

SERVICE AGREEMENT

This **SERVICE AGREEMENT** (“Agreement”) is made and entered into as of the **1ST** day of **JANUARY, 2009**, by and between **VDW METROPOLITAN DISTRICT NO. 1**, a quasi-municipal corporation and political subdivision of the State of Colorado (the “District”), and **COCAL LANDSCAPE SERVICES, INC** (“Contractor”), (collectively, the “Parties”).

RECITALS

WHEREAS, the District was organized pursuant to the laws of the State of Colorado in order to construct, operate and maintain certain public facilities and improvements in accordance with its approved service plan; and

WHEREAS, pursuant to § 32-1-1001(1)(d)(I), C.R.S., the District is permitted to enter into contracts affecting the affairs of the District; and

WHEREAS, the District desires to procure **Landscape Maintenance Services**, as described in **Exhibit A** attached hereto, for purposes of operating and/or maintaining District facilities and/or improvements; and

WHEREAS, Contractor has experience in providing the types of services required by the District; and

WHEREAS, the District desires to engage Contractor to perform such services as are needed by the District and Contractor is willing to provide such services to the District for reasonable consideration; and

WHEREAS, the Parties desire to enter into this Agreement to establish the terms and conditions by which Contractor shall provide such services to the District.

NOW THEREFORE, in consideration of the mutual covenants and promises set forth herein, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

AGREEMENT

I. APPOINTMENT OF CONTRACTOR

1.1 APPOINTMENT OF CONTRACTOR. The District hereby retains Contractor and Contractor agrees to perform certain services for the District (“Services”) pursuant to the terms and conditions set forth herein.

1.2 INDEPENDENT CONTRACTOR STATUS. Contractor is and shall be considered an independent contractor under this Agreement. Nothing herein contained shall constitute or

designate Contractor or any of its employees or agents as employees or agents of the District, nor shall Contractor be deemed or considered as a partner or agent of the District. Contractor shall have full power and authority to select the means, manner and method of performing its duties under this Agreement without detailed control or direction of the District except as set forth in this Agreement. It shall be Contractor's responsibility as an independent contractor to pay any and all taxes on payments which it receives under this Agreement and to pay its own costs and expenses incurred in connection with performance of this Agreement.

II. DUTIES AND AUTHORITY

2.1 GENERAL LIMITATIONS AND REQUIREMENTS. Contractor shall perform the duties and have the authority specified in Section 2.4 below. Contractor shall have no right or authority, express or implied, to take any action, expend any sum, incur an obligation, or otherwise obligate the District in any manner whatsoever, except to the extent specifically provided in this Agreement or specifically authorized or ratified by the Board of Directors (the "Board") of the District as reflected in the meeting minutes of the Board. Contractor shall at all times conform to the stated policies established and approved by the District.

2.2 COMPLIANCE WITH APPLICABLE LAW. Contractor shall provide the Services set forth herein in full compliance with all applicable laws, ordinances, rules, and regulations of any federal, state, county, or municipal body or agency thereof having jurisdiction in which this Agreement is performed. Contractor declares that Contractor has complied with all federal, state and local laws regarding business permits, certificates and licenses that may be required to carry out the Services to be provided under this Agreement.

2.3 NO RIGHT OR INTEREST IN THE DISTRICT ASSETS. Contractor shall have no right or interest in any of the District's assets, nor any claim or lien with respect thereto, arising out of this Agreement or the performance of the Services contemplated herein.

2.4 SPECIFIC DUTIES AND AUTHORITY. Contractor shall perform the Services for the District as outlined on the Scope of Work in **Exhibit A** attached hereto and incorporated herein by reference. Contractor shall obtain approval from the District prior to providing any Services that vary from those Services set forth in **Exhibit A** attached hereto.

2.5 GENERAL DUTIES AND AUTHORITY. In connection with its specific duties, Contractor agrees to:

(A) Provide all Services specified in Section 2.4 hereof in a good and workmanlike manner and in accordance with any and all approved plans, documents, and specifications described in Contractor's proposal to provide such Services to the District.

(B) Furnish, or cause to be furnished, all labor, materials, equipment, permits and accessories, as necessary, to provide such Services.

(C) Take all precautions necessary for safely and prudently conducting the Services required by this Agreement, including maintaining insurance as required by Part V hereof.

(D) Advise the District of the status of the Services required by this Agreement on a regular basis and work in coordination with the District's staff and consultants to assure that the District has the most complete information available for the exercise of the District's powers and discretionary authority.

