City of Los Alamitos

Agenda Report	December 14, 2015
Consent Calendar	Item No: 8E

To: Mayor Richard D. Murphy & Members of the City Council

Via: Bret M. Plumlee, City Manager

From: Steven A. Mendoza, Development Services Director
Tony Brandyberry, Public Works Superintendent

Subject: Extension of Professional Services Agreement with Midori Gardens for Landscape Maintenance Services

Summary: This item is to consider continuing services with Midori Gardens to provide landscape maintenance services. The current Professional Services Agreement (PSA) expires on January 2, 2016, but can be extended by mutual agreement.

Recommendation: Authorize the Mayor to execute Amendment No. 1 of the PSA with Midori Gardens for Landscape Maintenance services.

Background

The 2014/15 budget discussions yielded a question of how to provide additional maintenance to City sports fields and new park facilities while remaining within budget. The original proposal was to hire four (4) additional part time Maintenance Workers to assist with the added maintenance of the four (4) sports fields and Coyote Creek Park.

A hybrid approach to maintenance approved at the November 17th, 2014 Council meeting. This hybrid approach entailed hiring one (1) part time Maintenance Worker for a three (3) year period along with contracting the general mowing of all City owned facilities, all parks (excluding McAuliffe Field), and all median islands and arterials.

The goal was to free up the City's full time qualified Maintenance Workers to address the added maintenance. This hybrid system has been in effect since January 2, 2015 and has worked very well. A review of the effectiveness of the hybrid program will be completed after three (3) years, in 2018.

Discussion

The original Professional Services Agreement (PSA) between the City of Los Alamitos and Midori Gardens is approaching its expiration date of January 2, 2016. Staff is pleased with the work, quality, and effectiveness of this contract. Midori Gardens has performed the standards of the contract and has gone a step above. When water restriction went into effect in June, Midori Gardens adjusted the work schedule to mow the center median island turf every other week and on the off week, provided weed abatement and trash removal of the planted median islands, at no additional costs. It is this working relationship that Staff feels is essential to our organization.

Midori Gardens is offering a two year contract extension with no cost increase as the Superintendent has negotiated a continuation at their current rate. The two (2) year contract extension, terminating on January 2, 2018, will allow the same Contractor for all three years of the Hybrid maintenance approach. Staff will release a new Request For Proposal (RFP) in fall of 2017.

Fiscal Impact

There is no added cost to the original contract of $61,332.00.

Prepared By:

Tony Brandyberry
Public Works Superintendent

Fiscal Impact Reviewed By:

Jason Al-Imam
Administrative Services Director

Submitted By:

Steven A. Mendoza
Development Services Director

Approved By:

Bret M. Plumlee
City Manager

Attachments: 1) Amendment No. 1 – PSA Extension, Midori Gardens
2) Letter – Midori Gardens PSA Extension Proposal
3) Previous PSA Between the City and Midori Gardens

AMENDMENT NO. 1 TO PROFESSIONAL SERVICES AGREEMENT
(City of Los Alamitos and Midori Gardens)

This Amendment No. 1 ("Amendment") to Professional Services Agreement ("Agreement") is made on this 2nd day of January, 2016, at Los Alamitos, California, by and between the City of Los Alamitos, a municipal corporation, 3191 Katella Ave., Los Alamitos, California 90720 ("City") and Midori Gardens, 3231 S. Main Street, Santa Ana, CA 92707 ("Contractor").

This "Amendment" modifies the original "Agreement" between the "City" and the "Contractor" dated January 2, 2016, in the following fashion:

"City" and "Contractor" desire to amend the "Agreement" by modifying Section 3.4 – Expiration Date of the "Agreement" to read as follows:

3.4 "Expiration Date": January 2, 2018.

TO EFFECTUATE THIS AGREEMENT, the parties have caused their duly authorized representatives to execute this Agreement on the dates set forth below.

"City"
City of Los Alamitos

By:_____
Richard M. Murphy, Mayor

Date: _____

Attest:

By:_____
Windmera Quintanar, City Clerk

Date: _____

Approved as to form:

By:_____
Cary Reisman, City Attorney

Date: _____

"Consultant"
Midori Gardens

By:_____
Naga Hamamoto, President

Date: 12/9/15

By:_____
Naga Hamamoto, Vice President

Date: 12/9/15

Attachment 2

midori
gardens
3231 S. Main St., Santa Ana, Ca. 92707 714-751-8792

November 20, 2015

City of Los Alamitos

Attn: Tony Brandyberry
Superintendent of Public Works

RE: Request for Contract Extension

Dear Tony,

Midori Gardens would like to submit our proposal to extend the current contract for Park and Landscape Maintenance Services. The current contract ends this year. Midori Gardens submits for your consideration a contract extension for a two year term at the current annual amount of sixty-one thousand three hundred thirty-two dollars per year.

