

This contract was bid in several parts in March of 2011 and August of 2011 with three bids submitted each time.

CONTRATING AGREEMENT

September 12, 2012

This agreement is executed by Harvest Landscaping , a California corporation (hereinafter “Contractor”) at PO Box 900902, San Diego, CA 92190 and **Hillcrest Business Association** (hereinafter “HBA”), whose address is **3737 Fifth Avenue San Diego, CA 92103**. Phone: **619-299-3330** Fax: **619-299-4230**, with respect to the following facts:

Recitals

- A. The City of San Diego, though not a party to this agreement is referred to in this agreement as “The City”.
- B. Contractor is engaged in the business of providing maintenance services for various types of buildings and building complexes.
- C. HBA desires to have Contractor provide specified maintenance services as outlined in attachment A.
- D. HBA has engaged with the property owner, The City of San Diego, by contract to provide a variety of services as outlined by City Ordinances and Contracts.

The parties hereby enter into the following agreement:

Agreement

Please Refer to Attachment # A for Scope of Work.

Fees and Payments

- A. HBA shall pay to Contractor the amount(s) for each service rendered pursuant to this agreement, per Attachment # A.
- B. The total amount (indicated above) shall be paid once per month, no later than thirty days after the date of each monthly invoice. Late payments shall be subject to a service charge at the maximum rate permitted by law, up to 1.5 percent per month.

Other Considerations

Term and Terminations. This agreement supersedes all previous agreements signed between Contractor and HBA.

The term of this agreement shall be one year from the date of its execution, and shall be automatically renewed for successive one year terms. Either party may cancel this agreement at any time after date of signing, including within the first year hereof or any subsequent renewal year, upon 30 days written notice to the other party. If this agreement is cancelled for any reason by either party, there will be no liability on the part of either party regarding this agreement.

Independent Contractor Status Contractor is not an employee of the City or HBA. All staff costs relating to the agreement must be borne by Contractor. Contractor shall have no authority to bind the City or HBA in any manner or to incur any obligation, debt, or liability of any kind, on behalf of or against the City or HBA. Signing this agreement does not assign any rights, obligations, and/or duties of Hillcrest Business Association under this agreement to any third party. This agreement does not create a contractual relationship between the City or HBA and any third party.

It is understood and agreed that by virtue of entering into this agreement, Contractor and/or its employees shall not become employees of HBA. Rather, Contractor shall have the status of an independent Contractor. HBA shall make no deductions of any kind from any consideration paid Contractor, including but not limited to state, federal and local taxes, social security, etc. HBA shall not be required to secure workers compensation or any other insurance or benefit for Contractor except as may be expressly provided herein. Contractor shall maintain general discretion and control over the manner in which the services required hereunder are performed. Nothing herein shall be construed or interpreted to prohibit Contractor from entering into similar or dissimilar agreements with other parties or entities, provided that Contractor shall devote all time reasonably necessary to fully perform its obligations hereunder.

Materials, Supplies and Equipment Contractor shall furnish all materials, supplies and equipment necessary to fully perform the services specified herein. Weed abatement spray to be furnished by Contractor Services and re-billed. (Water and sprinkler systems, to the extent utilized in performing services pursuant to this agreement, shall be supplied by HBA.)

Authorization HBA hereby represents and warrants that if not the owner of the Premises, or the HBA is fully authorized by the owner to enter into this agreement.

Supervision Contractor shall provide supervision adequate to ensure that the services rendered pursuant to this agreement are of high quality.

Holidays Contractor employees are not required to work on six (6) legal holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. If a service day falls on anyone of those holidays, services will not be provided on that day but will be provided the following business day. However, if services are required on holidays, then HBA shall be billed at double the regular hourly labor rate.

Inclement Conditions, Other Disruptive Factors HBA hereby acknowledges that rain, strong winds and other inclement conditions may impair the ability of Contractor to provide required services. For example, if sweeping is included in the agreement, power sweepers, blowers and brooms are ineffective on wet surfaces. Similarly, heavy rains may prevent strict adherence to landscaping maintenance schedules. Additionally, trash removal services personnel frequently leave dumpsters in disarray, and tenants are not always careful and tidy when depositing trash or breaking down boxes in dumpsters. See also, Section 19 below, Force Majeure.

Assignment HBA or Contractor may not assign any rights or obligations hereunder without the prior, express written consent of both parties. This agreement shall be binding on and inure to the benefit of the successors, assigns and personal representatives of the parties.

