

SERVICE PROVIDER AGREEMENT

THIS SERVICE PROVIDER AGREEMENT ("**Agreement**") is entered into this 24th day of November, 2020, by and between RiverRock Real Estate Group, a California corporation (hereinafter referred to as "**Manager**") as agent for the CITY OF ALAMEDA, a municipal corporation (the "**City**"), and GOTHIC LANDSCAPE, GOTHIC GROUNDS MANAGEMENT, INC., (a California corporation), whose address is 1155 Mabury Rd., San Jose, CA 95133, (the "**Provider**"), in reference to the following:

RECITALS:

- A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of the City. The City has an interest in certain real property and improvements known as Alameda Point located in Alameda, California, on behalf of the City of Alameda (the "**Project**").
- B. The City is in need of the following services: Residential and Commercial Landscape Maintenance. City staff reached out to the service providers on the City's bidders list interviewed qualified firms and selected the service provider that best meets the City's needs.
- C. Provider possesses the skill, experience, ability, background, certification and knowledge to provide the services described in this Agreement on the terms and conditions described herein.
- D. RiverRock Real Estate Group, a California corporation, has been appointed as the manager of the Project and is authorized to enter into this Agreement as "**Agent**" for the City of Alameda.
- E. Manager and Provider desire to enter into an agreement for Residential and Commercial Landscape Maintenance, upon the terms and conditions herein.

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

1. TERM:

The term of this Agreement shall commence on the 1st day of January 2021, and shall terminate on the 31st day of December 2023, unless terminated earlier as set forth herein.

This Agreement may be mutually extended on a year-by-year basis, for up to four (4) additional years, at the sole discretion of the Property Manager, based, at a minimum, upon satisfactory performance of all aspects of this Agreement. The Property Manager may submit written notice that the Agreement is to be extended at the same terms and compensation as the existing Agreement.

2. **SERVICES TO BE PERFORMED:**

Provider agrees to do all necessary work at its own cost and expense, to furnish all labor, tools, equipment, materials, except as otherwise specified, and to do all necessary work included in Exhibit B as requested. The Provider acknowledges that the work plan included in EXHIBIT B is tentative and does not commit the City to request Provider to perform all tasks included therein.

3. **COMPENSATION TO PROVIDER:**

a. By the 7th day of each month, Provider shall submit to the City an invoice for the total amount of work done the previous month. Pricing and accounting of charges are to be according to the fee schedule as set forth in this Section 3. Extra work must be approved in writing by the Property Manager or his/her designee prior to performance and shall be paid on a Time and Material basis.

b. The total compensation for the work under this Agreement is not to exceed **\$268,230.00** per year.

4. **TIME IS OF THE ESSENCE:**

Provider and Manager agree that time is of the essence regarding the performance of this Agreement.

5. **STANDARD OF CARE:**

Provider agrees to perform all services hereunder in a manner commensurate with the prevailing standards of like professionals or service providers, as applicable, in the San Francisco Bay Area and agrees that all services shall be performed by qualified and experienced personnel who are not employed by the City.

6. **INDEPENDENT PARTIES:**

Provider hereby declares that Provider is engaged as an independent business and Provider agrees to perform the services as an independent contractor. The manner and means of conducting the services and tasks are under the control of Provider, except to the extent they are limited by statute, rule or regulation and the express terms of this Agreement. No civil service status or other right of employment will be acquired by virtue of Provider's services. None of the benefits provided by Manager or City to its employees, including but not limited to unemployment insurance, workers' compensation plans, vacation and sick leave are available from Manager/City to Provider, its employees or agents. Deductions shall not be made for any state or federal taxes, FICA payments, PERS payments, or other purposes normally associated with an employer-employee relationship from any compensation due to Provider. Payments of the above items, if required, are the responsibility of Provider.

7. **IMMIGRATION REFORM AND CONTROL ACT (IRCA):**

Provider assumes any and all responsibility for verifying the identity and employment authorization of all of its employees performing work hereunder, pursuant to all applicable IRCA or other federal, or state rules and regulations. Provider shall indemnify, defend, and hold

Manager and the City harmless from and against any loss, damage, liability, costs or expenses arising from any noncompliance of this provision by Provider.

8. NON-DISCRIMINATION:

Consistent with Manager's policy and state and federal law that harassment and discrimination are unacceptable conduct, Provider agrees that harassment or discrimination directed toward a job applicant, a Manager or City employee, or a citizen by Provider or Provider's employee on the basis of race, religious creed, color, national origin, ancestry, handicap, disability, marital status, pregnancy, sex, age, or sexual orientation will not be tolerated. Provider agrees that any and all violations of this provision shall constitute a material breach of this Agreement.

9. HOLD HARMLESS:

a. Provider shall indemnify, defend, and hold harmless Manager, the City of Alameda, its City Council, boards, commissions, officials, employees, and volunteers ("**Indemnitees**") from and against any and all loss, damages, liability, claims, suits, costs and expenses whatsoever, including reasonable attorneys' fees ("**Claims**"), arising from or in any manner connected to Provider's negligent act or omission, whether alleged or actual, regarding performance of services or work conducted or performed pursuant to this Agreement. If Claims are filed against Indemnitees which allege negligence on behalf of the Provider, Provider shall have no right of reimbursement against Indemnitees for the costs of defense even if negligence is not found on the part of Provider. However, Provider shall not be obligated to indemnify Indemnitees from Claims arising from the sole negligence or willful misconduct of Indemnitees.

b. **Indemnification for Claims for Professional Liability Only:** As to Claims for professional liability only, Provider's obligation to defend Indemnitees (as set forth above) is limited to the extent to which its professional liability insurance policy will provide such defense costs.

c. Provider's obligation to indemnify, defend and hold harmless Indemnities shall expressly survive the expiration or early termination of this Agreement.

10. INSURANCE:

a. On or before the commencement of the terms of this Agreement, Provider shall furnish Manager with certificates showing the type, amount, class of operations covered, effective dates and dates of expiration of insurance coverage in compliance with subsections 10A, B, C and D. Such certificates, which do not limit Provider's indemnification, shall also contain substantially the following statement:

"Should any of the above insurance covered by this certificate be canceled or coverage reduced before the expiration date thereof, the insurer affording coverage shall provide ten (10) days' advance written notice to the City of Alameda. Attention: Risk Manager."

b. It is agreed that Provider shall maintain in force at all times during the performance of this Agreement all appropriate coverage of insurance required by this Agreement

with an insurance company that is acceptable to Manager and licensed to do insurance business in the State of California. Endorsements naming the City of Alameda, its City Council, boards, commissions, officials, employees, and volunteers and RiverRock Real Estate Group, their officers and employees as additional insured shall be submitted with the insurance certificates.

