

**SERVICE PROVIDER AGREEMENT
BY AND BETWEEN
THE CITY OF DESERT HOT SPRINGS
AND
CONSERVE LANDCARE, INC.**

THIS SERVICE PROVIDER AGREEMENT (hereinafter, the "Agreement") is made and entered into this 1st day of September, 2014, by and between the City of Desert Hot Springs, a municipal corporation located in the County of Riverside, State of California, hereinafter referred to as the "City," and Conserve LandCare, Inc., a California corporation, hereinafter referred to as "Service Provider."

RECITALS:

WHEREAS, the City desires to enter into an agreement for the cleaning and removal of storm debris on various roads and locations, located in the City of Desert Hot Springs (hereinafter, the "Services"); and

WHEREAS, the City desires to retain the services of a qualified service provider to provide the Services on an independent contractor's basis.

NOW THEREFORE, IN CONSIDERATION OF THE COVENANTS, CONDITIONS AND PROMISES CONTAINED HEREIN AND FOR SUCH OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED, THE PARTIES HERETO AGREE AS FOLLOWS:

Section 1. RECITALS

The Recitals set forth above are true and correct and are hereby incorporated into this Agreement by this reference, as though set forth in full herein.

Section 2. SCOPE OF SERVICES, EXTRA WORK

a. Service Provider shall perform the Services specifically described in the Scope of Services, attached hereto and incorporated herein by this reference as Exhibit "A." In the event any conflict exists between this Agreement minus the Scope of Services, on the one hand, and the Scope of Services, on the other hand, the former shall supersede.

b. At any time during the term of this Agreement, the City may request that Service Provider perform Extra Work. As used herein, "Extra Work" means any work which is determined by the City to be necessary for the proper completion of the Services, but which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Service Provider shall not perform, nor be compensated for, Extra Work, without written authorization from the City.

Section 3. TERM

Service Provider shall perform those services set forth in the Scope of Services during the term of this Agreement, which shall be effective as of September 1, 2014, and expire June 30, 2015.

Section 4. COMPENSATION

Service Provider shall be paid compensation not to exceed **One Hundred Fifty Nine Thousand Nine Hundred Thirty Dollars and No Cents (\$159,930.00)** for the services rendered by Service Provider pursuant to this Agreement.

Section 5. METHOD OF PAYMENT

a. Service Provider shall invoice the City, not more often than once a month, for the performance of the services under this Agreement in the amount agreed upon by the parties herein.

b. Service Provider shall be paid the amount specified in the invoice within thirty (30) days of receipt by the City, provided that the services reflected in the invoice were performed to the reasonable satisfaction of the City in accordance with the terms of this Agreement.

Section 6. INDEPENDENT CONTRACTOR'S STATUS

Service Provider shall at all times during the term of this Agreement perform the services described in this Agreement as an independent contractor, and hereby waives any claims for any compensation or benefits afforded to City employees and not to independent contractors.

Section 7. CIVIL CODE SECTION 1542 WAIVER

Service Provider expressly waives any and all rights and benefits conferred upon it by the provisions of section 1542 of the California Civil Code which reads as follows:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”

This waiver shall be effective as a bar to any and all actions, fees, damages, losses, claims, liabilities and demands of whatsoever character, nature and kind that are known or unknown, or suspected or unsuspected, including, without limitation, claims of entitlements under the California Public Employees' Retirement System ("CalPERS") that are only afforded to employees and not independent contractors. Service Provider further represents and warrants that it understands this waiver and that if it does not

understand this waiver, it shall seek the advice of a qualified attorney before executing this Agreement.

Initials

**Section 8. REPRESENTATIONS AND ACKNOWLEDGMENTS
REGARDING INDEPENDENT CONTRACTOR'S STATUS
OF SERVICE PROVIDER**

a. Service Provider represents and acknowledges the following:

(1) The City is not required to provide any training or legal counsel to Service Provider or its employees in order for Service Provider to perform the services described in this Agreement.

(2) Performance of the services described in this Agreement does not have to be integrated into the daily business operations of the City.

(3) The services described in this Agreement can be performed without the use of City equipment, materials, tools or facilities.

(4) Nothing in this Agreement shall be interpreted to imply that the City must maintain any contractual relationship with Service Provider on a continuing basis after termination of this Agreement.

