

FILE

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July 2, 2012

Mr. Nelson Fowlkes, Foreperson
Riverside County Grand Jury
P.O. Box 829
Riverside, CA 92502

Re: 2011-12 Grand Jury Report: City of Wildomar

Gentlemen and Ladies:

We are in receipt of the 2011-12 Grand Jury Report relating to the City of Wildomar (the "Grand Jury Report"). The Grand Jury Report makes two findings and presents the City with two recommendations. Because we believe that the City's actions were taken in full accord with all applicable law and appropriate public policy, these findings and recommendations are somewhat puzzling. We hope that our responses below, together with the attachments provided here, will resolve any outstanding issues.

The City responds as follows with regard to the recommendations that have been made:

Recommendation 1:

Transparency requires that City positions held by a contracted person, company, or any entity other than a City employee shall be identified as a contracted position on the City web page and the City organizational chart. The chart must be posted on the City legal notice board.

Response to Recommendation 1:

The City of Wildomar will comply with recommendation 1 by continuing to be transparent to the public in all aspects of our municipal operations. The City would like to clarify the generalized statements made in the Grand Jury report regarding transparency of "paid employees" and "contracted vendors".

The report erroneously characterizes the city as not being transparent when it comes to identifying which employees are paid and which are vendors. This conclusion was

drawn because these distinctions are not specifically identified in an organizational chart or the city's webpage. As a matter of public policy and more important than the City's webpage the information in question can be found in the City's annual fiscal year budget. Each year the City administration develops a budget for the City Council's consideration. The annual budget development allows the City Manager to publicly layout any organizational changes and identify administrative priorities for spending city tax dollars on behalf of its residents.

During the public hearings city staff provides a presentation of the budget document where each department is listed separately by heading and each in-house and contracted position (i.e. Interwest Planning Director) is listed by consulting firm along with the line item appropriation request. This is done so the public can see both the contracted position and the amount of funds accompanying the item without going to separate pages or documents. All the information a resident would need to know about a particular function and how much it costs the city can be found in one location.

This budget format is by design. Since a city's budget document is its policy statement about spending priorities for any given year, and is typically the location financial experts, auditors, and residents go to locate City information, most municipalities have evolved to contain the information in one source document as opposed to multiple areas forcing residents to track information down. The City believes our budget accurately characterizes the employee positions as they were intended to be executed either as an in-house public employee or an identified contracted consulting firm as currently depicted in the city's annual budget. In addition the City goes to great lengths to keep the public involved including holding a separate budget workshop outside of a regular city council meeting to allow residents to comment on the budget directly to city staff while it is still in draft form. Consequently, it is inaccurate to characterize the City's practices as lacking transparency. The City will continue to practice transparency in all aspects of our municipal operation.

Further, while the City is open to new ideas, the final recommendation is a bit confusing since to the City's knowledge there is no legal requirement for posting an organizational chart in the City's legal notice board. Legal notice boards are typically used exclusively for notices regarding council meeting times and dates, public hearings, and official election postings. Nor is there precedence for this as a best management practice in municipal agencies. As described in the City's response, the information is currently already available in a more comprehensive format. As a result, providing thorough and complete documents will continue to be a high priority to the City and will continue to be available to the public upon request.

Recommendation 2:

Contracts for contracted services and City positions must be advertised, bid on by qualified interested parties and then awarded to the lowest qualified bidder in accordance with City Purchasing Procedure Ordinance No. 25, § 3.07.030.

Response to Recommendation 2:

The City will comply with Recommendation 2 by continuing to abide by its Purchasing Procedure Ordinance. However, the City desires to clarify some of the facts included within the Grand Jury Report.

The Grand Jury Report indicates that the amended contract dated August 10, 2011 with Diamond W Events was entered into without following the City's Purchasing Procedure Ordinance because no other bids were submitted to the City. The Grand Jury Report further indicates that the original contract with Diamond W Events dated October 20, 2009 was entered into without competitive bidding.

As further discussed below, the City did receive bids prior to awarding the original Diamond W Events contract. The term of this original contract includes the ability to extend the contract two times for a one year period for each extension. The parties thereafter agreed to extend the original contract two times. It is this final contract extension which the Grand Jury Report indicates should have been entered into by soliciting bids. However, the City did not enter into a new contract for services. The parties had a current contractual relationship and agreed to extend the term of the current contract and therefore solicitation of bids was not required.

The Original Diamond W Events Contract (October 2009)

The City took over park and recreation services from Riverside County on July 1, 2009. Prior to that date, the City requested informal bids from interested parties to supply such services. Fourteen companies and public entities submitted responses for some or all required services. The City then entered into interim contracts with some providers, including Diamond W Events, and those responding were asked to submit proposals for longer term contracts. One of the long-term proposals was received from Diamond W Events covering park recreational services, special events work and park maintenance for three city parks.

At the Council meeting held on October 14, 2009, the responsible consultants whose proposals were the most advantageous to the City in four different task areas were identified and presented to the City Council. Four companies were selected to address the needs of the City and identical agreements for professional services were approved. Contracts were approved for Diamond W Events, CTAI Pacific Greenscape Landscape Service, AA Janitorial Services and Protection Rescue Security Patrol. The full staff report and contract format and exhibits are attached as Exhibit A.

Section 3, Term of Agreement, in this original contract states, "The term of this Agreement shall be from October 1, 2009 to September 30, 2010, with two (2) one year extensions, unless earlier terminated as provided in Section 11 Termination of Agreement." Thus, the term of this original contract could be extended to September 30, 2012 with the consent of both parties.

Contract Extensions with Diamond W Events

The City and Diamond W Events subsequently agreed to extend the contract for one year to September 30, 2011. The City extended the contracts of Diamond W Events, CTAI Pacific Greenscape Landscape Service, AA Janitorial Services and Protection Rescue Security Patrol for one year. The full staff report and contract format and exhibits are attached as Exhibit B.

The City and Diamond W Events then entered into a final extension which extended the contract term until September 30, 2012, and also reduced the compensation and scope of services to remove park management and maintenance services due to lack of funding. The full staff report and contract are attached as Exhibit C.

It is this contract amendment of August 10, 2011 that the Grand Jury Report indicates was entered into without following the City's Purchasing Procedure Ordinance because no other bids were submitted to the City. However, the City Council and City Manager have at all times fully complied with applicable purchasing procedures. The original contract simply was extended according to its terms because the contractual relationship between the parties had not expired. The City did not award a new contract for services subject to the bidding process of the Purchasing Procedure Ordinance because the parties were still in a contractual relationship. The parties merely exercised the right provided for in the original contract to extend the term and therefore the City did not award or enter into a new contract for services which would be subject to the Purchasing Procedure Ordinance.

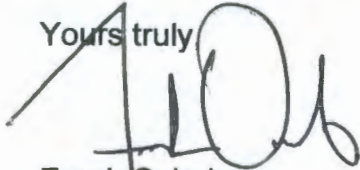
Without a factual basis for the assertion that appears in the Grand Jury Report, the City can only express its intention to continue to comply with all applicable purchasing procedures.

Conclusion

Decisions and actions taken relating to the matters reviewed by the Grand Jury reflect a careful, open and responsive handling of financial, contractual and operational issues. The Grand Jury Report does not present any findings or recommendations with factual or legal evidence of wrongdoing or violation of law.

We hope this response will fully resolve the recommendations that have been made in the Grand Jury Report. Thank you and all the members of the Grand Jury for your service to the County of Riverside in investigating and reporting on these matters.

Yours truly



Frank Oviedo
City Manager

TO: Mayor and Members of the City Council
FROM: Gary Nordquist, Director of Finance
SUBJECT: Approval of Agreements for Community Services and Park Maintenance

STAFF REPORT

RECOMMENDATION:

Authorize the City Manager to enter into contracts with Diamond W Events for Special Events, Park and Emergency Services, CTAI Pacific Greenscape Landscape Services, AA Janitorial Services and Protection Rescue Security Services.

BACKGROUND/DISCUSSION: On July 8, 2009 the City Council authorized the City Manager to enter into interim service agreements with Diamond W Events and CTAI Pacific Greenscape Landscape Services in response to the July 1, 2009 transition of responsibilities for parks services from Riverside County to the City of Wildomar. Since that authorization, city staff obtained proposals for longer term service contracts from several organizations and companies. Based on a review of those submittals, city staff recommends awarding contracts to the following as the lowest most responsible vendors to provide services to the City and Marna O'Brien, Regency Heritage and Windsong Parks.

1. Diamond W Events will provide community service project services and park maintenance to the City at a combined rate of \$7,300 per month as compared to Riverside County's estimated cost for services of \$10,858.
2. CTAI Pacific Greenscape Landscape Service was the lowest responsible vendor for landscape services at the parks for a combined rate of \$3,800 per month as compared to Riverside County's estimated cost for services of \$4,260/month and Excel's \$4,559/month.
3. AA Janitorial Services will provide such services at Marna O'Brien Park for \$570 per month as compared to Andrews & Sons submittal of \$575 per month.
4. Protection Rescue Security Patrol will provide services at the parks for \$425 per month as compared to Maxxum Security's submittal of \$645 per month.