A. COVERAGE:

Provider shall maintain the following insurance coverage:

(1) Workers' Compensation:

Statutory coverage as required by the State of California.

(2) Liability:

Commercial general liability coverage in the following minimum limits:

Bodily Injury:	\$1,000,000 each occurrence
	\$2,000,000 aggregate - all other

Property Damage:	\$1,000,000 each occurrence
	\$2,000,000 aggregate

If submitted, combined single limit policy with aggregate limits in the amounts of \$2,000,000 will be considered equivalent to the required minimum limits shown above. Additional Insured Endorsement naming the City, its City Council, boards, commissions, officials, employees, and volunteers is required.

(3) Automotive:

Comprehensive automobile liability coverage (any auto) in the following minimum limits:

Bodily injury:	\$1,000,000 each occurrence
Property Damage:	\$1,000,000 each occurrence

or

Combined Single Limit:	\$1,000,000 each occurrence
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Additional Insured Endorsement naming the City, its City Council, boards, commissions, officials, employees, and volunteers is required.

B. SUBROGATION WAIVER:

Provider agrees that in the event of loss due to any of the perils for which it has agreed to provide comprehensive general and automotive liability insurance, Provider shall look solely to its insurance for recovery. Provider hereby grants to Manager or the City, on behalf of any insurer providing comprehensive general and automotive liability insurance to either Provider, Manager or City with respect to the services of Provider herein, a waiver of any right to subrogation which any such insurer of said Provider may acquire against Manager or the City by virtue of the payment of any loss under such insurance.

C. FAILURE TO SECURE:

If Provider at any time during the term hereof should fail to secure or maintain the foregoing insurance, Manager shall be permitted to obtain such insurance in the Provider's name or as an agent of the Provider and shall be compensated by the Provider for the costs of the insurance premiums at the maximum rate permitted by law and computed from the date written notice is received that the premiums have not been paid.

D. ADDITIONAL INSURED:

City, its City Council, boards, commissions, officials, employees, and volunteers, River Rock Real Estate Group, their officers and employees shall be named as an additional insured under all insurance coverages, except worker's compensation and professional liability insurance. The naming of an additional insured shall not affect any recovery to which such additional insured would be entitled under this policy if not named as such additional insured. An additional insured named herein shall not be held liable for any premium, deductible portion of any loss, or expense of any nature on this policy or any extension thereof. Any other insurance held by an additional insured shall not be required to contribute anything toward any loss or expense covered by the insurance provided by this policy.

E. SUFFICIENCY OF INSURANCE:

The insurance limits required by Manager are not represented as being sufficient to protect Provider. Provider is advised to consult Provider's insurance broker to determine adequate coverage for Provider.

11. CONFLICT OF INTEREST:

Provider warrants that it is not a conflict of interest for Provider to perform the services required by this Agreement. Provider may be required to fill out a conflict of interest form if the services provided under this Agreement requires Provider to make certain governmental decisions or serve in a staff capacity as defined in Title 2, Division 6, Section 18700 of the California Code of Regulations.

12. PROHIBITION AGAINST TRANSFERS:

a. Provider shall not assign, sublease, hypothecate, or transfer this Agreement, or any interest therein, directly or indirectly, by operation of law or otherwise, without prior written consent of Manager. Provider shall submit a written request for consent to transfer to the Manager at least thirty (30) days in advance of the desired transfer. The Manager may consent or reject such request in his/her sole and absolute discretion. Any attempt to do so without said consent shall be null and void, and any assignee, sublessee, hypothecate or transferee shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer. However, claims for money against the Manager under this Agreement may be assigned by Provider to a bank, trust company or other financial institution without prior written consent.

b. The sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of Provider, or of the interest of any general partner or joint venturer or syndicate member or cotenant, if Provider is a partnership or joint venture or syndicate or cotenancy, which shall result in changing the control of Provider, shall be construed as an

assignment of this Agreement. Control means fifty percent or more of the voting power of the corporation.

13. APPROVAL OF SUB-PROVIDERS:

a. Only those persons and/or businesses whose names and resumes are attached to this Agreement shall be used in the performance of this Agreement. However, if after the start of this Agreement, Provider wishes to use sub-providers, at no additional costs to the City, then Provider shall submit a written request for consent to add sub-providers including the names of the sub-providers and the reasons for the request to the Manager at least five (5) days in advance. The Manager may consent or reject such requests in his/her sole and absolute discretion.

b. Each sub-provider shall be required to furnish proof of workers' compensation insurance and shall also be required to carry general, automobile and professional liability insurance (as applicable) in reasonable conformity to the insurance carried by the Provider. In addition, any tasks or services performed by sub-providers shall be subject to each provision of this Agreement.

c. The requirements in this Section 13 shall not apply to persons who are merely providing materials, supplies, data or information which the Provider then analyzes and incorporates into its work product.

14. PERMITS AND LICENSES:

Provider, at its sole expense, shall obtain and maintain during the term of this Agreement, all appropriate permits, certificates and licenses, including a City Business License that may be required in connection with the performance of the services and tasks hereunder.

15. REPORTS:

a. Each and every report, draft, work product, map, record and other document produced, prepared or caused to be prepared by Provider pursuant to or in connection with this Agreement shall be the exclusive property of City.

b. No report, information or other data given to or prepared or assembled by Provider pursuant to this Agreement shall be made available to any individual or organization by Provider without prior approval of the City Manager or his/her designee or Manager.

c. Provider shall, at such time and in such form as City Manager or his/her designee or Manager may require, furnish reports concerning the status of services and tasks required under this Agreement.