Midori Gardens will absorb the additional costs associated with Obama care which take effect on January 1st, 2016. Health care was not a requirement at the time of our original proposal and subsequent contract, therefore was not included.

Thank you again for your continued support and allowing Midori Gardens to provide landscape maintenance service to the City of Los Alamitos.
Regards,

Nelson Goodness

Nelson Goodness
Contracts Administrator

PROFESSIONAL SERVICES AGREEMENT
(City of Los Alamitos /Midori Gardens.)

1. IDENTIFICATION

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is entered into by and between the City of Los Alamitos, a California municipal corporation ("City") and Midori Gardens, a California Corporation ("Consultant").

2. RECITALS

2.1 City has determined that it requires the following professional services from a consultant: ***Park and Landscape Maintenance Services.***

2.2 Consultant represents that it is fully qualified to perform such professional services by virtue of its experience and the training, education and expertise of its principals and employees. Consultant further represents that it is willing to accept responsibility for performing such services in accordance with the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein contained, City and Consultant agree as follows:

3. DEFINITIONS

3.1 "Scope of Services": Such professional services as are set forth in Consultant's ***September 3, 2014*** proposal to City attached hereto as Exhibit A and incorporated herein by this reference.

3.2 "Approved Fee Schedule": Such compensation rates as are set forth in Consultant's ***September 3, 2014*** fee schedule to City attached hereto as Exhibit B and incorporated herein by this reference.

3.3 "Commencement Date": January 2 ,2015.

3.4 "Expiration Date": January 2, 2016.

4. TERM

The term of this Agreement shall commence at 12:00 a.m. on the Commencement Date and shall expire at 11:59 p.m. on the Expiration Date unless extended by written agreement of the parties or terminated earlier in accordance with Section 17 ("Termination") below.

5. CONSULTANT'S SERVICES

5.1 Consultant shall perform the services identified in the Scope of Services. City shall have the right to request, in writing, changes in the Scope of Services. Any

such changes mutually agreed upon by the parties, and any corresponding increase or decrease in compensation, shall be incorporated by written amendment to this Agreement. In no event shall the total compensation and costs payable to Consultant under this Agreement exceed the sum of ***Sixty-One Thousand Three Hundred Thirty Two Dollars*** **($61,332.00)** unless specifically approved in advance and in writing by City.

5.2 Consultant shall obtain a City business license prior to commencing performance under this Agreement.

5.3 Consultant shall perform all work to the highest professional standards of Consultant's profession and in a manner reasonably satisfactory to City. Consultant shall comply with all applicable federal, state and local laws and regulations, including the conflict of interest provisions of Government Code Section 1090 and the Political Reform Act (Government Code Section 81000 *et seq.*).

5.4 During the term of this Agreement, Consultant shall not perform any work for another person or entity for whom Consultant was not working at the Commencement Date if both (i) such work would require Consultant to abstain from a decision under this Agreement pursuant to a conflict of interest statute and (ii) City has not consented in writing to Consultant's performance of such work.

5.5 Consultant represents that it has, or will secure at its own expense, all personnel required to perform the services identified in the Scope of Services. All such services shall be performed by Consultant or under its supervision, and all personnel engaged in the work shall be qualified to perform such services. **Nelson Goodness** shall be Consultant's project administrator and shall have direct responsibility for management of Consultant's performance under this Agreement. No change shall be made in Consultant's project administrator without City's prior written consent.

6. COMPENSATION

6.1 City agrees to compensate Consultant for the services provided under this Agreement, and Consultant agrees to accept in full satisfaction for such services, payment in accordance with the Approved Fee Schedule.

6.2 Consultant shall submit to City an invoice, on a monthly basis or less frequently, for the services performed pursuant to this Agreement. Each invoice shall itemize the services rendered during the billing period and the amount due. City shall not withhold applicable taxes or other authorized deductions from payments made to Consultant.