Attached is the complete contract for Diamond W Events. This contract is the same format for the other vendors and only the "Scope of Work exhibit is attached for review.

One complete copy of all contracts is available for review at City Hall and will be available for review at the City Council Meeting.

FISCAL IMPACTS:

The total cost of this recommendation is \$145,260 compared to Riverside County's estimate of \$181,296 for a similar level of service. Funds for these services are budgeted in the FY 2009/10 Community Services Budget (10-470-xx, 10-467-xx and fund 50).

ALTERNATIVES:

1. Take no action
2. Provide staff with further direction.

Attachments:

1. Agreement for Contract Services between City of Wildomar and Diamond W Events.
2. Exhibits from the proposed Agreement for Maintenance Services between City of Wildomar and CTAI.
3. Exhibits from the proposed Agreement for Janitorial Services between City of Wildomar and AA Janitorial Services.
4. Exhibits from the proposed Agreement for Security Services between City of Wildomar and Protection Rescue Security Services.

Submitted by:

Approved by:

Gary Nordquist
Finance Director

Frank Oviedo
City Manager

Reviewed by:

Julie Hayward Biggs
City Attorney

EXHIBIT "A" SCOPE OF SERVICES

The following specifications described the work that will be required by the contractor for Contract Services.

- Provide 10 hours weekly maintenance for three (3) parks; Marna O'Brien, Regency Heritage and Windsong.
- To develop and implement the operations of Parks & Recreation including parks and buildings maintenance and recreation services programs.
- To plan, direct, manage and coordinate festivals and special events for the City.
- Coordinate and manage the emergency preparedness program for the City.

EXHIBIT "B" SCHEDULE OF SERVICES

- Diamond W Events will provide 30 hours of service per week overseeing Parks & Recreation, Special Events and Emergency Preparedness.

EXHIBIT "C" COMPENSATION

Contract services for Park Maintenance	\$2,000 per month
Contract services for Community Service projects	\$5,000 per month
Telecommunications reimbursement	\$300 per month

EXHIBIT "D" CONTRACT MODIFICATIONS

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AGREEMENT FOR CONTRACT SERVICES

BETWEEN

THE CITY OF WILDOMAR

AND

DIAMOND W EVENTS

TABLE OF CONTENTS

	Page
SECTION 1. CONTRACTOR	1
SECTION 2. PROJECT	1
SECTION 3. TERM OF AGREEMENT.....	1
SECTION 4. SCOPE OF SERVICES	1
SECTION 5. EXTRA WORK.....	2
SECTION 6. COMPENSATION AND METHOD OF PAYMENT	2
A. Compensation	2
B. Payment of Compensation	2
C. Reimbursement for Expenses.....	2
SECTION 7. RESPONSIBILITIES OF CONTRACTOR	2
A. Control and Payment of Subordinates; Independent Contractor.....	2
B. Schedule of Services.....	3
C. Conformance to applicable requirements.....	3
D. City’s Representative	3
E. Contractor’s representative	3
F. Coordination of Services.....	3
G. Standard of Care; Performance of Employees	3
H. Law and Regulations.....	4
I. Safety	4
J. Prevailing Wages	4
K. Assignment or Transfer.....	5
L. Accounting Records.....	5
M. Ownership of Documents	5
N. Equal Opportunity Employment	6
O. Unauthorized Aliens	6
SECTION 8. INDEMNIFICATION.....	6
A. Indemnification	6
B. General Indemnification	6
SECTION 9. INSURANCE.....	7
SECTION 10. BONDS.....	10
A. Performance Bond	10
B. Payment Bond.....	10
C. Bond Provisions.....	11
D. Surety Qualifications	11

TABLE OF CONTENTS
(continued)

Page

SECTION 11.	TERMINATION OF AGREEMENT	11
A.	Grounds for Termination	11
B.	Effect of Termination.....	11
C.	Additional Services.....	11
D.	Default	12
SECTION 12.	EXCUSABLE DELAYS	12
SECTION 13.	COOPERATION; FURTHER ACTS.....	12
SECTION 14.	CITY’S RIGHT TO EMPLOY OTHER CONTRACTORS	12
SECTION 15.	CONSTRUCTION; REFERENCES; CAPTIONS	12
SECTION 16.	NO THIRD PARTY BENEFICIARIES	12
SECTION 17.	PROHIBITED INTERESTS.....	13
SECTION 18.	DELIVERY OF NOTICES.....	13
SECTION 19.	AUTHORITY TO EXECUTE.....	14
SECTION 20.	BINDING EFFECT	14
SECTION 21.	MODIFICATION OF AGREEMENT.....	14
SECTION 22.	WAIVER	14
SECTION 23.	GOVERNING LAW.....	14
SECTION 24.	ATTORNEYS FEES, COSTS AND EXPENSES.....	14
SECTION 25.	LABOR CERTIFICATION.....	14
SECTION 26.	SUBCONTRACTING	15
SECTION 27.	COUNTERPARTS	15
SECTION 28.	ENTIRE AGREEMENT.....	15
SECTION 29.	SEVERABILITY	16
EXHIBIT “A” SCOPE OF SERVICES		
EXHIBIT “B” SCHEDULE OF SERVICES		
EXHIBIT “C” COMPENSATION		
EXHIBIT “D” CONTRACT MODIFICATIONS		

**AGREEMENT FOR CONTRACT SERVICES
BETWEEN
THE CITY OF WILDOMAR
AND
DIAMOND W EVENTS**

This Agreement for Contract Services (“Agreement”), is made and entered into this first day of October 2009, by and between the City of Wildomar, a California municipal corporation organized under the laws of the State of California with its principal place of business at 23873 Clinton Keith Rd., Suite 201, Wildomar, CA 92595 (“City”) and Diamond W Events, a California (partnership, limited partnership, corporation, etc.) (“Contractor”).

In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

SECTION 1. CONTRACTOR

Contractor desires to perform and assume responsibility for the provision of certain Contract services required by the City on the terms and conditions set forth in this Agreement. Contractor represents that it is experienced in providing Contract services to public clients, that it and its employees or subcontractors have all necessary licenses and permits to perform the Services in the State of California, and that they are familiar with the plans of the City.

SECTION 2. PROJECT

City desires to engage Contractor to render such services for Community Services as set forth in this Agreement.

SECTION 3. TERM OF AGREEMENT

The term of this Agreement shall be from October 1, 2009 to September 30, 2010, with two (2) one year extensions, unless earlier terminated as provided in Section 11 “Termination of Agreement”. Contractor shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines. Such term may be extended upon written agreement of both parties to this Agreement.

SECTION 4. SCOPE OF SERVICES

Contractor promises and agrees to furnish to the Owner all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional Contract services necessary for the Project (“Services”). The Services are more particularly described in Exhibit “A” attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with this Agreement, the Exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

that Contractor or any of contractor's officers, employees or agents are in any manner officials, officers, employees or agents of City.

(3) Neither Contractor, nor any of Contractor's officers, employees or agents, shall obtain any rights to retirement, healthcare or any other benefits which may otherwise accrue to City's employees. Contractor expressly waives any claim Contractor may have to any such rights.

B. Schedule of Services. Contractor shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the Schedule of Services set forth in Exhibit "B" attached hereto and incorporated herein by reference. Contractor represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Contractor's conformance with the Schedule, City shall respond to Contractors' submittals in a timely manner. Upon request of City, Contractor shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

C. Conformance to applicable requirements. All work prepared by Contractor shall be subject to the approval of the City.

D. City's Representative. The City Hereby designates Frank Oviedo, City Manager, or his or her designee, to act as its representative for the performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for purposes under this Contract. Contractor shall not accept direction or orders from any person other than the City's Representative or his or her designee.

E. Contractor's representative. Contractor hereby designates Paula Willette or his or her designee, to act as its representative for the performance of this Agreement ("Contractor's Representative"). Contractor's Representative shall have full authority to represent and act on behalf of the Contractor for all purposes under this Agreement. The Contractor's Representative shall supervise and direct the Services, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

F. Coordination of Services. Contractor agrees to work closely with City staff in the performance of Services and shall be available to City's staff, consultants and other staff at all reasonable times.

G. Standard of Care; Performance of Employees. Contractor shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Contractor represents and maintains that it is skilled in the professional calling necessary to perform the Services. Contractor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Finally, Contractor represents that it, its employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Finally, Contractor represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, including a City Business

License, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Contractor shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Contractor's failure to comply with the standard of care provided for herein. Any employee of the Contractor or its subcontractors who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed from the Project by the Contractor and shall not be re-employed to perform any of the Services or to work on the Project.

H. Law and Regulations. Contractor shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Contractor shall be liable for all violations of such laws and regulations in connection with Services. If the Contractor performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the City, Contractor shall be solely responsible for all costs arising there from. Contractor shall defend, indemnify and hold City, its officials, directors, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

I. Safety. Contractor shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Contractor shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (A) adequate life protection and life saving equipment and procedures; (B) instructions in accident prevention for all employees and subcontractors, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and Contract of all safety measures.

