

**AGENDA ITEM NO. 6C**  
**BIOLA COMMUNITY SERVICES DISTRICT**  
**LANDSCAPING SERVICES AGREEMENT**

This INDEPENDENT CONTRACTOR SERVICES AGREEMENT ("Agreement") is made and entered into effective 1 February, 2019(the "Effective Date"), by and between the Biola Community Services District ("District") and **Carbajal Landscaping** ("Contractor").

1. **Contractor Services.** Contractor agrees to provide the following services to the District (collectively, the "Services") at the Community Center located at 4925 N Seventh Street and the G street area 7th to 5th Street, Biola Avenue landscaping from "G" Street to Shaw Avenue and the ponding basin twice a year on "B" Street and "H" Street:

**The District will provide the following materials and/or services:**

- All fertilizers, herbicides, trees/shrubs/flowers; and other related materials as recommended by the Landscaper and as approved by the District:
- All parts and materials as necessary to maintain the landscape automatic sprinkler system:
- Disposal services as necessary for removal of lawn clippings, shrub and tree trimmings, leaves and plants debris, and other trash resulting from landscape services of the site.
- The fuel cost of picking up materials, parts, fertilizers etc.

**The Landscaper is to provide the following equipment:**

- All tools necessary to fulfill services, including, but not limited to lawn mower, edger, trimmers, shovels, hoes, rakes, brooms, fertilizers spreader, sprayers, etc.

**Tasks to be performed weekly (all seasons) at the Biola Community Center, "G" Street from 7th to 5th Street and Biola Avenue from "G" Street to Shaw Avenue are as follows:**

- Mow and edge lawns to height proper for season (bi-weekly during winter season)
- Weed (mechanical and/or chemical) if and where needed, shrub and flower beds
- Prune (light) if and where needed, any shrub/trees dead- damaged limbs/branches
- Rake, if and where needed, lawns and shrubs/flower beds:
- Sweep concrete walkways and around it.
- All small trees will be trimmed at least once per year
- Inspect for proper operation of irrigation system, and if needed repair and adjust automatic water Sprinkler system.

**Tasks to be performed 12 times a year (all seasons) at the Biola Community Center are as follows:**

- Maintain ponding basin at Community Center and the lot west of the Community Center. The lot west of the community center will be eliminated from this contract after the VFW takes over the landscaping duties at a date yet to be determined.

**Tasks to be performed quarterly (seasonal)**

**Fall**

- Apply lawn fertilizer
- Seed winter rye grass
- Maintain South ponding basin off H Street

**Winter**

- Apply fertilizer to lawn and shrub/flower beds
- Apply pre-emergent herbicide to lawn shrub/flower beds
- Prune shrubs and trees (light clean-up of suckers, dead limbs/branches, and minimal thinning of trees and shrubs as proper for species/variety.
- Prepare entrances area flower beds for spring planting

**Spring**

- Apply fertilizer to lawns
- Apply pre-emergent herbicide to lawn shrub/flower
- Plant entrance area flower beds
- Plant replacement shrubs/trees
- Mulch shrub and flowers beds
- Maintain South ponding basin off H Street

**Other task as follows:**

- Landscaper shall provide any other environmental services required by the District not specifically Provided herewith, at additional cost, but only when authorized in writing by the District.
- All work/tasks shall be performed to the highest professional standard.
- All documents, information, and materials of any and every type prepared by Landscaper pursuant to this Agreement shall be the property of the District, whether completed or in process.

2. **Contractor Qualifications.** Contractor represents and warrants to District that Contractor, and all of Contractor's employees, agents or volunteers (the "Contractor Parties"), have in effect and shall maintain in full force throughout the Term of this Agreement all licenses, credentials, permits and any other qualifications required by law to perform the Services and to fully and faithfully satisfy all of the terms set forth in this Agreement. Contractor and any Contractor Parties performing services shall be competent to perform those services.

3. **Term.** This Agreement shall begin on 1 February, 2019, and shall terminate upon completion of the Services, but no later than 30 January 2020 ("Term"), except as otherwise stated in Paragraph 4 below. There shall be no extension of the Term of this Agreement without the express written consent of all parties. Written notice by the District General Manager or designee shall be sufficient to stop further performance of the Services by Contractor or the Contractor Parties. In the event of early termination, Contractor shall be paid for satisfactory Services performed to the date of termination. Upon payment by District, District shall be under no further obligation to Contractor,

monetarily or otherwise, and District may proceed with the work in any manner District deems proper.