No Joint Venture or Partnership This agreement shall not be construed or interpreted to create or establish any joint venture or partnership between the parties.

Notices Any notice to a party required or permitted hereunder shall be deemed given on the date of delivery if personally served, or on the third day after mailing if mailed. Any notice by mail shall be first class or airmail, postage prepaid, certified mail (return receipt requested) and sent to the address indicated by the signature of the party on this Agreement, or to the most recent address given the sender by written notice from that party.

Waivers The waiver by any party of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach of such provision or of any other provision.

Entire Agreement, Amendment This instrument contains the entire Agreement of the parties, and supersedes any and all prior representations, negotiations, agreements and understandings between them, whether oral or written. This Agreement may not be modified or amended except by written instrument, signed by each party hereto.

Governing Law Contractor shall at all times comply with all applicable laws, statutes, ordinances, and regulations of City, county, state, and federal governments. SubContractor shall also comply with all notices issued by City under the authority of all current or future laws, statutes, ordinances, or regulations. The construction, interpretation and application of this Agreement shall be governed by the law of the State of California.

Force Majeure If performance by Contractor of any of its obligations hereunder is interrupted or delayed by any occurrence not occasioned by the conduct of either party to this agreement, e.g., whether that occurrence is an act of God or public enemy, or whether that occurrence is caused by war, riot, storm, earthquake or other natural forces, or by the acts of anyone not a party to this agreement, then Contractor shall be excused from any further performance for whatever period of time after the occurrence is reasonably necessary to remedy the effects of that occurrence.

Severability Should any provision of this Agreement be rendered void, invalid or unenforceable by any court of competent jurisdiction, such invalidity, etc., shall not render void or unenforceable any other provision.

Conflict of Interest Contractor shall comply with all federal, state, and local laws, including conflict of interest laws, statutes, ordinances, regulations, and policies of City related to public contracts and procurement practices to the extent applicable. HBA and Contractor are unaware of any financial or economic interest of any public officer or employee of the City relating to this Agreement. Contractor has been made aware of the HBA's Conflict of Interest policy (Attachment B).

Agreements with third parties

Upon signing, the Contractor shall disclose and provide copies of all agreements with third parties relating to the project including rental agreements, service contracts, entertainment agreements, sponsorships, in-kind donations, special payments, and mutual benefit arrangements. Unwritten agreements shall be unacceptable.

Insurance. Contractor shall defend, indemnify, protect, and hold harmless the City and HBA,

their elected officials, departments, officers, employees, representatives, and agents from and against any and all claims asserted, or liability established, for damages or injuries to any person or property resulting from Contractor work as set forth in this agreement. Contractor shall provide Commercial General Liability [CGL] Insurance, naming HBA and the "The City of San Diego, its elected officials, officers, employees, representatives, and agents" as additionally insured. Contractor shall provide Worker's Compensation Insurance, as required by the laws of the State of California for all of Contractor employees who are subject to this Agreement, with Employer's Liability coverage with a limit of at least One Million Dollars (\$1,000,000). "The City of San Diego, its elected officials, officers, employees, representatives, and agents" shall be named as additionally insured in the CGL. The policies shall be kept in force for the duration of the Term and any extended use. The certificate(s) of insurance shall be delivered to HBA at the execution of this contract. All insurance required by the terms of this Agreement must be provided by insurers licensed to do business in the State of California which are rated at least "A-, VI" by the current AM Best Ratings Guide. Non-admitted surplus lines insurers may be accepted provided they are included on the most recent list of California eligible surplus lines insurers (LESLI list) and otherwise meet City requirements. If City is made a party to any judicial or administrative proceeding to resolve the dispute between HBA and Contractor, Contractor shall defend and indemnify the City as described herein.

Equal employment and nondiscriminatory provisions Contractor shall not discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in Contractor activities pursuant to this Agreement, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment. Contractor shall comply with City Council Ordinance No.18173 (San Diego Municipal Code sections 22.2701 through 22.2708, as amended), EQUAL EMPLOYMENT OPPORTUNITY OUTREACH PROGRAM, a copy of which is on file in the Office of the City Clerk and by this reference is incorporated into this Agreement. Contractor is individually responsible to abide by its contents. Contractor shall comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375, and 12086; the California Fair Employment Practices Act; and any other applicable federal and state laws and regulations hereafter enacted. Contractor shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Contractor may be required to comply, and require each of its Sub Contractors to comply, with the provisions of the City's Living Wage Ordinance. It is the responsibility of the Contractor to determine if compliance is required. Contractor is required where applicable to comply with the Americans with Disabilities Act, the City of San Diego Drug Free Workplace requirements, and Storm Water Management and Discharge Control Ordinance.