16. RECORDS:

a. Provider shall maintain complete and accurate records with respect to the services, tasks, work, documents and data in sufficient detail to permit an evaluation of the Provider's performance under the Agreement, as well as maintain books and records related to sales, costs, expenses, receipts and other such information required by City or Manager that relate to the performance of the services and tasks under this Agreement (collectively the "Records").

b. All Records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Provider shall provide free access to the Records to the representatives of City or Manager or its designees during regular business hours upon reasonable prior notice. The City or Manager has the right to examine and audit the Records, and to make copies or transcripts therefrom as necessary, and to allow inspection of all proceedings and activities related to this Agreement. Such Records, together with supporting documents, shall be kept separate from other documents and records and shall be maintained by Provider for a period of three (3) years after receipt of final payment.

c. If supplemental examination or audit of the Records is necessary due to concerns raised by City's or Manager's preliminary examination or audit of records, and the City's or Manager's supplemental examination or audit of the records discloses a failure to adhere to appropriate internal financial controls, or other breach of this Agreement or failure to act in good faith, then Provider shall reimburse the City or Manager for all reasonable costs and expenses associated with the supplemental examination or audit.

17. NOTICES:

a. All notices shall be in writing and delivered: (i) by hand; or (ii) sent by registered, express, or certified mail, with return receipt requested or with delivery confirmation requested from the U.S. postal service; or (iii) sent by overnight or same day courier service at the party's respective address listed in this Section.

b. Each notice shall be deemed to have been received on the earlier to occur of: (x) actual delivery or the date on which delivery is refused; or (y) three (3) days after notice is deposited in the U.S. mail or with a courier service in the manner described above (Sundays and City holidays excepted).

c. Either party may, at any time, change its notice address (other than to a post office box address) by giving the other party three (3) days prior written notice of the new address.

d. All notices, demands, requests, or approvals from Provider to City shall be addressed to City at:

City of Alameda
c/o RiverRock Real Estate Group
950 W. Mall Square, Room 239
Alameda, CA 94501
ATTENTION: Property Manager
Ph: (510) 749-0304

e. All notices, demands, requests, or approvals from City to Provider shall be addressed to Provider at:

GOTHIC LANDSCAPE, GOTHIC GROUNDS MANAGEMENT, INC.
1155 Mabury Rd.
San Jose, CA 95133
Email: Ryan.Ferrara@gothiclandscape.com
Ph: (408) 332-3545

18. SAFETY:

a. The Provider will be solely and completely responsible for conditions of all vehicles owned or operated by Provider, including the safety of all persons and property during performance of the services and tasks under this Agreement. This requirement will apply continuously and not be limited to normal working hours. In addition, Provider will comply with all safety provisions in conformance with U.S. Department of Labor Occupational Safety and Health Act, any equivalent state law, and all other applicable federal, state, county and local laws, ordinances, codes, and any regulations that may be detailed in other parts of the Agreement. Where any of these are in conflict, the more stringent requirements will be followed. The Provider's failure to thoroughly familiarize itself with the aforementioned safety provisions will not relieve it from compliance with the obligations and penalties set forth herein.

b. The Provider will immediately notify Manager within 24 hours of any incident of death, serious personal injury or substantial property damage that occurs in connection with the performance of this Agreement. The Provider will promptly submit to the Manager a written report of all incidents that occur in connection with this Agreement. This report must include the following information: (i) name and address of injured or deceased person(s); (ii) name and address of Provider's employee(s) involved in the incident; (iii) name and address of Provider's liability insurance carrier; (iv) a detailed description of the incident; and (v) a police report.

19. TERMINATION:

a. In the event Provider fails or refuses to perform any of the provisions hereof at the time and in the manner required hereunder, Provider shall be deemed in default in the performance of this Agreement. If such default is not cured within two (2) business days after receipt by Provider from City of written notice of default, specifying the nature of such default and the steps necessary to cure such default; City may thereafter immediately terminate the Agreement forthwith by giving to the Provider written notice thereof.

b. The foregoing notwithstanding, City shall have the option, at its sole discretion and without cause, of terminating this Agreement by giving seven (7) days' prior written notice to Provider as provided herein.

c. Upon termination of this Agreement either for cause or for convenience, each party shall pay to the other party that portion of compensation specified in this Agreement that is earned and unpaid prior to the effective date of termination. The obligation of the parties under this Section 19.c. shall survive the expiration or early termination of this Agreement.

20. ATTORNEY'S FEES:

In the event of the bringing of any action or suit by a party hereto against the other party by reason of any breach of any covenants, conditions, obligation or provision arising out of this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party all of its costs and expenses of the action or suit, including reasonable attorneys' fees, experts' fees, all court costs and other costs of action incurred by the prevailing party in connection with the prosecution or defense of such action and enforcing or establishing its rights hereunder (whether or not such action is prosecuted to a judgment). For the purposes of this Agreement, reasonable fees of attorneys of the Alameda City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the Alameda City Attorney's services were rendered who practice in Alameda County in law firms with approximately the same number of attorneys as employed by the Alameda City Attorney's Office.

21. COMPLIANCE WITH ALL APPLICABLE LAWS:

During the Term of this Agreement, Provider shall keep fully informed of all existing and future state and federal laws and all municipal ordinances and regulations of the City of Alameda which affect the manner in which the services or tasks are to be performed by the Provider, as well as all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same. Provider shall comply with all applicable laws, state and federal and all ordinances, rules and regulations enacted or issued by City.

22. CONFLICT OF LAW:

This Agreement shall be interpreted under, and enforced by the laws of the State of California without regard to any choice of law rules which may direct the application of laws of another jurisdiction. The Agreement and obligations of the parties are subject to all valid laws, orders, rules, and regulations of the authorities having jurisdiction over this Agreement (or the successors of those authorities.) Any suits brought pursuant to this Agreement shall be filed with the courts of the County of Alameda, State of California.

23. WAIVER:

A waiver by City of any breach of any term, covenant, or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained herein, whether of the same or a different character.

24. INTEGRATED CONTRACT:

The Recitals and Exhibits are a material part of this Agreement and are expressly incorporated herein. This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties hereto, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions hereof. Any modification of this Agreement will be effective only by written execution signed by both City and Provider.

25. CAPTIONS:

The captions in this Agreement are for convenience only, are not a part of the Agreement and in no way affect, limit or amplify the terms or provisions of this Agreement.

Signatures on next page

IN WITNESS WHEREOF, the parties have caused the Agreement to be executed on the day and year first above written.

GOTHIC LANDSCAPE, INC.