(5) The City will not be requested or demanded to assume any liability for the direct payment of any salary, wage or other such compensation to any person employed by Service Provider to perform the services described in this Agreement.

(6) Service Provider shall not at any time or in any manner represent that it or any of its officers, employees, or agents are "employees" of the City.

b. The City represents and acknowledges the following:

(1) Service Provider is not required to comply with daily instructions from City staff with respect to when, where or how Service Provider must perform the services set forth in this Agreement.

(2) Service Provider is solely responsible for determining who, under the supervision or direction of Service Provider, will perform the services set forth in this Agreement.

(3) The City will not hire, supervise or pay any assistants working for Service Provider pursuant to this Agreement.

(4) Nothing in this Agreement shall be interpreted to imply that Service

Provider must maintain any contractual relationship with the City on a continuing basis after termination of this Agreement.

(5) Service Provider is not required to devote full time to the business operations of the City in order to perform the services set forth in this Agreement.

(6) Nothing in this Agreement shall be interpreted to preclude Service Provider from working for other persons or firms, provided that such work does not create a conflict of interest.

(7) Service Provider is not required to perform the services set forth in this Agreement in any particular order or sequence.

(8) It is the sole responsibility of Service Provider to set the hours in which Service Provider performs or plans to perform the services set forth in this Agreement.

Section 9. NOT AGENT OF THE CITY

a. Nothing contained in this Agreement shall be deemed, construed or represented by the City or Service Provider or by any third person to create the relationship of principal and agent.

b. Service Provider shall have no authority, express or implied, to act on behalf of the City in any capacity whatsoever as an agent, nor shall Service Provider have any authority, express or implied, to bind the City to any obligation whatsoever.

Section 10. WARRANTY

Service Provider warrants that all services will be performed in a competent, professional and satisfactory manner in accordance with the standards prevalent in the industry for such services.

Section 11. FAMILIARITY WITH WORK

a. By executing this Agreement, Service Provider warrants that (1) it has thoroughly investigated and considered the work to be performed, (2) it has investigated the issues, regarding the scope of services to be provided, (3) it has carefully considered how the work should be performed, and (4) it fully understands the facilities, difficulties and restrictions attending performance of the work under this Agreement.

b. Should Service Provider discover any latent or unknown conditions materially differing from those inherent in the work or as represented by the City, it shall immediately inform the City of such fact and shall not proceed except at Service Provider's risk until written instructions are received from the City Manager or his or her designee.

Section 12. EQUAL OPPORTUNITY EMPLOYMENT

Service Provider represents that it is an equal opportunity employer and shall not discriminate against any subcontractor, employee, or applicant ("person") for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age or sexual orientation. Unless otherwise permitted under the law, Service Provider shall not refuse to hire or employ any such person or refuse to select any such person for a training program leading to employment, or bar or discharge any such person from employment or from a training program leading to employment, or otherwise discriminate against any such person in compensation or in terms, conditions, or privileges of employment.

Section 13. CONFLICTS OF INTEREST

Service Provider covenants that it does not have any interest, nor shall it acquire an interest, directly or indirectly, which would conflict in any manner with the performance of Service Provider's services under this Agreement. In the event the City officially determines that Service Provider must disclose its financial interests by completing and filing a Fair Political Practices Commission Form 700, Statement of Economic Interests, Service Provider shall file the subject Form 700 with the City Clerk's Office pursuant to the written instructions provided by the Office of the City Clerk.

Section 14. COMPLIANCE WITH LAWS; LICENSING AND PERMIT REQUIREMENTS

a. Service Provider shall comply with all local, state and federal laws and regulations applicable to the services required hereunder, including any rule, regulation or bylaw governing the conduct or performance of Service Provider and/or its employees, officers, or board members.

b. Service Provider represents that it and all of its subcontractors, if any, have obtained and will maintain at all times during the term of this Agreement all professional and/or business licenses, certifications and/or permits necessary for performing the services described in this Agreement, including a City business license.