(E) Refrain from entering into any contract, oral or written, in the name of the District, and from incurring any debt, liability or obligation for or on behalf of the District. All obligations incurred by Contractor shall be the obligations of Contractor whom shall hold the District harmless therefrom.

III. COMPENSATION

3.1 FEE CALCULATION. Contractor shall be paid as set forth in **Exhibit A** attached hereto and incorporated herein by reference and in accordance with the procedures described herein. Contractor shall obtain approval from the District prior to charging for any Services that vary from those costs set forth in **Exhibit A** attached hereto. In the event of early termination described in Section 4.1 hereof, the District shall pay Contractor for all Services satisfactorily performed up to and including the designated termination date.

3.2 MONTHLY REPORTS AND PAYMENTS. Contractor shall submit to the District monthly reports in a form acceptable to the District which describes the work completed to date and the work yet to be performed, and summarizes costs paid to date by the District and the amount currently due to Contractor. Contractor shall submit its report together with its invoice to the District by the 5th day of each month for Services completed in the preceding month. The District's Board shall review and approve all invoices received for payment at the next meeting of the Board. The District reserves the right to inspect all services completed and invoiced for payment. In the event inspected services are not accepted for payment by the District, the terms of Section 3.3 hereof shall apply.

3.3 INSPECTION OF SERVICES. The District may inspect the Services provided at any time throughout the Term of this agreement and shall notify Contractor if, in the District's discretion, any or all Services are not provided in accordance with this Agreement. Failure by Contractor to properly provide the Services required by this Agreement shall constitute a default hereunder. In such case, the District shall provide written notice of said default to Contractor. Contractor shall have two (2) days to cure the default unless otherwise agreed to by the Parties. If Contractor fails to cure the default within the time period provided, the District shall be entitled to pursue all remedies provided by law and in equity, including specific performance, and to recover all costs and reasonable attorney fees incurred in any suit or claim brought by the District to enforce the terms of this Agreement. In addition, in the event of default by Contractor, the District may hire a third party to complete the Services and Contractor agrees to pay all additional costs incurred for the completion of the Services by a third party.

3.4 EXPENSES. Contractor shall be responsible for all expenses it incurs in performance of this Agreement and shall not be entitled to any reimbursement or compensation except as set forth in Section 3.1 hereof unless such expenses are approved for reimbursement in

advance by the District in writing. Contractor shall not charge the District any other fee for use by the District of Contractor's offices, personnel, or overhead except as agreed in advance by the District in writing.

3.5 FEE ADJUSTMENT. In the event this Agreement extends beyond one year, the District and Consultant shall annually analyze the reasonableness of the Scope of Work and the fees set forth in **Exhibit A** attached hereto, and may, upon the mutual consent of the District and Consultant, adjust the schedule of the Scope of Work and/or fees as deemed appropriate by the Parties. Any such adjustment shall be evidenced in writing signed by the Parties. The failure of the District and Consultant to agree upon any such adjustment shall not require a termination of this Agreement nor shall either party be entitled to seek an adjustment from any court or other tribunal.

3.6 ANNUAL BIDDING. The District shall be entitled to bid each calendar year's services under this Agreement as it deems necessary to comply with current law regarding contracts for such services. Contractor shall have no claim against the District if this Agreement is not extended for any budget year.

IV. DURATION AND TERMINATION

4.1 TERM. This Agreement shall be effective as of **January 1, 2009**, and shall terminate upon thirty (30) days written notice by either Party. In the event of such notice, Contractor shall continue its duties until the date of termination and shall be entitled to receive compensation for all unpaid services within fifteen (15) days of the date of termination. As set forth in Section 7.2 herein, the District's payment obligation shall be subject to annual appropriations and this Agreement shall not be considered a multi-fiscal year obligation of the District.

Upon termination, Consultant shall transfer title and deliver to the District all work product which shall be deemed from and after the effective date of this Agreement to be the property of the District. "Work Product" shall consist of all written materials maintained by Consultant in connection with performance of this Agreement, including but not limited to all maps, plans, drawings, specifications, reports, electronic files and other documents, in whatever form. Consultant shall maintain reproducible drawings of any project drawings which it obtains and shall make them available for District's use, and shall provide such copies to the District upon request at commercial printing rates. Consultant shall be entitled to retain copies of all work product at its own expense.

V. INSURANCE

5.1 INSURANCE COVERAGE REQUIREMENTS. At all times during the Term of this Agreement, Contractor shall carry and maintain, at its sole cost and expense, the following insurance coverages:

- (A) Workers' Compensation insurance as required by law.

