



3.6

GENERAL SERVICES
DEPARTMENT

SOLID WASTE
DIVISION

CITY OF SACRAMENTO
CALIFORNIA

2812 MEADOWVIEW ROAD
BUILDING 1
SACRAMENTO, CA 95832

(916) 808-4932
FAX (916) 808-4999

July 20, 2004

City Council
Sacramento, California

Honorable Members in Session:

SUBJECT: APPROVAL OF A CONTRACT FOR PAYMENT FOR GREEN WASTE PROCESSING SERVICES RENDERED BY GROVER LANDSCAPE SERVICES, INC. FOR THE CITY OF SACRAMENTO DURING THE MONTHS OF MARCH, APRIL, MAY AND JUNE 2004

LOCATION AND COUNCIL DISTRICT: Citywide

RECOMMENDATION:

This report recommends adopting the attached resolution authorizing the City Manager to execute a Nonprofessional Services Agreement with Grover Landscape Services, Inc. in the amount of \$252,402 for green waste services provided to the City of Sacramento during the months of March, April, May and June 2004.

CONTACT PERSON: Marty Strauss, Integrated Waste Planning Superintendent, 808-4934
G. Harold Duffey, Integrated Waste General Manager, 808-4932

FOR COUNCIL MEETING OF: August 31, 2004

SUMMARY:

On March 9, 1999, the City Council approved City Agreement No. 99-037 with Grover Landscape Services, Inc. to process 30,000 to 35,000 tons of green waste annually. The agreement provided that the City would pay \$17 per ton for material processed, not to exceed a total sum of \$850,000. The annual volume of material processed under this contract has increased to 50,374 tons of material at an adjusted rate of \$18 per ton. Therefore, the annual amount needed to fully fund the contract in its last year was approximately \$906,731.

City Council
Approval of Green Waste Processing Services Contract with Grover Landscape Services, Inc.
for the Months of March, April, May and June 2004
July 20, 2004

COMMITTEE/COMMISSION ACTION: None.

BACKGROUND INFORMATION:

On March 9, 1999 the City of Sacramento entered into City Agreement No. 99-037 with Grover Landscape Services, Inc. to provide green waste processing services to the City of Sacramento until June 30, 1999. The agreement (Attachment 1) allowed both parties to mutually consent to annual renewals, but not beyond five years from the date of the contract. Solid Waste Division staff used June 30, 2004 as the contract termination date. However, the contract with Grover Landscape Services, Inc. expired on March 9, 2004. By the time staff realized the error, Grover had been paid \$195,672, and an additional \$56,731 is owed for services rendered. In order to pay for the services provided beyond the expiration of the agreement term, staff is recommending approval of a new agreement authorizing payment for the services rendered.

It is recommended that the City Council authorize the City Manager to execute the attached Nonprofessional Services Agreement (Attachment 2) to provide contractual authorization for the total amount of payments already made after the agreement term expired, and payment of the contractor's remaining invoices in the amount of \$56,731. Although this is an unusual situation, staff believes that it is appropriate and in the City's best interests to authorize these payments, since the cost of green waste processing is a necessary component of the City's garden refuse collection program, and the contractor incurred costs to provide this necessary service based on its mutual understanding with City staff that the term of the prior agreement extended through June 30, 2004.

FINANCIAL CONSIDERATIONS:

There are adequate funds in the current 2004/2005 Solid Waste Division Operating Budget to pay the outstanding amount of \$56,731.

ENVIRONMENTAL CONSIDERATIONS:

Approval of the agreement authorizing payment for green waste processing services already performed has no potential for causing a significant effect on the environment, and therefore is not subject to the California Environmental Quality Act (CEQA).

POLICY CONSIDERATIONS:

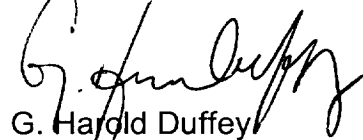
The proposed City Council action is consistent with the City's Strategic Plan goal to promote and support economic vitality. Staff recommendations are consistent with prior Council approval of the contract for services with Grover Landscape Services, Inc.

City Council
Approval of Green Waste Processing Services Contract with Grover Landscape Services, Inc.
for the Months of March, April, May and June 2004
July 20, 2004

ESBD CONSIDERATIONS:

No new services are being procured by approval of this item.