Section 15. INSURANCE REQUIREMENTS

a. Service Provider shall procure and maintain at its own expense, during the term of this Agreement, commercial general liability insurance of not less than Two Million Dollars (\$2,000,000) per occurrence, combined single limit coverage for bodily injury, personal injury, death, loss, and property damage associated with work contemplated in this Agreement. If a commercial general liability insurance form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general

aggregate limit shall be at least twice the required occurrence limit. Service Provider shall provide insurance on an occurrence, not claims-made basis. Service Provider acknowledges and agrees that, for purposes of clarification with the intention of avoiding gaps in coverage with any umbrella or excess insurance, personal and advertising injury coverage shall be triggered by an "offense" while bodily injury and property damage coverage shall be triggered by an "occurrence" during the policy period. The coverage required in this paragraph shall provide at least as much coverage as that provided by ISO form CG 00 01 12 07 or any updated form thereof.

b. Service Provider shall further procure and maintain at its own expense, until completion of performance and acceptance by the City, commercial vehicle liability insurance covering personal injury and property damage, of not less than One Million Dollars (\$1,000,000) combined single limit per occurrence and Two Million Dollars (\$2,000,000) in the aggregate, covering any vehicle utilized by Service Provider or its officers, employees, servants, volunteers and agents and independent contractors in performing the services required by this Agreement. As an alternative, Service Provider shall be permitted to obtain a non-owned automobile endorsement to its commercial general liability insurance policy providing the same protection and coverage as though Service Provider were to provide separate commercial vehicle liability insurance as set forth in this paragraph. The coverage required in this paragraph shall provide at least as much coverage as that provided by ISO form CA 00 01 or any updated form thereof.

c. Service Provider agrees to require that all parties, including but not limited to subcontractors, architects, engineers or others with whom Service Provider enters into contracts or whom Service Provider hires or retains pursuant to or in any way related to the performance of this Agreement, provide the insurance coverage required herein, at minimum, and name as additional insureds the parties to this Agreement. Service Provider agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Section.

d. In the event this Agreement is terminated for any reason prior to the completion of all obligations and requirements of this Agreement, Service Provider agrees to maintain all coverages required herein until the City provides written authorization to terminate the coverages following the City's review and determination that all liability posed under this Agreement as to the party providing insurance has been eliminated.

e. Service Provider agrees and acknowledges that if it fails to obtain all of the insurance required in this Agreement in accordance with the requirements herein, or to obtain and ensure that the coverage required herein is maintained by any subcontractors or others involved in any way with the Services, Service Provider shall be responsible for any losses, claims, suits, damages, defense obligations, or liability of any kind or nature attributable to the City or its officers, employees, servants, volunteers, agents and independent contractors.

f. Service Provider shall disclose to and obtain the approval of City for any self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement. During the period covered by this Agreement, only upon the prior express written authorization of the City Manager, Service Provider may either reduce or eliminate such deductibles or self-insured retentions with respect to the City, its officers, employees, agents, and volunteers. The City Manager may condition approval of any reduction or elimination in deductible or self-insured retention levels with a requirement that Service Provider procure a bond, guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to each of them.

g. In the event that any coverage required in this Agreement is canceled, reduced, limited, or materially affected in any other manner, Service Provider shall provide written notice to the City either by telephone, facsimile and/or via certified mail, at Service Provider's earliest possible opportunity and in no case later than two (2) business days after Service Provider is notified of the change in coverage.

Section 16. **WORKERS' COMPENSATION INSURANCE**

a. Service Provider shall procure and maintain at its own expense, during the term of this Agreement, workers' compensation insurance, providing coverage as required by the California State Workers' Compensation Law, of an amount not less than one million dollars (\$1,000,000) per accident. In addition, Service Provider shall require each subcontractor to similarly maintain Worker's Compensation Insurance and Employer's Liability Insurance in accordance with the laws of the State of California for all of the subcontractor's employees.

b. If any class of employees employed by the Service Provider pursuant to this Agreement is not protected by the California State Workers' Compensation Law, Service Provider shall provide adequate insurance for the protection of such employees to the satisfaction of the City. This provision shall not apply if Service Provider has no employees performing work under this Agreement. If Service Provider has not employees for the purposes of this Agreement, Service Provider shall sign the Certificate of Exemption from Worker's Compensation Insurance, attached hereto as Exhibit "B." Service Provider agrees to waive its statutory immunity under any worker's compensation or similar statute, as respecting the City, and to require any and all subcontractors and any other person or entity involved with the Services to do the same.

