



COUNTY OF LOS ANGELES
DEPARTMENT OF PARKS AND RECREATION
"Creating Community Through People, Parks and Programs"

Russ Guiney, Director

August 15, 2006

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Dear Supervisors:

**APPROVAL OF AMENDMENT NUMBER 2 TO
MOWING SERVICES CONTRACT NUMBER 73721
TO INCREASE THE CONTRACT SUM FOR MOWING OF
NEWLY DEVELOPED TURF AREAS AT STEVEN SORENSEN PARK
(Fifth District - 3 Vote Matter)**

IT IS RECOMMENDED THAT YOUR BOARD:

1. Find that the project is categorically exempt from the California Environmental Quality Act (CEQA) according to a Section of the State CEQA Guidelines and a Class of the Environmental Document Reporting Procedures and Guidelines adopted by your Board on November 17, 1987, cited herein.
2. Approve and instruct the Mayor to sign the attached Amendment Number 2 to Mowing Services Contract Number 73721 with Toribio's Landscape to increase the annual contract amount by \$18,351 to \$54,169 to include the mowing of two (2) newly developed acres of turf at Steven Sorensen Park.
3. Find that Mowing Services Contract Number 73721, as amended, remains cost-effective pursuant to Los Angeles County Code Chapter 2.121.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION:

On December 4, 2001, your Board approved a mowing services contract to provide mowing services for the Antelope Valley Area Parks. Due to the recent development of two (2) acres of turf at Steven Sorensen Park there is a need to amend the existing contract to provide additional mowing services, which will increase the contract sum.

IMPLEMENTATION OF STRATEGIC PLAN GOALS:

The proposed amendment will further the Board-approved County Strategic Plan Goal Four, Fiscal Responsibility, by continuing the Department's contracting effort with the private sector in delivering mowing services through the most cost effective means possible. It will also further Goal Six, Community Service, by providing a new facility that will be available for a wide range of services in response to specific community needs.

FISCAL IMPACT/FINANCING:

The increased contract cost for providing the additional mowing services at Steven Sorensen Park is \$18,351 per year, increasing the total contract sum from \$35,818 to \$54,169 annually.

Based on preliminary estimates available during the preparation of the Fiscal Year 2006-07 Annual Budget Request, the Department requested \$8,300 in its New Facilities Request to fund the contract augmentation, which was adopted in the 2006-07 Budget. Subsequently, the amount recommended herein was negotiated in May 2006, and is \$10,051 more than the amount appropriated for the annual cost of services at Steven Sorensen Park. The Department will request that the difference be transferred from Provisional Financing Uses as part of its FY 2006-07 Supplemental Resolution Budget Request. If not funded, the increased cost of the contract will negatively impact the Department's ability to purchase other goods and services.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS:

On December 4, 2001, your Board approved Mowing Services Contract Number 73721 with Cut 'N' Edge to provide mowing services for the Antelope Valley Area Parks, which included Apollo Community Regional, George Lane, Jackie Robinson, Everett Martin, and Pearblossom Parks.

On February 17, 2004, your Board approved Amendment Number 1 to Mowing Services Contract Number 73721 to add Steven Sorensen Park.

On December 28, 2005, pursuant to Section 8 of the contract, this Department approved the assignment of Mowing Services Contract Number 73721 from Cut 'N' Edge to Toribio's Landscape.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS: (Continued)

As provided by the contract, your Board may authorize compensation to increase the Contractor's level of maintenance due to the inclusion of newly developed landscaped areas within the existing contract facilities. The increase in the contract sum exceeds the Department's delegated authority to amend the contract. The effective date of the increased service is upon your Board's approval.

The Department has reviewed the amended contract cost in accordance with a methodology approved by the Auditor-Controller and has determined that this Proposition A contract remains cost-effective at the increased amount in accordance with the requirements of Los Angeles County Code Chapter 2.121 (Attachment I).

Additionally, Amendment Number 2 incorporates contract language implemented by your Board subsequent to the approval of Amendment Number 1 on February 17, 2004. The term of the contract expires December 3, 2006.

County Counsel has approved the attached amendment as to form and Toribio's Landscape has executed the amendment.

ENVIRONMENTAL DOCUMENTATION:

The approval of this contract amendment is categorically exempt from CEQA according to Section 15301(h) of the State CEQA Guidelines and Class 1(j) of the Environmental Document Reporting Procedures and Guidelines, adopted by your Board on November 17, 1987, because the project provides for maintenance of existing facilities.