Respectfully submitted,



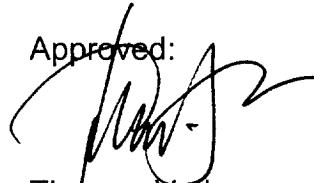
G. Harold Duffey
Integrated Waste General Manager

RECOMMENDATION APPROVED:



ROBERT P. THOMAS
City Manager

Approved:



Thomas V. Lee
Deputy City Manager/
Interim General Services Director

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City of Sacramento
Public Works Department

2812 Meadowview Road
Sacramento, CA 95832

Solid Waste Division

(916) 433-4900
(916) 433-4999 fax

June 20, 2003

Mark Grover
Grover Landscape Services, Inc.
2825 Kierman Ave.
Modesto, CA 95356

RE: Renewal of City of Sacramento Agreement #99-037

Dear Mr. Grover:

We wish to renew the City of Sacramento Agreement #99-037, dated March 9, 1999 with Grover Landscape Services, Inc. for the purpose of processing and diversion of 30,000 to 35,000 of City collected green waste. This contract period will be from July 1, 2003 through June 30, 2004. Exhibit A "Renewal of Agreement", states ". . . If mutually agreeable to both parties, the agreement may be extended on a year to year basis; however, in no case shall this agreement extend beyond five (5) years from the date of award of the original agreement."

If you concur, please sign below and return to:

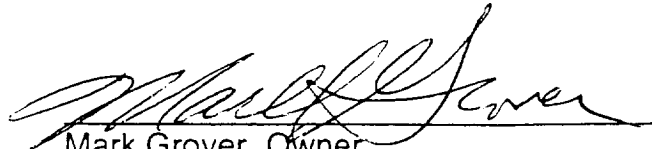
Colleen Laubinger
City of Sacramento
Solid Waste Division
2812 Meadowview Road
Sacramento, CA 95832

Thank you for your attention to this matter.

Respectfully,

Concurrence:


G. Harold Duffey
Integrated Waste General Manager
City of Sacramento


Mark Grover, Owner
Grover Landscape Services, Inc.

CITY
AGREEMENT NO.

99-037-3

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PROJECT #: Green Waste Contract
 PROJECT NAME: Grover Landscape Services, Inc.
 DEPARTMENT: General Services
 DIVISION: Solid Waste

CITY OF SACRAMENTO

NONPROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made at Sacramento, California, as of _____, by and between the **CITY OF SACRAMENTO**, a municipal corporation ("CITY"), and

Grover Landscaping Services, Inc.
 2825 Kierman Avenue
 Modesto, CA 95356
 (209) 545-4401

("CONTRACTOR"), who agree as follows:

1. **Services.** Subject to the terms and conditions set forth in this Agreement, CONTRACTOR shall provide to CITY the services described in Exhibit A. CONTRACTOR shall provide said services at the time, place, and in the manner specified in Exhibit A. CONTRACTOR shall not be compensated for services outside the scope of Exhibit A unless prior to the commencement of such services: (a) CONTRACTOR notifies CITY and CITY agrees that such services are outside the scope of Exhibit A; (b) CONTRACTOR estimates the additional compensation required for these additional services; and (c) CITY, after notice, approves in writing a Supplemental Agreement specifying the additional services and amount of compensation therefore. CITY shall have no obligations whatsoever under this Agreement and/or any Supplemental Agreement, unless and until this Agreement or any Supplemental Agreement is approved by the Sacramento City Manager or the City Manager's authorized designee, or by the Sacramento City Council, as required by the Sacramento City Code.
2. **Payment.** CITY shall pay CONTRACTOR for services rendered pursuant to this Agreement at the times and in the manner set forth in Exhibit B. The payments specified in Exhibit B shall be the only payments to be made to CONTRACTOR for the services rendered pursuant to this Agreement unless pursuant to Section 1, above, CITY approves additional compensation for additional services. CONTRACTOR shall submit all billings for said services to CITY in the manner specified in Exhibit B, or, if not specified in Exhibit B, according to the usual and customary procedures and practices which CONTRACTOR uses for billing clients similar to CITY.
3. **Facilities and Equipment.** Except as set forth in Exhibit C, CONTRACTOR shall, at its sole cost and expense, furnish all facilities and equipment, which may be required for furnishing services pursuant to this Agreement. CITY shall furnish to CONTRACTOR only the facilities and equipment listed in Exhibit C according to any terms and conditions set forth in Exhibit C.

- 4. **General Provisions.** The General Provisions set forth in Exhibit D, which include indemnity and insurance requirements, are part of this Agreement. In the event of any conflict between the General Provisions and any terms or conditions of any document prepared or provided by CONTRACTOR and made a part of this Agreement, including without limitation any document relating to the scope of services or payment therefore, the General Provisions shall control over said terms or conditions.
- 5. **CITY Representative.** The CITY Representative specified in Exhibit A, or the Representative's designee, shall administer this Agreement for CITY.
- 6. **Authority.** The person signing this Agreement for CONTRACTOR hereby represents and warrants that he/she is fully authorized to sign this Agreement on behalf of CONTRACTOR and to bind CONTRACTOR to the performance of its obligations hereunder.
- 7. **Exhibits.** All exhibits referred to herein are attached hereto and are by this reference incorporated as if set forth fully herein.