Section 17. **ADDITIONAL NAMED INSURED**

Notwithstanding any inconsistent statement in any required insurance policies or any subsequent endorsements attached thereto, the protection offered by all policies, except for Workers' Compensation, shall bear an endorsement whereby it is provided that the City and its officers, employees, servants, volunteers, agents, and independent contractors, including without limitation, the City Manager and City Attorney, are named

as additional insureds. Additional insureds shall be entitled to the full benefit of all insurance policies in the same manner and to the same extent as any other insureds and there shall be no limitation to the benefits conferred upon them other than policy limits to coverages.

Section 18. WAIVER OF SUBROGATION RIGHTS

Service Provider shall require the carriers of all required insurance policies to waive all rights of subrogation against the City and its officers, volunteers, employees, contractors and subcontractors.

Section 19. INSURANCE DOCUMENTATION

a. Service Provider shall secure from a good and responsible company or companies authorized to do insurance business in the State of California, and possessing a Best's rating of no less than A:VII, the policies of insurance required by this Agreement and furnish to the City certificates of said insurance with original endorsements on or before the commencement of the term of this Agreement. Service Provider shall ensure that the most current certification of insurance is on file with the City at all times during the term of this Agreement.

b. Each policy required herein must be endorsed to provide that the policy shall not be cancelled or reduced in coverage by either party (except by paid claims) unless the insurer has provided the City with thirty (30) days prior written notice of cancellation or reduction in coverage.

c. All insurance policies required to be provided by Service Provider or any other party must be endorsed to provide that the policies shall apply on a primary and noncontributing basis in relation to any insurance or self-insurance, primary or excess, maintained or available to the City, and its officers, employees, servants, volunteers, agents and independent contractors.

Section 20. TERMINATION OR SUSPENSION

a. This Agreement may be terminated or suspended without cause by the City at any time provided that the City provides the Service Provider at least thirty (30) business days written notice of such termination or suspension.

b. This Agreement may be terminated or suspended with cause by either party at any time provided that the respective party provides the other party at least ten (10) business days' written notice of such termination or suspension.

c. In the event of a termination of this Agreement under this section, Service Provider shall provide all documents, reports, data or other work product developed in performance of the Scope of Services of this Agreement to the City, within ten (10) calendar days of such termination and without additional charge to the City. Service

Provider shall be entitled to compensation for services performed up to the effective date of termination, provided that Service Provider shall have satisfied all its obligations under this Agreement through and including the effective date of termination.

Section 21. **TIME OF THE ESSENCE**

Time is of the essence in the performance of this Agreement.

Section 22. **INDEMNIFICATION**

a. Service Provider shall defend, indemnify and hold harmless the City, its officers, officials, agents, employees and volunteers from and against any and all claims, demands, actions, losses, damage, injuries, and liability, direct or indirect, (including any and all costs and expenses in connection therein), arising out of the performance of this Agreement, except for any such claim arising out of the sole negligence or willful misconduct of the City, its officers, agents, employees or volunteers.

b. The City does not, and shall not; waive any rights that it may have against Service Provider under this section because of the acceptance by the City, or the deposit with the City, of any insurance policy or certificate required pursuant to this Agreement. The hold harmless, indemnification and duty to defend provisions of this section shall apply regardless of whether or not said insurance policies are determined to be applicable to the claim, demand, action, damage, liability, loss, cost or expense described herein.

c. Notwithstanding the provisions of subsections a. and b. of this section, Service Provider shall not be responsible for damages or be in default or deemed to be in default by reason of delay caused by strikes, lockouts, accidents, or acts of God, or the failure of the City to furnish timely information or to approve or disapprove Service Provider's work promptly, or by reason of delay or faulty performance by the City, construction contractors, or governmental agencies, or by reason of any other delays beyond Service Provider's control, or for which Service Provider is without fault.

d. In the event that Service Provider or any employee, agent, or subcontractor of Service Provider providing services under this Agreement is determined by a court of competent jurisdiction or CalPERS to be eligible for enrollment in CalPERS as an employee of the City, Service Provider shall indemnify, defend, and hold harmless the City for the payment of any employee and/or employer contributions for CalPERS benefits on behalf of Service Provider or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of the City.