IMPACT ON CURRENT SERVICES (OR PROJECTS):

The mowing services are currently being provided by Toribio's Landscape; therefore, there will be no employee impact to existing staff or service levels.

CONCLUSION:

It is requested that a certified copy of the action taken by your Board and a fully executed copy of the attached amendment be mailed to Toribio's Landscape, Attention: Mr. Jose Toribio, 937 East Haltern Street, Azusa, California 91702. It is also requested that two (2) conformed copies be forwarded to this Department.

Respectfully submitted,



Russ Guiney
Director, Parks and Recreation

RG:mg

Attachments

c: Chief Administrative Officer
Executive Officer, Board of Supervisor (22)
County Counsel

**County's Estimated Avoidable Costs compared to Toribio Landscape's Costs
for Antelope Valley Area Parks Mowing Services**

COUNTY COSTSDIRECT

Salaries:

Position	Benefits w/5th Step Variance ⁽¹⁾	No. of Positions ⁽²⁾	No. of Months	TOTAL
Grounds Maintenance Worker I	\$3,759.82	0.4900	12	\$22,107.74
Grounds Maintenance Worker II	\$4,204.30	0.4900	12	\$24,721.28
		0.9800		\$46,829.03

(1) 5th Step Variance @ 97.1365%.

(2) Positions reflect annual County Productive Work Hours @ 1764.

Equipment:

Vehicle Usage/Fixed Assets ⁽³⁾	No. of Units	No. of Miles	Cost/Mile	TOTAL
<u>Vehicle Usage</u>				
1 Ton Crew Cab Pickup Truck (180 miles per week)	1	9360	0.6891	\$6,450
<u>Fixed Assets (annualized 7 yrs)</u>				
1 Ton Crew Cab Pickup Truck	26.00%			\$1,300
1 Equip Trailer	26.00%			\$78
Toro 580D	26.00%			\$1,857
Toro 72"	26.00%			\$743
				\$10,428

Services & Supplies

Fuel/Maintenance Services

\$8,113

Total Services and Supplies/Equipment

\$18,541

INDIRECT⁽⁴⁾

Avoidable Overhead Contract Admin.

\$0

Avoidable Overhead Agency Admin.

\$0

\$0

TOTAL ESTIMATED COUNTY AVOIDABLE COSTS⁽⁵⁾\$65,370

(3) Equipment costs include the use of a 1 ton truck @ 180 miles per week @ \$0.6891 per mile.

(4) Indirect Costs include monitoring by County field staff.

(5) County's cost to provide the current and proposed level of service.

TORIBIO LANDSCAPE'S COSTSDIRECT⁽⁶⁾

Contractor Cost

Current Cost

\$35,818

Proposed Cost

\$18,351

Total Contractor Direct Costs

\$54,169

INDIRECT COSTS⁽⁷⁾

Avoidable Overhead Contract Admin.

\$0

Avoidable Overhead Agency Admin.

\$0

\$0

TOTAL CONTRACTING COSTS (Direct Costs plus Indirect Costs)\$54,169

(6) Contractor's current and proposed costs.

(7) Contract monitoring conducted by existing County staff.

**ESTIMATED SAVINGS FROM CONTRACTING (TOTAL ESTIMATED COUNTY
AVOIDABLE COSTS LESS TOTAL CONTRACTING COSTS)**\$11,201

**AMENDMENT NUMBER 2 TO CONTRACT NUMBER 73721
FOR MOWING SERVICES FOR ANTELOPE VALLEY AREA PARKS**

THIS AMENDMENT NUMBER 2 TO THE MOWING SERVICES CONTRACT, made and entered this _____ day of _____, 2006

BY AND BETWEEN THE

COUNTY OF LOS ANGELES, a body corporate and politic, hereinafter referred to as "County",

AND

TORIBIO'S LANDSCAPE, hereinafter referred to as "Contractor" for mowing services, hereinafter referred to as "services" for **Antelope Valley Area Parks**, hereinafter referred to as "facility".