(a California corporation)

Ryan Ferrara

NAME Ryan Ferrara

TITLE Strategic Growth Manager-CA

RIVERROCK REAL ESTATE GROUP,
as agent for the City of Alameda

Steve Core

AC

Name: Steve Core

Title: President

NAME

TITLE

EXHIBIT A1 – COMMERCIAL PROPERTY MAP

EXHIBIT A-1

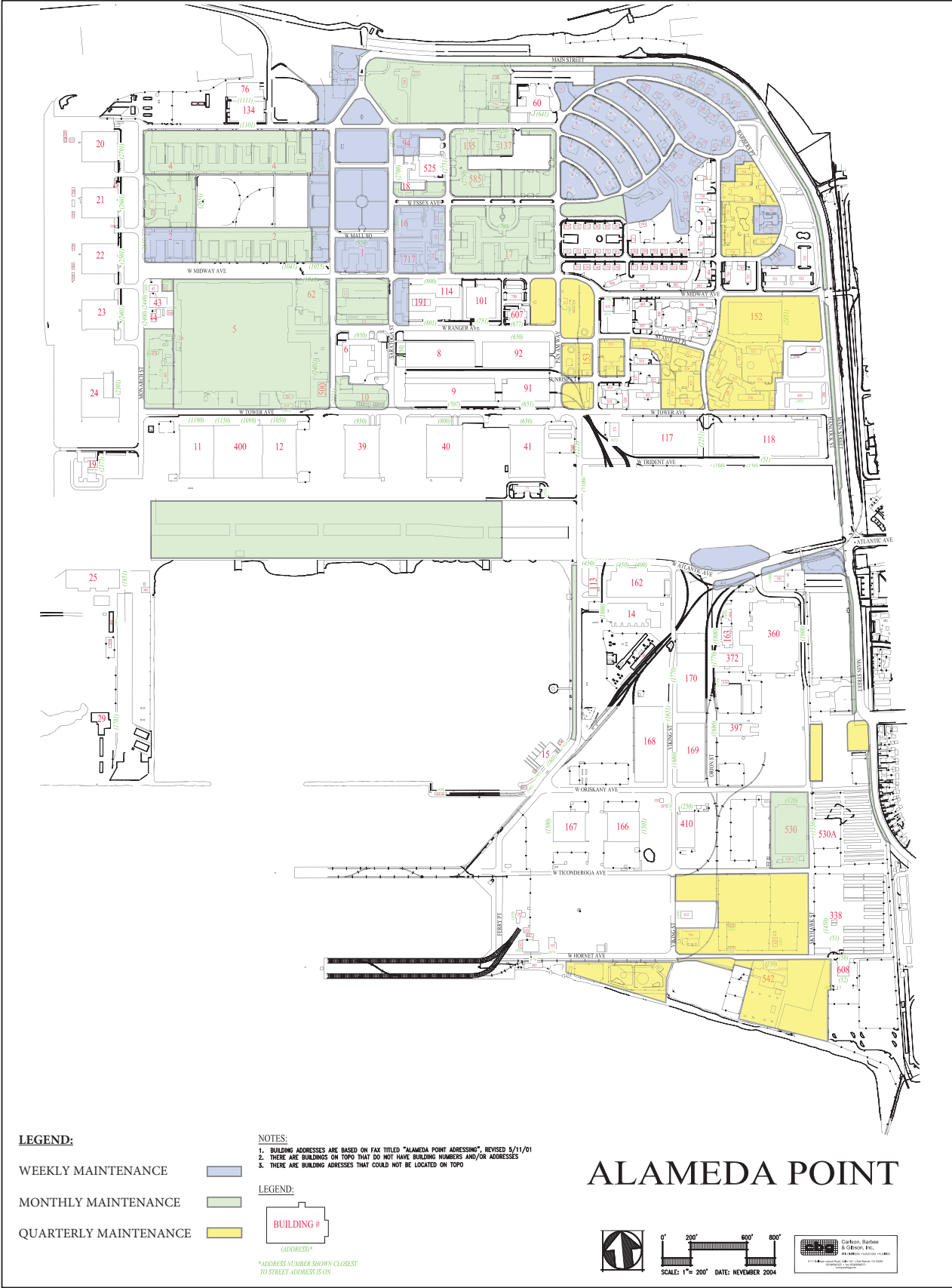


EXHIBIT A2 – RESIDENTIAL PROPERTY MAP

Residential Area

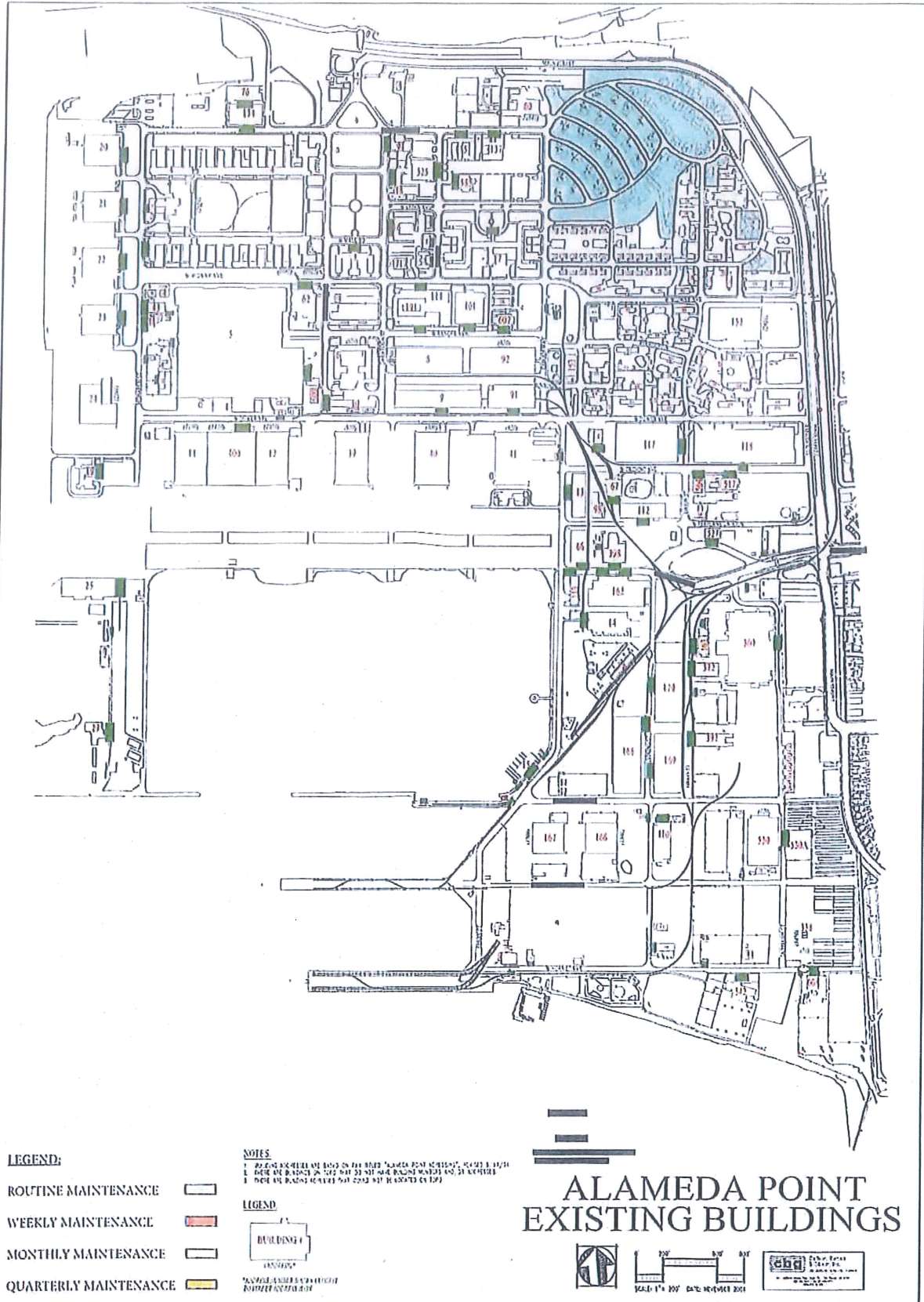


EXHIBIT B – SCOPE OF WORK

Cover Sheet

EXHIBIT B

SCOPE OF WORK

DESCRIPTION OF THE SERVICES, SPECIAL SERVICES AND WARRANTIES FOR COMMERCIAL AND RESIDENTIAL PROPERTIES

A. Work Included

This section includes all necessary maintenance of grounds, plantings, irrigation, debris removal, porter services, manual irrigation, chemical application, and other related work.

B. Quality Assurance

1. The Contractor shall be properly licensed to perform landscape work including pest control. This includes a C-27 license, a DPR Qualified Applicators License and a Maintenance Gardener Pest Control Business License. The Contractor shall procure all permits and licenses, including City of Alameda business licenses.
2. RiverRock Real Estate Group and VPM as agents for City of Alameda assumes no responsibility for loss or damage to equipment owned or operated by the contractor, his agents, or employees.
3. The Contractor shall be responsible for the skills, methods and actions of his employees and for all work done.
4. The Contractor shall replace at its own expense, any lawn area or other plant material requiring replacement due to negligence on his part in improper maintenance. This requirement is not to be construed as requiring the contractor to replace plants or entire lawns due to conditions totally beyond his control but is to be considered strictly as a normal maintenance condition in accordance with accepted practice.
5. The Contractor shall also be able to repair or replace damage attributable to minor vandalism, storms, irrigation failure, etc., in a timely manner.
6. The Contractor must be equipped with a communication system that allows for reaching staff in the field (two-way radios, cellular phones, etc.).
7. Recommended replacement schedule for specific landscape equipment as follows:
 - a. Replace four (4) 6 volt batteries for IBOC controllers biannually.
 - b. Replace fourteen (14) 9 volt batteries for Unik, Rain-dial, and Hunter controllers biannually.

8. Root interference / Safety Hazard

- a. Potential root damage to hardscape, sidewalks and/or any other potential pedestrian safety hazard shall be reported to Manager. Corrective action will be determined and directed as an extra service.

C. Environmental Conditions and Protection Provisions

1. Contractor acknowledges that The Property, formerly Alameda NAS, is a Federal Superfund (CERCLA) and a RCRA site. Contractor shall comply with all applicable Federal, state and local occupational health and safety standards and Federal, state, and local environmental laws, and regulations.