Section 23.**BOOKS AND RECORDS**

a. Service Provider shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to the City for a minimum period of three years, or for any longer period required by law, from the date of final payment to Service Provider pursuant to this Agreement.

b. Service Provider shall maintain all documents and records which demonstrate performance under this Agreement for a minimum of three years, or for any longer period required by law, from the date of termination or completion of this Agreement.

c. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the City Manager, City Attorney, City auditor or a designated representative of these officers. Copies of such documents shall be provided to the City for inspection at City Hall, when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Service Provider's address indicated for receipt of notices in this Agreement.

d. Where the City has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of Service Provider's business, the City may, by written request of any of the above-named officers, require that custody of the records be given to the City and that the records and documents be maintained at City Hall. Access to such records and documents shall be granted to any party authorized by Service Provider, Service Provider's representatives, or Service Provider's successor-in-interest.

Section 24.**OWNERSHIP OF DOCUMENTS**

All plans, studies, documents and other writings prepared by and for Service Provider, its officers, employees and agents and subcontractors in the course of implementing this Agreement, except working notes and internal documents, shall become the property of the City upon payment to Service Provider for such work, and the City shall have the sole right to use such materials in its discretion without further compensation to Service Provider or to any other party. Service Provider shall, at their expense, provide such reports, plans, studies, documents and other writings to the City upon written request.

Section 25.**CONFIDENTIALITY**

a. All ideas, memoranda, specifications, plans, procedures, drawings, photographs, descriptions, computer program data, input record data, written information, and other documents and data either created by or provided to Service

Provider in connection with the performance of this Agreement shall be held confidential by Service Provider. Such materials shall not, without prior written consent of the City, be used by Service Provider for any purposes other than the performance of the services under this Agreement, nor shall such materials be disclosed to any person or entity not connected with the performance of the services under this Agreement. Nothing furnished to Service Provider which is otherwise known to Service Provider or is generally known, or has become known, to the related industry shall be deemed confidential.

b. Service Provider shall not use the City's insignia or photographs relating to the project for which Service Provider's services are rendered, or any publicity pertaining to the Service Provider's services under this Agreement in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of the City.

Section 26. MODIFICATIONS AND AMENDMENTS

This Agreement may be modified or amended only by a written instrument signed by both parties.

Section 27. BACKGROUND CHECKS

At any time during the term of this Agreement, the City reserves the right to make an independent investigation into the background of Service Provider's personnel who perform work required in the Scope of Services, including but not limited to their references, character, address history, past employment, education, social security number validation, and criminal or police records, for the purpose of confirming that such personnel are lawfully employed, qualified to provide the subject service or pose a risk to the safety of persons or property in and around the vicinity of where the Services will be rendered or City Hall. If the City makes a reasonable determination that any of Service Provider's prospective or then current personnel is deemed objectionable, then the City may notify Service Provider of the same. Service Provider shall not use that personnel to perform work required in the Scope of Services, and if necessary, shall replace him or her with another suitable worker.

Section 28. ENTIRE AGREEMENT

a. This Agreement supersedes any and all other agreements, either oral or written, between the City and Service Provider with respect to the subject matter of this Agreement.

b. This Agreement contains all of the covenants and agreements between the parties with respect to the subject matter of this Agreement, and each party to this Agreement acknowledges that no representations, inducements, promises, or agreements have been made by or on behalf of any party except those covenants and agreements embodied in this Agreement.

c. No agreement, statement, or promise not contained in this Agreement shall be valid or binding.

Section 29. **AMBIGUITIES**

This Agreement is in all respects intended by each party hereto to be deemed and construed to have been jointly prepared by the parties and the parties hereby expressly agree that any uncertainty or ambiguity existing herein shall not be interpreted against either of them. Except as expressly limited by this paragraph, all of the applicable rules of interpretation of contract shall govern the interpretation of any uncertainty or ambiguity of this Agreement.

Section 30. **NOTICES**

a. Any notice to be provided pursuant to this Agreement shall be in writing, and all such notices shall be delivered by personal service or by deposit in the United States mail, certified or registered, return receipt requested, with postage prepaid, and addressed to the parties as follows:

To the City:	Martín Magaña, City Manager City of Desert Hot Springs 65-950 Pierson Blvd. Desert Hot Springs, CA 92240 Telephone: (760) <u>329-6411</u> Facsimile: (760) <u>288-3129</u> Email: mmagana@cityofdhs.org
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To Service Provider:	Conserve LandCare, Inc. 72265 Manufacturing Road Thousand Palms, CA 92276 Telephone: (760) 343-1433 Facsimile: (760) 343-0433 Email: ConserveLandCare.com
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b. Notices, payments and other documents shall be deemed delivered upon receipt by personal service or as of the second (2nd) day after deposit in the United States mail.