J. Prevailing Wages. Contractor is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 1600, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "Public Works" and "Maintenance" projects. If the Services are being performed as part of an applicable "Public Works" or "Maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. City shall provide Contractor with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Contractor's principal place of business and at the project site. Contractor shall defend, indemnify and hold the City, its elected officials,

officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

K. Assignment or Transfer. Contractor shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the City. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

L. Accounting Records

(1) Maintenance and Inspection. Contractor shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. Any and all such documents or records shall be maintained in accordance with generally accepted accounting principles and shall be sufficiently complete and detailed so as to permit an accurate evaluation of the services provided by Contractor pursuant to this Agreement. All such records shall be clearly identifiable. Contractor shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Contractor shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

(2) Copies of such documents or records shall be provided directly to the City for inspection, audit and copying when it is practical to do so; otherwise, unless an alternative is mutually agreed upon, such documents and records shall be made available at Contractor's address indicated for receipt of notices in this Agreement. Where City has reason to believe that any of the documents or records required to be maintained pursuant to this section may be lost or discarded due to dissolution or termination of Contractor's business, City may, by written request, require that custody of such documents or records be given to the requesting party and that such documents and records be maintained by the requesting party. Access to such documents and records shall be granted to City, as well as to its successors-in-interest and authorized representatives.

M. Ownership of Documents. All original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents prepared, developed or discovered by Contractor in the course of providing any services pursuant to the Agreement shall become the sole property of City and may be used, reused or otherwise disposed of the City without the permission of the Contractor. Upon completion, expiration or termination of this Agreement, Contractor shall turn over to City all such original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents

N. Equal Opportunity Employment. Contractor represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff

O. Unauthorized Aliens. Contractor hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§ 1101, et seq., as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Contractor so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should any liability or sanctions be imposed against City for such use of unauthorized aliens, Contractor hereby agrees to and shall reimburse City for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by City.

SECTION 8. INDEMNIFICATION

A. Indemnification. Contractor shall defend, indemnify and hold the City, its officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any alleged acts, omissions or willful misconduct of Contractor, its officials, officers, employees, agents, consultants and contractors arising out of or in connection with the performance of the Services, the Project or this Agreement, including without limitation the payment of all consequential damages and attorney's fees and other related costs and expenses. Contractor shall defend, at Contractor's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against City, its directors, officials, officers, employees, agents or volunteers. Contractor shall pay and satisfy any judgment, award or decree that may be rendered against City or its directors, officials, officers, employees, agents or volunteers, in any such suit, action or other legal proceeding. Contractor shall reimburse City and its directors, officials, officers, employees, agents and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Contractor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City, its directors, official's officers, employees, agents or volunteers.

B. General Indemnification. Contractor agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this section from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Contractor in the performance of this Agreement. In the event Contractor fails to obtain such indemnity obligations from others are required here, Contractor agrees to be fully responsible according to the terms of this section. Failure of City to monitor compliance with these requirements imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder. This obligation to indemnify and defend City as set forth here is binding on the successors, assigns or heirs of Contractor and shall survive the termination of this Agreement or this section.

SECTION 9. INSURANCE

Prior to the beginning of and throughout the duration of the Work, Contractor will maintain insurance in conformance with the requirements set forth below. Contractor will use existing coverage to comply with these requirements. If that existing coverage does not meet the requirements set forth here, Contractor agrees to amend, supplement or endorse the existing coverage to do so. Contractor acknowledges that the insurance coverage and policy limits set forth in this section constitute the minimum amount of coverage required. Any insurance proceeds in excess of the limits and coverage required in this Agreement and which are applicable to a given loss, will be available to the City.

Contractor shall provide the following types and amounts of insurance:

A. Commercial General Liability Insurance using Insurance Services Office "Commercial General Liability" policy form CG 00 01 or the exact equivalent. Defense costs must be paid in addition to limits. There shall be no cross liability exclusion for claims or suits by one insured against another. Limits are subject to review but in no event less than \$1,000,000 per occurrence for all covered losses and no less than \$2,000,000 general aggregate.

B. Business Auto Coverage on ISO Business Auto Coverage form CA 00 01 including symbol 1 (Any Auto) or the exact equivalent. Limits are subject to review, but in no event to be less than \$1,000,000 per accident. If Contractor owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the general liability policy described above. If Contractor or Contractor's employees will use personal autos in any way on this project, Contractor shall provide evidence of personal auto liability coverage for each such person.

C. Workers Compensation on a state-approved policy form providing statutory benefits as required by law with employer's liability limits no less than \$1,000,000 per accident or disease.

D. Excess or Umbrella Liability Insurance (Over Primary) if used to meet limit requirements, shall provide coverage at least as broad as specified for the underlying coverage's. Any such coverage provided under an umbrella liability policy shall include a drop down provision providing primary coverage above a maximum \$25,000 self-insured retention for liability not covered by primary but covered by the umbrella. Coverage shall be provided on a "pay on behalf" basis, with defense costs payable in addition to policy limits. Policy shall contain a provision obligating insurer at the time insured's liability is determined, not requiring actual payment by the insured first. There shall be no cross liability exclusion precluding coverage for claims or suits by one insured against another. Coverage shall be applicable to City for injury to employees of Contractor, subcontractors or others involved in the Work. The scope of coverage provided is subject to approval of City following receipt of proof of insurance as required herein. Insurance procured pursuant to these requirements shall be written by insurers that are admitted carriers in the State of California and with an A.M. Best rating of A or better and a minimum financial size VII.

E. General conditions pertaining to provision of insurance coverage by Contractor.
Contractor and City agree to the following with respect to insurance provided by Contractor:

(1) Contractor agrees to have its insurer endorse the third party general liability coverage required herein to include as additional insured's City, its officials, employees and agents, using standard ISO endorsement No. CG 2010 with an edition prior to 1992. Contractor also agrees to require all contractors, and subcontractors to do so likewise.

(2) No liability insurance coverage provided to comply with this Agreement shall prohibit Contractor, or Consultant's employees, or agents, from waiving the right of subrogation prior to a loss. Contractor agrees to waive subrogation rights against City regardless of the applicability of any insurance proceeds, and to require all contractors and subcontractors to do likewise.

(3) All insurance coverage and limits provided by Contractor and available or applicable to this Agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement or any other agreement relating to the City or its operations limits the application of such insurance coverage.

(4) None of the coverage's required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to City and approved in writing.

(5) No liability policy shall contain any provision or definition that would serve to eliminate so-called "third party action over" claims, including any exclusion for bodily injury to an employee of the insured or any contractor or subcontractor.

(6) All coverage types and limits required are subject to approval, modification and additional requirements by the City, as the need arises. Contractor shall not make any reductions in scope of coverage (e.g. elimination of contractual liability or reduction of discovery period) that may affect City's protection without City's prior written consent.

(7) Proof of compliance with these insurance requirements, consisting of certificates of insurance evidencing all of the coverage's required and an additional insured endorsement to Contractor's general liability policy, shall be delivered to City at or prior to the execution of this Agreement. In the event such proof of any insurance is not delivered as required, or in the event such insurance is canceled at any time and no replacement coverage is provided, City has the right, but not the duty, to obtain any insurance it deems necessary to protect its interests under this or any other agreement and to pay the premium. Any premium so paid by City shall be charged to and promptly paid by Contractor or deducted from sums due Contractor, at City option.

(8) Certificate(s) are to reflect that the insurer will provide 30 days notice to City of any cancellation of coverage. Contractor agrees to require its insurer to modify such certificates to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, or that any party will "endeavor" (as opposed to being required) to comply with the requirements of the certificate.

(9) It is acknowledged by the parties of this Agreement that all insurance coverage required to be provided by Contractor or any subcontractor, is intended to apply first and on a primary, non-contributing basis in relation to any other insurance or self insurance available to City.

(10) Contractor agrees to ensure that subcontractors, and any other party involved with the project who is brought onto or involved in the project by Contractor, provide the same minimum insurance coverage required of Contractor. Contractor 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. Contractor agrees that upon request, all agreements with subcontractors and others engaged in the project will be submitted to City for review.

(11) Contractor agrees not to self-insure or to use any self-insured retention's or deductibles on any portion of the insurance required herein except as disclosed to and approved by the City and further agrees that it will not allow any contractor, subcontractor, Architect, Engineer or other entity or person in any way involved in the performance of work on the project contemplated by this Agreement to self-insure its obligations to City. City expressly approves maintenance by the Contractor of a \$100,000 deductible on its current Professional Liability insurance policy.

(12) The City reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Contractor ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Contractor, the City will negotiate additional compensation proportional to the increased benefit to City.

(13) For purposes of applying insurance coverage only, this Agreement will be deemed to have been executed immediately upon any party hereto taking any steps that can be deemed to be in furtherance of or towards performance of this Agreement.

(14) Contractor acknowledges and agrees that any actual or alleged failure on the part of City to inform Contractor of non-compliance with any insurance requirement in no way imposes any additional obligations on City nor does it waive any rights hereunder in this or any other regard.