2. Contractor's work may be interrupted or interfered with by environmental investigations, removal or remedial actions as required by the Federal Facilities Agreement. The Navy assumes no liability to Contractor, or its assigns, should implementation of the Federal Facilities Agreement interfere with the Contractor's performance of work under this scope of work.

3. Storage, treatment or disposal of toxic or hazardous materials or wastes at The Property is prohibited. Any remaining Naval or Coast Guard accumulation points for hazardous, toxic or other solid wastes will not be used by the Contractor. The Contractor may not co-mingle any solid wastes with the Navy's or Coast Guards hazardous, toxic, or other solid wastes. The Contractor shall have a plan, for responding to hazardous wastes, fuel, or other chemical spills prior to commencement of operations at The Property, pre-approved by RiverRock Real Estate Group.

If, to perform any tasks identified under this scope of work, the Contractor is required to temporarily stage or store hazardous materials, not to exceed 90 days, at The Property, then the Contractor will obtain pre-approval from RiverRock Real Estate Group, and from the local certified unified program agency (CUPA).

Contractor will also comply with all Federal, state and local laws and regulations requiring notification to emergency response providers of any storage or use of hazardous materials or wastes on-site. Contractor will at all times comply with Federal and state laws and regulations governing the use and application of any pesticide, herbicide or fertilizer.

4. Contractor shall obtain and comply with any permits required to perform the work under this scope of work. Contractor shall maintain copies of any permit applications made to any Federal, state or local regulatory agencies and shall provide copies to RiverRock Real Estate Group, City of Alameda, or to the Navy upon reasonable request. Contractor shall promptly notify RiverRock Real Estate Group, City of Alameda and the Navy of any notices of violation or noncompliance received by the Contractor from any such agency, concerning environmental matters or hazardous substances or hazardous wastes on, about or pertaining to the Property.

5. Contractor shall be responsible for reporting, containing, removing, and cleaning up any soil, air, or water pollution occurring on the Property as a result of the Contractor's use of the Property, use of the Property by Contractor's agents, employees, contractors, subcontractors, Contractor or assigns.

6. The responsibility of the Government to indemnify and hold harmless RiverRock Real Estate Group and Contractor against toxic torts and other environmental claims shall be in accordance with Public Law 102-484, Section 330, as amended.

