

**OREGON CITY PUBLIC WORKS
PERSONAL SERVICES AGREEMENT**

Landscape Maintenance Services – Street (PS 16-023)

This PERSONAL SERVICES AGREEMENT ("Agreement") is entered into between:

CITY OF OREGON CITY ("City")

City of Oregon City
PO Box 3040
625 Center Street
Oregon City, OR 97045
Attention: Martin Montalvo

and

DeSANTIS LANDSCAPES, INC. ("Contractor")

DeSantis Landscapes, Inc.
7907 State Street
Salem, OR 97317
Attention: Dean DeSantis

RECITALS

A. City requires services that Contractor is capable of providing under the terms and conditions hereinafter described.

B. Contractor is able and prepared to provide such services as City requires under the terms and conditions hereinafter described.

The parties agree as follows:

AGREEMENT

1. Term. The term of this Agreement shall be from **October 1, 2016** until **April 30, 2018**, with an option to renew for an additional three (3) one (1) year terms, unless sooner terminated pursuant to provisions set forth below. However, such expiration shall not extinguish or prejudice City's right to enforce this Agreement with respect to (i) breach of any warranty; or (ii) any default or defect in Contractor's performance that has not been cured.

2. Compensation. City agrees to pay Contractor on a time-and-materials basis for the services required. Total compensation, including reimbursement for expenses incurred, shall not exceed **Ninety thousand two hundred forty-nine and .12/100 dollars (\$90,249.12)**.

3. Scope of Services. Contractor's services under this Agreement shall consist of services as detailed in Exhibit A, attached hereto and by this reference incorporated herein.

4. Standard Conditions. This Agreement shall include all of the standard conditions as detailed in Exhibit B, attached hereto and by this reference incorporated herein.

5. Schedule. The components of the project described in the Scope of Services shall be completed according Term, above.

6. Integration. This Agreement, along with the description of services to be performed attached as Exhibit A and the Standard Conditions to Oregon City Personal Services Agreement attached as Exhibit B,

contain the entire agreement between and among the parties, integrate all the terms and conditions mentioned herein or incidental hereto, and supersede all prior written or oral discussions or agreements between the parties or their predecessors-in-interest with respect to all or any part of the subject matter hereof.

7. Notices. Any notices, bills, invoices, reports or other documents required by this Agreement shall be sent by the parties by United States mail, by hand delivery or by electronic means. All notices shall be in writing and shall be effective when delivered. If mailed, notices shall be deemed effective forty-eight (48) hours after mailing, unless sooner received.

Contractor shall be responsible for providing the City with a current address. Either party may change the address set forth in this Agreement by providing notice to the other party in the manner set forth above.

8. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the state of Oregon without resort to any jurisdiction's conflicts of law, rules or doctrines.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly appointed officers on this 29th day of September, 2016.

CITY OF OREGON CITY

By: John M. Lewis

Title: Public Works Director

DATED: 9-21, 2016.

By: Anthony J. Kohkol III

Title: City Manager

DATED: 9-21, 2016.

DeSANTIS LANDSCAPES, INC.

By: Dean DeSantis

Title: President

DATED: 9/29/16, 2016.

ORIGINAL CITY COMMISSION APPROVAL (IF APPLICABLE):

DATE: 9-21-16

APPROVED AS TO LEGAL SUFFICIENCY:

By: [Signature]

City Attorney

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EVALUATION OF PROPOSALS
Multiple Site Landscape Maintenance

Bidder	Annual Cost	Monthly Cost
Desantis Landscapes	\$2,314.98	\$192.84
	\$50,166.08	\$5,013.84
4% increase		
New total		

DI original price	\$54,382	\$4,531.83
4% increase	\$2,175.28	\$181.27
New Total	\$56,557.28	\$4,713.11

Landscape Maintenance Services Scope of Services

Site Distribution:

The City has divided, in an equitable manner, the landscape sites in accordance with the respective divisions. The Contractor has been assigned a list of sites for which they will be responsible for all landscape maintenance activities. At the end of the first contract year, the City retains the right to evaluate and redistribute sites amongst the Contractors as it sees fit. Maps of the assigned sites and individual sites are attached.

Reassignment:

If at any time, the Project Manager determines that the Contractor's performance is deemed unsatisfactory, or that the Contractor is being non-responsive to the City's requests, the City may reassign individual sites to another Contractor of its choice.