(15) Contractor will renew the required coverage annually as long as City, or its employees or agents face an exposure from operations of any type pursuant to this Agreement. This obligation applies whether or not the Agreement is canceled or terminated for any reason. Termination of this obligation is not effective until City executes a written statement to that effect.

(16) Contractor shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Proof that such coverage has been ordered shall be submitted prior to expiration. A coverage binder or letter from Contractor's insurance agent to this effect is acceptable. A certificate of insurance and/or additional insured endorsement as

(17) The provisions of any workers' compensation or similar act will not limit the obligations of Contractor under this Agreement. Contractor expressly agrees not to use any statutory immunity defenses under such laws with respect to City, its employees, officials and agents.

(18) Requirements of specific coverage features or limits contained in this section are not intended as limitations on coverage, limits or other requirements nor as a waiver of any coverage normally provided by any given policy. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue, and is not intended by any party or insured to be limiting or all-inclusive.

(19) These insurance requirements are intended to be separate and distinct from any other provision in this Agreement and are intended by the parties here to be interpreted as such.

(20) The requirements in this Section supersede all other sections and provisions of this Agreement, except Exhibit "D" "Modifications to Contract Documents", to the extent that any other section or provision conflicts with or impairs the provisions of this Section.

(21) Contractor agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Contractor for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.

(22) Contractor agrees to provide immediate notice to City of any claim or loss against Contractor arising out of the work performed under this Agreement. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City.

SECTION 10. BONDS

A. Performance Bond. If specifically requested by City in Exhibit "D", "Modifications to Contract Documents", attached hereto and incorporated herein by reference, Contractor shall execute and provide to City concurrently with this Agreement a Performance Bond in the amount of the total, not-to-exceed compensation indicated in this Agreement, and in a form provided or approved by the City. If such bond is required, no payment will be made to Contractor until it has been received and approved by the City.

B. Payment Bond. If required by law or otherwise specifically requested by City in Exhibit "D", "Modifications to Contract Documents", attached hereto and incorporated herein by reference, Contractor shall execute and provide to City concurrently with this Agreement a Payment Bond in the amount of the total, not-to-exceed compensation indicated in this

Agreement, and in a form provided or approved by the City. If such bond is required, no payment will be made to Contractor until it has been received and approved by the City.

C. Bond Provisions. Should, in City's sole opinion, any bond become insufficient or any surety be found to be unsatisfactory, Contractor shall renew or replace the affected bond within 10 days of receiving notice from City. In the event the surety or Contractor intends to reduce or cancel any required bond, at least thirty (30) days prior written notice shall be given to the City, and Contractor shall post acceptable replacement bonds at least ten (10) days prior to expiration of the original bonds. No further payments shall be deemed due or will be made under this Agreement until any replacement bonds required by this Section are accepted by the City. To the extent, if any, that the total compensation is increased in accordance with the Agreement, the Contractor shall, upon request of the City, cause the amount of the bonds to be increased accordingly and shall promptly deliver satisfactory evidence of such increase to the City. To the extent available, the bonds shall further provide that no change or alteration of the Agreement (including, without limitation, an increase in the total compensation, as referred to above), extensions of time, or modifications of the time, terms, or conditions of payment to the Contractor, will release the surety. If the Contractor fails to furnish any required bond, the City may terminate this Agreement for cause.

D. Surety Qualifications. Only bonds executed by an admitted surety insurer, as defined in Code of Civil Procedure Section 995.120, shall be accepted. The surety must be a California-admitted surety with a current A.M. Best's rating no less than A:VIII and satisfactory to the City. If a California-admitted surety insurer issuing bonds does not meet these requirements, the insurer will be considered qualified if it is in conformance with Section 995.660 of the California Code of Civil Procedure, and proof of such is provided to the City.

SECTION 11. TERMINATION OF AGREEMENT.

A. Grounds for Termination. City may, by written notice to Contractor, terminate with or without cause the whole or any part of this Agreement at any time and by giving written notice to Contractor of such termination, and specifying the effective date thereof, at least thirty (30) days before the effective date of such termination. Upon termination, Contractor shall be compensated only for those services, which have been adequately rendered to City, and Contractor shall be entitled to no further compensation. Contractor may not terminate this Agreement except for cause.

B. Effect of Termination. If this Agreement is terminated as provided herein, City may require Contractor to provide all finished or unfinished documents and data and other information of any kind prepared by Contractor in connection with the performance of Services under this Agreement. Contractor shall be required to provide such document and other information within fifteen (15) days of the request.

C. Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

D. Default. In the event that Contractor is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Contractor for any work performed after the date of default and may terminate this Agreement immediately by written notice to the Contractor.

SECTION 12. EXCUSABLE DELAYS

Contractor shall not be liable for damages, including liquidated damages, if any, caused by delay in performance of failure to perform due to causes beyond the control of Contractor. Such causes include, but are not limited to, acts of God, acts of the public enemy, acts of federal, state or local governments, acts of City, court orders, fires, floods, epidemics, strikes, embargoes, and unusually severe weather. The term and price of this Agreement shall be equitably adjusted for any delays due to such causes.

SECTION 13. COOPERATION; FURTHER ACTS

All public information, data, reports, records, and maps as are existing and available to City as public records, and which are necessary for carrying out the work as outlined in the Exhibit "A" "Scope of Services", shall be furnished to Contractor in every reasonable way to facilitate, without undue delay, the work to be performed under this Agreement. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of the Agreement.

SECTION 14. CITY'S RIGHT TO EMPLOY OTHER CONTRACTORS

City reserves right to employ other contractors in connection with this Project.

SECTION 15. CONSTRUCTION; REFERENCES; CAPTIONS

Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Contractor include all personnel, employees, agents, and subcontractors of Contractor, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit augment, or describe the scope, content, or intent of this Agreement.

SECTION 16. NO THIRD PARTY BENEFICIARIES.

There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

SECTION 17. PROHIBITED INTERESTS

Contractor maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Agreement. Further, Contractor warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising there from.

SECTION 18. DELIVERY OF NOTICES

All notices required or permitted to be given under this Agreement shall be in writing and shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

CITY: City of Wildomar
Attention: Frank Oviedo, City Manager
23873 Clinton Keith Rd., Suite 201
Wildomar, CA 92595

Phone: 951.677.7751
Fax: 951.698.1463

CONSULTANT: Diamond W Events
Paula Willette
21285 Shoemaker Dr.
Wildomar, CA 92595

Phone: 951.678.5434
Phone: 951.323.3103
Fax: 888.859.9296

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and address to the part at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

SECTION 19. AUTHORITY TO EXECUTE

The person or persons executing this Agreement on behalf of Contractor represents and warrants that he/she/they has/have the authority to so execute this Agreement and to bind Contractor to the performance of its obligations hereunder.

SECTION 20. BINDING EFFECT

This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the parties.

SECTION 21. MODIFICATION OF AGREEMENT

Except as modified in Exhibit "D" "Modifications to Contract", no amendment to or modification of this Agreement shall be valid unless made in writing and approved by the City and the Contractor. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

SECTION 22. WAIVER

Waiver by any party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party or any breach of the provisions of this Agreement shall not constitute a waiver of any other provision, nor a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any work or services by Contractor shall not constitute a waiver of any of the provisions of this Agreement.

SECTION 23. GOVERNING LAW

This Agreement shall be interpreted, construed and governed according to the laws of the State of California. In the event of litigation between the parties, venue in state trial courts shall lie exclusively in the County of Riverside. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in Los Angeles.

SECTION 24. ATTORNEYS FEES, COSTS AND EXPENSES

In the event litigation or other proceeding is required to enforce or interpret any provision of this Agreement, the prevailing party in such litigation or other proceeding shall be entitled to an award of reasonable attorney's fees, costs and expenses, in addition to any other relief to which it may be entitled.

SECTION 25. LABOR CERTIFICATION

By its signature hereunder, Contractor certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

SECTION 26. SUBCONTRACTING

Contractor shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

SECTION 27. COUNTERPARTS

This Agreement may be signed in counterparts, each of which shall constitute an original.

SECTION 28. ENTIRE AGREEMENT

This Agreement, including the attached Exhibits "A" through "D", is the entire, complete, final and exclusive expression of the parties with respect to the matters addressed therein and supersedes all other agreements or understandings, whether oral or written, or entered into between Contractor and City prior to the execution of this Agreement. No statements, representations or other agreements, whether oral or written, made by any party which is not embodied herein shall be valid and binding. No amendment to this Agreement shall be valid and binding unless in writing duly executed by the parties or their authorized representatives.

SECTION 29. SEVERABILITY

If a term, condition or covenant of this Agreement is declared or determined by any court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall not be affected thereby and the Agreement shall be read and construed without the invalid, void or unenforceable provision(s).

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed the day and year first above written.