RECITALS

WHEREAS, on December 4, 2001, the County Board of Supervisors (Board) approved Contract Number 73721 (Contract) with Cut 'N' Edge for the provision of mowing services for Antelope Valley Area Parks; and

WHEREAS, on February 17, 2004, the Board approved Amendment Number 1 to Contract with Cut 'N' Edge adding Steven Sorensen Park and increasing the total Contract amount; and

WHEREAS, on December 28, 2005, pursuant to Section 8 of the Contract, the Department of Parks and Recreation (Department) approved the assignment of Contract from Cut 'N' Edge to Contractor; and

WHEREAS, the County has developed two additional acres of turf at Steven Sorensen Park which require mowing; and

WHEREAS, pursuant to Paragraph 7.02.02 of the Contract, compensation may be authorized by the Board to increase the Contractor's level of maintenance due to inclusion of newly developed landscaped areas within existing facilities identified in Exhibit A, Statement of Work, of the Contract; and

WHEREAS, the County and Contractor agree to expand the mowing service requirements as set forth in Exhibit A, Statement of Work, of the Contract to include the newly developed acres of turf at Steven Sorensen Park; and

WHEREAS, the County reserves the right to amend other terms and conditions in the Contract as they become necessary; and

WHEREAS, this Amendment contains amended provisions consistent with the County's right and the Contractor has affirmed the implementation of these provisions;

NOW THEREFORE, in consideration of the mutual promises, covenants and conditions set forth herein, the parties hereto and each of them do agree as follows:

1.0 CONTRACTOR'S SERVICE

The Contractor shall provide the required mowing services for the two (2) newly developed acres of turf at Steven Sorensen Park in the manner and form described in Exhibit A, Statement of Work, Section II, "On-Going Maintenance Tasks", of the Contract.

2.0 PRICING AND BILLING SCHEDULE

Exhibit B, Pricing and Billing Schedule, of the Contract is amended to include the two (2) newly developed acres of turf at Steven Sorensen Park for an annual cost of Eighteen Thousand Three Hundred Fifty-One Dollars (\$18,351.00) and to increase the Annual Contract Costs for all facilities to Fifty-Four Thousand One Hundred Sixty-Nine Dollars (\$54,169.00).

3.0 RECORD RETENTION AND INSPECTION

The existing Paragraph 14 of the Contract is deleted in its entirety and the following paragraph is substituted:

"14. RECORD RETENTION AND INSPECTION/AUDIT SETTLEMENT

The Contractor shall maintain accurate and complete financial records of its activities and operations relating to this Contract in accordance with generally accepted accounting principles. The Contractor shall also maintain accurate and complete employment and other records relating to its performance of this Contract. The Contractor agrees that the County, or its authorized representatives, shall have access to and the right to

examine, audit, excerpt, copy, or transcribe any pertinent transaction, activity, or record relating to this Contract. All such material, including, but not limited to, all financial records, bank statements, cancelled checks or other proof of payment, timecards, sign-in/sign-out sheets and other time and employment records, and proprietary data and information, shall be kept and maintained by the Contractor and shall be made available to the County during the term of this Contract and for a period of five (5) years thereafter unless the County's written permission is given to dispose of any such material prior to such time. All such material shall be maintained by the Contractor at a location in Los Angeles County, provided that if any such material is located outside Los Angeles County, then, at the County's option, the Contractor shall pay the County for travel, per diem, and other costs incurred by the County to examine, audit, excerpt, copy, or transcribe such material at such other location.

14.1 In the event that an audit of the Contractor is conducted specifically regarding this Contract by any Federal or State auditor, or by any auditor or accountant employed by the Contractor or otherwise, then the Contractor shall file a copy of such audit report with the County's Auditor-Controller within thirty (30) days of the Contractor's receipt thereof, unless otherwise provided by applicable Federal or State law or under this Contract. Subject to applicable law, the County shall make a reasonable effort to maintain the confidentiality of such audit report(s).

14.2 Failure on the part of the Contractor to comply with any of the provisions of this Sub-paragraph 14 shall constitute a material breach of this Contract upon which the County may terminate or suspend this Contract.

14.3 If, at any time during the term of this Contract or within five (5) years after the expiration or termination of this Contract, representatives of the County conduct an audit of the Contractor regarding the work performed under this Contract, and if such audit finds that the

County's dollar liability for any such work is less than the payments made by the County to the Contractor, then the difference shall be either: a) repaid by the Contractor to the County by cash payment upon demand or b) at the sole option of the County's Auditor-Controller, deducted from any amounts due to the Contractor from the County, whether under this Contract or otherwise. If such audit finds that the County's dollar liability for such work is more than the payments made by the County to the Contractor, then the difference shall be paid to the Contractor by the County by cash payment, provided that in no event shall the County's maximum obligation for this Contract exceed the funds appropriated by the County for the purpose of this Contract.