Arbitration. If a dispute arises out of or relates to this Agreement, or the breach thereof, the parties agree first to try in good faith to resolve the dispute by mediation administered by the American Arbitration Association under its Rules, before resorting to arbitration. Thereafter, any unresolved controversy or claim arising out of or relating to this Agreement, or breach thereof, shall be resolved by arbitration administered by the American Arbitration Association in accordance with its Arbitration Rules, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof pursuant to applicable law. In any dispute the prevailing party will be entitled to all reasonable costs and attorney's fees.

IN WITNESS WHEREOF, the parties have executed this agreement
on _____, at _____, California.

**HILLCREST BUSINESS
ASSOCIATION**

CONTRACTOR

By:

Benjamin Nicholls
Executive Director
ADDRESS:
3737 Fifth Avenue
San Diego, California 92103
(619) 299-3330 Tel.
(619) 299-4230 Fax

By: _____

Attachment # A Scope of Work

Service Area 1 (MAD area):

Service area 1 includes 19 block faces.

- University Ave. from Third Ave. to Sixth Ave. (6 block faces)
- Fifth Ave. from Pennsylvania Ave. to University Ave. on both sides of the street, and the west side of the street between University Ave. and Washington St. (5 block faces)
- Sixth Ave. from Pennsylvania Ave. to University Ave. on both sides of the street (4 block faces)
- Robinson Ave. from Fourth. to Sixth Ave. on both sides of the street (4 block faces)

Service Area 2 (General Service area):

Service area 2 includes 43 block faces.

- University Ave. from First to Third, and Six Ave. to Park Blvd on both sides of the street (18 block faces)
- Washington Street between First Ave. and Fifth Ave. on both sides of the street (6 block faces)
- Fourth Ave. from Washington Ave. to Robinson Ave. on both sides of the street (4 blocks)
- Fifth Ave. from Pennsylvania Ave. to Upas St. on both sides of the street (6 blocks)
- Sixth Ave. from Robinson Ave. to Upas St. on both sides of the street (6 blocks)
- Park Blvd. from Essex St. to University Ave. on both sides of the street and from University Ave. to Lincoln St. on the west side of the street (3 blocks)

Scope of Work:

Service Area 1:

Street cleaning and trash removal:

- All streets shall be cleaned and have trash removed Monday, Tuesday, Thursday, Friday and Saturday (5 days per week). This shall include:
 - Clean sidewalk and flower beds for litter and remove any item cigarette butt sized or larger
 - Remove and dispose of all weeds growing in the service area
 - Empty all HBA owned trashcans and ash cans in area and wipe down as needed
 - Empty all HBA owned ashtrays area indicted above and wipe down as needed
 - Broom sweep gutters for cigarette butts and leaves along sidewalks and major corners, bus stops, and outside nightclubs
 - Remove posters and stickers from light poles and trees up to 8' high
- Five additional hours a month shall be available for special projects at the direction of the HBA (60 hours annually)

Pressure Washing

- ~~All streets shall be pressure washed on alternating months (6 times per year) with the exception of 5th Ave from Robinson Ave. to University Ave. which shall be pressure washed on a monthly basis (12 times per year). This shall include removing gum, soda spillage, trash can debris and other blemishes not removed in the sidewalk cleaning described above~~

- ~~• All HBA owned trash cans and containers shall be pressure washed and sanitized quarterly (4 times per year)~~
- ~~• Four additional hours per month shall be available for special projects at the direction of the HBA (52 hours annually)~~

Service Area 2:

Street cleaning and trash removal:

- All streets shall be cleaned and have trash removed on Monday and Friday (two days per week). This shall include:
 - Clean sidewalk and flower beds for litter and remove any item cigarette butt sized or larger
 - Remove and dispose of all weeds growing in the service area
 - Empty all HBA owned trashcans and ash cans in area and wipe down as needed
 - Empty all HBA owned ashtrays area indicted above and wipe down as needed
 - Broom sweep gutters for cigarette butts and leaves along sidewalks and major corners, bus stops, and outside nightclubs
 - Remove posters and stickers from light poles and trees up to 8' high
- Three and one third additional hours per month shall be available for special projects at the direction of the HBA (40 hours maximum per month).

