Agreement No. 2013-22

AGREEMENT FOR PERFORMANCE OF GROUNDS/LANDSCAPE MAINTENANCE SERVICES

This Agreement is entered into this 15th day of April, 2013 between the City of Delano, a municipal corporation, hereinafter referred to as "City" and Clean Cut Landscape hereinafter referred to as "Contractor."

CITY and CONTRACTOR agree as follows:

(1) SCOPE OF WORK: Contractor shall furnish and use, at his own expense, all materials, labor, tools, equipment, transportation and incidentals necessary to provide complete annual contractual Landscape Maintenance for:

2013 Grounds/Landscape Maintenance Services

in accordance with the contract documents.

(2) TIME FOR COMPLETION: The work shall be completed within the times set forth in the schedule of work submitted by the Contractor. Time is of the essence as provided for in the contract documents.

(3) TERMS: The term of this agreement is for four (4) years, commencing on May 1, 2013 and terminating on May 31, 2017. This agreement may be extended for additional two (2) option years by mutual agreement between the City and the Contractor.

(4) COMPENSATION: The total yearly compensation payable to Contractor for Performance of maintenance services pursuant to this Agreement shall be **$75,879.00** for the first twelve (12) months. Subsequent years shall be adjusted by the Consumer Price Index (CPI) as described below <u>but not to exceed 3%</u>.

(4)(a) CPI ADJUSTMENTS. Annually, on the anniversary date of this Agreement, the total yearly compensation payable to Contractor shall be adjusted by the CPI Index as follows: The Consumer Price Index (CPI) [All Consumer-All Items] using the base year 2013 for Los Angeles-Anaheim-Riverside CMSA, published for the most twelve month period ending with the month of January most immediately preceding each contract year (the Current Index) shall be compared with the Index published for the twelve month period ending with the month of January most immediately preceding the previous contract year (the Previous Index). If the Current Index has increased over the Previous Index, the annual compensation payable shall be set by multiplying the previous year's annual compensation (including all previous CPI adjustments) by a fraction, the numerator of which is the Current Index and the denominator of which is the

Previous Index. If the Current Index has decreased from the Previous Index, no adjustment shall be made to the annual compensation for that contract year. Contractor shall calculate the adjustment to annual compensation, and provide City with a written notice thereof, at least 30 days prior to the start of each new contract year. If the Index is changed so that the base yet differs from that specified above, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Statistics.

(5) PAYMENTS: Payment shall occur during the month following services. Within ten (10) calendar days after the end of each month, Contractor shall submit to the City an invoice for one-twelfth *(1/12)* of the yearly compensation and for such additional authorized work as shall have been performed within the preceding months. For months in which there is only partial performance under this Agreement, monthly compensation shall be prorated.

(6) ADDITIONAL WORK: Any additional work to be done by Contractor shall be authorized in writing by the City's Public Works Director or a designated representative and shall be performed by the Contractor at a rate of **$35.00** per hour, plus actual material costs. Material costs shall be determined based on actual invoices submitted by suppliers. City shall have the option of supplying necessary materials.

(7) SATISFACTION OF CITY: Maintenance services by the Contractor shall be performed to the satisfaction of the Parks and Building Supervisor or a designated representative.

(8) CONTRACT DOCUMENTS: The complete contract includes all the Contract Documents set forth herein, to wit: Notice Inviting Sealed Proposals (Bids), Bid Form, Agreement, Performance Bond, Payment Bond, Certificate of Insurance (Workers' Compensation and Employer's Liability), Insurance Endorsement (Workers' Compensation and Employer's Liability), Maintenance Services Specifications, Drawings, Plans, Schedule of Work, and also addenda thereto and supplemental agreements.

(9) PERFORMANCE BOND: Contractor shall provide the City with a faithful performance bond, or other security for performance in a form acceptable to the City, in City's sole discretion, in an amount equal to one hundred percent (100%) of the annual contract amount. Said bond or other security shall remain in full force and in effect for the duration of this Agreement and for sixty (60) days from termination thereof. This security shall guarantee faithful performance by the Contractor of all of Contractor's obligations and responsibilities under this Agreement.

(10) PAYMENT BOND: Contractor shall provide City with a payment bond in the amount of fifty percent (50%) of the annual contract amount to secure the payment of claims for labor and materials. Said bond or other security shall

remain in full force and in effect for the duration of this Agreement and for sixty (60) days from termination thereof.

(11) AUTHORITY OF THE PUBLIC WORKS DIRECTOR: The Director of Public Works shall have the authority to take such action necessary to administer this contract, including the power to make decisions and determinations as provided in this Agreement. All instructions, rulings and decisions of the Public Works Director shall be final and binding.

(12) MINIMUM LIABILITY AND INSURANCE:

A. Liability. Contractor shall take all precautions necessary for the safety of and prevention of damage to property on or adjacent to the work site, and for the safety of and prevention of injury to persons, including City employees, Contractor's employees, and third persons, on or adjacent to the work site. All work shall be performed according to law and entirely at Contractor's risk.

B. Hold Harmless and Indemnification. To the fullest extent permitted by law, Contractor expressly undertakes to and shall defend, indemnify and save City, its officers, agents and employees free and harmless from and against any and all claims, demands, damages, actions, expenses, suits, liabilities, or proceedings and other costs, including attorney's fees, arising out of or in connection with any act, omission, work, duties, operations or negligence of Contractor or any of subcontractors, agents, employees, sub-lessees, or assignees arising out of any incident, injury, or damage whatsoever caused or occurring to any person of property on or arising out of the Contractor's performance under this Agreement.

