractor of the responsibility to provide adequate irrigation with full and proper coverage to all areas in the work site.
- 2) Any damages to public or private property resulting from excessive irrigation water or irrigation water run-off shall be charged against the contract payment unless immediate repairs are made by the Contractor to the satisfaction of the Superintendent.
- 3) The Contractor shall inspect the operation of the system at least once a week to keep the system operation at an optimum level of efficiency. The Contractor shall maintain all sprinkler systems, at no cost to the City, in such a way as to: guarantee proper coverage and full working capability; and make whatever adjustments

necessary to prevent excessive run-off into street right-of-ways or other areas not meant to be irrigated.

- a) Whenever possible, automatic irrigation shall be programmed to start between the hours of 12:00 midnight and 4:00 a.m. The Contractor shall be responsible for reprogramming controllers during inclement weather to conserve water. Contractor shall pay particular attention to areas requiring hand watering and apply proper amounts to assure normal growth, health and appearance.
- 4) This periodic inspection may occur more often, but not less frequently than one inspection each week. All areas receiving marginal coverage shall be irrigated by a portable irrigation method. The Contractor shall furnish all hoses, nozzles, sprinklers, etc., necessary to accomplish this supplementary irrigation. Care shall be exercised to prevent a waste of water, erosion, and/or detrimental seepage into existing underground improvements or structures.
- 5) Turf shall be irrigated Monday through Friday as required, to maintain horticulturally accepted growth and color and to encourage deep rooting. Irrigation should be applied every other night or twice each week as seasonal requirements dictate. Additionally, irrigation shall be performed in the event of unusually hot/dry weather conditions (as are present during winter Santa Ana conditions) or other times of low humidity or high winds, or during a prolonged high temperature period during the summer months. Medians shall not be irrigated Saturdays or Sundays.
- 6) Landscape: Improved banks and slopes shall be irrigated Monday through Friday, as required, to maintain horticulturally acceptable growth and color, and to encourage deep rooting.
- 7) Shrub beds shall be irrigated, as required, to maintain horticulturally acceptable growth and color, and to promote deep rooting. Irrigation rates for shrub areas shall be applied in such a manner as to keep surface run-off at a minimum. The irrigation rate shall be adjusted to the needs of shrub-types, seasons, and weather conditions.
- 8) Newly planted trees, shrubs, ground cover and turf shall receive special attention until these plants are established. Adequate water shall be applied to promote normal, healthy growth. Proper berms or basins shall be maintained during the establishment period.

b. Pruning Shrubs and Ground Cover Plants

All shrubs and ground cover plants growing in the work areas shall be pruned as required, to maintain plants in a healthy, growing condition and to maintain plant growth within reasonable bounds to prevent encroachment of passage ways, walks, streets, and view of signs or in any manner deemed objectionable by the City. Dead or damaged limbs or branches shall be cut cleanly with sharp pruning tools, with no projections or stubs remaining. Any pruning cut which exceeds two inches in diameter shall be sealed with

an approved pruning paint. Pruning shall be done in a manner to permit plants to grow naturally in accordance with their normal growth characteristics. Exceptions: box hedging may be required on some hedges or shrubs. Shearing, hedging or sever pruning of plants will be authorized upon request in order to promote traffic safety or as directed by the City.

c. Weed Control

- 1) All landscaped areas within the specified maintenance area including but not limited to lawns, shrub and ground cover beds, planters and tree wells shall be kept free of all weeds. All median and landscaped areas shall be checked a minimum of once a week for the removal of weeds. For the purpose of this specification, a weed will be considered as "any undesirable or misplaced plant". Weeds shall be controlled either by hand, mechanical or chemical methods. The Superintendent may restrict the use of chemical weed control in certain areas.
- 2) Weeding shall also include the removal of weeds growing in all bomanite and paved or unpaved surfaces maintained under contract.

d. Disease and Pest Control

- 1) The Contractor shall regularly inspect all landscaped areas for presence of disease, insect or rodent infestation. The Contractor shall advise the Superintendent within four (4) days when disease, insect or rodent infestation is found; he shall identify the disease, insect or rodent and specify control measures to be taken and upon written approval of the Superintendent, the Contractor shall implement the approved control measures, exercising extreme caution in the application of all spray materials, dusts or other materials utilized.
- 2) Approved control measures shall be continued until disease, insect or rodent is controlled to the satisfaction of the Superintendent. The Contractor shall utilize all safeguards necessary during the disease, insect or rodent control operations to ensure safety of the public and the employees of the Contractor.

e. Replacement of Plant Material

- 1) The contractor shall notify the Superintendent within four (4) days of the loss of plant material due to any cause.
- 2) The Contractor shall remove and replace shrub, turf or ground cover which is damaged or lost due to Contractor's faulty maintenance or negligence as determined by the City. The size and species of replacement shrubs, turf or ground cover plants shall be as directed by the Superintendent.