7. Contractor shall maintain copies of any permit applications made to any Federal, State or local regulatory agencies and shall provide copies to RiverRock Real Estate Group or Government upon reasonable request. Contractor shall promptly notify RiverRock Real Estate Group and Government of any notices of violation or noncompliance received by Contractor from any such agency, concerning environmental matters or hazardous substances or hazardous waste on, about, or pertaining to the Property.

8. Contractor shall be responsible for reporting, containment, removal and cleanup of any land, air or water pollution that occurs on any Property as a result of Contractor's use of the Property, the use of the Property by Contractor's agents, employees, contractors, subcontractors, Contractors or assigns.

D. Scheduling

1. Any changes in work schedule shall be communicated to Manager prior to the change taking effect.

2. Weekly Maintenance areas as shown in Exhibit A-3, shall be managed with correct and sound horticultural practices along with the sections listed above and below, with the goal to provide a clean and pleasing landscape. A lush, professional looking landscape. The turf in these areas should be kept green and neat year-round.

3. Monthly Maintenance areas as shown in Exhibit A-3, shall be managed with correct and sound horticultural practices along with the sections above and below, with the goal to provide a clean and tidy landscape.

4. Quarterly Maintenance areas as shown in Exhibit A-3, shall be managed with correct and sound horticultural practices along with the sections above and below, with the goal to keep the existing turf low, shrubs not blocking windows and hardscape weed free.

5. Contractor is to provide Manager with a weekly work schedule describing the work to be performed at the Project.

E. Products

1. Fertilizers

Commercial fertilizers may be pellet, tablet, and granular or liquid form and will conform to the requirements of the California Food and Agriculture Code. Choice of fertilizer will be based on soil fertility tests and/or the specific plant requirements.

F. Trees

1. Pruning

a. All trees will be allowed to grow their natural genetic form and size, unless specifically directed in a written purchase order or agreement by Manager. The Contractor will not be responsible for any tree pruning over ten (10) feet from the uphill side of the trunk. The Contractor is responsible for the pruning of trees under the supervision of a Certified Arborist and to comply with guidelines as outlined in ANSI A300 Tree Care Pruning Standards.

b. Tree pruning will have three basic objectives: to promote structural strength, to ensure the safety of pedestrians and vehicles, and to accentuate the natural form and features of the tree.

c. Contractor shall provide for proper sidewalk clearance – both in height or lower branches and extension of branches into the street. For trees twenty feet (20') or greater in height, height clearance shall be eight feet (8') from sidewalk level. Vehicular clearance for trees less than twenty feet (20') in height shall be provided according to the instructions of Managing Agent.

d. Trees that encompass power poles with their foliage shall be cut back so as to maintain a two foot (2') minimum horizontal clearance of the entire circumference of the pole.

e. In addition to meeting tree workers' qualifications and because a percentage of the tree may be within ten feet (10') of energized conductors, employees and equipment working within a ten foot (10') proximity of energized conductors in excess of 750 volts shall be qualified line-clearance tree trimmers using approved tools and equipment used in the line clearing pruning. Proof of an employee training program and dielectric test on equipment and tools is required whenever Contractor is working within ten feet (10') of high power line.

f. Under no circumstances will stripping of lower branches ("raising up") of young trees be permitted. Lower branches will be cut-off only after the tree is able to stand erect without staking or other support.

2. Staking and Guying

- a. The purpose of staking and guying trees is to support and protect young trees until such time as they can stand-alone.
- b. All tree stakes, guys and ties will be maintained to properly support the trees and Contractor will regularly inspect, to prevent girdling or chafing of trunks or branches or rubbing that may cause bark wounds.
- c. Stakes and guys will be removed when no longer required for support.

3. Tree Wells

- a. Soil wells around all trees will be covered to a depth of 4-6 inches of mulch and a radius of 12-24 inches beyond the bark of the tree or more as agreed to with the Manager at all times. This area will be maintained free of grass, ground cover and weeds.
- b. Grasses and weeds will be removed or sprayed with an herbicide.

G. Shrubs and Vines

1. The general objectives for pruning of shrubs and vines are to maintain growth within space limitations, to maintain a natural appearance, to eliminate diseased or damaged growth, and to select and develop permanent branches.
2. Shrubs will be pruned to conform to the design concept of the landscape.
3. Vine will be pruned to control growth and direction, and will be kept "in-bounds" and not allow to grow over window, doors, gates or other structural features.
4. All pruning cuts will be made to lateral branches or buds or flush with trunk or main stem. Pinching or light heading back of terminal buds on selected shrub species promotes bushiness. To prevent legginess (sparse lower branches) shrubs will be maintained with the lower foliage wider than the upper foliage. This practice allows more light to reach the lower foliage.
5. "Shearing", "hedging" or pruning with the use of powered or manual hedge trimmers or shears, shall be prohibited on plants which have been planted in the last three (3) years

H. Ground Covers

1. Established ground covers bordering sidewalks, curbs or structures will be edged as often as necessary to provide a clean, crisp line at all times and shall be maintained 2" to 4" from borders or structures.
2. Ground covers will not be allowed within 12" of a tree trunk.

3. Ground covers may need to be mowed / pruned on an annual basis depending on species growth habit.

I. Seasonal Color

1. Seasonal color should be appropriate for the time of year. Species, bloom color and pattern will be chosen by Contractor and presented to Manager for approval prior to ordering material.

2. The frequency of seasonal color rotation (replacement) will depend on the time of year

and the species selected. The Contractor should plan on at least four rotations per year.

3. The goal of the seasonal color will be to highlight and compliment the structures they are planted around. It is important for these areas to be kept in good health and vigor, as these are at the entrances to the Property.

i. Dead heading shall be done on a constant basis to promote flowering and keep a neat appearance.

ii. Dead and/or dying plants should be immediately removed and replaced.

iii. Seasonal color replacement due to improper Contractor maintenance shall be done at Contractor's expense.

iv. The soil shall be amended at time of planting to provide the best possible growing medium for the seasonal color.

v. Seasonal color should be fertilized regularly, with the goal to provide lush growth and profuse blooming. Regular fertilization, special fertilization or soil treatment techniques to correct nutrient deficiencies are included in the price.

vi. Size of flats for color rotation: 4"

4. Color Rotation for Commercial Areas:

i. Both entrances to the property, on W. Atlantic Avenue and on Navy Way around the airplanes.

ii. At Bldg. 1 Courtyard and entrance on W. Midway

iii. At the entrance on W. Mall Square.