Executed as of the day and year first above stated.

CITY OF SACRAMENTO
A Municipal Corporation

By _____
Robert P. Thomas, City Manager
(Or Authorized Designee)

APPROVED TO AS FORM:

City Attorney

ATTEST:

City Clerk

Attachments

- Exhibit A - Scope of Service
- Exhibit B - Fee Schedule/Manner of Payment
- Exhibit C - Facilities/Equipment Provided by CITY
- Exhibit D - General Provisions

CONTRACTOR:

NAME OF FIRM

Federal I.D. No.

State I.D. No.

City of Sacramento Business Op. Tax Cert. No.

TYPE OF BUSINESS ENTITY (*check one*):

- Individual/Sole Proprietor
- Partnership
- Corporation
- Limited Liability Company
- Other (*please specify:* _____)

Signature of Authorized Person

Title

Additional Signature (*if required*)

Title

EXHIBIT A

CONTRACTOR AND PROFESSIONAL SERVICES AGREEMENT

SCOPE OF SERVICES

1. Representatives.

The CITY Representative for this Agreement is:

*Martin S. Strauss, IWPS
City of Sacramento Department of General Services
Solid Waste Division
Sacramento, CA 95832
Telephone (916) 808-4934
Fax (916) 433-4999
mstrauss@cityofsacramento.org*

All CONTRACTOR questions pertaining to this Agreement shall be referred to the CITY Representative or the Representative's designee.

The CONTRACTOR Representative for this Agreement is:

*Mark Grover, Owner
Grover Landscaping Services, Inc.
2825 Kierman Avenue
Modesto, CA 95356
(209) 545-4401*

All CITY questions pertaining to this Agreement shall be referred to the CONTRACTOR Representative. All correspondence to CONTRACTOR shall be addressed to the address set forth on page one of this Agreement. Unless otherwise provided in this Agreement, all correspondence to the CITY shall be addressed to the CITY Representative.

- 2. Professional Liability Insurance.** Professional Liability (Errors and Omissions) insurance is ___ is not [check one] required for this Agreement. (See Exhibit D, Section 11, for complete insurance requirements.)
- 3. Scope of Services.** [describe services to be provided here, or, if scope of services is described in an attachment, label the attachment "Attachment 1 to Exhibit A" and include the following sentence:]

The Scope of Services to be provided are the same as those described in Agreement 99-037, dated March 9, 1999 and approved by the City Council on that date.

4. **Time of Performance.** The services described herein shall be provided during the period, or in accordance with the schedule, described below: *[identify performance period or schedule; may be done by reference to Section 3, above, if the performance period/schedule is specified in the scope of work]*

The services performed shall have been performed between the period of March 1, 2004 through June 30, 2004.

EXHIBIT B

CONTRACTOR AND PROFESSIONAL SERVICES AGREEMENT

FEE SCHEDULE/MANNER OF PAYMENT

1. **CONTRACTOR'S Compensation.** The total of all fees paid to the CONTRACTOR for the performance of all services set forth in Exhibit A, including normal revisions (hereafter the "Services"), and for all authorized Reimbursable Expenses, shall not exceed the total sum of \$252,402.00.
2. **Appropriate Billable Hourly or Daily Rates.**
 - A. Unless payment under this Agreement will be made on a flat fee or lump sum basis, CONTRACTOR shall be paid the hourly or daily rates set forth in Attachment 1 to Exhibit B, attached hereto and incorporated herein. [*Attach list of the hourly or daily rates, labeled "Attachment 1 to Exhibit B".*]
 - B. If payment will be made on a flat fee or lump sum basis, payment shall be made to CONTRACTOR as follows: [*If payment will not be made on the basis of hourly/daily billable rates, describe basis of payment here.*]
3. **CONTRACTOR'S Reimbursable Expenses.** Reimbursable Expenses shall be limited to actual expenditures of CONTRACTOR for expenses that are necessary for the proper completion of the Services and shall only be payable if specifically authorized in advance by CITY.
4. **Payments to CONTRACTOR.**
 - A. Payments to CONTRACTOR shall be made within a reasonable time after receipt of CONTRACTOR'S invoice, said payments to be made in proportion to services performed or as otherwise specified in Section 2.B., above. CONTRACTOR may request payment on a monthly basis. CONTRACTOR shall be responsible for the cost of supplying all documentation necessary to verify the monthly billings to the satisfaction of CITY.
 - B. All invoices submitted by CONTRACTOR shall contain the following information:
 1. Job Name
 2. Description of services billed under this invoice, and overall status of project
 3. Date of Invoice Issuance
 4. Sequential Invoice Number