- 14.4 In addition to the above, the Contractor agrees, should the County or its authorized representatives determine, in the County's sole discretion, that it is necessary or appropriate to review a broader scope of the Contractor's records (including, certain records related to non-County contracts) to enable the County to evaluate the Contractor's compliance with the County's Living Wage Program, that the Contractor shall promptly and without delay provide to the County, upon the written request of the County or its authorized representatives, access to and the right to examine, audit, excerpt, copy, or transcribe any and all transactions, activities, or records relating to any of its employees who have provided services to the County under this Contract, including without limitation, records relating to work performed by said employees on the Contractor's non-County contracts. The Contractor further acknowledges that the foregoing requirement in this subparagraph relative to the Contractor's employees who have provided services to the County under this Contract is for the purpose of enabling the County in its discretion to verify the Contractor's full compliance with and adherence to California labor laws and the County's Living Wage

Program. All such materials and information, including, but not limited to, all financial records, bank statements, cancelled checks or other proof of payment, timecards, sign-in/sign-out sheets and other time and employment records, and proprietary data and information, shall be kept and maintained by the Contractor and shall be made available to the County during the term of this Contract and for a period of five (5) years thereafter unless the County's written permission is given to dispose of any such materials and information prior to such time. All such materials and information shall be maintained by the Contractor at a location in Los Angeles County, provided that if any such materials and information is located outside Los Angeles County, then, at the County's option, the Contractor shall pay the County for travel, per diem, and other costs incurred by the County to examine, audit, excerpt, copy, or transcribe such materials and information at such other location."

4.0 CONTRACTOR'S WARRANTY OF ADHERENCE TO COUNTY'S CHILD SUPPORT COMPLIANCE PROGRAM

Within the existing Paragraph 26 of the Contract entitled "CONTRACTOR'S WARRANTY OF ADHERENCE TO COUNTY'S CHILD SUPPORT COMPLIANCE PROGRAM," the words "District Attorney" are deleted and replaced with "Child Support Services Department."

5.0 TERMINATION FOR BREACH OF WARRANTY TO MAINTAIN COMPLIANCE WITH COUNTY'S CHILD SUPPORT COMPLIANCE

With the existing Paragraph 27 of the Contract entitled "TERMINATION FOR BREACH OF WARRANTY TO MAINTAIN COMPLIANCE WITH COUNTY'S CHILD SUPPORT COMPLIANCE," the words "District Attorney" are deleted and replaced with "Child Support Services Department."

6.0 CONTRACTOR'S ACKNOWLEDGMENT OF COUNTY'S COMMITMENT TO CHILD SUPPORT COMPLIANCE ENFORCEMENT

Within the existing Paragraph 28 entitled "CONTRACTOR'S ACKNOWLEDGMENT OF COUNTY'S COMMITMENT TO CHILD SUPPORT

COMPLIANCE ENFORCEMENT,” the words “District Attorney” are deleted and replaced with “Child Support Services Department.”

7.0 COMPLIANCE WITH THE LIVING WAGE PROGRAM

The existing Paragraph 38 of the Contract is deleted in its entirety and the following paragraph is substituted:

“38. COMPLIANCE WITH THE COUNTY’S LIVING WAGE PROGRAM

38.1 Living Wage Program:

This Contract is subject to the provisions of the County’s ordinance entitled Living Wage Program as codified in Sections 2.201.010 through 2.201.100 of the Los Angeles County Code, a copy of which is attached as Exhibit J and incorporated by reference into and made a part of this Contract.

38.2 Payment of Living Wage Rates.

1. Unless the Contractor has demonstrated to the County’s satisfaction either that the Contractor is not an “Employer” as defined under the Program (Section 2.201.020 of the County Code) or that the Contractor qualifies for an exception to the Living Wage Program (Section 2.201.090 of the County Code), the Contractor shall pay its Employees no less than the applicable hourly living wage rate, as set forth immediately below, for the Employees’ services provided to the County, including, without limitation, “Travel Time” as defined below in Subsection 5 of this Subparagraph 10.1.2, under the Contract:
 - a. Not less than \$9.46 per hour if, in addition to the per-hour wage, the Contractor contributes less than \$1.14 per hour towards the provision of bona fide health care benefits for its Employees and any dependents; or
 - b. Not less than \$8.32 per hour if, in addition to the per-hour wage, the Contractor contributes at least \$1.14 per hour towards the provision of bona fide health care benefits for its employees and any dependents. The Contractor will be

deemed to have contributed \$1.14 per hour towards the provision of bona fide health care benefits if the benefits are provided through the County Department of Health Services Community Health Plan. If, at any time during the Contract, the Contractor contributes less than \$1.14 per hour towards the provision of bona fide health care benefits, the Contractor shall be required to pay its Employees the higher hourly living wage rate.