f. Turf Grass Mowing and Edging – Frequency

- 1) Grass in this contract may be mowed with power propelled mowers. The mowers shall be maintained so as to provide a smooth even cut without tearing. The reel or blade adjustment will provide a uniform level cut without ridges or depressions. Rotary mowers must be equipped with grass catchers.
- 2) Mowing shall be performed weekly and all foliage cut to the accepted height for the species of grass being mowed. The Contractor may request alteration of this mowing frequency from the Superintendent, for reasons of inclement weather or to account for seasonal adjustment.
- 3) Cool season turf shall be cut at 2-1/2" and Bermuda at 1" height. Grass clippings shall be collected and removed after each mowing. Turf shall be edged as specified. Contractor shall apply approved chemicals for control of broadleaf weeds. Bermuda shall be overseeded with annual rye grass (*Lolium Multiflorum*) at a rate of six pounds per 1,000 sp. Ft. Seed shall be uniformly broadcast and applied during the month of October. All clippings shall be removed following each mowing and edging and plant debris disposed of. All grass clippings removed from City medians shall be deposited on behalf of the City of Carson for recycling as green waste in accordance with the Source Reduction and Recycling Element adopted pursuant to Public Resources Code Section 41000 et. Seq. All weight receipts for the disposal of green waste receipts will result in delay of payment until Contractor satisfies this requirement. Turf growing adjacent to irrigation heads and tree trunks shall be removed or trimmed to a minimum of six inches in all directions from said objects.
- 4) All turf shall be edged adjacent to all improved surfaces, and where no improved surface exists, turf edges shall be maintained as if the turf area abuts a shrub bed, property line or to maintain turf delineation. Edging shall be accomplished twice monthly or more frequently if desired by the Contractor.

g. Ground Covers

- 1) Maintenance and Replacement: Ground covers are to be maintained and replaced as needed so as to form a solid mat over the surface of the ground. Ground covers must be replaced in kind unless authorization or prior approval is obtained from the Superintendent to change the plant material.
- 2) Irrigation and Fertilization: Areas planted with ground covers shall be adequately irrigated to maintain the planting in a healthy condition. Frequent light irrigation is to be avoided.
- 3) Edging: Ground cover beds shall be maintained within their intended bounds, edged every two (2) weeks and shall not be permitted to encroach into lawns, shrub beds or adjacent areas, or in any manner deemed undesirable by the Superintendent.

- 4) Renovation: Ground cover plantings shall be thinned and pruned for the health of the planting and the appearance of the site, and at such other times when directed by the Superintendent.
- 5) Cultivation: The open soil between plants shall be regularly cultivated where the planting permits.
- 6) Replanting: Replanting shall be required to maintain the continuity of the ground cover area. Replacement material and labor shall be provided by the Contractor at no cost to the City.

h. Paved Surfaces

All paved surfaces shall be maintained in a safe, non-hazardous and usable condition at all times. The Contractor shall remove stones, paper, leaves, twigs, and all other debris from paved areas. Removal of debris from sidewalks and paved areas shall be done on a weekly basis. Any damage to sidewalks or surfaced areas requiring repair shall be promptly reported to the Superintendent.

i. Reporting Damage or Malfunction

Any damage to or malfunction of any facility not specifically provided for above shall be promptly reported to the Superintendent.

j. Fertilization. Aerification. Renovation Schedules

Schedule fertilization of all ground covers with a commercial fertilizer as often as required to promote healthy appearance. Water thoroughly to prevent burning. Apply at the rate recommended by manufacturer (see Fertilizer, Aerification, Renovation Schedule), and soil test results.

Aeration of turf areas a minimum of one (1) time per year to reduce compaction stress conditions, which will offer a greater water penetration and reduce runoff. In those areas where soil condition is poor, top dressing may be required by the City.

Thatching all turf areas one (1) time per year at a time when there will be the least amount of stress to turf.

k. Inspection

The City shall inspect the work area to insure adequacy of maintenance and that methods of performing the work are in compliance with the contract. However, this shall not be construed to relieve the Contractor of the duty to provide continuous inspection of the work area. Discrepancies and deficiencies in the work shall be brought to the attention of the Contractor and corrected in the manner specified by the Superintendent.

2.0 MISCELLANEOUS PROVISIONS

10.1 Notice. Any notices, bills, invoices, or reports required by this AGREEMENT shall be deemed received on (a) the day of delivery if delivered by hand during the receiving party's regular business hours or by facsimile before or during the receiving party's regular business hours; or (b) on the second business day following deposit in the United States mail, postage prepaid, to the addresses set forth below, or to such other addresses as the parties may, from time to time, designate in writing pursuant to the provisions of this Section.

To City:
City of Carson
2390 E. Dominguez Street
Long Beach, CA. 90810
Attention: Uli Fe'esago Jr.
Public Works Superintendent
Public Works Operation Service

To CONTRACTOR:

Swayzer's Inc.
1663 East Del Amo Blvd.
Carson, CA 90746
Attention: Samuel Swayzer
Vice President

10.2 Entire Agreement. This AGREEMENT, and any other documents incorporated herein by specific reference, represents the entire and integrated agreement between CITY and CONTRACTOR. This AGREEMENT supersedes all prior oral or written negotiations, representations or agreements. This AGREEMENT may not be amended, nor any provision or breach hereof waived, except in a writing signed by the parties which expressly refers to this AGREEMENT. To the extent any of the terms, covenants or conditions of this AGREEMENT conflict in any respect with those set forth in the proposal, the terms, covenants and conditions of this AGREEMENT shall prevail and shall supersede by conflicting provisions in the PROPOSAL.

10.3 Severability. In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this AGREEMENT shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this AGREEMENT which shall be interpreted to carry out of the intent of the parties hereunder.

TO EFFECTUATE THIS AGREEMENT, each of the parties has caused this Agreement to be executed by its duly authorized representative as of the date set forth below the authorized signature.

ATTEST:

[Signature]
CITY CLERK 9/15/10

CITY OF CARSON

By: Jim Dear

JIM DEAR, MAYOR

Date: 09/08/10

APPROVED AS TO FORM:

[Signature]
CITY ATTORNEY

Swayzer's Inc.

By: [Signature]
(Authorized Representative)

Title: PRESIDENT

Date: 09-08-10

Swayzer's Inc.

By: [Signature]
(Authorized Representative)

Title: VICE-PRESIDENT

Date: 09-08-10