

(PROPOSED)

EXTERIOR LANDSCAPING SERVICES CONTRACT

This Exterior Landscaping Services Contract ("Contract") is entered into this the 25th day of August, 2008, by and between the Aubrey Independent School District ("District") and Classic Landscapes Inc., ("Contractor") pursuant to the terms and conditions set forth in this Contract.

In addition to the terms and conditions set forth in this Contract, this Contract incorporates the Request for Competitive Sealed Proposal for Exterior Landscaping Services and all exhibits and attachments thereto ("RFCSP") as though the RFCSP was set forth and copied at length herein.

In consideration for the mutual promises and covenants contained in this Contract, the District agrees to purchase exterior landscaping services ("Landscaping Services") to be performed at all District facilities ("Facilities") from the Contractor, and the Contractor agrees to perform the Landscaping Services at all District Facilities pursuant to the terms and conditions contained in this Contract.

1. Definitions

District: Aubrey Independent School District
415 Tisdell Lane
Aubrey, Texas 76227

District Manager: Marilyn Hampton

Contractor: Classic Landscapes Inc.
Aubrey, Texas 76227

Project: Exterior Landscaping Services

Commencement Date: September 1, 2008

Renewal Provision: August 31, 2009

Contract Price: The Contract price is set forth in the attached Exhibit 1 to this Contract and is incorporated herein as if fully set forth and copied at length herein.

Exhibit A
Landscape Maintenance Program Schedule

| Annual Landscape Functions | Jan | Feb | Mar | Apr | May | Jun | Jul | Aug | Sep | Oct | Nov | Dec | Total |
|--|---------------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|--------------|
| 1. Mow Turf | 1 | 2 | 2 | 4 | 4 | 5 | 4 | 4 | 5 | 2 | 2 | 1 | 36 |
| 2. Edge Walks, Curbs & Planting Beds | 1 | 2 | 2 | 4 | 4 | 5 | 4 | 4 | 5 | 2 | 2 | 1 | 36 |
| 3. Monofilament Trimming | 1 | 2 | 2 | 4 | 4 | 5 | 4 | 4 | 5 | 2 | 2 | 1 | 36 |
| 4. Clippings cleared - Concrete Areas | 1 | 2 | 2 | 4 | 4 | 5 | 4 | 4 | 5 | 2 | 2 | 1 | 36 |
| 5. Weed Beds | 1 | 2 | 2 | 4 | 4 | 5 | 4 | 4 | 5 | 2 | 2 | 1 | 36 |
| 6. Irrigation Inspection - ALT 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 12 |
| 7. Debris Removal | 1 | 2 | 2 | 4 | 4 | 5 | 4 | 4 | 5 | 2 | 2 | 1 | 36 |
| 8. Weed Control - Pavement Cracks | **** AS NEEDED **** | | | | | | | | | | | | |
| 9. Groundcover Trimming | | | 1 | 2 | 2 | 2 | 2 | 2 | 2 | 1 | | | 14 |
| 10. Tree Pruning (6'-8' Clearance) | 1 | | | | | | | | | | | | 1 |
| 11. Leaf Clean-up | 1 | 1 | | | | | | | | 1 | 1 | 1 | 5 |
| 12. Scalp Asian Jasmine (if present) | | | 1 | | | | | | | | | | 1 |
| 13. Scalp Liriope (if present) | | 1 | | | | | | | | | | | 1 |
| 14. Cut back Ornamental Grasses (if present) | | 1 | | | | | | | | | | | 1 |
| 15. Landscape Inspections | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 12 |
| 16. Other | | | | | | | | | | | | | |

Kevin Anderson 8/25/08
Marilyn Hampton 8-25-08

2. Services.

- A. Contractor agrees to perform for District the Landscaping Services at the District Facilities, as set forth in this Contract and including the Contractor Services specifically set forth in Exhibit 2 which is attached hereto and incorporated herein as though fully set forth and copied at length. Contractor agrees to insure that each of Contractor's employees and subcontractors understands and complies with the specifications contained in Exhibit 2, as well as the other applicable terms and conditions of this Contract.
- B. Contractor acknowledges that the Landscaping Services are to be provided on all exterior District Facilities, that District shall continue the normal operation and occupancy of the District Facilities, and that such operation and occupancy during the hours Contractor performs the Landscaping Services is of critical importance. Contractor shall use its best efforts to minimize any interference with the operation of the District Facilities by District, or the use and occupancy of the District Facilities by District's students, employees, and guests.
- C. Contractor shall perform all work in accordance with good practices and generally acceptable methods and standards, free from defects. Contractor shall perform the Landscaping Services in accordance with Exhibit 3, Landscape Maintenance Program Schedule ("Schedule"), which is attached to the Contract and incorporated herein the same is if fully set forth and copied at length herein.