CITY OF WILDOMAR

By: _____
Frank Oviedo, City Manager

APPROVED AS TO FORM:

Julie Hayward Biggs, City Attorney

CONTRACTOR:

By: _____
(Authorized Officer)

Title _____

Print Name

Phone

By: _____
(Authorized Officer)

Title _____

Print Name

Phone

Attachment 2

AGREEMENT FOR MAINTENANCE SERVICES

BETWEEN

THE CITY OF WILDOMAR

AND

CTAI Pacific Greenscape

EXHIBIT "A" SCOPE OF SERVICES

Complete landscape maintenance which includes but is not limited to the following at:

Marna O'Brien Park
Regency Heritage Park
Windsong Park
Cervera Streetscape

1. Weekly mowing and edging of all turf areas
2. Planter maintenance
3. Removal of weeds
4. Landscape pest management including gophers
5. Trimming/pruning of shrubs (train for establishment)
6. Landscape fertilizer service for planters and turf
7. Removal of litter and debris from planters and parking lot
8. Tree maintenance (trees under 12')
9. Chemical weed prevention and treatment program
10. Weekly irrigation systems check and inspection
11. Day Porter Service

- Main line breaks billed separately
- Vandalism repairs billed separately
- No charge for lateral line irrigation repairs

Irrigation repairs to be billed separately

EXHIBIT "B" SCHEDULE OF SERVICES

1. Weekly mowing and edging of all turf areas
2. Weekly irrigation systems check and inspection
3. Day porter service

EXHIBIT "C" COMPENSATION

Marna O'Brien Park	\$2,000 per month
Regency Heritage Park	\$950 per month
Windsong Park	\$850 per month
Cervera Street	\$460 per month

Attachment 3

AGREEMENT FOR JANITORIAL SERVICES

BETWEEN

THE CITY OF WILDOMAR

AND

A & A JANITORIAL SERVICES

EXHIBIT "A" SCOPE OF SERVICES

The following specifications described the work that will be required by the contractor for Marna O'Brien Park.

Park Restrooms shall maintain an acceptable level that ensures usability by the public by performing the following daily operations:

- Floors shall be swept
- Clean dispensers
- Clean was basins
- Wet-mop floors
- Empty trash containers and remove debris
- Chemically clean toilets and urinals daily to remove stains and deposits
- Disinfect toilets and urinals
- Clean interior walls and ceilings as needed
- Scrub floors as needed

EXHIBIT "B" SCHEDULE OF SERVICES

A & A Janitorial Services will provide 7 days per week Janitorial Services for Marna O'Brien Park.

EXHIBIT "C" COMPENSATION

Marna O'Brien Park \$570.00 per month

Attachment 4

AGREEMENT FOR SECURITY SERVICES

BETWEEN

THE CITY OF WILDOMAR

AND

PROTECTION RESCUE SECURITY SERVICES

EXHIBIT "A" SCOPE OF SERVICES

The following specifications described the work that will be required by the contractor for Park Security Services.

- Walk-thru of Regency Heritage Park at dusk to ensure no persons are in park before locking both gates
- Unlock Regency heritage Park at dawn
- Lock restrooms at Marna O'Brien park after 10pm and unlock at dawn
- Drive by a minimum of three (3) times per night. Lock up may be considered a drive by
- Respond to emergency or disturbance calls as needed
- Report all emergency or disturbance calls to City Contact in a timely manner
- Report any safety hazards for immediate attention

EXHIBIT "B" SCHEDULE OF SERVICES

Protection Rescue Security Services will provide 7 days per week Security Services for Marna O'Brien Park, Regency Heritage Park, and Windsong Park

EXHIBIT "C" COMPENSATION

\$425 for Security at the following Parks

- Marna O'Brien
- Regency Heritage
- Windsong

TO: Mayor and City Council
FROM: Gary Nordquist, Assistant City Manager
SUBJECT: Agreement Amendments for Community Services and Park Maintenance

STAFF REPORT

RECOMMENDATION:

That the City Council authorize the City Manager to sign the amendment to the contracts with Diamond W Events, CTAI Pacific Greenscape Landscape Services, AA Janitorial Services, and Protection Rescue Security Services.

BACKGROUND/DISCUSSION:

On October 14, 2009, the City Council authorized the City Manager to enter into contractual agreements for the City's parks and emergency preparedness programs and park maintenance services with Diamond W Events, CTAI Pacific Greenscape Landscape Services, AA Janitorial Services and Protection Rescue Security Services.

The term of the agreements were for one year with the potential of 2 one year extensions. Upon review of the performance of the contractors, after their first full year of service, staff is recommending to amend three of the contracts for another year of service and a 3 month extension for the 4th contract. Additionally, the scope of services has been further defined on several contracts to assist staff in performance evaluation of the contractors. No other changes to the original contracts are being requested.

FISCAL IMPACTS:

None, the total cost of this recommendation is included in the City's adopted budget for FY 2010-11.

ALTERNATIVES:

- 1. Take no action
- 2. Provide staff with further direction.

Submitted by:

Approved by:

Gary Nordquist
Assistant City Manager

Frank Oviedo
City Manager

ATTACHMENTS:

1. Amendment to the Agreement for Contract Services between City of Wildomar and Diamond W Events.
2. Amendment to the Agreement for Contract Services for Security Services between City of Wildomar and Protection Rescue Security Services.
3. Amendment to the Agreement for Contract Services for Janitorial Services between City of Wildomar and AA Janitorial Services.
4. Amendment to the Agreement for Contract Services for Maintenance Services between City of Wildomar and CTAI.

Attachment 1

AMENDMENT TO THE AGREEMENT FOR CONTRACT SERVICES

BETWEEN

THE CITY OF WILDOMAR

AND

DIAMOND W EVENTS

CONTRACT AMENDMENT

NUMBER 1

**AGREEMENT FOR CONTRACT SERVICES
BETWEEN
THE CITY OF WILDOMAR
AND
DIAMOND W EVENTS**

This Amendment to the agreement for Contract Services (“Agreement”), is made and entered into this first day of October 2010, by and between the City of Wildomar, a California municipal corporation organized under the laws of the State of California with its principal place of business at 23873 Clinton Keith Rd., Suite 201, Wildomar, CA 92595 (“City”) and Diamond W Events, a California (partnership, limited partnership, corporation, etc.) (“Contractor”).

This Amendment modifies the following sections:

SECTION 3. TERM OF AGREEMENT

The term of this Amendment for the Agreement shall be from October 1, 2010 to September 30, 2011, with one (1) one year extension, unless earlier terminated as provided in Section 11 “Termination of Agreement”. Contractor shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines. Such term may be extended upon written agreement of both parties to this Agreement.

SECTION 4. SCOPE OF SERVICES

Contractor promises and agrees to furnish to the Owner all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional Contract services necessary for the Project (“Services”). The Services are more particularly described in Exhibit “A” (Amended October 1, 2010) attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with this Agreement, the Exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations

IN WITNESS WHEREOF, the parties hereto have caused this AMENDMENT TO THE AGREEMENT to be executed the day and year first above written.

CITY OF WILDOMAR

By: _____
Frank Oviedo, City Manager

ATTEST:

Debbie A. Lee, CMC, City Clerk

APPROVED AS TO FORM:

Julie Hayward Biggs, City Attorney

CONTRACTOR:

By: _____
(Authorized Officer)

Title _____

Print Name

Phone

By: _____
(Authorized Officer)

Title _____

Print Name

Phone

**EXHIBIT "A" SCOPE OF SERVICES
AMENDED OCTOBER 1, 2010**

The following specifications described the work that will be required by the contractor for Contract Services.

A. Emergency Preparedness

Coordinate and manage the emergency preparedness program for the City.

1. Attend County Office of Emergency Services (OES) meetings to stay informed
2. Work with Staff on Emergency Operation Center (EOC) positions
3. Work with Staff to ensure mandatory certifications are current
4. Update Emergency Operation Plan (EOP) as needed and provide an annual review
5. Educate the community about preparedness
 - a. Offer seminars throughout the year
 - b. Offer Citizens Emergency Response Team (CERT) training
 - c. Provide opportunities to place individual orders for family preparedness items
6. Submit and manage yearly Emergency Management Performance Grant (EMPG)
7. Submit and manage yearly Homeland Security Grant (HSGP)
8. Submit and manage other grants available through Riverside OES

B. Events and Park Management

To develop and implement the operations of Parks & Recreation including parks and buildings maintenance and recreation services programs, such as:

1. Events

- a. Plan, budget, and carry out a minimum of 5 citywide events per year such as:
 - i. Movies in the Park
 - ii. Egg Hunt
 - iii. Farmers Market
 - iv. Breakfast with Santa
 - v. State of the City
- b. Oversee submission of Special Events permits submitted by local residents
- c. Oversee two (2) community Clean Up events per year

2. Park Management

- a. Oversee landscaping and security contracts
- b. Oversee the utility bills for the parks
 - i. Manage water usage to stay within budget
- c. Weekly walk thru of parks
- d. Maintain Shelter reservation calendar
- e. Request and receive insurance certificates when required
- f. Maintain Field reservation calendar
- g. Request and receive insurance certificates
- h. Maintain the field lighting schedule
 - i. Invoice for lighting fees
- i. Work with local youth groups to collect out of District fees

C. Park Maintenance

Provide 10 hours weekly maintenance for three (3) parks; Marna O'Brien, Regency Heritage and Windsong, not limited to do the following maintenance at all three parks:

1. Graffiti removal
2. Painting
3. Minor plumbing
4. Fence repairs
5. Steam Cleaning of sidewalks
6. Submit monthly reports

CONTRACT AMENDMENT

NUMBER 1

AGREEMENT FOR SECURITY SERVICES BETWEEN THE CITY OF WILDOMAR AND PROTECTION RESCUE SECURITY SERVICES

This Amendment to the Agreement for Security Services (“Agreement”), is made and entered into this first day of October 2010, by and between the City of Wildomar, a California municipal corporation organized under the laws of the State of California with its principal place of business at 23873 Clinton Keith Rd., Suite 201, Wildomar, CA 92595 (“City”) and Protection Rescue Security Services, a California (partnership, limited partnership, corporation, etc.) (“Contractor”).