Should any new sites be added to the list of maintained areas, the City retains the right to assign them as it sees fit. Should the work be assigned to the Contractor, the Contractor agrees to accept the work at mutually agreed upon price. An Amendment to the Agreement will be created for the new site and the Contractor will commence work when it has been fully executed.

Schedules & Communication:

Contractor shall provide and keep current a list of key staff working on the project, including email addresses and phone numbers. Contractor shall also provide and keep current an email address for work related issues.

Site detail maps indicate the type and schedule of maintenance required for the individual site. Maintenance will be performed according to the schedule listed, paying attention to any special features, such as mowing or irrigation, that may be present. Contractors shall determine their monthly schedules of maintenance and communicate them to the Public Works Department by way of the Work Scheduled/Completed Form (Exhibit C).

The Agreement includes some sites that have irrigation as a special feature. The maintenance schedule for these sites includes the turn on/shut off schedule. The Contractor shall know that any tasks associated with irrigation systems maintenance are those tasks having to do with efficient functioning of those systems and are included as part of this Agreement. These tasks include, but are not limited to, verifying flow, setting timers, adjusting sprinkler heads for efficient use of water, etc. Any repair or replacement of irrigation system components will be managed on a time and materials basis. The Contractor shall notify the Project Manager verbally of the work required followed by a written report of the work needed and the reasons why prior to commencing repair work. The work may commence with verbal approval from the Project Manager with written notification to follow. (Email is sufficient for written notification)

Contractor shall submit a Work Completed Form, via email or fax, to Public Works Operations, c/o oclandscaping@orcny.org; fax 503-650-9590, no later than 12:00 Noon on first work week of each month. The Work Completed Form will also show work completed the previous month (after week 1) that will be verified by the Operations Project Manager. **Failure to submit the Work Completed Form will delay work verification and may delay payment of subsequent invoices.**

All work performed by the Contractor which is determined by the Project Manager to be unsatisfactory shall be corrected by and at the expense of the Contractor within seventy two (72) hours of the City's WRITTEN notification. The City may notify the Contractor verbally; however, written notification will follow (email is considered sufficient written notification).

Safety:

Contractor will ensure all work is completed in accordance with all applicable State and Federal statutes pertaining to the safety of its employees and the general population, to include PPE, traffic management, etc.

Contractor will immediately notify the Project Manager (503-657-8241) of any incident resulting in significant bodily injury or monetary damage while performing work for the City.

Emergencies:

In emergencies affecting the safety of persons, the work or property at the site, or adjacent thereto, the Contractor is obligated to act at his discretion to prevent threatened damage, injury or loss. He will give the City prompt written notice of any significant changes in the work or deviations from the Contract caused thereby. An Amendment may be issued covering the changes and deviations involved if both parties agree it is necessary.

Keys:

The City's Project Manager will provide to the Contractor a master key which will permit the Contractor to perform required services at sites not accessible by the general public. The Contractor may have the key duplicated at its expense. The Contractor shall advise the City's Project Manager of all such duplicates made. The original and all duplicates shall be delivered to the Project Manager with the Contractor's final invoice for services. The Contractor is granted admission to the site for reasons of performance of this contract and for no other reason.

Invoicing:

All invoices shall be submitted to the Public Works Department no later than the 10th day of each month. Invoices will include the contract number, the sites assigned, unit price and dates of services. Additional work performed will be listed as separate line items with site number, nature of the work completed, and time and material costs. Copies of the Work Completed Form for the month billed and documentation of any additional work must be attached.

The Project Manager may refuse to approve the whole or any part of any payment to protect the City from loss if, in his opinion, the work was:

1. Unsatisfactory and unresolved
2. Unverified
3. Not performed in a time frame pertinent to the attached site schedules.

The Project Manager will notify the Contractor both verbally and in writing the reason for refusing to approve payment (email is considered sufficient written notice). The Contractor may make the necessary corrections and re-submit the invoice. Within thirty (30) days of approval of the invoice, the City will pay the Contractor the approved amount.

STANDARD CONDITIONS TO OREGON CITY PERSONAL SERVICES AGREEMENT

1. Contractor Identification. Contractor shall furnish to City its taxpayer identification number, as designated by the Internal Revenue Service, or Contractor's social security number, as City deems applicable.

2. Payment.

(a) Invoices submitted in connection with this Agreement shall be properly documented and shall identify the pertinent agreement and/or purchase order numbers.

(b) City agrees to pay Contractor within thirty (30) days after receipt of Contractor's itemized statement. Amounts disputed by City may be withheld pending settlement.