6.3 Payments for any services requested by City and not included in the Scope of Services shall be made to Consultant by City on a time-and-materials basis using Consultant's standard fee schedule. Consultant shall be entitled to increase the

fees in this fee schedule at such time as it increases its fees for its clients generally; provided, however, in no event shall Consultant be entitled to increase fees for services rendered before the thirtieth day after Consultant notifies City in writing of an increase in that fee schedule.

7. OWNERSHIP OF WRITTEN PRODUCTS

All reports, documents or other written material ("written products" herein) developed by Consultant in the performance of this Agreement shall be and remain the property of City without restriction or limitation upon its use or dissemination by City. Consultant may take and retain copies of such written products as desired, but no such written products shall be the subject of a copyright application by Consultant.

8. RELATIONSHIP OF PARTIES

Consultant is, and shall at all times remain as to City, a wholly independent contractor. Consultant shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise to act on behalf of City as an agent. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not represent that it is, or that any of its agents or employees are, in any manner employees of City.

9. CONFIDENTIALITY

All data, documents, discussion, or other information developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Consultant without prior written consent by City. City shall grant such consent if disclosure is legally required. Upon request, all City data shall be returned to City upon the termination or expiration of this Agreement.

10. INDEMNIFICATION

10.1 The parties agree that City, its officers, agents, employees and volunteers should, to the fullest extent permitted by law, be protected from any and all loss, injury, damage, claim, lawsuit, cost, expense, attorneys' fees, litigation costs, or any other cost arising out of or in any way related to the performance of this Agreement. Accordingly, the provisions of this indemnity provision are intended by the parties to be interpreted and construed to provide the City with the fullest protection possible under the law. Consultant acknowledges that City would not enter into this Agreement in the absence of Consultant's commitment to indemnify and protect City as set forth herein.

10.2 To the fullest extent permitted by law, Consultant shall indemnify, hold harmless, and when the City requests with respect to a claim provide a deposit for the defense of, and defend City, its officers, agents, employees and volunteers from and against any and all claims and losses, costs or expenses for any damage due to

death or injury to any person, whether physical, emotional, consequential or otherwise, and injury to any property arising out of or in connection with Consultant's alleged negligence, recklessness or willful misconduct or other wrongful acts, errors or omissions of Consultant or any of its officers, employees, servants, agents, or subcontractors, or anyone directly or indirectly employed by either Consultant or its subcontractors, in the performance of this Agreement or its failure to comply with any of its obligations contained in this Agreement, except such loss or damage as is caused by the sole active negligence or willful misconduct of the City. Such costs and expenses shall include reasonable attorneys' fees due to counsel of City's choice, expert fees and all other costs and fees of litigation.

10.3 City shall have the right to offset against any compensation due Consultant under this Agreement any amount due City from Consultant as a result of Consultant's failure to pay City promptly any indemnification arising under this Section 10 and any amount due City from Consultant arising from Consultant's failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.

10.4 The obligations of Consultant under this Section 10 are not limited by the provisions of any workers' compensation act or similar act. Consultant expressly waives its statutory immunity under such statutes or laws as to City, its officers, agents, employees and volunteers.

10.5 Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this Section 10 from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. If Consultant fails to obtain such indemnity obligations from others as required herein, Consultant agrees to be fully responsible and indemnify, hold harmless and defend City, its officers, agents, employees and volunteers from and against any and all claims and losses, costs or expenses for any damage due to death or injury to any person and injury to any property resulting from any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of Consultant's subcontractors or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys' fees incurred by counsel of City's choice.

10.6 City does not, and shall not, waive any rights that it may possess against Consultant because of the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to this Agreement. This hold harmless and indemnification provision shall apply regardless of whether or not any insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost or expense.

11. INSURANCE

11.1 During the term of this Agreement, Consultant shall carry, maintain, and keep in full force and effect insurance against claims for death or injuries to persons or damages to property that may arise from or in connection with Consultant's performance of this Agreement. Such insurance shall be of the types and in the amounts as set forth below:

11.1.1 Comprehensive General Liability Insurance with coverage limits of not less than One Million Dollars ($1,000,000) including products and operations hazard, contractual insurance, broad form property damage, independent consultants, personal injury, underground hazard, and explosion and collapse hazard where applicable.

11.1.2 Automobile Liability Insurance for vehicles used in connection with the performance of this Agreement with minimum limits of One Million Dollars ($1,000,000) per claimant and One Million dollars ($1,000,000) per incident.