5. CITY'S Purchase Order Number
 6. Total Contract Amount
 7. Amount of this Invoice (Itemize all Reimbursable Expenses)
 8. Total Billed to Date
 9. Total Remaining on Contract
 10. Updated project schedule. This shall identify those steps that shall be taken to bring the project back on schedule if it is behind schedule.
- C. Items shall be separated into Services and Reimbursable Expenses. Billings that do not conform to the format outlined above shall be returned to CONTRACTOR for correction. CITY shall not be responsible for delays in payment to CONTRACTOR resulting from CONTRACTOR'S failure to comply with the invoice format described below.
- D. Requests for payment shall be sent to:

*City of Sacramento, Solid Waste Division
2812 Meadowview Road
Sacramento, CA 95832
Telephone (916) 808-4934
Fax (916) 433-4999
Attn: Martin S. Strauss, IWPS*

5. **Additional Services.** Additional Services are those services related to the scope of services of CONTRACTOR set forth in Exhibit A but not anticipated at the time of execution of this Agreement. Additional Services shall be provided only when a Supplemental Agreement authorizing such Additional Services is approved by CITY in accordance with CITY'S Supplemental Agreement procedures. CITY reserves the right to perform any Additional Services with its own staff or to retain other CONTRACTORS to perform said Additional Services.
6. **Accounting Records of CONTRACTOR.** CONTRACTOR shall maintain for three (3) years after completing of all Services and Additional Services hereunder, all records under this Agreement, including, but not limited to, records of CONTRACTOR'S direct salary costs for all Services and Additional Services performed under this Agreement and records of CONTRACTOR'S Reimbursable Expenses, in accordance with generally accepted accounting practices, and shall keep such records available for inspection and audit by representatives of the Department of Finance of CITY at a mutually convenient time.
7. **Taxes.** CONTRACTOR shall pay, when and as due, any and all taxes incurred as a result of CONTRACTOR'S compensation hereunder, including estimated taxes, and shall provide CITY with proof of such payment upon request.

8. CONTRACTOR hereby agrees to indemnify CITY for any claims, losses, costs, fees, liabilities, damages or injuries suffered by CITY arising out of CONTRACTOR'S breach of this Section 7.

EXHIBIT C
CONTRACTOR AND PROFESSIONAL SERVICES AGREEMENT
FACILITIES AND EQUIPMENT TO BE PROVIDED BY CITY

CITY shall X Not furnish any facilities or equipment for this Agreement.

EXHIBIT D
CONTRACTOR AND PROFESSIONAL SERVICES AGREEMENT
GENERAL PROVISIONS

1. Independent Contractor.

- A. It is understood and agreed that CONTRACTOR (including CONTRACTOR'S employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto for any purpose whatsoever. Neither CONTRACTOR nor CONTRACTOR'S assigned personnel shall be entitled to any benefits payable to employees of CITY. CITY is not required to make any deductions or withholdings from the compensation payable to CONTRACTOR under the provisions of this Agreement, and CONTRACTOR shall be issued a Form 1099 for its services hereunder. As an independent contractor, CONTRACTOR hereby agrees to indemnify and hold CITY harmless from any and all claims that may be made against CITY based upon any contention by any of CONTRACTOR 'S employees or by any third party, including but not limited to any state or federal agency, that an employer-employee relationship or a substitute therefore exists for any purpose whatsoever by reason of this Agreement or by reason of the nature and/or performance of any Services under this Agreement. (As used in this Exhibit D, the term "Services" shall include both Services and Additional Services as such terms are defined elsewhere in this Agreement.)
- B. It is further understood and agreed by the parties hereto that CONTRACTOR, in the performance of its obligations hereunder, is subject to the control and direction of CITY as to the designation of tasks to be performed and the results to be accomplished by the Services agreed to be rendered and performed under this Agreement, but not as to the means, methods, or sequence used by CONTRACTOR for accomplishing such results. TO the extent that CONTRACTOR obtains permission to, and does, use CITY facilities, space, equipment or support services in the performance of this Agreement, this use shall be at the CONTRACTOR'S sole discretion based on the CONTRACTOR'S determination that such use will promote CONTRACTOR'S efficiency and effectiveness. Except as may be specifically provided elsewhere in this Agreement, the CITY does not require that CONTRACTOR use CITY facilities, equipment or support services or work in CITY locations in the performance of this Agreement.