(c) City certifies that sufficient funds are available and authorized for expenditure to finance the cost of the services to be provided pursuant to this Agreement.

(d) City shall not pay any amount in excess of the compensation amounts set forth above, nor shall City pay Contractor any fees or costs that City reasonably disputes.

3. Independent Contractor Status.

(a) Contractor is an independent contractor and is free from direction and control over the means and manner of providing labor or services, subject only to the specifications of the desired results.

(b) Contractor represents that it is customarily engaged in an independently established business and is licensed under ORS chapter 671 or 701, if the services provided require such a license. Contractor maintains a business location that is separate from the offices of the City and bears the risk of loss related to the business as demonstrated by the fixed price nature of the contract, requirement to fix defective work, warranties provided and indemnification and insurance provisions of this Agreement. Contractor provides services for two or more persons within a 12 month period or routinely engages in advertising, solicitation or other marketing efforts. Contractor makes a significant investment in the business by purchasing tools or equipment, premises or licenses, certificates or specialized training and

Contractor has the authority to hire or fire persons to provide or assist in providing the services required under this Agreement.

(c) Contractor is responsible for obtaining all assumed business registrations or professional occupation licenses required by state or local law (including applicable City or Metro business licenses as per Oregon City Municipal Code Chapter 5.04). Contractor shall furnish the tools or equipment necessary for the contracted labor or services. Contractor agrees and certifies that:

(d) Contractor is not eligible for any federal social security or unemployment insurance payments. Contractor is not eligible for any PERS or workers' compensation benefits from compensation or payments made to Contractor under this Agreement.

(e) Contractor agrees and certifies that it is licensed to do business in the state of Oregon and that, if Contractor is a corporation, it is in good standing within the state of Oregon.

4. Early Termination.

(a) This Agreement may be terminated without cause prior to the expiration of the agreed-upon term by mutual written consent of the parties or by the City upon ten (10) days written notice to the Contractor, delivered by certified mail or in person.

(b) Upon receipt of notice of early termination, Contractor shall immediately cease work and submit a final statement of services for all services performed and expenses incurred since the date of the last statement of services.

(c) Any early termination of this Agreement shall be without prejudice to any obligation or liabilities of either party already accrued prior to such termination.

(d) The rights and remedies of City provided in this Agreement and relating to defaults by Contractor shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

STANDARD CONDITIONS TO OREGON CITY PERSONAL SERVICES AGREEMENT

5. No Third-Party Beneficiaries. City and Contractor are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide, any benefit or right, whether directly or indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

6. Payment of Laborers; Payment of Taxes.

(a) Contractor shall:

- (i) Make payment promptly, as due, to all persons supplying to Contractor labor and materials for the prosecution of the services to be provided pursuant to this Agreement.
- (ii) Pay all contributions or amounts due to the State Accident Insurance Fund incurred in the performance of this Agreement.
- (iii) Not permit any lien or claim to be filed or prosecuted against City on account of any labor or materials furnished.
- (iv) Be responsible for all federal, state, and local taxes applicable to any compensation or payments paid to Contractor under this Agreement and, unless Contractor is subject to back-up withholding, City will not withhold from such compensation or payments any amount(s) to cover Contractor's federal or state tax obligation.
- (v) Pay all employees at least time and one-half for all overtime worked in excess of forty (40) hours in any one week, except for individuals excluded under ORS 653.100 to 653.261 or under 29 U.S.C. §§ 201 to 209 from receiving overtime.
- (b) If Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished by any person in connection with this Agreement as such claim becomes due, City may pay such claim to the person furnishing the labor or services and shall charge the amount of the payment against funds due or to become due Contractor by reason of this Agreement.
- (c) The payment of a claim in this manner

shall not relieve Contractor or Contractor's surety from obligation with respect to any unpaid claims.

(d) Contractor and subcontractors, if any, are subject employers under the Oregon workers' compensation law and shall comply with ORS 656.017, which requires provision of workers' compensation coverage for all workers.

7. SubContractors and Assignment.

Contractor shall neither subcontract any of the work, nor assign any rights acquired hereunder, without obtaining prior written approval from City. City, by this Agreement, incurs no liability to third persons for payment of any compensation provided herein to Contractor.

8. Access to Records. City shall have access to all books, documents, papers and records of Contractor that are pertinent to this Agreement for the purpose of making audits, examinations, excerpts and transcripts.