11.1.3 Worker's Compensation insurance as required by the laws of the State of California.

11.1.4 Professional Errors and Omissions Insurance with coverage limits of not less than One Million Dollars ($1,000,000).

11.2 Consultant shall require each of its subcontractors to maintain insurance coverage that meets all of the requirements of this Agreement.

11.3 The policy or policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least A: VII in the latest edition of Best's Insurance Guide.

11.4 Consultant agrees that if it does not keep the aforesaid insurance in full force and effect, City may either (i) immediately terminate this Agreement; or (ii) take out the necessary insurance and pay the premium thereon at Consultant's expense.

11.5 At all times during the term of this Agreement, Consultant shall maintain on file with City's Risk Manager a certificate or certificates of insurance showing that the aforesaid policies are in effect in the required amounts and naming the City and its officers, employees, agents and volunteers as additional insureds. Consultant shall, prior to commencement of work under this Agreement, file with City's Risk Manager such certificate(s).

11.6 Consultant shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Such proof will be furnished at least two weeks prior to the expiration of the coverages.

11.7 The general liability and automobile policies of insurance required by this Agreement shall contain an endorsement naming City and its officers, employees,

agents and volunteers as additional insureds. All of the policies required under this Agreement shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty days' prior written notice to City. Consultant agrees to require its insurer to modify the certificates of insurance to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word "endeavor" with regard to any notice provisions.

11.8 The insurance provided by Consultant shall be primary to any coverage available to City. Any insurance or self-insurance maintained by City and/or its officers, employees, agents or volunteers, shall be in excess of Consultant's insurance and shall not contribute with it.

11.9 All insurance coverage provided pursuant to this Agreement shall not prohibit Consultant, and Consultant's employees, agents or subcontractors, from waiving the right of subrogation prior to a loss. Consultant hereby waives all rights of subrogation against the City.

11.10 Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of City, Consultant shall either reduce or eliminate the deductibles or self-insured retentions with respect to City, or Consultant shall procure a bond in the amount of the deductible or self-insured retention to guarantee payment of losses and expenses.

11.11 Procurement of insurance by Consultant shall not be construed as a limitation of Consultant's liability or as full performance of Consultant's duties to indemnify, hold harmless and defend under Section 10 of this Agreement.

12. MUTUAL COOPERATION

12.1 City shall provide Consultant with all pertinent data, documents and other requested information as is reasonably available for the proper performance of Consultant's services under this Agreement.

12.2 If any claim or action is brought against City relating to Consultant's performance in connection with this Agreement, Consultant shall render any reasonable assistance that City may require in the defense of that claim or action.

13. RECORDS AND INSPECTIONS

Consultant shall maintain full and accurate records with respect to all matters covered under this Agreement for a period of three years after the expiration or termination of this Agreement. City shall have the right to access and examine such records, without charge, during

normal business hours. City shall further have the right to audit such records, to make transcripts therefrom and to inspect all program data, documents, proceedings, and activities.

14. PERMITS AND APPROVALS

Consultant shall obtain, at its sole cost and expense, all permits and regulatory approvals necessary for Consultant's performance of this Agreement. This includes, but shall not be limited to, professional licenses, encroachment permits and building and safety permits and inspections.

15. NOTICES

Any notices, bills, invoices, or reports required by this Agreement shall be deemed received on: (i) the day of delivery if delivered by hand, facsimile or overnight courier service during Consultant's and City's regular business hours; or (ii) on the third business day following deposit in the United States mail if delivered by mail, postage prepaid, to the addresses listed below (or to such other addresses as the parties may, from time to time, designate in writing).

If to City

City of Los Alamitos
3191 Katella Avenue
Los Alamitos, CA 90720
Telephone: (562) 431-3538
Facsimile: (562) 493-0678

If to Consultant:

Midori Gardens
3231 S. Main Street
Santa Ana, CA 92707
Telephone: (714) 751-8792
Facsimile: (714) 751-4167

With courtesy copy to:
Cary S. Reisman
Los Alamitos City Attorney
Wallin, Kress, Reisman & Kranitz, LLP
2800 Twenty-Eight Street, Suite 315
Santa Monica, CA 90405-6201
Telephone: (310) 450-9582 x333
Facsimile: (310) 450-0506

16. SURVIVING COVENANTS

The parties agree that the covenants contained in Section 9, Section 10, Paragraph 12.2 and Section 13 of this Agreement shall survive the expiration or termination of this Agreement.