Time is of the essence of this Contract, and Contractor shall not deviate from the Schedule without District's consent. Contractor shall desist immediately from performing the Landscaping Services in the event that, in the sole judgment of District, Contractor's activities constitute a nuisance or interruption in the activities of the District Facilities students, employees, or guests. Immediately upon so desisting with the Landscaping Services, Contractor shall contact District to reschedule the Landscaping Services for a mutually agreeable time.

- D. Before commencing the Landscaping Services, Contractor shall secure and pay for all permits, approvals, governmental fees, certificates, licenses and inspections, if any, necessary for the proper performance of the Landscaping Services. The originals of all such permits, approvals, licenses and certificates, if any, shall be delivered to District upon receipt by Contractor. If Contractor observes that this Contract is at variance with any applicable code, rule or regulation, Contractor shall immediately notify District in writing.

3. Term.

- A. The term of this Contract is as described above, commencing on the Commencement Date. Notwithstanding the foregoing, either party hereto shall have the right, at its sole election, to terminate this Contract after the Commencement Date, for any cause whatsoever, upon the delivery of thirty (30) days written notice to the other party.

The Contractor understands and agrees that if the Landscaping Services Contract will exceed one (1) year in duration, the District's Board retains the continuing right to terminate the Contract at the end of the budget period during the term of the Contract, and the continuation of the Contract is conditioned on a best efforts attempt by the Board to obtain and appropriate funds for payment of the Contract.

- B. District can terminate the Contract upon three (3) business days written notice to the Contractor for the following reasons if Contractor has not cured the default/problem within three (3) business days of receiving the notice:
- i. Contractor fails to perform scheduled Landscaping Services;
 - ii. Contractor fails to provide competent and adequate labor to perform the Landscaping Services;
 - iii. Contractor fails to furnish sufficient quantities of materials to complete the Landscaping Services as set forth in this Contract; or
 - iv. Contractor fails to pay subcontractors, materialmen or other individuals or entities to whom the Contractor is obligated in connection with the Contract.

Additionally, District may terminate the Contract immediately upon giving written notice if any of the following occurs:

- i. Contractor is insolvent, files any petition in bankruptcy, or is forced into bankruptcy by a creditor;
- ii. Contractor makes a general assignment for the benefit of collectors;
- iii. A receiver is appointed for all or substantially all of the Contractor's assets;
- iv. Execution is levied upon any material part of Contractor's property; or Contractor disregards or violates any applicable law, statute, ordinance, regulation or any order of any public authority or otherwise does not comply with the terms and conditions of any permit, license, or approval required to perform the Landscaping Services under this Contract.

If the Contract is terminated for any of the reasons under Section 3.B., District will be entitled to reimbursement for damages or losses sustained by District by reason of Contractor's default. District may deduct any amount payable to Contractor

under this Contract in any amount sufficient to cover such damages or loses.

4. **Payment.** District agrees to pay Contractor for all Landscaping Services performed by Contractor, as Landscaping Services are completed, and in accordance with Exhibit 1. Contractor may bill District monthly, but not more frequently. Payment in full is due thirty (30) days from the date of billing.
5. **Relationship of Parties.** Contractor's relationship with District is that of an independent contractor, and nothing in this Contract shall be construed to designate Contractor, or any of its employees, as employees, agents, joint ventures or partners as employees of District. Contractor shall exercise its own discretion on the method and manner of performing its duties, and District will not exercise control over Contractor, its employees, equipment or facilities except insofar as may be reasonably necessary to insure performance and compliance with this Contract. District's failure to require cessation of the Landscaping Services shall not be deemed an acceptance of the Landscaping Services or an admission that the Landscaping Services are acceptable. None of the benefits provided by District to District's employees, including, but not limited to, compensation insurance and unemployment insurance, are available from District to Contractor or the employees, agents, or servants of Contractor.
6. **Labor and Materials.** Contractor shall furnish, at its own expense, all labor, materials, and consumables necessary to carry out the terms of this Contract. It is the responsibility of Contractor that any equipment provided by Contractor or its employees shall be kept in good repair and proper working order. Any inspection, maintenance, repairs, modifications, or replacement of this equipment shall be the sole responsibility of Contractor.
7. **Compliance with Laws and Regulations.** Contractor agrees to comply with all federal, state, county, municipal, and other local laws, rules, regulations, and District Board policies which are now, or may in the future, become applicable to Contractor or Contractor's business, equipment and personnel engaged in operations covered by this Contract or accruing out of the performance of such operation.
8. **Insurance.** At all times during the term of this Contract, Contractor shall, at Contractor's expense, procure the insurance coverage hereinafter described and set forth on Exhibit 4 to this Contract. All such policies (except workers compensation and employers' liability) shall name District and Manager as additional insureds. Further, each insurance policy shall contain an endorsement requiring the insurer to provide District with thirty (30) days written notice prior to cancellation of the policy. Insurance coverage shall be as follows:
 - A. Workers Compensation insurance in kind and amount as prescribed by statute. Additionally, the Contractor shall provide an endorsement to the