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- C. If, in the performance of this Agreement, any third persons are employed by CONTRACTOR, such persons shall be entirely and exclusively under the direction, supervision, and control of CONTRACTOR. Except as may be specifically provided elsewhere in this Agreement, all terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by CONTRACTOR. It is further understood and agreed that CONTRACTOR shall issue W-2 or 1099 Forms for income and employment tax purposes, for all of CONTRACTOR'S assigned personnel and subcontractors.
- D. The provisions of this Section 1 shall survive any expiration or termination of this Agreement. Nothing in this Agreement shall be construed as to create an exclusive relationship between CITY and CONTRACTOR. CONTRACTOR may represent, perform services for, or be employed by such additional persons or companies as CONTRACTOR sees fit provided that CONTRACTOR does not violate the provisions of Section 5, below.
2. **Licenses; Permits, Etc.** CONTRACTOR represents and warrants that CONTRACTOR has all licenses, permits, City Business Operations Tax Certificate, qualifications, and approvals of whatsoever nature which are legally required for CONTRACTOR to practice its profession or provide any services under the Agreement. CONTRACTOR represents and warrants that CONTRACTOR shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, and approvals which are legally required for CONTRACTOR to practice its profession or provide such Services. Without limiting the generality of the foregoing, if CONTRACTOR is an out-of-state corporation, CONTRACTOR warrants and represents that it possesses a valid certificate of qualification to transact business in the State of California issued by the California Secretary of State pursuant to Section 2105 of the California Corporations Code.
3. **Time.** CONTRACTOR shall devote such time to the performance of Services pursuant to this Agreement as may be reasonably necessary for satisfactory performance of CONTRACTOR'S obligations under this Agreement. Neither party shall be considered in default of this Agreement, nor be entitled to additional compensation, to the extent performance is prevented or delayed by any cause, present or future, which is beyond the reasonable control of the party.
4. **CONTRACTOR Not Agent.** Except as CITY may specify in writing, CONTRACTOR and CONTRACTOR'S personnel shall have no authority, express or implied, to act on behalf of CITY in any capacity whatsoever as an agent. CONTRACTOR and CONTRACTOR'S personnel shall have no authority, express or implied, to bind CITY to any obligations whatsoever.

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5. **Conflicts of Interest.** CONTRACTOR covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, that would conflict in any manner with the interests of CITY or which would in any way hinder CONTRACTOR'S performance of Services under this Agreement. CONTRACTOR further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor, without the written consent of CITY. CONTRACTOR agrees to avoid conflicts of interest or the appearance of any conflicts of interest with the interests of CITY at all times during the performance of this Agreement.

6. **Confidentiality of CITY Information.** During performance of this Agreement, CONTRACTOR may gain access to and use CITY information regarding inventions, machinery, products, prices, apparatus, costs, discounts, future plans, business affairs, governmental affairs, processes, trade secrets, technical matters, customer lists, product design, copyright, data, and other vital information (hereafter collectively referred to as "City Information") which are valuable, special and unique assets of the CITY. CONTRACTOR agrees to protect all City Information and treat it as strictly confidential, and further agrees that CONTRACTOR shall not at any time, either directly or indirectly, divulge, disclose or communicate in any manner any City Information to any third party without the prior written consent of CITY. A violation by CONTRACTOR of this Section 6 shall be a material violation of this Agreement and shall justify legal and/or equitable relief.

7. **CONTRACTOR Information.**
 - A. CITY shall have full ownership and control, including ownership of any copyrights, of all information prepared, produced, or provided by CONTRACTOR pursuant to this Agreement. In this Agreement, the term "information" shall be construed to mean and include: any and all work product, submittals, reports, plans, specifications, and other deliverables consisting of documents, writings, handwritings, typewriting, printing, photostating, photographing, computer models, and any other computerized data and every other means of recording any form of information, communications, or representation, including letters, works, pictures, drawings, sounds, or symbols, or any combination thereof. CONTRACTOR shall not be responsible for any unauthorized modification or use of such information for other than its intended purpose by CITY.

 - B. CONTRACTOR shall fully defend, indemnify and hold harmless CITY, its officers and employees, and each and every one of them, from and against any and all claims, actions, lawsuits or other proceedings alleging that all or any part of the information prepared, produced, or provided by CONTRACTOR pursuant to this Agreement infringes upon any third party's trademark, trade name, copyright, patent or other

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intellectual property rights. CITY shall make reasonable efforts to notify CONTRACTOR not later than ten (10) days after CITY is served with any such claim, action, lawsuit or other proceeding, provided that CITY'S failure to provide such notice within such time period shall not relieve CONTRACTOR of its obligations hereunder, which shall survive any termination or expiration of this Agreement.