This Amendment modifies the following sections:

SECTION 3. TERM OF AGREEMENT

The term of this Amendment to the Agreement shall be from October 1, 2010 to September 30, 2011, with one (1) one year extensions as long as both parties agree in writing to such an extension thirty (30) days prior to termination, unless earlier terminated as provided in Section 11 “Termination of Agreement”.

SECTION 4. SCOPE OF SERVICES

Contractor promises and agrees to furnish to the Owner all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional Security services necessary for the Project (“Services”). The Services are more particularly described in Exhibit “A” (Amended) attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with this Agreement, the Exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

IN WITNESS WHEREOF, the parties hereto have caused this AMENDMENT to the AGREEMENT to be executed the day and year first above written.

CITY OF WILDOMAR

By: _____
Frank Oviedo, City Manager

ATTEST:

Debbie A. Lee, CMC, City Clerk

APPROVED AS TO FORM:

Julie Hayward Biggs, City Attorney

CONTRACTOR:

By: _____
(Authorized Officer)

Title _____

Print Name

Phone

By: _____
(Authorized Officer)

Title _____

Print Name

Phone

**AMENDED
EXHIBIT "A"
SCOPE OF SERVICES**

The following specifications described the work that will be required by the contractor for Park Security Services.

1. Walk-thru of Regency Heritage Park at dusk to ensure no persons are in park before locking both gates.
2. Unlock Regency Heritage Park at dawn.
3. Lock restrooms at Marna O'Brien park after 10pm and unlock at dawn.
4. Drive by a minimum of three (3) times per night. Lock up may be considered a drive by.
5. Respond to emergency or disturbance calls as needed.
6. Report all emergency or disturbance calls to City Contact in a timely manner.
7. **Report any safety hazards for immediate attention.**

Attachment 3

AMENDMENT TO THE AGREEMENT FOR JANITORIAL SERVICES

BETWEEN

THE CITY OF WILDOMAR

AND

A & A JANITORIAL SERVICES

AMENDMENT
TO THE
AGREEMENT FOR JANITORIAL SERVICES
BETWEEN
THE CITY OF WILDOMAR
AND
A & A JANITORIAL SERVICES

This Agreement for Janitorial Services (“Agreement”), is made and entered into this first day of October 2010, by and between the City of Wildomar, a California municipal corporation organized under the laws of the State of California with its principal place of business at 23873 Clinton Keith Rd., Suite 201, Wildomar, CA 92595 (“City”) and A&A Janitorial Services, a California (partnership, limited partnership, corporation, etc.) (“Contractor”).

The Amendment modifies the following sections:

SECTION 3. TERM OF AGREEMENT

The term of this Agreement shall be from October 1, 2010 to September 30, 2011, with one (1) one year extensions as long as both parties agree in writing to such an extension thirty (30) days prior to termination, unless earlier terminated as provided in Section 11 “Termination of Agreement”.

SECTION 4. SCOPE OF SERVICES

Contractor promises and agrees to furnish to the Owner all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional janitorial services necessary for the Project (“Services”). The Services are more particularly described in Exhibit “A” (AMENDED) attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with this Agreement, the Exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed the day and year first above written.

CITY OF WILDOMAR

By: _____
Frank Oviedo, City Manager

ATTEST:

Debbie A. Lee, CMC, City Clerk

APPROVED AS TO FORM:

Julie Hayward Biggs, City Attorney

CONTRACTOR:

By: _____
(Authorized Officer)

Title _____

Print Name

Phone

By: _____
(Authorized Officer)

Title _____

Print Name

Phone

**AMENDED
EXHIBIT "A" SCOPE OF SERVICES**

The following specifications described the work that will be required by the contractor for Marna O'Brien Park.

Park Restrooms shall maintain an acceptable level that ensures usability by the public by performing the following daily operations:

1. Floors shall be swept
2. Clean dispensers
3. Clean wash basins
4. Wet-mop floors
5. Empty trash containers and remove debris
6. Chemically clean toilets and urinals daily to remove stains and deposits
7. Disinfect toilets and urinals
8. Clean interior walls and ceilings as needed
9. Scrub floors as needed

Attachment 4

**AMENDMENT TO THE
AGREEMENT FOR MAINTENANCE SERVICES**

BETWEEN

THE CITY OF WILDOMAR

AND

CTAI Pacific Greenscape

**AMENDMENT TO THE
AGREEMENT FOR MAINTENANCE SERVICES
BETWEEN
THE CITY OF WILDOMAR
AND
CTAI PACIFIC LANDSCAPE**

This Agreement for Maintenance Services ("Agreement"), is made and entered into this first day of October 2010, by and between the City of Wildomar, a California municipal corporation organized under the laws of the State of California with its principal place of business at 23873 Clinton Keith Rd., Suite 201, Wildomar, CA 92595 ("City") and CTAI Pacific Landscape, a California (partnership, limited partnership, corporation, etc.) ("Contractor").

The Amendment modifies the following section:

SECTION 3 TERM OF AGREEMENT

The term of this Agreement shall be from October 1, 2010 to December 31, 2010, with possible extension to September 30, 2011 and (1) one year extension as long as both parties agree in writing to such an extension thirty (30) days prior to termination, unless earlier terminated as provided in Section 11 "Termination of Agreement".

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed the day and year first above written.

CITY OF WILDOMAR

By: _____
Frank Oviedo, City Manager

ATTEST:

Debbie A. Lee, CMC, City Clerk

APPROVED AS TO FORM:

Julie Hayward Biggs, City Attorney

CONTRACTOR:

By: _____
(Authorized Officer)

Title _____

Print Name

Phone

By: _____
(Authorized Officer)

Title _____

Print Name

Phone

CITY OF WILDOMAR – COUNCIL
Agenda Item #3.3
GENERAL BUSINESS
Meeting Date: August 10, 2011

TO: Mayor and City Council Members

FROM: Gary Nordquist, Assistant City Manager

SUBJECT: Accounting and Community/Emergency Services Contract Amendments – Misty Cheng and Diamond W Events

STAFF REPORT

RECOMMENDATION:

Staff recommends that the City Council approve the contract amendments and authorize the City Manager to execute said contracts.

BACKGROUND/DISCUSSION:

The City contracts for services which are provided on either an as needed basis or certain professional services are needed on a less than full time basis and it is fiscally advantageous to contract rather than hire full time city staff. Two such service contracts are recommended for approval for Fiscal Year 2011-12.

1. A Professional Services Agreement with Misty Cheng has been in place since 2009. Ms. Cheng has provided excellent support to City staff in financial areas of the organization. Ms Cheng has interfaced with City and contract staff and was the project Director in the City's conversion from the "Quick Books" accounting system to the "Eden" governmental finance and accounting systems. This successful conversion will provide the City with more timely and accurate financial information as well as implement the necessary and auditable fiscal controls for the City's operations. The City has received its first formal recognition from the Governmental Finance Officers Association (GFOA) that the City met all necessary criteria with its FY 2009-10 Comprehensive Annual Financial Report (CAFR) submittal to achieve the Excellence in Financial Reporting award. These accomplishments have been heavily influenced by Ms. Cheng's directions and participation and it is recommended that she continue in the capacity of City Comptroller to oversee the City's accounting services and participate in the continual improvements of the City's financial services.
2. A Professional Services Agreement with Diamond W Events has been in place since 2009. Diamond W Events has focused on the community service and emergency operations management/training needs of the community.

Additionally, the company and its principal, Ms. Paula Willette, have also undertaken a number of the administrative needs associated with some of the economic development activities which have been started at the City. The services provided by this company during the past several years have been outstanding and this contract amendment is presented for review and approval.

FISCAL IMPACT:

1. The funds for the accounting services request of \$83,200 are included in the City's budget and reflect the recent changes the City Council sought during the July 28, 2011 Financial Budget Reduction plan.
2. The funds for the community services/economic development and emergency operations management/training request of \$60,900 are included in the City's budget and reflect the recent changes the City Council sought during the July 28, 2011 Financial Budget Reduction plan.