Section 31. **NON-LIABILITY OF CITY OFFICERS AND EMPLOYEES**

No officer or employee of the City shall be personally liable to Service Provider, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to Service Provider or to its successor, or for any breach of any obligation of the terms of this Agreement.

Section 32. **REVIEW BY ATTORNEYS**

Each party hereto has had its attorneys review this Agreement and all related documents. Each party hereto has consulted with its attorneys and has negotiated the terms of this Agreement based on such consultation.

Section 33. **WAIVER**

a. No waiver shall be binding, unless executed in writing by the party making the waiver.

b. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any such waiver constitute a continuing or subsequent waiver of the same provision.

c. Failure of either party to enforce any provision of this Agreement shall not constitute a waiver of the right to compel enforcement of the remaining provisions of this Agreement.

Section 34. **ASSIGNMENT AND SUBCONTRACTING**

a. The experience, knowledge, capability and reputation of Service Provider, its principals and employees were a substantial inducement for the City to enter into this Agreement. Assignments of any or all rights, duties or obligations of the Service Provider under this Agreement will be permitted only with the written consent of the City.

b. Service Provider shall not subcontract any portion of the work to be performed under this Agreement without the written consent of the City. If the City consents to such subcontract, Service Provider shall be fully responsible to the City for all acts or omissions of the subcontractor. Nothing in this Agreement shall create any contractual relationship between the City and subcontractor nor shall it create any obligation on the part of the City to pay or to see to the payment of any monies due to any such subcontractor other than as required by law.

Section 35. **CARE OF WORK**

The performance of services by Service Provider shall not relieve Service Provider from any obligation to correct any incomplete, inaccurate or defective work at no further cost to the City, when such inaccuracies are due to the negligence of Service Provider.

Section 36. **CAPTIONS AND HEADINGS**

The captions and headings contained in this Agreement are provided for identification purposes only and shall not be interpreted to limit or define the content of the provisions described under the respective caption or heading.

Section 37. **SUCCESSORS, HEIRS AND ASSIGNS**

Except as otherwise expressly provided herein, this Agreement shall be binding upon the successors, endorsees, assigns, heirs, and personal representatives of each of the parties to this Agreement and, likewise, shall inure to the benefit of the successors, endorsees, assigns, heirs, and personal representatives of each of the parties.

Section 38. **SEVERABILITY**

If any one or more of the sentences, clauses, paragraphs or sections contained herein is declared invalid, void or unenforceable by a court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall not affect, impair or invalidate any of the remaining sentences, clauses, paragraphs or sections contained herein.

Section 39. **GOVERNING LAW**

The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the parties under this Agreement, shall be construed pursuant to and in accordance with California law.

Section 40. **DEFAULT**

a. Failure or delay by any party to this Agreement to perform any material term or provision of this Agreement shall constitute a default under this Agreement; provided however, that if the party who is otherwise claimed to be in default by the other party commences to cure, correct or remedy the alleged default within fifteen (15) calendar days after receipt of written notice specifying such default and shall diligently complete such cure, correction or remedy, such party shall not be deemed to be in default hereunder.

b. The party which may claim that a default has occurred shall give written notice of default to the party in default, specifying the alleged default. Delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default; provided, however, the injured party shall have no right to exercise any remedy for a default hereunder without delivering the written default notice, as specified herein.

c. Any failure or delay by a party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any rights or remedies associated with a default.

d. In the event that a default of any party to this Agreement may remain uncured for more than fifteen (15) calendar days following written notice, as provided above, a "breach" shall be deemed to have occurred. In the event of a breach, the

injured party shall be entitled to seek any appropriate remedy or damages by initiating legal proceedings.

Section 41. **REMEDIES**

If Service Provider materially breaches any of the terms of this Agreement, the City's remedies shall include, but shall not be limited to, the following:

- a. Immediately terminate the Agreement;
- b. Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Service Provider pursuant to this Agreement;
- c. Retain a different service provider to complete the work described in the Scope of Services that are not finished by Service Provider; or
- d. Charge Service Provider the difference between the cost to complete the work described in the Scope of Services that is unfinished at the time of breach and the amount that the City would have paid Service Provider pursuant to Section 4 hereof if Service Provider had completed the work.