2. For purposes of this Sub-paragraph, "Contractor" includes any subcontractor engaged by the Contractor to perform services for the County under the Contract. If the Contractor uses any subcontractor to perform services for the County under the Contract, the subcontractor shall be subject to the provisions of this Sub-paragraph. The provisions of this Subparagraph shall be inserted into any such subcontract and a copy of the Living Wage Program shall be attached to the subcontract. "Employee" means any individual who is an employee of the Contractor under the laws of California, and who is providing full-time services to the Contractor, some or all of which are provided to the County under the Contract. "Full-time" means a minimum of 40 hours worked per week, or a lesser number of hours, if the lesser number is a recognized industry standard and is approved as such by the County; however, fewer than 35 hours worked per week will not, in any event, be considered full-time.
3. If the Contractor is required to pay a living wage when the Contract commences, the Contractor shall continue to pay a living wage for the entire term of the Contract, including any option period.
4. If the Contractor is not required to pay a living wage when the Contract commences, the Contractor shall have a continuing

obligation to review the applicability of its “exemption status” from the living wage requirement. The Contractor shall immediately notify the County if the Contractor at any time either comes within the Living Wage Program’s definition of “Employer” or if the Contractor no longer qualifies for an exception to the Living Wage Program. In either event, the Contractor shall immediately be required to commence paying the living wage and shall be obligated to pay the living wage for the remaining term of the Contract, including any option period. The County may also require, at any time during the Contract and at its sole discretion, that the Contractor demonstrate to the County’s satisfaction that the Contractor either continues to remain outside of the Living Wage Program’s definition of “Employer” and/or that the Contractor continues to qualify for an exception to the Living Wage Program. Unless the Contractor satisfies this requirement within the time frame permitted by the County, the Contractor shall immediately be required to pay the living wage for the remaining term of the Contract, including any option period.

5. For purposes of the Contractor’s obligation to pay its Employees the applicable hourly living wage rate under this Contract, “Travel Time” shall have the following two meanings, as applicable: 1) With respect to travel by an Employee that is undertaken in connection with this Contract, Travel Time shall mean any period during which an Employee physically travels to or from a County facility if the Contractor pays the Employee any amount for that time or if California law requires the Contractor to pay the Employee any amount for that time; and 2) With respect to travel by an Employee between County facilities that are subject to two different contracts between the Contractor and the County (of which both contracts are subject

to the Living Wage Program), Travel Time shall mean any period during which an Employee physically travels to or from, or between such County facilities if the Contractor pays the Employee any amount for that time or if California law requires the Contractor to pay the Employee any amount for that time.

38.3 Contractor's Submittal of Certified Monitoring Reports.

The Contractor shall submit to the County certified monitoring reports at a frequency instructed by the County. The certified monitoring reports shall list all of the Contractor's Employees during the reporting period. The certified monitoring reports shall also verify the number of hours worked, the hourly wage rate paid, and the amount paid by the Contractor for health benefits, if any, for each of its Employees. The certified monitoring reports shall also state the name and identification number of the Contractor's current health care benefits plan, and the Contractor's portion of the premiums paid as well as the portion paid by each Employee. All certified monitoring reports shall be submitted on forms provided by the County as Exhibit K and Exhibit L hereto, or other form approved by the County which contains the above information. The County reserves the right to request any additional information it may deem necessary. If the County requests additional information, the Contractor shall promptly provide such information. The Contractor, through one of its officers, shall certify under penalty of perjury that the information contained in each certified monitoring report is true and accurate.