Pressure Washing

- ~~• All streets shall be pressure washed twice per year (2 times per year). This shall occur once in early July and once in early December. This shall include removing gum, soda spillage, trash can debris and other blemishes not removed in the sidewalk cleaning described above~~
- ~~• All HBA trash cans and containers shall be pressure washed and sanitized twice annually~~
- ~~• Two additional hours per month shall be available for special projects at the direction of the HBA (24 hours annually)~~

All Service Areas

- Contractor's staff shall at all times wear HBA identified clothing as directed by HBA. HBA shall be responsible for paying for clothing.

Gardening and watering Zone 1 & 2:

- The pocket gardens located on University Ave. between Tenth Ave. and Normal Street, all trees (under 15 feet), flower baskets and all sidewalk planters shall be watered on a weekly basis.
- This frequency shall be increased as needed during the months of July, August, and September based upon hot weather and adjusted down during winter months based upon rainfall.
- All tree wells shall be free of weeds and debris and fertilized quarterly.
- Weekly tree (under 15 feet) maintenance trimming will take place and include all dead plant material removal, and maintaining a tree canopy of 8' at sidewalks and 10' at streets so as to comply with City of San Diego Code.
- Detail pruning, so as to remove tree mass and cultivate growth, shall take place twice per year during the months of March and September (2 times per year).

On a weekly basis in all areas as outlined below, provide the following services:

- Notify client of any hazards including large trash dumping, trip hazards, abandoned bicycles, and abandoned shopping carts. All sidewalk safety hazards which are observed in the implementation of this agreement (including damaged meter boxes and street vaults), shall be barricaded immediately and then, immediately following barricading, reported for repair to the City’s General Services Department: Street Division. If an unsafe sidewalk condition exists and is reported to the City’s Street Division (at 619-527-7500 OR go to www.sandiego.gov and select Request a Street Repair – either means of reporting provides a “standard notification number” confirming that the report was made and received), the City will take action to temporarily mitigate the potential hazard and notify abutting property owners of their responsibility to permanently repair/replace the sidewalk.
- Notify client of any new graffiti and illegal newspaper racks.
- On a weekly basis seek approval of client to remove graffiti, abandoned bicycles, and abandoned shopping carts, and other items.
- Document all activity conducted on a weekly basis on a weekly log

Fee Structure

HBA shall pay contractor on a monthly basis within thirty days of receipt of invoice for providing the services noted above. The invoice shall be itemized by service type and area, similar to as indicated below. The chart below describes the maximum payable for each service item:

Sidewalk cleaning and trash removal

- Zone 1: \$24,714. annually, \$2,059 monthly
- Zone 2: \$22,193 annually, \$1,849 monthly

Pressure washing

- ~~Zone 1: \$15,122 annually, \$1,260 monthly~~
- ~~Zone 2: \$8,877 annually, \$739 monthly~~

Gardening and watering

- All zones: \$35,112 annually, \$2,926 monthly

Attachment B: Conflict of Interest policy

No contract may be entered into by the Hillcrest Business Association if one of its’ officers, members, directors, committee members, staff members or volunteers has a material financial interest in the contract or transaction, except in the following circumstances:

- (1) the material facts as to the contract or transaction and as to the party’s interest are fully disclosed or known to the member, board or committee voting on the matter;
- (2) the contract or transaction is approved by the members, board or committee in good faith, by a vote sufficient without counting the vote of the interested party or parties;
- (3) the interested party or parties abstains from voting on the matter;
- (4) the contract or transaction is just and reasonable to the Hillcrest Business Association at the time it was authorized, approved or ratified;
- (5) the interested party or parties shall not actively participate in the decision about the contract or transaction, except to answer questions or provide a broad explanation;
- (6) the action is recorded in meeting minutes, noting which members voted, how the

members voted, and identifying any members who abstained from voting.

A violation of any provision of this policy shall be grounds for removal of the officers, directors, members, committee members, staff members or volunteers from their positions with the HBA. A contract or transaction entered into in violation of this Conflict of Interest Policy shall be void and unenforceable.

Attachment C: Cleaning Service Area Map