- C. All proprietary and other information received from CONTRACTOR by CITY, whether received in connection with CONTRACTOR'S proposal to CITY or in connection with any Services performed by CONTRACTOR, will be disclosed upon receipt of a request for disclosure, pursuant to the California Public Records Act; provided, however, that, if any information is set apart and clearly marked "trade secret" when it is provided to CITY, CITY shall give notice to CONTRACTOR of any request for the disclosure of such information. The CONTRACTOR shall then have five (5) days from the date it receives such notice to enter into an agreement with the CITY, satisfactory to the City Attorney, providing for the defense of, and complete indemnification and reimbursement for all costs (including plaintiff's attorney fees) incurred by CITY in any legal action to compel the disclosure of such information under the California Public Records Act. The CONTRACTOR shall have sole responsibility for defense of the actual "trade secret" designation of such information.
- D. The parties understand and agree that any failure by CONTRACTOR to respond to the notice provided by CITY and/or to enter into an agreement with CITY, in accordance with the provisions of subsection C, above, shall constitute a complete waiver by CONTRACTOR of any rights regarding the information designated "trade secret" by CONTRACTOR, and such information shall be disclosed by CITY pursuant to applicable procedures required by the Public Records Act.
8. **Standard of Performance.** CONTRACTOR shall perform all Services required pursuant to this Agreement in the manner and according to the standards currently observed by a competent practitioner of CONTRACTOR'S profession in California. All products of whatsoever nature which CONTRACTOR delivers to CITY pursuant to this Agreement shall be prepared in a professional manner and conform to the standards of quality normally observed by a person currently practicing in CONTRACTOR'S profession. CONTRACTOR shall assign only competent personnel to perform

Services pursuant to this Agreement. CONTRACTOR shall notify CITY in writing of any changes in CONTRACTOR'S staff assigned to perform the Services required under this Agreement, prior to any such performance. In the event that CITY, at any time during the term of this Agreement, desires the removal of any person or persons assigned by CONTRACTOR to perform Services pursuant to

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this Agreement, because CITY, in its sole discretion, determines that such person(s) is not performing in accordance with the standards required herein, CONTRACTOR shall remove such person(s) immediately upon receiving notice from CITY of the desire of CITY for the removal of such person(s).

9. Terms; Suspension; Termination.

- A. This Agreement shall become effective on the date that it is approved by both parties, and shall continue in effect until both parties have fully performed their respective obligations under this Agreement, unless sooner terminated as provided herein.
- B. CITY shall have the right at any time to temporarily suspend CONTRACTOR'S performance hereunder, in whole or in part, by giving a written notice of suspension to CONTRACTOR. If CITY gives such notice of suspension, CONTRACTOR shall immediately suspend its activities under this Agreement, as specified in such notice.
- C. CITY shall have the right to terminate this Agreement at any time by giving a written notice of termination to CONTRACTOR. If CITY gives such notice of termination, CONTRACTOR shall immediately cease rendering Services pursuant to this Agreement. If CITY terminates this Agreement:
 - 1. CONTRACTOR shall promptly deliver to CITY copies of all information prepared pursuant to this Agreement.
 - 2. CITY shall pay CONTRACTOR the reasonable value of Services rendered by CONTRACTOR prior to termination; provided, however, CITY shall not in any manner be liable for lost profits which might have been made by CONTRACTOR had the Agreement not been terminated or had CONTRACTOR completed the Services required by this Agreement. In this regard, CONTRACTOR shall furnish to CITY such financial information as in the judgment of the CITY is necessary for CITY to determine the reasonable value of the Services render by CONTRACTOR. The foregoing is cumulative and does not affect any right or remedy which CITY may have in law or equity.

10. Indemnity.

- A. Indemnity: CONTRACTOR shall fully indemnify and save harmless, CITY, its officers and employees, and each and every one of them, from and against all actions, damages, costs, liability, claims, losses, judgments, penalties and expenses of every type and description, including, but not limited to, any fees and/or costs reasonable incurred by CITY'S staff attorneys or outside attorneys and any fees and expenses incurred in enforcing this provision

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(hereafter collectively referred to as "Liabilities"), to which any or all of them may be subjected, to the extent such Liabilities are caused by or result from any negligent act or omission or willful misconduct of CONTRACTOR, its subCONTRACTORS, subcontractors or agents, and their respective officers and employees, in connection with the performance or nonperformance of this Agreement, whether or not the CITY, its officers or employees reviewed, accepted or approved any service or work product performed or provided by the CONTRACTOR, and whether or not such Liabilities are litigated, settled or reduced to judgment.