38.4 Contractor's Ongoing Obligation to Report Labor Law/Payroll Violations and Claims

During the term of the Contract, if the Contractor becomes aware of any labor law/payroll violation or any complaint, investigation or proceeding ("claim") concerning any alleged labor law/payroll violation (including but not limited to any violation or claim pertaining to wages, hours and working conditions such as

minimum wage, prevailing wage, living wage, the Fair Labor Standards Act, employment of minors, or unlawful employment discrimination), the Contractor shall immediately inform the County of any pertinent facts known by the Contractor regarding same. This disclosure obligation is not limited to any labor law/payroll violation or claim arising out of the Contractor's contract with the County, but instead applies to any labor law/payroll violation or claim arising out of any of the Contractor's operations in California.

38.5 County Auditing of Contractor Records.

Upon a minimum of twenty-four (24) hours' written notice, the County may audit, at the Contractor's place of business, any of the Contractor's records pertaining to the Contract, including all documents and information relating to the certified monitoring reports. The Contractor is required to maintain all such records in California until the expiration of five (5) years from the date of final payment under the Contract. Authorized agents of the County shall have access to all such records during normal business hours for the entire period that records are to be maintained.

38.6 Notifications to Contractor and Employees.

The Contractor shall place County-provided living wage posters at each of the Contractor's places of business and locations where the Contractor's employees are working. The Contractor shall also distribute County-provided notices to each of its employees at least once per year. The Contractor shall translate posters and handouts into Spanish and any other language spoken by a significant number of Contractor employees.

38.7 Enforcement and Remedies.

If the Contractor fails to comply with the requirements of this Subparagraph, the County shall have the rights and remedies described in this Sub-paragraph in addition to any rights and remedies provided by law or equity.

1. Remedies For Submission of Late or Incomplete Certified Monitoring Reports. If the Contractor submits a certified monitoring report to the County after the date it is due or if the report submitted does not contain all of the required information or is inaccurate or is not properly certified, any such deficiency shall constitute a breach of the Contract. In the event of any such breach, the County may, in its sole discretion, exercise any or all of the following rights/remedies:
 - a. Withholding of Payment. If the Contractor fails to submit accurate, complete, timely and properly certified monitoring reports, the County may withhold from payment to the Contractor up to the full amount of any invoice that would otherwise be due, until the Contractor has satisfied the concerns of the County, which may include required submittal of revised certified monitoring reports or additional supporting documentation.
 - b. Liquidated Damages. It is mutually understood and agreed that the Contractor's failure to submit an accurate, complete, timely and properly certified monitoring report will result in damages being sustained by the County. It is also understood and agreed that the nature and amount of the damages will be extremely difficult and impractical to fix; that the liquidated damages set forth herein are the nearest and most exact measure of damages for such breach that can be fixed at this time; and that the liquidated damages are not intended as a penalty or forfeiture for the Contractor's breach. Therefore, in the event that a certified monitoring report is deficient, including but not limited to being late, inaccurate, incomplete or uncertified, it is agreed that the County may, in its sole discretion, assess against the Contractor liquidated damages in the amount of \$100 per

monitoring report for each day until the County has been provided with a properly prepared, complete and certified monitoring report. The County may deduct any assessed liquidated damages from any payments otherwise due the Contractor.

c. Termination. The Contractor's continued failure to submit accurate, complete, timely and properly certified monitoring reports may constitute a material breach of the Contract. In the event of such material breach, the County may, in its sole discretion, terminate the Contract.

2. Remedies for Payment of Less Than the Required Living Wage.

If the Contractor fails to pay any Employee at least the applicable hourly living wage rate, such deficiency shall constitute a breach of the Contract. In the event of any such breach, the County may, in its sole discretion, exercise any or all of the following rights or remedies:

a. Withholding Payment. If the Contractor fails to pay one or more of its employees at least the applicable hourly living wage rate, the County may withhold from any payment otherwise due the Contractor the aggregate difference between the living wage amounts the Contractor was required to pay its employees for a given pay period and the amount actually paid to the employees for that pay period. The County may withhold said amount until the Contractor has satisfied the County that any underpayment has been cured, which may include required submittal of revised certified monitoring reports or additional supporting documentation.

b. Liquidated Damages. It is mutually understood and agreed that the Contractor's failure to pay any of its employees at least the applicable hourly living wage rate will result in

damages being sustained by the County. It is also understood and agreed that the nature and amount of the damages will be extremely difficult and impractical to fix; that the liquidated damages set forth herein are the nearest and most exact measure of damages for such breach that can be fixed at this time; and that the liquidated damages are not intended as a penalty or forfeiture for the Contractor's breach. Therefore, it is agreed that the County may, in its sole discretion, assess against the Contractor liquidated damages of \$50 per Contractor's employee per day for each and every instance of an underpayment to Contractor's employee. The County may deduct any assessed liquidated damages from any payments otherwise due the Contractor.

c. Termination. The Contractor's continued failure to pay any of its employees the applicable hourly living wage rate may constitute a material breach of the Contract. In the event of such material breach, the County may, in its sole discretion, terminate the Contract.