(B) Comprehensive commercial general liability insurance, \$1,000,000 combined single limit for bodily injury and property damage, each occurrence; \$1,000,000 general aggregate; and \$1,000,000 products and completed operations aggregate.

(C) Commercial Automobile Liability Insurance providing bodily injury and property damage with a combined single limit of at least \$1,000,000 each occurrence or claim.

(D) All insurance policies required by this Agreement shall include a provision requiring a minimum of 30 days notice to the District of any change or cancellation. The District also shall be named as an additional insured on each policy. Contractor shall provide proof of all required insurance coverage prior to commencing any operations on the Property.

VI. ILLEGAL ALIENS

6.1 CERTIFICATION. Prior to the execution of this Agreement, Contractor shall certify to the District, as attached hereto as **Exhibit B**, that at the time of certification, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement and that Contractor will participate in either the E-Verify Program administered by the U.S. Department of Homeland Security and the Social Security Administration, or in the Colorado Department of Labor and Employment's Employment Verification Program (the "Department Program"), as further described in Section 6.6 herein, in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

6.2 PROHIBITED ACTS. Contractor shall not:

(A) Knowingly employ or contract with an illegal alien to perform work under this Agreement; or

(B) Enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. Contractor shall provide the District with all certifications received from subcontractors in which subcontractors certify that said subcontractors do not knowingly employ or contract with an illegal alien to perform work under this Agreement.

6.3 VERIFICATION.

(A) Contractor has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement through participation in either the E-Verify Program or the Department Program.

(B) Contractor shall not use either the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

(C) If Contractor obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, Contractor shall:

(i) Notify the subcontractor and the District within three (3) days that Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and

(ii) Terminate the subcontract with the subcontractor if, within three (3) days of receiving the notice required pursuant to subparagraph (i) hereof, the subcontractor does not stop employing or contracting with the illegal alien; except that Contractor shall not terminate the contract with the subcontractor if during such three (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

6.4 DUTY TO COMPLY WITH INVESTIGATIONS. Contractor shall comply with any reasonable request by the Colorado Department of Labor and Employment (the “Department”) made in the course of an investigation conducted pursuant to § 8-17.5-102 (5), C.R.S. to ensure that Contractor is complying with Part VI of this Agreement.

6.5 BREACH. If Contractor violates a provision of this Part VI, the District may terminate the Agreement for a breach of the Agreement. If the Agreement is so terminated, Contractor shall be liable for actual and consequential damages to the District. The District shall notify the Colorado office of the Secretary of State if Contractor violates a provision of this Part VI of the Agreement and the District terminates the Agreement.

6.6 DEPARTMENT PROGRAM. If Contractor participates in the Department Program, in lieu of the E-Verify Program, Contractor shall notify the Department and the District of such participation. Contractor shall, within twenty (20) days after hiring an employee who is newly hired for employment to perform work under the Agreement, affirm that the Contractor has examined the legal work status of such employee, retained file copies of the documents required by 8 U.S.C. Sec. 1324a, and not altered or falsified the identification documents for such employees. Contractor shall provide a written, notarized copy of the affirmation, similar in form as attached hereto as **Exhibit C**, to the District.

VII. MISCELLANEOUS

7.1 LIABILITY OF THE DISTRICT. No provision, covenant or agreement contained in this Agreement, nor any obligations herein imposed upon the District shall constitute or create an indebtedness or debt of the District within the meaning of any Colorado constitutional provision or statutory limitation.

7.2 SUBJECT TO ANNUAL BUDGET AND APPROPRIATION. The District does not intend hereby to create a multiple-fiscal year direct or indirect debt or other financial obligation

whatsoever. The performance of those obligations of the District hereunder requiring budgeting and appropriation of funds are subject to annual budgeting and appropriations.

7.3 NOTICES. Any notices, demands, or other communications required or permitted to be given by any provision of this Agreement shall be given in writing, delivered personally, sent by facsimile with a hard copy sent immediately thereafter via First Class U.S. Mail, or sent via First Class U.S. Mail, postage prepaid and return receipt requested, and addressed to the Parties at the information set forth below.