B. Obligation to Defend: CONTRACTOR shall, upon CITY'S request, defend at CONTRACTOR'S sole cost any action, claim, suit, cause of action or portion thereof which asserts or alleges Liabilities to the extent such Liabilities are caused by or result from any negligent act or omission or willful misconduct of CONTRACTOR, its sub-CONTRACTORS, subcontractors or agents, and their respective officers and employees, in connection with the performance or nonperformance of this Agreement, whether such action, claim, suit, cause of action or portion thereof is well founded or not.

C. Insurance Policies; Intellectual Property Claims: Except as may be expressly provided in this Section 10, the existence or acceptance by CITY of any of the insurance policies or coverages described in this Agreement shall not affect or limit any of CITY'S rights under this Section 10, nor shall the limits of such insurance limit the liability of CONTRACTOR hereunder. This Section 10 shall not apply to any intellectual property claims, actions, lawsuits or other proceedings subject to the provisions of Section 7.B., above. The provisions of this Section 10 shall survive any expiration or termination of this Agreement.

11. Insurance Requirements. During the entire term of this Agreement, CONTRACTOR shall maintain the following insurance.

- A. Minimum Scope of Insurance: Coverage should be at least as broad as:
- (1) Insurance Services Office Form No. CG 0001 (Commercial General Liability);
 - (2) Insurance Services Office Form No.: CA 0001 (Ed. 1/87) (Automobile Liability, Code "any auto");
 - (3) Workers' Compensation as required by the Labor Code of the State of California, and Employers' Liability Insurance;
 - (4) Professional Liability (Errors and Omissions) insurance against loss due to error, omission or malpractice if specifically required in the Scope of Services (Exhibit A).

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- B. Minimum Limits of Insurance: CONTRACTOR shall maintain limits no less than:
- (1) Commercial General Liability; \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage.
 - (2) Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.
 - (3) Workers' Compensation and Employers' Liability: Workers' compensation limits as required by the Labor Code of the State of California and Employers' Liability limits of \$1,000,000 per accident.
 - (4) Professional Liability (Errors and Omissions): \$1,000,000 combined single limit per occurrence if specifically required in the Scope of Services (Exhibit A).
- C. Deductibles and Self-Insured Retention's: Any deductibles or self-insured retentions must be declared to and approved by the CITY.
- D. Other Insurance Provisions: The policies are to contain, or be endorsed to contain, the following provisions:
- (1) General Liability and Automobile Liability Coverages:
 - (a) CITY, its officials, employees and volunteers shall be covered as insured as respects: liability arising out of activities performed by or on behalf of CONTRACTOR; products and completed operations of CONTRACTOR; premises owned, leased or used by CONTRACTOR. The coverage shall contain no special limitations on the scope of the protection afforded to CITY, its officials, employees or volunteers.
 - (b) CONTRACTOR'S insurance coverage shall be primary insurance as respects CITY, its officials, employees and volunteers. Any insurance or self-insurance maintained by CITY, its officials, employees or volunteers shall be in excess of CONTRACTOR'S insurance and shall not contribute with it.

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- (c) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to CITY, its officials, employees or volunteers.
 - (d) Coverage shall state that CONTRACTOR'S insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- (2) All Coverages:

Each insurance policy require by this Agreement shall be endorsed to state that coverages shall not be canceled except after thirty (30) days prior written notice has been given to CITY. In addition, CONTRACTOR agrees that it shall not reduce its coverage or limits on any such policy except after thirty (30) days prior written notice has been give to CITY and CITY approves the reduction in coverage or limits. CONTRACTOR further agrees that it shall not increase any deductibles or self-insured retentions on any such policy except after thirty (30) days prior written notice has been given to CITY and CITY approves such increase.

- E. Acceptability of Insurers: Insurance shall be placed with insurers with a Bests' rating of no less than A:VII. This requirement may, however, be waived in individual cases for Errors and Omissions Coverages only; provided, however, that in no event shall a carrier with a rating below B:IX be acceptable.
- F. Verification of Coverage: CONTRACTOR shall furnish CITY with certificates of insurance showing compliance with the above requirements and with original endorsements effecting all coverages required by this Agreement. The certificates and/or endorsements shall set forth a valid policy number for CITY, and shall indicate the Issue Date, Effective Date and Expiration Date. The certificates and endorsements for each insurance policy shall be signed by a person authorized by the insurer to bind coverage on its behalf. The certificates and endorsements shall be forwarded to the CITY representative named in Exhibit A.
- G. Payment Withhold: CITY shall withhold payments to CONTRACTOR if the certificates of insurance and endorsements required in subsection F, above, are canceled or CONTRACTOR otherwise ceases to be insured as required herein.