Without limiting the generality of the foregoing, the foregoing shall specifically include the obligation to defend, indemnify, and save harmless City, its officers, agents, employees, or independent Contractors, even if the claim, suit, action, expense, accident, injury, or damage has been caused partially by what may be characterized as, constitute, or be the equivalent of independent or passive negligence on any proportion, whether partial, concurrent or otherwise, on behalf of the City, or any of its officers, agents, employees, Contractors or subcontractors. Moreover, Contractor hereby agrees to defend, indemnify, and save the City, its officers, agents, employees and independent Contractors harmless from any and all claims, demands, actions, expenses, attorney's fees, and other costs that may arise out of or in connection with any failure of Contractor or any subcontractor to take out or in connection with any failure of Contractor or any subcontractor to take out or maintain such insurance or the insurance referred to in this Agreement.

C. Insurance. During the term of this Agreement, Contractor shall maintain, and pay all premiums required to maintain and keep in force the following insurance:

(1) Public Liability and Property Damage. Contractor shall maintain non-assessable public liability and property damage insurance at all times during the term of this Agreement from a company or companies that are California admitted carriers.

It is hereby agreed and understood that the City of Delano and all officers, agents, and employees of the City of Delano are to be named as additional insureds with regard to any and all claims, demands, damages, actions, attorney's fees and liability arising out of work, duties, or any passive negligence, in any proportion, of City, its officers, agents, employees or independent Contractors, or any passive negligence, in any proportion, of City, its officers, agents, employees or independent Contractors. This insurance coverage shall be and shall state that it is primary with respect to all other insurance coverage or retention limits of the City of Delano, its officers, agents, and employees, and that such other insurance that may be carried by City shall be excess thereto. Such insurance shall be on an "occurrence" and not a "claims made" basis and shall not be cancelable or subject to reduction except upon thirty (30) days prior hand-delivered written notice to the Delano Risk Manager.

Work, duties, or operations by Contractor shall not commence until appropriate certificates of insurance (and copies of the policy or policies) have been presented to the City showing that all required insurance is in full force and effect notwithstanding any disclaimer or provision to the contrary relief upon by such carrier, issuance of such certificates of insurance and/or policies shall constitute a certification by the carrier(s) that a duly authorized representative of the carrier(s) issuing the insurance required hereunder has read the insurance requirements of this Agreement, that the provisions of this Agreement are controlling, and that said insurance meets all of the requirements set forth in this Agreement.

All requirements herein provided shall appear either in the body of the insurance policies or as endorsements and, whether or not contained herein, shall specifically bind the insurance carrier.

Said insurance shall provide coverage of no less than $1,000,000 for each person injured, $1,000,000 for anyone accident, and $500,000 for property damage. If said insurance should, at any time, cease to be in full force and effect, Contractor's use of the subject premises shall cease until such insurance or its equivalent is restored to the full satisfaction of the City.

(2) Worker's Compensation Insurance. Contractor shall maintain Worker's Compensation Insurance for all its employees during the life of this Agreement.

Such insurance shall comply with all applicable State laws. Contractor shall provide a Certificate of Insurance acceptable to the City.

(13) PERMITS: The Contractor shall obtain all permits necessary to do the work required under this Agreement.

(14) MODIFICATION OF AGREEMENT: Except as expressly or otherwise provided, this Agreement may be amended only by the mutual consent of the parties hereto, in writing.

(15) ENTIRE AGREEMENT: This Agreement comprises the entire Agreement of the parties hereto and no obligations other than those set forth shall be recognized.

(16) ASSIGNMENT: Any assignment of the rights or obligations under this Agreement without the prior written consent of the City is prohibited and shall be null and void.

(17) NOTICES: Any notice to be given or made pursuant to this Agreement, including a notice of change on the address to which notices or payments are to be sent, shall be given by personal delivery to the other party or by mail addressed as follows:

TO CONTRACTOR:

Clean Cut Landscape
8406 N. Armstrong
Clovis, CA 93619
Attn: Karry Wendel

TO CITY:

Roman Dowling
City of Delano
Public Works Department
1015 11th Avenue
Delano, CA 93215

All notices shall be in writing. All payments shall be made by check or warrant. Notices given or made by mail shall be deemed given or made upon deposit of the notice, postage prepaid, in the Unites States mail addressed in accordance with this paragraph, or to such other change addressed as to which notice has been given pursuant to this paragraph.

(18) TERMINATION OF AGREEMENT: The Agreement may be terminated by City, with or without cause, at any time, at City's sole discretion, by giving thirty (30) days' written notice to the Contractor, which notice shall terminate this Agreement on the thirtieth (30th) calendar day after the giving of such notice or at such later time as may be specified in said notice.

In the event of termination pursuant to this paragraph, Contractor shall be entitled only to payment for work performed to date, based on appropriate proration of the yearly compensation, or, in the event termination is for cause, to such amount as may be appropriate in accordance with applicable laws.

This Agreement is executed by the CITY pursuant to an action of its City Council in session on April 15, 2013, authorizing the same, and Contractor has caused this Agreement to be duly executed.

Dated: April 29, 2013

By: _____
Joe E. Aguirre Jr.

Title: Mayor

ATTEST:

By: Phyllis A Kraft
Phyllis Kraft, City Clerk

Contractor:

Dated: 4/18/13, 2013

By: _____
Karry Wendel

Title: Owner

APPROVED AS TO FORM:

By: _____
Delano City Attorney