Submitted by:

Approved by:

Gary Nordquist
Assistant City Manager

Frank Oviedo
City Manager

ATTACHMENTS:

- A. Contract with Misty V. Cheng
- B. Contract with Diamond W Events

Attachment

A

CITY OF WILDOMAR

PROFESSIONAL SERVICES AGREEMENT WITH

MISTY CHENG

1. PARTIES AND DATE.

This Agreement is made and entered into this 10th day of August, 2011, by and between the City of Wildomar, a municipal organization organized under the laws of the State of California with its principal place of business at 23873 Clinton Keith Road, Suite 201, Wildomar, California 92595 ("City") and Misty Cheng, an independent contractor ("Consultant"). City and Consultant are sometimes individually referred to as "Party" and collectively as "Parties."

2. RECITALS.

2.1 City. City is an independent special City organized under the laws of the State of California, with power to contract for services necessary to achieve its purpose.

2.2 Consultant. Consultant, an independent contractor, desires to perform and assume responsibility for the provision of certain professional services required by the City on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing Accounting/Computer Software Implementation Services to the public and is familiar with the plans of City.

3. TERMS.

3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Consultant promises and agrees to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional services necessary for the City accounting services. The Services are more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

3.1.2 Term. The term of this Agreement shall be from July 1, 2011 to June 30, 2012, unless earlier terminated as provided herein. Consultant shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines

Responsibilities of Consultant.

3.1.2 Control and Payment of Subordinates; Independent Contractor. The Services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. City retains Consultant on an independent contractor basis and not as an employee. Consultant retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall also not be employees of City and shall at all times be under Consultant's exclusive direction and control. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, Calpers payments, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.1.3 Schedule of Services. Consultant shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the Schedule of Services set forth in Exhibit "B" attached hereto and incorporated herein by reference. Consultant represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Consultant's conformance with the Schedule, City shall respond to Consultant's submittals in a timely manner. Upon request of City, Consultant shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

3.1.4 Conformance to Applicable Requirements. All work prepared by Consultant shall be subject to the approval of City.

3.1.5 Substitution of Key Personnel. Consultant has represented to City that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of City. In the event that City and Consultant cannot agree as to the substitution of key personnel, City shall be entitled to terminate this Agreement for cause. As discussed below, any personnel who fail or refuse to perform the Services in a manner acceptable to the City, or who are determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the services or a threat to the safety of persons or property, shall be promptly removed by the Consultant at the request of the City. The key personnel for performance of this Agreement are as follows: Misty Cheng.

3.1.6 City's Representative. The City hereby designates the Assistant City Manager, to act as its representative for the performance of this Agreement ("City's

Representative"). City's Representative shall have the power to act on behalf of the City for all purposes under this Contract. Consultant shall not accept direction or orders from any person other than the City's Representative.

3.1.7 Consultant's Representative. Consultant hereby designates Misty Cheng or her designee, to act as its representative for the performance of this Agreement ("Consultant's Representative"). Consultant's Representative shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement. The Consultant's Representative shall supervise and direct the Services, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

3.1.8 Coordination of Services. Consultant agrees to work closely with City staff in the performance of Services and shall be available to City's staff, consultants and other staff at all reasonable times.

3.1.9 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services. As provided for in the indemnification provisions of this Agreement, Consultant shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided for herein. Any employee of the Consultant or its sub-consultants who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed from providing services by the Consultant and shall not be re-employed to perform any of the services.

3.1.10 Laws and Regulations. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with Services. If the Consultant performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the City, Consultant shall be solely responsible for all costs arising there from. Consultant shall defend, indemnify and hold City, its officials, directors, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.1.11 Insurance.

3.1.11.1 Time for Compliance. Consultant shall not commence the Services under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required under this section. In addition, Consultant shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to the City that the subcontractor has secured all insurance required under this section.

3.1.11.2 Minimum Requirements. Consultant shall, at its expense, procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the Consultant, its agents, representatives, employees or subcontractors. Consultant shall also require all of its subcontractors to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:

(A) Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) *General Liability*: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001); (2) *Automobile Liability*: Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto); and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

(B) Minimum Limits of Insurance. Consultant shall maintain limits no less than: (1) *General Liability*: One Million Dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (2) *Automobile Liability*: One Million Dollars (\$1,000,000) per accident for bodily injury and property damage; and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of One Million Dollars (\$1,000,000) per accident for bodily injury or disease.

3.1.11.3 Professional Liability. Consultant shall procure and maintain, and require its sub-consultants to procure and maintain, for a period of five (5) years following completion of the Services, errors and omissions liability insurance appropriate to their profession. Such insurance shall be in an amount not less than \$2,000,000 per claim, and shall be endorsed to include contractual liability.

3.1.11.4 Insurance Endorsements. The insurance policies shall contain the following provisions, or Consultant shall provide endorsements on forms supplied or approved by the City to add the following provisions to the insurance policies:

(A) General Liability. The general liability policy shall be endorsed to state that: (1) the City, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insured's with respect to the Services or operations performed by or on behalf of the Consultant, including materials, parts or equipment furnished in connection with such work; and (2) the insurance coverage shall be primary insurance as respects

the City, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its directors, officials, officers, employees, agents and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way.

(B) Automobile Liability. The automobile liability policy shall be endorsed to state that: (1) the City, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insured's with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Consultant or for which the Consultant is responsible; and (2) the insurance coverage shall be primary insurance as respects the City, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its directors, officials, officers, employees, agents and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way.

(C) Workers' Compensation and Employers Liability Coverage. The insurer shall agree to waive all rights of subrogation against the City, its directors, officials, officers, employees, agents and volunteers for losses paid under the terms of the insurance policy which arise from work performed by the Consultant.

(D) All Coverage's. Each insurance policy required by this Agreement shall be endorsed to state that: (A) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City; and (B) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the City, its directors, officials, officers, employees, agents and volunteers.

3.1.11.5 Separation of Insured's; No Special Limitations. All insurance required by this Section shall contain standard separation of insured's provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the City, its directors, officials, officers, employees, agents and volunteers.

3.1.11.6 Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. Consultant shall guarantee that, at the option of the City, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its directors, officials, officers, employees, agents and volunteers; or (2) the Consultant shall procure a bond guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

3.1.11.7 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating no less than A: VIII, licensed to do business in California, and satisfactory to the City.

3.1.11.8 Verification of Coverage. Consultant shall furnish City with original certificates of insurance and endorsements effecting coverage required by this

Agreement on forms satisfactory to the City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by the City if requested. All certificates and endorsements must be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

3.1.12 Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (A) adequate life protection and life saving equipment and procedures; (B) instructions in accident prevention for all employees and subcontractors, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

3.2 Fees and Payments.

3.2.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "C" attached hereto and incorporated herein by reference. Extra Work may be authorized, as described below; and if authorized, said Extra Work will be compensated at the rates and manner set forth in this Agreement.

3.2.2 Payment of Compensation. Consultant shall submit to City a monthly itemized statement which indicates work completed and hours of Services rendered by Consultant. The statement shall describe the amount of Services and supplies provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. City shall, within thirty (30) days of receiving such statement, review the statement and pay all approved charges thereon.

3.2.3 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by City.

3.2.4 Extra Work. At any time during the term of this Agreement, City may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by 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. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from City's Representative.

3.2.5 Prevailing Wages. Consultant is aware of the requirements of California Labor Code Sections 1720, et seq., and 1770, et seq., as well as California Code of

Regulations, Title 8, Section 16000, et seq., (“Prevailing Wage Laws”), which require the payment of prevailing wage rates and the performance of other requirements on certain “public works” and “maintenance” projects. If the Services are being performed as part of an applicable “public works” or “maintenance” project, as defined by the Prevailing Wage Laws, and if the total compensation is One Thousand Dollars (\$1,000) or more, Consultant agrees to fully comply with such Prevailing Wage Laws. City shall provide Consultant with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Consultant shall make copies of the prevailing rates of per diem wages for each craft; classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant’s principal place of business and at the project site. Consultant shall defend, indemnify and hold the City, its elected officials, officers, employees, volunteers and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

3.3 Accounting Records.

3.3.1 Maintenance and Inspection. Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

3.4 General Provisions.

3.4.1 Termination of Agreement.

3.4.1.1 Grounds for Termination. City may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those services which have been adequately rendered to City, and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause.

3.4.1.2 Effect of Termination. If this Agreement is terminated as provided herein, City may require Consultant to provide all finished or unfinished Documents and Data and other information of any kind prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such documents and other information within fifteen (15) days of the request.

3.4.1.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.4.2 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective Parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

<u>City</u>	<u>Consultant</u>
City of Wildomar	Misty Cheng
23873 Clinton Keith Road,	2021 Oakdale Street
Suite 201,	Pasadena, CA 91107
Wildomar, California 92595	925-963-9996
Attn: Gary Nordquist	

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the Party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.4.3 Ownership of Materials and Confidentiality.