9. Ownership of Work Product; License. All work products of Contractor that result from this Agreement (the "Work Products") are the exclusive property of City. In addition, if any of the Work Products contain intellectual property of Contractor that is or could be protected by federal copyright, patent, or trademark laws, or state trade secret laws, Contractor hereby grants City a perpetual, royalty-free, fully paid, nonexclusive and irrevocable license to copy, reproduce, deliver, publish, perform, dispose of, use and re-use, in whole or in part (and to authorize others to do so), all such Work Products and any other information, designs, plans, or works provided or delivered to City or produced by Contractor under this Agreement. The parties expressly agree that all works produced (including, but not limited to, any taped or recorded items) pursuant to this Agreement are works specially commissioned by City, and that any and all such works shall be works made for hire in which all rights and copyrights belong exclusively to City. Contractor shall not publish, republish, display or otherwise use any work or Work Products resulting from this Agreement without the prior written agreement of City.

10. Compliance With Applicable Law.

Contractor shall comply with all federal, state, and

STANDARD CONDITIONS TO OREGON CITY PERSONAL SERVICES AGREEMENT

local laws and ordinances applicable to the services to be performed pursuant to this Agreement, including, without limitation, the provisions of ORS 279B.220, 279C.515, 279B.235, 279B.230 and 279B.270. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with (i) Title VI of the Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans With Disabilities Act of 1990 (Pub. L No. 101-336), ORS 659.425, and all regulations and administrative rules established pursuant to those laws; and (iv) all other applicable requirements of federal and state civil rights and rehabilitation and other applicable statutes, rules and regulations.

11. Professional Standards. Contractor shall be responsible, to the level of competency presently maintained by others practicing in the same type of services in City's community, for the professional and technical soundness, accuracy and adequacy of all services and materials furnished under this authorization.

12. Modification, Supplements or Amendments. No modification, change, supplement or amendment of the provisions of this Agreement shall be valid unless it is in writing and signed by the parties hereto.

13. Indemnity and Insurance.

(a) Indemnity. Contractor acknowledges responsibility for liability arising out of Contractor's negligent performance of this Agreement and shall hold City, its officers, agents, Contractors, and employees harmless from, and indemnify them for, any and all liability, settlements, loss, costs, and expenses, including attorney fees, in connection with any action, suit, or claim caused or alleged to be caused by the negligent acts, omissions, activities or services by Contractor, or the agents, Contractors or employees of Contractor provided pursuant to this Agreement.

(b) Workers' Compensation Coverage. Contractor certifies that Contractor has qualified for workers' compensation as required by the state of Oregon. Contractor shall provide the Owner, within ten (10) days after execution of this Agreement, a certificate of insurance evidencing coverage of all subject workers under Oregon's workers' compensation statutes. The insurance

certificate and policy shall indicate that the policy shall not be terminated by the insurance carrier without thirty (30) days' advance written notice to City. All agents or Contractors of Contractor shall maintain such insurance.

(c) Comprehensive, General, and Automobile Insurance. Contractor shall maintain comprehensive general and automobile liability insurance for protection of Contractor and City and for their directors, officers, agents, and employees, insuring against liability for damages because of personal injury, bodily injury, death, and broad-form property damage, including loss of use, and occurring as a result of, or in any way related to, Contractor's operation, each in an amount not less than \$1,000,000 combined, single-limit, per-occurrence/annual aggregate. Such insurance shall name City as an additional insured, with the stipulation that this insurance, as to the interest of City, shall not be invalidated by any act or neglect or breach of this Agreement by Contractor.

(d) Errors and Omissions Insurance. Contractor shall provide City with evidence of professional errors and omissions liability insurance for the protection of Contractor and its employees, insuring against bodily injury and property damage arising out of Contractor's negligent acts, omissions, activities or services in an amount not less than \$500,000 combined, single limit. Contractor shall maintain in force such coverage for not less than three (3) years following completion of the project. Such insurance shall include contractual liability.

Within ten (10) days after the execution of this Agreement, Contractor shall furnish City a certificate evidencing the dates, amounts, and types of insurance that have been procured pursuant to this Agreement. Contractor will provide for not less than thirty (30) days' written notice to City before the policies may be revised, canceled, or allowed to expire. Contractor shall not alter the terms of any policy without prior written authorization from City. The provisions of this subsection apply fully to Contractor and its Contractors and agents.

14. Legal Expenses. In the event legal action is brought by City or Contractor against the other to enforce any of the obligations hereunder or arising

STANDARD CONDITIONS TO OREGON CITY PERSONAL SERVICES AGREEMENT

out of any dispute concerning the terms and conditions hereby created, the losing party shall pay the prevailing party such reasonable amounts for attorney fees, costs, and expenses as may be set by a court. "Legal action" shall include matters subject to arbitration and appeals.