If to the District: VDW Metropolitan District No. 1
Attn: District Manager
c/o Pinnacle Consulting Group, Inc.
5110 Granite Street, Suite C
Loveland, Colorado 80538
Fax: (970) 669-3612

Copy to: Icenogle, Norton, Smith, Blieszner, Gilida, & Pogue, PC.
Attn: Alan D. Pogue
1331 Seventeenth Street, Suite 500
Denver, Colorado 80202
Fax: (303) 292-9101

If to the Contractor: CoCal Landscape Services, Inc.
Attn: Doug Prostko-Bell
12570 East 39th Avenue
Denver, CO 80239
Fax: (303) 774-0560

Copy to: _____

Fax: _____

7.4 INDEMNIFICATION. Contractor shall defend, indemnify, assume all responsibility for and hold harmless the District and its directors, officers, employees, and agents, from all claims or suits for any damages to property or injury to persons, and for the costs of litigation and reasonable attorney fees of all such Parties and persons that may arise out of any actions undertaken by the Contractor pursuant to this Agreement; provided, however, that the provisions of this section shall not apply to loss, damage or claims attributable solely to the intentional acts or omissions of the District.

7.5 PERSONS INTERESTED HEREIN. Nothing expressed or implied in this Agreement is intended or shall be construed to confer upon or to give to any person, other than the Parties hereto, any right, remedy, or claim under or by reason of this Agreement or any covenants,

terms, conditions, or provisions thereof, and all of the covenants, terms, conditions, and provisions in this Agreement by and on behalf of the Parties shall be for the sole and exclusive benefit of the Parties hereto.

7.6 RECOVERY OF COSTS. In the event of any litigation between the Parties hereto concerning the subject matter hereof, the prevailing party in such litigation shall be entitled to receive from the non-prevailing party, in addition to the amount of any judgment or other award entered therein, all reasonable costs, expenses and attorney's fees incurred by the prevailing party in such litigation.

7.7 MODIFICATION. This Agreement may be modified, amended or changed, except as otherwise provided herein, in whole or in part, only by an agreement in writing duly authorized and executed by both Parties.

7.8 ASSIGNMENT. Contractor shall not assign this Agreement or any interest hereunder, in whole or in part, without the prior written consent of the District, which consent may be withheld for any reason or for no reason. The District shall provide written consent only upon assurance from Contractor that each proposed subcontract is evidenced in writing and contains all pertinent provisions and requirements of this Agreement. Any improper attempt of assignment shall be deemed void and of no force or effect. Consent to one assignment shall not be deemed to be consent to any subsequent assignment nor the waiver of any right to consent to such subsequent assignment.

7.9 NON-WAIVER. No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other provision of this Agreement, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided herein, nor shall the waiver of any default hereunder be deemed to be a waiver of any subsequent default hereunder.

7.10 GOVERNING LAW. This Agreement shall be governed and construed in accordance with the laws of the State of Colorado.

7.11 SEVERABILITY. Invalidation of any of the provisions of this Agreement or of any paragraph, sentence, clause, phrase, or word herein, or the application thereof in any given circumstance, shall not affect the validity of any other provision of this Agreement.

7.12 BINDING AGREEMENT. This Agreement shall inure to and be binding on the heirs, executors, administrator, successors, and permitted assigns of the Parties hereto.

7.13 INTEGRATION. This Agreement contains the entire agreement between the Parties, and no statement, promise or inducement made by either party or the agent of either party that is not contained in this Agreement shall be valid or binding.

7.14 HEADINGS FOR CONVENIENCE ONLY. The headings, captions and titles contained herein are intended for convenience and reference only and are not intended to construe the provisions hereof.

7.15 COUNTERPARTS. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and together shall constitute one and the same instrument.

(Remainder of Page Left Intentionally Blank.)

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

VDW METROPOLITAN DISTRICT NO. 1

By: _____
Its: _____

ATTEST:

By: _____
Its: _____

COCAL LANDSCAPE SERVICES, INC.

By: _____
Its: _____

EXHIBIT A
SCOPE OF SERVICE (CONTRACTOR'S QUOTE)

EXHIBIT B

CERTIFICATION REGARDING ILLEGAL ALIENS

**CERTIFICATION
REGARDING ILLEGAL ALIENS**

To: VDW METROPOLITAN DISTRICT NO. 1

I, _____, as _____ of **CoCal Landscape Services, Inc.**, the prospective "Contractor" for that certain contract for **Landscape Maintenance Services** to be entered into with VDW Metropolitan District No. 1, do hereby certify on behalf of said Contractor that, as of the date of this Certification, Contractor does not knowingly employ or contract with an illegal alien who will perform work under this Agreement and that Contractor will participate in either the E-Verify Program administered by the U.S. Department of Homeland Security and the Social Security Administration, or in the Colorado Department of Labor and Employment's Employment Verification Program pursuant to Section 8-17.5-102(5)(c), C.R.S. in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

Executed on the ____ of _____, 2008.

COCAL LANDSCAPE SERVICES, INC.

By: _____
Its: _____

EXHIBIT C

AFFIRMATION OF LEGAL WORK STATUS