3. Debarment. In the event the Contractor breaches a requirement of this Subsection, the County may, in its sole discretion, bar the Contractor from the award of future County contracts for a period of time consistent with the seriousness of the breach, not to exceed three years.

38.8 Use of Full-Time Employees.

The Contractor shall assign and use full-time employees of the Contractor to provide services under the Contract unless the Contractor can demonstrate to the satisfaction of the County that it is necessary to use non-full-time employees based on staffing efficiency or County requirements for the work to be performed under the Contract. It is understood and agreed that the Contractor shall not, under any circumstance, use non-full-time employees for

services provided under the Contract unless and until the County has provided written authorization for the use of same. The Contractor submitted with its proposal a full-time employee staffing plan. If the Contractor changes its full-time employee staffing plan, the Contractor shall immediately provide a copy of the new staffing plan to the County.

38.9 Contractor Retaliation Prohibited.

The Contractor and/or its employees shall not take any adverse action which would result in the loss of any benefit of employment, any contract benefit, or any statutory benefit for any Employee, person or entity who has reported a violation of the Living Wage Program to the County or to any other public or private agency, entity or person. A violation of the provisions of this Sub-paragraph may constitute a material breach of the Contract. In the event of such material breach, the County may, in its sole discretion, terminate the Contract.

38.10 Contractor Standards.

During the term of the Contract, the Contractor shall maintain business stability, integrity in employee relations and the financial ability to pay a living wage to its employees. If requested to do so by the County, the Contractor shall demonstrate to the satisfaction of the County that the Contractor is complying with this requirement.

38.11 Employee Retention Rights

1. The Contractor shall offer employment to all retention employees who are qualified for such jobs. A “retention employee” is an individual:
 - a. Who is not an exempt employee under the minimum wage and maximum hour exemptions defined in the federal Fair Labor Standards Act; and

- b. Who has been employed by a Contractor under a predecessor Proposition A contract or a predecessor cafeteria services contract with the County for at least six months prior to the date of this new Contract, which predecessor contract was terminated by the County prior to its expiration; and
 - c. Who is or will be terminated from his or her employment as a result of the County entering into this new contract.
2. The Contractor is not required to hire a retention employee who:
 - a. Has been convicted of a crime related to the job or his or her performance; or
 - b. Fails to meet any other County requirement for employees of a Contractor.
 3. The Contractor shall not terminate a retention employee for the first 90 days of employment under the contract, except for cause. Thereafter, the Contractor may retain a retention employee on the same terms and conditions as the Contractor's other employees.

38.12 Neutrality in Labor Relations

The Contractor shall not use any consideration received under the Contract to hinder, or to further, organization of, or collective bargaining activities by or on behalf of the Contractor's employees, except that this restriction shall not apply to any expenditure made in the course of good faith collective bargaining, or to any expenditure pursuant to obligations incurred under a bona fide collective bargaining Contract, or which would otherwise be permitted under the provisions of the National Labor Relations Act.

8.0 CONTRACTOR RESPONSIBILITY AND DEBARMENT

The existing Paragraph 45 of the Contract is deleted in its entirety and the following paragraph is substituted:

“45. CONTRACTOR RESPONSIBILITY AND DEBARMENT

45.1 Responsible Contractor

A responsible Contractor is a Contractor who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity and experience to satisfactorily perform the contract. It is the County’s policy to conduct business only with responsible Contractors.

45.2 Chapter 2.202 of the County Code

The Contractor is hereby notified that, in accordance with Chapter 2.202 of the County Code, if the County acquires information concerning the performance of the Contractor on this or other contracts which indicates that the Contractor is not responsible, the County may, in addition to other remedies provided in the Contract, debar the Contractor from bidding or proposing on, or being awarded, and/or performing work on County contracts for a specified period of time, which generally will not exceed five years but may exceed five years or be permanent if warranted by the circumstances, and terminate any or all existing Contracts the Contractor may have with the County.