4. **Termination.** Either party may terminate this Agreement at any time by giving thirty (30) days advance written notice to the other party, however the parties may agree in writing to a shorter notice period. Notwithstanding the foregoing, District may terminate this Agreement at any time by giving written notice to Contractor if Contractor materially breaches any of the terms of this Agreement, any act or omission of Contractor or the Contractor Parties exposes District to potential liability or may cause an increase in District's insurance premiums, Contractor is adjudged a bankrupt, Contractor makes a general assignment for the benefit of creditors or a receiver is appointed because of Contractor's insolvency. Such termination shall be effective immediately upon Contractor's receipt of the notice.

5. **Payment of Fees for Services.** District agrees to pay Contractor fees at the rate of \$675 per month for Services satisfactorily performed. These fees are totaled as follows:

- \$300 per month for the community center property around the building and parking lot
- \$75 per month for the south ponding basin off H Street/"B" Street
- \$100 per month for the ponding basin NW of community center
- \$100 per month for "G" Street from 7th to 5th Street
- \$100 per month for Biola Avenue from "G" Street to Shaw Avenue

Contractor shall not increase the rate over the course of this Agreement. Total fees ("the Fee") paid by District to Contractor shall not exceed \$8,100 per year. Any work performed by Contractor without express pre-authorization by the General Manager, in excess of the Fee shall not be compensated. District agrees to pay the Fee, up to the maximum amount provided herein, within sixty (60) days of receipt of a detailed invoice from Contractor, including any additional supporting documentation District reasonably requests. On an annual bases the District will go out to bid for additional services such as a (Trimming of all District Trees)

6. **Indemnity.** Contractor shall defend, indemnify, and hold harmless District and its agents, representatives, officers, consultants, employees, Board of Trustees, members of the Board of Trustees (collectively, the "District Parties"), from and against any and all claims, demands, liabilities, damages, losses, suits and actions, and expenses (including, but not limited to attorney fees and costs including fees of consultants) of any kind, nature and description (collectively, the "Claims") directly or indirectly arising out of, connected with, or resulting from any act, error, omission, negligence, or willful misconduct of Contractor, the Contractor Parties or their respective agents, subcontractors, employees, material or equipment suppliers, invitees, or licensees in the performance of or failure to perform Contractor's obligations under this Agreement, including, but not limited to Contractor's or the Contractor Parties' use of the site, Contractor's or the Contractor Parties' performance of the Services, Contractor's or the Contractor Parties' breach of any of the representations or warranties contained in this Agreement, or for injury to or death of persons or damage to property or delay or damage to the District or the District Parties. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity, which would otherwise exist as to a party, person, or entity described in this paragraph.

7. **Equipment and Materials.** Contractor at its sole cost and expense shall provide and furnish all tools, labor, materials, equipment, transportation services and any other items (collectively, "Equipment") which are required or necessary to perform the Services in a manner which is consistent with generally accepted standards of the profession for similar services. Notwithstanding the foregoing, District shall not be responsible for any damages to persons or property as a result of the use, misuse or failure of any Equipment used by Contractor or the Contractor Parties, even if such Equipment is furnished, rented or loaned to Contractor or the Contractor Parties by District. Furthermore, District may reject any Equipment or workmanship that does not conform to the requirements of this Agreement and Contractor must then promptly remedy or replace it at no additional cost to District and subject to District's reasonable satisfaction.

8. **Insurance.** Without in any way limiting Contractor's liability, or indemnification obligations set forth in Paragraph 6 above, Contractor shall secure and maintain throughout the Term of this Agreement the following insurance: (i) comprehensive general liability insurance with limits of not less than \$1,000,000 each occurrence and \$2,000,000 in the aggregate; and (ii) worker's compensation insurance as required by Labor Code section 3200, *et seq.*, if applicable. Neither Contractor nor any of the Contractor Parties shall commence performing any portion of the Services until all required insurance has been obtained and certificates indicating the required coverages have been delivered to and approved by District. All insurance policies shall include an endorsement stating that District and District Parties are named additional insureds. All of the policies shall be amended to provide that the insurance shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to District. If such a notice is not given or even if District receives a notice, District may, at its sole option, terminate this Agreement. All insurance policies shall include an endorsement stating that it is primary to any insurance or self-insurance maintained by District and shall waive all rights of subrogation against District and/or the District Parties. A copy of the declarations page of Contractor's insurance policies shall be attached to this Agreement as proof of insurance.