17. TERMINATION

17.1. City may terminate this Agreement for any reason on five calendar days' written notice to Consultant. Consultant may terminate this Agreement for any reason on

thirty calendar days' written notice to City. Consultant agrees to cease all work under this Agreement on or before the effective date of any notice of termination. All City data, documents, objects, materials or other tangible things shall be returned to City upon the termination or expiration of this Agreement.

17.2 If City terminates this Agreement due to no fault or failure of performance by Consultant, then Consultant shall be paid based on the work satisfactorily performed at the time of termination. In no event shall Consultant be entitled to receive more than the amount that would be paid to Consultant for the full performance of the services required by this Agreement.

18. GENERAL PROVISIONS

18.1 Consultant shall not delegate, transfer, subcontract or assign its duties or rights hereunder, either in whole or in part, without City's prior written consent, and any attempt to do so shall be void and of no effect. City shall not be obligated or liable under this Agreement to any party other than Consultant.

18.2 In the performance of this Agreement, Consultant shall not discriminate against any employee, subcontractor, or applicant for employment because of race, color, creed, religion, sex, marital status, sexual orientation, national origin, ancestry, age, physical or mental disability, medical condition or any other unlawful basis.

18.3 The captions appearing at the commencement of the sections hereof, and in any paragraph thereof, are descriptive only and for convenience in reference to this Agreement. Should there be any conflict between such heading, and the section or paragraph thereof at the head of which it appears, the section or paragraph thereof, as the case may be, and not such heading, shall control and govern in the construction of this Agreement. Masculine or feminine pronouns shall be substituted for the neuter form and vice versa, and the plural shall be substituted for the singular form and vice versa, in any place or places herein in which the context requires such substitution(s).

18.4 The waiver by City or Consultant of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition herein contained. No term, covenant or condition of this Agreement shall be deemed to have been waived by City or Consultant unless in writing.

18.5 Consultant shall not be liable for any failure to perform if Consultant presents acceptable evidence, in City's sole judgment, that such failure was due to causes beyond the control and without the fault or negligence of Consultant.

18.6 Each right, power and remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise shall be cumulative and shall be in addition to every other right, power, or remedy provided for herein or now or hereafter

existing at law, in equity, by statute, or otherwise. The exercise, the commencement of the exercise, or the forbearance of the exercise by any party of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by such party of any of all of such other rights, powers or remedies. If legal action shall be necessary to enforce any term, covenant or condition herein contained, the party prevailing in such action, whether reduced to judgment or not, shall be entitled to its reasonable court costs, including accountants' fees, if any, and attorneys' fees expended in such action. The venue for any litigation shall be Los Angeles County, California and Consultant hereby consents to jurisdiction in Los Angeles County for purposes of resolving any dispute or enforcing any obligation arising under this Agreement.

18.7 If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then such term or provision shall be amended to, and solely to, the extent necessary to cure such invalidity or unenforceability, and in its amended form shall be enforceable. In such event, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

18.8 This Agreement shall be governed and construed in accordance with the laws of the State of California.

18.9 All documents referenced as exhibits in this Agreement are hereby incorporated into this Agreement. In the event of any material discrepancy between the express provisions of this Agreement and the provisions of any document incorporated herein by reference, the provisions of this Agreement shall prevail. This instrument contains the entire Agreement between City and Consultant with respect to the transactions contemplated herein. No other prior oral or written agreements are binding upon the parties. Amendments hereto or deviations herefrom shall be effective and binding only if made in writing and executed by City and Consultant.

18.10 This Agreement is not subject to the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., or California Code of Regulations, Title 8, Section 16000, et seq. ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects.

TO EFFECTUATE THIS AGREEMENT, the parties have caused their duly authorized representatives to execute this Agreement on the dates set forth below.

"City"
City of Los Alamitos

By _____
Bret M. Plumlee, City Manager

Date: 12-16-14

"Consultant"
Midori Gardens

By: _____
Naga Hamamoto, President

Date: 11/21/14

By: _____
Al Gamatero, Vice President

Date: 11/21/14

Attest:

By _____
Windmera Quintanar, CMC, City Clerk

Date: 12/16/14

Approved as to form:

By _____
Cary S. Reisman, City Attorney

Date: 12/15/14