45.3 Non-responsible Contractor

The County may debar a Contractor if the Board of Supervisors finds, in its discretion, that the Contractor has done any of the following: (1) violated a term of a contract with the County or a nonprofit corporation created by the County, (2) committed an act or omission which negatively reflects on the Contractor’s quality, fitness or capacity to perform a contract with the County, any other public entity, or a nonprofit corporation created by the County, or engaged in a pattern or practice which negatively reflects on same, (3) committed an act or offense which indicates a lack of business

integrity or business honesty, or (4) made or submitted a false claim against the County or any other public entity.

45.4 Contractor Hearing Board

1. If there is evidence that the Contractor may be subject to debarment, the Department will notify the Contractor in writing of the evidence which is the basis for the proposed debarment and will advise the Contractor of the scheduled date for a debarment hearing before the Contractor Hearing Board.
2. The Contractor Hearing Board will conduct a hearing where evidence on the proposed debarment is presented. The Contractor and/or the Contractor's representative shall be given an opportunity to submit evidence at that hearing. After the hearing, the Contractor Hearing Board shall prepare a tentative proposed decision, which shall contain a recommendation regarding whether the Contractor should be debarred, and, if so, the appropriate length of time of the debarment. The Contractor and the Department shall be provided an opportunity to object to the tentative proposed decision prior to its presentation to the Board of Supervisors.
3. After consideration of any objections, or if no objections are submitted, a record of the hearing, the proposed decision, and any other recommendation of the Contractor Hearing Board shall be presented to the Board of Supervisors. The Board of Supervisors shall have the right to modify, deny, or adopt the proposed decision and recommendation of the Contractor Hearing Board.
4. If a Contractor has been debarred for a period longer than five (5) years, that Contractor may, after the debarment has been in effect for at least five (5) years, submit a written request for review of the debarment determination to reduce the period of debarment or terminate the debarment. The County may, in its

discretion, reduce the period of debarment or terminate the debarment if it finds that the Contractor has adequately demonstrated one or more of the following: (1) elimination of the grounds for which the debarment was imposed; (2) a bona fide change in ownership or management; (3) material evidence discovered after debarment was imposed; or (4) any other reason that is in the best interests of the County.

5. The Contractor Hearing Board will consider a request for review of a debarment determination only where (1) the Contractor has been debarred for a period longer than five (5) years; (2) the debarment has been in effect for at least five (5) years; and (3) the request is in writing, states one or more of the grounds for reduction of the debarment period or termination of the debarment, and includes supporting documentation. Upon receiving an appropriate request, the Contractor Hearing Board will provide notice of the hearing on the request. At the hearing, the Contractor Hearing Board shall conduct a hearing where evidence on the proposed reduction of debarment period or termination of debarment is presented. This hearing shall be conducted and the request for review decided by the Contractor Hearing Board pursuant to the same procedures as for a debarment hearing.
6. The Contractor Hearing Board's proposed decision shall contain a recommendation on the request to reduce the period of debarment or terminate the debarment. The Contractor Hearing Board shall present its proposed decision and recommendation to the Board of Supervisors. The Board of Supervisors shall have the right to modify, deny, or adopt the proposed decision and recommendation of the Contractor Hearing Board.

45.5 Subcontractors of Contractor

These terms shall also apply to Subcontractors of County Contractors.

9.0 RATIFICATION

All other terms, conditions, covenants and promises of the Contract not affected by this Amendment Number 2 shall remain in full force and effect and are hereby reaffirmed.

10.0 EFFECTIVE DATE

The effective date of this Amendment Number 2 shall be the date, month, and year first written above.

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IN WITNESS WHEREOF, the Contractor has executed this Amendment Number 2 to Contract Number 73721, or caused it to be duly executed, and the County, by order of its Board of Supervisors, has caused this Amendment Number 2 be executed on its behalf by the Mayor of said Board, and attested by the Executive Officer-Clerk of the Board of Supervisors thereof, on the date, month and year first written above.

CONTRACTOR

Toribio's Landscape

By  _____
Jose Toribio, President

COUNTY OF LOS ANGELES

By _____
Mayor, Board of Supervisors

ATTEST:

SACHI A. HAMAI
Executive Officer-Clerk
of the Board of Supervisors

By _____
Deputy

APPROVED AS TO FORM:

RAYMOND G. FORTNER, JR.
County Counsel

By  _____
Senior Deputy