9. **Independent Contractor Status.** Contractor, in the performance of this Agreement, shall be and act as an independent contractor. Contractor understands and agrees that Contractor and the Contractor Parties shall not be considered officers, employees, agents, partners, or joint venturers of District, and are not entitled to benefits of any kind or nature normally provided to employees of District and/or to which District's employees are normally entitled.

10. **Taxes.** All payments made by District to Contractor pursuant to this Agreement shall be reported to the applicable federal and state taxing authorities as required. District will not withhold any money from fees payable to Contractor, including FICA (social security), state or federal unemployment insurance contributions, or state or federal income tax or disability insurance. Contractor shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to Contractor and the Contractor Parties and otherwise in connection with this Agreement.

11. **Assignment/Successors and Assigns.** Contractor shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations under this Agreement without the prior written consent of District. Subject to the foregoing, this Agreement shall be binding on the

heirs, executors, administrators, successors, and assigns of the respective parties.

12. **Severability.** If any provision of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Agreement.

13. **Amendments.** The terms of this Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever except by written agreement signed by both parties.

14. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California, excluding its choice of law rules. Any action or proceeding seeking any relief under or with respect to this Agreement shall be brought solely in the Superior Court of the State of California for the County of Fresno, subject to transfer of venue under applicable State law, provided that nothing in this Agreement shall constitute a waiver of immunity to suit by the District.

15. **Written Notice.** Written notice shall be deemed to have been duly served if delivered in person to Contractor at the address located next to the party signatures below, or if delivered at or sent by registered or certified or overnight mail to the last business address known to the person who sends the notice.

16. **Compliance with Law.** Each and every provision of law and clause required by law to be inserted into this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included therein. Contractor shall comply with all applicable federal, state, and local laws, rules, regulations and ordinances.

17. **Non-Discrimination.** There shall be no unlawful discrimination in the contracting of persons under this Agreement because of race, color, national origin, age, ancestry, religion, sex, or sexual orientation of such persons.

18. **Liability of District.** Notwithstanding anything stated herein to the contrary, District shall not be liable for any special, consequential, indirect or incidental damages, including but not limited to lost profits in connection with this Agreement.

19. **Time.** Time is of the essence to this Agreement.

20. **Waiver.** No delay or omission by District in exercising any right under this Agreement shall operate as a waiver of that or any other right and no single or partial exercise of any right shall preclude the District from any or further exercise of any right or remedy.

21. **Entire Agreement.** This Agreement is intended by the parties as the final expression of their agreement with respect to such terms as are included herein and as the complete and exclusive statement of its terms and may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement, nor explained or supplemented by evidence of consistent additional terms.

22. **Ambiguity.** The parties to this Agreement, and each of them, hereby represent that the language contained herein is to be construed as jointly proposed and jointly accepted, and in the event of any subsequent determination of ambiguity, all parties shall be treated as equally responsible for such ambiguity.

23. **Execution of Other Documents.** The parties to this Agreement shall cooperate fully in the execution of any and all other documents and in the completion of any additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.

24. **Execution in Counterparts.** This Agreement may be executed in counterparts such that the signatures may appear on separate signature pages. A copy, facsimile, or an original, with all signatures appended together, shall be deemed a fully executed agreement.

25. **Warranty of Authority.** The persons who have signed this Agreement warrant that they are legally authorized to do so on behalf of the respective parties, and by their signatures to bind the respective parties to this Agreement.

\* \* \* \* \*

**DISTRICT:**

**CONTRACTOR:**

**BIOLA COMMUNITY SERVICES DISTRICT**

By:  
Name: Rudy Hernandez  
Title: Board President

By:  
Name: Argimiro Carbajal  
Title: Owner

Address for District Notices:

Address for Contractor Notices:

Biola Community Services District  
P.O. Box 57  
4925 N. Seventh Street  
Biola, CA 93606

Argimiro Carbajal  
P.O. Box 542  
12680 W D Street  
Biola, CA 93606