3.4.3.1 Documents & Data; Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, including, without limitation, any Computer Aided Design and Drafting ("CADD") data, which are prepared or caused to be prepared by Consultant under this Agreement ("Documents & Data"). Consultant shall require all subcontractors to agree in writing that City is granted a non-exclusive and perpetual license for any Documents, Data, and Software solutions the subcontractor prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Consultant or provided to Consultant by the City. City shall not be limited in any way in its use of the Documents & Data or Software at any time, provided that any such use not within the purposes intended by this Agreement shall be at City's sole risk. Any CADD data delivered to City shall not include the professional stamp or signature of an engineer, architect, or any other licensed professional, but shall be followed with a hard copy with such stamp or signature.

3.4.3.2 Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents and Data either created by or provided to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant. Such materials shall not, without the prior written consent of City, be used by Consultant for any purposes other than the performance of the Services. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use City's

name or insignia, photographs or any publication pertaining to the Services in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of City.

3.4.4 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.4.5 Attorney's Fees. If either Party commences an action against the other Party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees and all other costs of such action.

3.4.6 Indemnification.

3.4.6.1 Standard Indemnification. Consultant shall defend, indemnify and hold the City, its officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any alleged acts, omissions or willful misconduct of Consultant, its officials, officers, employees, agents, consultants and contractors arising out of or in connection with the performance of the Services, the Project or this Agreement, including without limitation the payment of all consequential damages and attorney's fees and other related costs and expenses. Consultant shall defend, at Consultant's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against City, its directors, officials, officers, employees, agents or volunteers. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against City or its directors, officials, officers, employees, agents or volunteers, in any such suit, action or other legal proceeding. Consultant shall reimburse City and its directors, officials, officers, employees, agents and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City, its directors, officials officers, employees, agents or volunteers.

3.4.6.2 Indemnification Related to Design Professional Services. The indemnification language above shall apply except as to design professional services, as defined in Civil Code section 2782.8, including any architect, landscape architect, and engineer or land surveyor services, provided pursuant to this Agreement. As to such Services, to the fullest extent permitted by law, Consultant shall defend, indemnify and hold the City, its officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or relating to any negligence, recklessness, or willful misconduct of Consultant, its officials, officers, employees, agents, consultants, and contractors arising out of or in connection with the performance of the Consultant's Services, including without limitation the payment of all consequential damages and attorney's fees and other related costs and expenses. Consultant shall defend, at Consultant's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of

every kind that may be brought or instituted against City, its directors, officials, officers, employees, agents or volunteers. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against City or its directors, officials, officers, employees, agents or volunteers, in any such suit, action or other legal proceeding. Consultant shall reimburse City and its directors, officials, officers, employees, agents and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City, its directors, officials officers, employees, agents or volunteers.

3.4.7 Entire Agreement. This Agreement contains the entire Agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both Parties.

3.4.8 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in Riverside County.

3.4.9 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.4.10 City's Right to Employ Other Consultants. City reserves right to employ other consultants in connection with this Project.

3.4.11 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the Parties.

3.4.12 Assignment or Transfer. Consultant shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the City. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

3.4.13 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Consultant include all personnel, employees, agents, and subcontractors of Consultant, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

3.4.14 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.4.15 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

3.4.16 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.4.17 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.4.18 Prohibited Interests. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising there from.

3.4.19 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Consultant shall also comply with all relevant provisions of any City's Minority Business Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.4.20 Labor Certification. By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.4.21 Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.4.22 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

3.5 Subcontracting.

3.5.1 Prior Approval Required. Consultant shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

CITY OF WILDOMAR

CONSULTANT

By: _____
Frank Oviedo, City Manager

By: _____
Misty V. Cheng

ATTEST:

By: _____
Debbie Lee, City Clerk

APPROVED AS TO FORM:

By: _____
Julie Biggs, City Attorney

EXHIBIT "A"
SCOPE OF SERVICES

Accounting Support Services

Provide accounting support services as the City's Comptroller. Such services would include the City and Special District's accounts payable/receivable, bank reconciliations, treasury reporting, jv processing and payroll support, benefits' coordination, interfacing with auditors and providing special reports as requested. Providing guidance and instruction to City support staff as needed.	20.0 per week
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TWELVE MONTHS TOTAL HOURS	1,040
RATE	\$80.00
TOTAL COST	<u>\$83,200</u>

EXHIBIT "B"
SCHEDULE OF SERVICES

July 1, 2011 to June 30, 2012.

EXHIBIT "C"
COMPENSATION

1. Accounting Services Support \$80.00 per hour not to exceed 20 hours per week.

Attachment B

**AMENDMENT TO THE
AGREEMENT FOR CONTRACT SERVICES**

BETWEEN

THE CITY OF WILDOMAR

AND

DIAMOND W EVENTS

CONTRACT AMENDMENT

NUMBER 2

AGREEMENT FOR CONTRACT SERVICES

**BETWEEN
THE CITY OF WILDOMAR
AND
DIAMOND W EVENTS**

This Amendment to the agreement for Contract Services (“Agreement”), is made and entered into this eight day of August 2011, by and between the City of Wildomar, a California municipal corporation organized under the laws of the State of California with its principal place of business at 23873 Clinton Keith Rd., Suite 201, Wildomar, CA 92595 (“City”) and Diamond W Events, a California (partnership, limited partnership, corporation, etc.) (“Contractor”).

This Amendment modifies the following sections:

SECTION 3. TERM OF AGREEMENT

The term of this Amendment for the Agreement shall be from August 1, 2011 to September 30, 2012, unless earlier terminated as provided in Section 11 “Termination of Agreement”. Contractor shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines. Such term may be extended upon written agreement of both parties to this Agreement.

SECTION 4. SCOPE OF SERVICES

Contractor promises and agrees to furnish to the Owner all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional Contract services necessary for the Project (“Services”). The Services are more particularly described in Exhibit “A” (Amended August 8, 2011) attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with this Agreement, the Exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations

IN WITNESS WHEREOF, the parties hereto have caused this AMENDMENT TO THE AGREEMENT to be executed the day and year first above written.

CITY OF WILDOMAR

By: _____
Frank Oviedo, City Manager

ATTEST:

Debbie A. Lee, CMC, City Clerk

APPROVED AS TO FORM:

Julie Hayward Biggs, City Attorney

CONTRACTOR:

By: _____
(Authorized Officer)

Title _____

Print Name

Phone

**EXHIBIT “A” SCOPE OF SERVICES
AMENDED AUGUST 8, 2011**

The following specifications described the work that will be required by the contractor for Contract Services.

A. Emergency Preparedness

Coordinate and manage the emergency preparedness program for the City.

1. Attend County Office of Emergency Services (OES) meetings to stay informed
2. Work with Staff on Emergency Operation Center (EOC) positions
3. Work with Staff to ensure mandatory certifications are current
4. Emergency Operation Plan (EOP) provide an annual review
5. Educate the community about preparedness
 - a. Offer seminars throughout the year
 - b. Offer Citizens Emergency Response Team (CERT) training
 - c. Provide opportunities to place individual orders for family preparedness items
6. Submit and manage yearly Emergency Management Performance Grant (EMPG)
7. Submit and manage yearly Homeland Security Grant (HSGP)
8. Submit and manage other grants available through Riverside OES

B. Events and Park Management

To develop and implement special events and operations of parks including all activities as necessary for closures and/or transition of operations.

1. Events
 - a. Plan, budget, and carry citywide events, which are self-funded, such as:
 - i. Movies in the Park
 - ii. Egg Hunt
 - iii. Farmers Market
 - iv. Breakfast with Santa
 - v. State of the City
 - b. Oversee two (2) community Clean Up events per year
2. Parks Agreements and Closure
 - a. Facilitate agreements to retain park operations or closures due to funding issues.

C. Economic Development

Provide administrative assistance to economic development programs and activities as need.

**EXHIBIT "B" SCHEDULE OF SERVICES
AMENDED AUGUST 8, 2011**

AUGUST 1, 2011 THRU SEPTEMBER 30, 2012

**EXHIBIT "C" COMPENSATION FOR SERVICES
AMENDED AUGUST 8, 2011**

1. City Fiscal Year August 1, 2011 thru June 30, 2012, \$55,000:
 - a. Community Services...\$2,300 per month, 25,300 annually including reduction.
 - b. Economic Development...\$200 per month, \$2,200 annually.
 - c. Emergency Operations Management/Training...\$1,500 per month, \$16,500 annually.
 - d. CSA 103 Operations...\$280.00 per month, \$3,080 annually.
 - e. Grant Projects and Administration...\$720 per month, \$7,920 annually.
 - f. Additional Services billing rate at \$50.00 per hour.

2. City Fiscal Year July 1, 2012 thru September 30, 2012, unless changed during FY 2012-13 budget process:
 - a. Community Services...\$2,300 per month.
 - b. Economic Development...\$200 per month.
 - c. Emergency Operations Management/Training...\$1,500 per month.
 - d. CSA 103 Operations...\$280.00 per month.
 - e. Grant Projects and Administration...\$720 per month.
 - f. Additional Services billing rate at \$50.00 per hour