12. **Equal Employment Opportunity.** During the performance of this Agreement, CONTRACTOR, for itself, its assignees and successors in interest, agrees as follows:
- A. Compliance With Regulations: CONTRACTOR shall comply with the Executive Order 11246 entitled "Equal Opportunity in Federal Employment", as amended by Executive Order 11375 and 12086, and as supplemented in Department of Labor regulations (41 CFR Chapter 60), hereinafter collectively referred to as the "Regulations".
 - B. Nondiscrimination: CONTRACTOR, with regards to the work performed by it after award and prior to completion of the work pursuant to this Agreement, shall not discriminate on the ground of race, color, religion, sex, national origin, age, marital status, physical handicap or sexual orientation in selection and retention of subcontractors, including procurement of materials and leases of equipment. CONTRACTOR shall not participate either directly or indirectly in discrimination prohibited by the Regulations.
 - C. Solicitations for Subcontractors, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiations made by CONTRACTOR for work to be performed under any subcontract, including all procurement of materials or equipment, each potential subcontractor or supplier shall be notified by CONTRACTOR of CONTRACTOR'S obligation under this Agreement and the Regulations relative to nondiscrimination on the ground of race, color, religion, sex, national origin, age, marital status, physical handicap or sexual orientation.
 - D. Information and Reports: CONTRACTOR shall provide all information and reports required by the Regulations, or by any orders or instructions issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities a may be determined by the CITY to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of CONTRACTOR is in the exclusive possession of another who fails or refuses to furnish this information, CONTRACTOR shall so certify to the CITY, and shall set forth what efforts it has made to obtain the information.
 - E. Sanctions for Noncompliance: In the event of noncompliance by CONTRACTOR with the nondiscrimination provisions of this Agreement, the CITY shall impose such sanctions as it may determine to be appropriate including, but not limited to:

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- (1) Withholding of payments to CONTRACTOR under this Agreement until CONTRACTOR complies;
 - (2) Cancellation, termination, or suspension of the Agreement, in whole or in part.
- F. Incorporation of Provisions: CONTRACTOR shall include the provisions of subsections A through E, above, in every subcontract, including procurement of materials and leases of equipment, unless exempted by the Regulations, or by any order or instructions issued pursuant thereto. CONTRACTOR shall take such action with respect to any subcontract or procurement as the CITY may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, CONTRACTOR may request CITY to enter such litigation to protect the interests of CITY.
13. **Entire Agreement.** This document, including all Exhibits, contains the entire agreement between the parties and supersedes whatever oral or written understanding they may have had prior to the execution of this Agreement. No alteration to the terms of this Agreement shall be valid unless approved in writing by CONTRACTOR, and by CITY, in accordance with applicable provisions of the Sacramento City Code.
 14. **Severability.** If any portion of this Agreement or the application thereof to any person or circumstance shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and shall be enforced to the greatest extent permitted by law.
 15. **Waiver.** Neither CITY acceptance of, or payment for, any Service or Additional Service performed by CONTRACTOR, nor any waiver by either party of any default, breach or condition precedent, shall be construed as a waiver of any provision of this Agreement, nor as a waiver of any other default, breach or condition precedent or any other right hereunder.
 16. **Enforcement of Agreement.** This Agreement shall be governed, construed and enforced in accordance with the laws of the State of California. Venue of any litigation arising out of or connected with this Agreement shall lie exclusively in the state trial court or Federal District Court located in Sacramento County in the State of California, and the parties consent to jurisdiction over their persons and over the subject matter of any such litigation in such courts, and consent to service of process issued by such courts.
 17. **Assignment Prohibited.** The expertise and experience of CONTRACTOR are material considerations for this Agreement. CITY has a strong interest in the qualifications and capability of the persons and entities who will fulfill the obligations imposed on CONTRACTOR under this Agreement. In recognition of

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this interest, CONTRACTOR shall not assign any right or obligation pursuant to this Agreement without the written consent of the CITY. Any attempted or purported assignment without CITY'S written consent shall be void and of no effect.

18. **Binding Effect.** This Agreement shall be binding on the heirs, executors, administrators, successors and assigns of the parties, subject to the provisions of Section 17, above.

RESOLUTION NO. _____

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF _____

**RESOLUTION AUTHORIZING APPROVAL OF A CONTRACT WITH GROVER
LANDSCAPING SERVICES, INC., FOR PAYMENT FOR GREEN WASTE
PROCESSING SERVICES**

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SACRAMENTO THAT:

The City Manager is hereby authorized to execute a Nonprofessional Services Agreement with Grover Landscape Services, Inc. in the amount of \$252,402 for green waste processing services provided to the City during the months of March, April, May and June of 2004.

MAYOR

ATTEST:

CITY CLERK

FOR CITY CLERK USE ONLY

RESOLUTION NO.: _____

DATE ADOPTED: _____

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