Section 42. **CUMULATIVE REMEDIES**

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

Section 43. **VENUE**

All proceedings involving disputes over the terms, provisions, covenants or conditions contained in this Agreement and all proceedings involving any enforcement action related to this Agreement shall be initiated and conducted in the applicable court or forum in Riverside County, California.

Section 44. **LITIGATION EXPENSES AND ATTORNEY'S FEES**

In the event any action, suite or proceeding is brought for the enforcement of, or the declaration of any right or obligation pursuant to this Agreement or as a result of any alleged breach of any provision of this Agreement, the prevailing party in such suit or proceeding shall be entitled to recover its costs and expenses, including reasonable attorney's fees, from the losing party, and any judgment or decree rendered in such a proceeding shall include an award thereof.

Section 45. **EFFECTIVENESS OF AGREEMENT**

This Agreement shall not be binding upon the City, until signed by the authorized representative(s) of Service Provider, and approved as to form by the City Attorney, and executed by the City Manager or his or her designee.

Section 46. **NO THIRD PARTY BENEFICIARIES**

The parties do not intend the benefits of this Agreement to inure to any third party, nor shall any provision of this Agreement be so construed.

Section 47. **LABOR LAWS**

a. All work or services performed within the State of California pursuant to this Agreement by Service Provider, Service Provider's employees and independent contractors, or contractor's subcontractors and its subcontractors' employees and independent contractors shall be performed by individuals lawfully permitted to perform such work or services in the State of California and/or the United States of America pursuant to all applicable State and/or Federal labor laws, rules and regulations including, but not limited to, any State or Federal law, rule or regulation prohibiting the employment of undocumented workers or any other person not lawfully permitted to perform said work or services in the State of California or the United States of America.

b. Documentation must be promptly submitted to the City at any time, at the request of the City, for the purpose of determining whether or not the work or services provided pursuant to this contract are being provided in compliance with this section.

Section 48. **REPRESENTATIONS OF PARTIES AND PERSONS
EXECUTING AGREEMENT**

a. Each of the parties to this Agreement hereby represents that all necessary and appropriate actions of their governing bodies have been taken to make this Agreement a binding obligation of each of the parties hereto.

b. The persons executing this Agreement warrant that they are duly authorized to execute this Agreement on behalf of and bind the parties each purports to represent.

Section 49. **COUNTERPARTS**

This Agreement may be executed in counterparts, each of which shall be deemed to be an original.

Section 50. **OTHER GOVERNMENTAL REGULATIONS**

To the extent that this Agreement may be funded by fiscal assistance from

another governmental entity, Service Provider and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.

Section 51. **SURVIVAL**

All obligations arising prior to any termination of this Agreement and all provisions of this Agreement allocating liability between the City and Service Provider shall survive such termination.

Section 52. **FINGERPRINTING**

Service Provider hereby acknowledges that it is required to be livescanned (fingerprinted) by the City of Desert Hot Springs Police Department, at Service Provider's expense, prior to execution of this Agreement. In the event Service Provider does not do so prior to execution, Service Provider agrees to do so immediately following execution hereof.

Section 53. **USE OF RECYCLED PRODUCTS**

Service Provider shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above.

CITY OF DESERT HOT SPRINGS

CONSERVE LANDCARE, INC.

Martín Magaña, City Manager

Its: _____
(Title)

ATTEST:

Jerryl Soriano, CMC, City Clerk

APPROVED AS TO FORM:

Steven B. Quintanilla, City Attorney

EXHIBIT “A”

SCOPE OF SERVICES

SEE ATTACHED

EXHIBIT "B"

CERTIFICATE OF EXEMPTION FROM WORKERS' COMPENSATION INSURANCE

I certify that, in the performance of the work to be performed by Conserve LandCare, Inc., for the City of Desert Hot Springs, I shall not employ any person in any manner so as to become subject to the workers' compensation laws of California, and agree that if I should become subject to the workers' compensation provisions of the California Labor Code, I shall forthwith comply with those provisions.

Name & Signature

Date: _____, 2014