J. Guarantee and/or Replacement Policy

Contractor shall guarantee installation of all new plant materials or irrigation system for a period of six (6) months. Such installation shall be replaced by Contractor at no charge if they

fail during the guarantee period. Contractor shall be exempt from this provision if damage occurs as a result of an act of God. Acts of God are defined as those caused by windstorm, hail, fire, flood, earthquake and freezing. Vandalism and theft are considered as other willful acts over which contractor no control has and are therefore exempt.

K. Lawns

1. Mowing

a. Lawns will be mowed weekly during the growing season (March-October) and every other week during the dormant season (November-February) to maintain a neat appearance. Generally, mowing heights will be 2" - 2½" in fall/winter and 2½" - 3½" in spring/summer. Mower blades are to be kept sharp. Bruising or rough cut grass will not be permitted. Mowers will be adjusted and operated such that the grass is cut at a uniform height. Scalping of mounded areas will not be permitted. Paper, rubbish, and debris shall be removed by the contractor prior to mowing.

b. Mowing patterns will be alternated each week, or as needed, to avoid creating ruts and compaction.

c. Clipping will be both caught and removed or where acceptable mulching mowers can be used. However, any clippings noticeably remaining on the lawn surface after 24 hours shall be raked and removed.

2. Edging

a. All lawn edges along sidewalks and curbs, as well as shrub or groundcover border areas, will be edged every week during the active growing season (March - October) and every other week during the dormant season (November - February) to create a clean look.

b. Hard edging will appear as a clean, smooth and vertical line. Trimming shall be done by power edgers or by hand, but in no case shall herbicides be used without prior approval. Care shall be taken to avoid damage to trees, shrubs, sprinklers, buildings, and other structures.

c. Lawn sprinkler heads will only be edged to allow for proper distribution of water.

L. Soil Fertility

1. Turf will be fertilized 4 times per year as dictated by growing conditions, using 10 lb. 21-8-8 fertilizer per 1000 square feet, according to individual needs to maintain good health, vigor and color throughout the year, or as required to maintain acceptable standards.

2. Ground cover and planter beds will be fertilized 2 times per year (in early April and late September) using 8 lb. 16-6-8 fertilizer per 1000 square feet or as required maintaining acceptable standards.

3. Special fertilization for acid-loving plant material (i.e., azaleas, camellias, rhododendrons, etc.) will be applied as required to maintain acceptable standards (up to 2 times per year).

M. Weed Control

1. Lawn, shrub, groundcovers and flowerbeds shall be kept free of weeds by hand, machine or chemical use.

2. Planter-bed and ground cover will receive two (2) applications per year of pre-emergent weed control. Post-emergent weed control will be performed on an as needed basis to provide a weed free area. Application timing will be determined by the Contractor to provide the best weed control possible.

3. Weeds in large open areas shall be abated in large open areas at the discretion of Manager and shall not be permitted to exceed 6" in winter and 2" in summer.

4. Contractor will perform pre-emergent and post-emergent applications, which will be applied as needed to sidewalks, asphalt surfaces and bare ground areas throughout the property as shown in Exhibit A-3.

N. Irrigation Systems

1. The Contractor shall be able to repair and maintain all irrigation equipment including but not limited to valves, controllers, pipelines, low voltage electrical lines, etc., in a timely manner.

2. Proper irrigation system maintenance includes the overall supervision of the system, controller scheduling, routine checks and adjustments, and necessary repairs from tee to head. The Contractor's routine maintenance responsibility for all irrigation systems shall begin at the discharge site of all electric remote control valves.

3. Inspections of the irrigation systems in operation will be made weekly during the summer months, April through October, and monthly November through March, to detect any malfunctioning of the system.

4. All irrigation breaks or malfunctions shall be reported as soon as possible to the Manager. All malfunctioning equipment will be repaired in a timely fashion so as not to disrupt the necessary watering schedule.

5. All replacement heads will be of the same manufacturer, type and application rates, as available, working toward a standardized system throughout the property.

6. Crew or on-site gardeners are responsible for making minor repairs and reporting the condition of the irrigation system to supervisor.

7. The Contractor's on-site irrigation staff will be responsible for operating the irrigation systems in their specified areas of maintenance, with the duties of adjusting controllers, observing the effectiveness of the irrigation system, and making minor adjustments to the system.

8. The irrigation programs will be adjusted to conform to plant requirements, soil and slope conditions, weather and change of season, within the limitations of the system.

9. Water should not be applied at a rate higher than the infiltration rate of the soil. Application of water to concrete areas and / or buildings should be avoided. Proper calibration of the irrigation system will be undertaken to minimize any of the aforementioned problems.

10. The contractor shall provide, at his expense, all necessary equipment, supplies, and material of good quality to fulfill the maintenance specifications at a professional level. The intent is to provide for minor repairs primarily to the irrigation system due to wear or malfunctioning parts, i.e. sprinkler heads, replacing washers, springs, small sections of pipe, etc. Manager will pay for parts and equipment replacement due to vandalism or for major repairs of systems not related to contractor negligence. All vandalism damage exceeding (\$100.00) must be accompanied by an Alameda Police Department report.

11. Manager has the authority for establishing hours of turf irrigation.

12. Damage incurred by Contractor shall be repaired at Contractor's expense. Any other repairs shall be reported to Manager with recommendations and cost to repair.

13. Hand watering will be necessary due to poor coverage or malfunctioning sprinkler heads. Where there is no irrigation system, Contractor will be required to use hoses and portable means of irrigating to promote healthy growth in landscape areas.

14. An updated timing sheet shall be kept in each controller with a copy on file with Manager.

15. A site map identifying stations shall be kept in each controller with a copy on file with Manager.

O. Manual Irrigation Systems

1. Manual hand watering will be required in areas which do not have an existing irrigation system.

2. All equipment required to maintain the turf will be supplied by the contractor.

3. Pre-Cast Containers on Atlantic Ave. contain a sub-surface irrigation system.

a. Reservoir is to be checked and filled on a weekly basis.

- b. Supplemental manual irrigation maybe required on an as needed basis to encourage and promote the health of the plant material. This cost is to be included in the routine maintenance.