15. Severability. The parties agree that, if any term or provision of this Agreement is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected.

16. Number and Gender. In this Agreement, the masculine, feminine or neuter gender, and the singular or plural number, shall be deemed to include the others or other whenever the context so requires.

17. Captions and Headings. The captions and headings of this Agreement are for convenience only and shall not be construed or referred to in resolving questions of interpretation or construction.

18. Hierarchy. The conditions contained in this document are applicable to every Personal Services Agreement entered into by the City of Oregon City in the absence of contrary provisions. Should contrary provisions be included in a Personal Services Agreement, those contrary provisions shall control over these conditions.

19. Calculation of Time. All periods of time referred to herein shall include Saturdays, Sundays and legal holidays in the state of Oregon, except that, if the last day of any period falls on any Saturday, Sunday or legal holiday, the period shall be extended to include the next day that is not a Saturday, Sunday or legal holiday.

20. Notices. Any notices, bills, invoices, reports or other documents required by this Agreement shall be sent by the parties by United States mail, postage prepaid, or personally delivered to the addresses listed in the Agreement attached hereto. All notices shall be in writing and shall be effective when delivered. If mailed, notices shall be deemed effective forty-eight (48) hours after mailing, unless sooner received.

21. Nonwaiver. The failure of City to insist

upon or enforce strict performance by Contractor of any of the terms of this Agreement or to exercise any rights hereunder shall not be construed as a waiver or relinquishment to any extent of its rights to assert or rely upon such terms or rights of any future occasion.

22. Information and Reports. Contractor shall, at such time and in such form as City may require, furnish such periodic reports concerning the status of the project, such statements, certificates, approvals, and copies of proposed and executed plans and claims, and other information relative to the project as may be requested by City. Contractor shall furnish City, upon request, with copies of all documents and other materials prepared or developed in relation with or as a part of the project. Working papers prepared in conjunction with the project are the property of City, but shall remain with Contractor. Copies as requested shall be provided free of cost to City.

23. City's Responsibilities. City shall furnish Contractor with all available necessary information, data, and materials pertinent to the execution of this Agreement. City shall cooperate with Contractor in carrying out the work herein and shall provide adequate staff for liaison with Contractor.

24. Arbitration.

All disputes arising out of or under this Agreement shall be timely submitted to nonbinding mediation prior to commencement of any other legal proceedings. The subsequent measures apply if disputes cannot be settled in this manner.

(a) Any dispute arising out of or under this Agreement shall be determined by binding arbitration.

(b) The party desiring such arbitration shall give written notice to that effect to the other party and shall in such notice appoint a disinterested person of recognized competence in the field as arbitrator on its behalf. Within fifteen (15) days thereafter, the other party may, by written notice to the original party, appoint a second disinterested person of recognized competence as arbitrator on its behalf. The arbitrators thus appointed shall appoint a third disinterested person of recognized

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competence, and the three arbitrators shall, as promptly as possible, determine such matter, provided, however, that:

(i) If the second arbitrator is not appointed as described above, then the first arbitrator shall proceed to determine such matter; and

(ii) If the two arbitrators appointed by the parties are unable to agree, within fifteen (15) days after the second arbitrator is appointed, on the appointment of a third arbitrator, they shall give written notice of such failure to agree to the parties and, if the parties fail to agree on the selection of the third arbitrator within fifteen (15) days after the arbitrators appointed by the parties give notice, then, within ten (10) days thereafter, either of the parties, on written notice to the other party, may request such appointment by the presiding judge of the Clackamas County Circuit Court.

(c) Each party shall each be entitled to present evidence and argument to the arbitrators. The determination of the majority of the arbitrators or the sole arbitrator, as the case may be, shall be conclusive on the parties, and judgment on the same may be entered in any court having jurisdiction over the parties. The arbitrators or the sole arbitrator, as the case may be, shall give written notice to the parties, stating the arbitration determination, and shall furnish to each party a signed copy of such determination. Arbitration proceedings shall be conducted pursuant to ORS 33.210 et seq. and the rules of the American Arbitration Association, except as provided otherwise.

(d) Each party shall pay the fees and expenses of the arbitrator appointed by such party and one-half of the fees and expenses of the third arbitrator, if any.

25. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the state of Oregon without resort to any jurisdiction's conflicts of law, rules or doctrines.