P. Aeration

1. Aeration is the process of alleviating compaction by punching holes into turf areas with specifically manufactured machines.
2. Required frequency is once per year for all routine maintenance turf areas and is included in the Contractor's bid.
3. Contractor to provide a cost in Exhibit A-2 for supplemental aeration for work which is above what is required in the previous paragraph.
4. All existing sprinklers locations are to be flagged in order to prevent unnecessary system damage.

Q. Integrated Pest Management

1. The goal of the Manager will be to minimize insect and disease problems through the Integrated Pest Management "IPM" program.
2. Prior to start of service, an IPM program will be developed by Manager and Contractor to properly manage the Property.
3. Plants which have declined and / or died as a result of improper or lack of monitoring by Contractor shall be replaced by Contractor at Contractor's expense.

R. Porter Service

1. Litter and trash including rubbish, papers, bottles, cans, and other debris will be removed from all hardscape and softscape areas of the site. Any hazardous waste will immediately be brought to the attention of the Manager.
2. Empty all public trash receptacles on a regular basis (includes all containers located on public walkways and near entrances with garbage bag replacement).
3. All trash receptacles will be periodically hosed out and the lids wiped down on an as needed basis.

S. Debris Removal

1. Parking lots for all included and vacant buildings, all sidewalks/walkways, and patios will be blown down thoroughly. Debris will be required to be bagged and disposed of properly off the Property, recycling where possible.

2. Clean curbs and corner build-up in parking lots areas. Blowing the debris back onto the lawns and planters will not be acceptable.
3. All cutting and clipping generated from maintenance work are to be removed from the job-site. Vacuuming or blowing must be completed on the same day as the cutting.
4. The Contractor will dispose of all clippings, trimmings, and cuttings at a State licensed composting facility or at a green waste collection facility for consolidation and transport to a State licensed composting facility. At no time will any clippings, trimmings and/or cuttings be land filled.
5. Service provider is not responsible for removing hazardous waste (i.e. batteries, motor oil) but will be required to remove all other forms of debris. Notify RiverRock Real Estate Group regarding large items that are dumped and we will coordinate removal of such items.

T. Flammable / Pesticide Storage

1. Fire prevention procedures will be implemented, including such controls as the careful handling of flammable liquids, the use of closed containers to prevent evaporation, the removal of all possible sources of ignition, adequate ventilation and the use of relief vents.
2. No more than five (5) total gallons of gasoline, diesel, or oil shall be stored on the Property.
3. Flammable materials will be stored properly according to State of California Fire Marshall guidelines.
4. All pesticides shall be stored according to California Department of Pesticide Regulation.
5. No more than 3 gallons of undiluted pesticide material shall be stored on the Property at any given time.
6. Spill response kits and action plans will be required next to any Flammable and / or Pesticide storage areas.

U. Compliance with Laws

1. Contractor shall take such action as may be necessary to comply with all laws, rules and regulations and any and all orders or requirements of any governmental authority having jurisdiction there over affecting the Property, including, but not limited to, SB-975 enacted by the State of California on January 1, 2002 requiring pay according to the California Prevailing Wage Scale for Alameda County.
2. Contractor will provide to Manager Material Safety Data Sheets (MSDS) for all chemicals, solvents, cleaners, pesticides, etc., used on or around the property prior to performing work within or around the Property.

3. Urban Runoff Management

a. The Contractor shall develop and implement erosion and sediment control to prevent pollution of storm drains. Such control includes but is not limited to:

i. Cover exposed piles of soil or construction material with plastic sheeting. All construction materials must be stored in containers.

ii. Contractor shall maintain a clean work area by removing trash, litter, and debris at the end of each work day. Contractor shall also clean up any leaks, drips, and other spills as they occur.

b. The objective is to ensure that the City and County of Alameda County-Wide Clean Water Program is adequately enforced.

c. These recommendations are intended to be used in conjunction with the State's Best Management Practices Municipal and Construction handbooks, local program guidance materials from municipalities, Section 7.1.01 of the Standard Specification and any other appropriate documents on storm water quality controls for construction.

d. Failure to comply with this program will result in the issuance of noncompliance notices, citations, property stop orders, and fines. The fine for noncompliance of the above program is two hundred fifty dollars (\$250.00) per occurrence per day. The State under the Federal Clean Water Act can also impose a fine on the Contractor, pursuant to Cal Water Code §13385.

4. Compliance with Marsh Crust Ordinance. Contractor shall perform all excavation work in compliance with the City's Marsh Crust Ordinance as set forth at Section 13- 56 of the Municipal Code. Prior to performing any excavation work, Contractor shall verify with the Building Official whether the excavation work is subject to the Marsh Crust Ordinance. Contractor shall apply for and obtain permits from Building Services on projects deemed to be subject to the Marsh Crust Ordinance.

5. Civil Rights Act of 1964. Under Title VI of the Civil Rights Act of 1964, no person shall, on the grounds of race, sex, religion, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

6. Section 109 of the Housing and Community Development Act of 1974. No person in the United States shall, on the grounds of race, sex, religion, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.

V. Use of Premises

1. Contractor shall confine all temporary staging of materials and use of spaces on the site to areas designated by Owner. Materials and equipment not in use shall be removed from the site.
2. Storage Location: Bldg. 115, 2601 Todd St., approx. 2,800 Sq. Ft.
3. Service provider must provide portable toilet(s) by the storage facility at Service provider's expense.

W. First Aid Facilities

1. Contractor shall provide on-site first aid facilities, conveniently located and adequately equipped to render first aid treatment to any injured workman employed under this Agreement, all in accordance with applicable laws.

X. Specific for Commercial Property

1. Property entrances on the north (Navy Way) and east (Atlantic Avenue) ends of the property are of the highest visibility. These entrance areas and their bordering areas must be maintained at the highest levels possible.
2. Seaplane Lagoon Clarification: Occasional weed abatement
3. Piedmont Soccer Field on Lexington, City Soccer on Main Street, and Alameda Soccer on W. Hornet Avenue, are excluded in Scope of Work.
4. Do not use preemergence at turf areas.

Y. Specific for Residential Properties

1. Hand Watering Frequency at Residential Property: 3 Days/week.
2. Lawns are mowed once a week with exception to lawns behind abandoned residential units, which are mowed once a month.
3. Parking lots (unless part of tenant occupied buildings) are to be kept clean and weed abated.
4. While back yard service is not included in residential areas, 390 W. Essex Ave. shall be included and serviced at the same consistency as the front yards.