Worker's Compensation policy which grants waiver of subrogation in favor of the District.

- B. Employers Liability insurance with a limit of not less per occurrence than that indicated on Exhibit 4 hereof.
 - C. Commercial General Liability insurance with a combined single limit of not less than that indicated on Exhibit 4 hereof, per occurrence, applying to bodily injury and property damage, with Broad Form Liability Endorsement on an occurrence basis and including coverage for the hazards of operation, independent contractors, products and completed operations (for two (2) years after the date of final acceptance of the Landscaping Services by District) and contractual liability specifically covering the indemnification provisions of Paragraph 8 hereof. Such insurance shall include an endorsement providing that the insurance afforded under Contractor's policy is primary insurance as respects District, and that any other insurance maintained by District is excess and non-contributing with the insurance required hereunder. Additionally, such insurance shall include legal liability coverage for the dishonest acts of Contractor's employees.
 - D. Commercial Automobile Liability insurance covering all owned, non-owned and hired automobiles with a combined single limit of not less than that indicated on Exhibit 4 hereof, per occurrence, for bodily injury and property damage.
 - E. Umbrella Liability insurance with a combined single limit of not less than that indicated on Exhibit 4 hereof, per occurrence, for bodily injury and property damage.
 - F. All insurance policies required above are subject to District's approval and shall be written with solvent insurance companies authorized to do business in the State of Texas. Contractor shall furnish, or cause to be furnished, original certified copies of certificates or (at District's option) policies of insurance to District, prior to or upon execution of, this Contract, evidencing the insurance coverage described above, and shall furnish such evidence of all renewals to District, as District shall reasonably require, at least thirty (30) days prior to the expiration thereof.
9. **Hold Harmless.** CONTRACTOR SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS THE INDEMNIFIED PARTIES (HEREINAFTER DEFINED) FROM AND AGAINST ALL CAUSES OF ACTION, CLAIMS, INCLUDING, BUT NOT LIMITED TO CAUSES OF ACTION AND CLAIMS FOR NEGLIGENCE, STRICT LIABILITY AND GROSS NEGLIGENCE, DAMAGES, LIENS, DEMANDS, COSTS, EXPENSES, AND LIABILITIES, INCLUDING

REASONABLE ATTORNEYS' FEES AND COURT COSTS, (COLLECTIVELY, "CLAIMS" AND INDIVIDUALLY, A "CLAIM"), ARISING IN FAVOR OF ANY PERSONS (INCLUDING ANY INDEMNIFIED PARTY) WHICH, IN WHOLE OR IN PART, ARISES OUT OF OR RESULTS FROM OR IS IN ANY WAY RELATED TO (I) ANY ACT OR OMISSION OF CONTRACTOR OR CONTRACTOR'S EMPLOYEES, AGENTS, LICENSEES OR SUBCONTRACTORS, (II) THE OPERATION OF CONTRACTOR'S EQUIPMENT AT THE PROJECT, OR (III) ANY FAILURE BY CONTRACTOR OR ITS EMPLOYEES, AGENTS OR SUBCONTRACTORS TO COMPLY WITH THE TERMS AND OBLIGATIONS OF THIS CONTRACT. THESE OBLIGATIONS TO DEFEND, INDEMNIFY AND HOLD HARMLESS SHALL BE VALID AND BINDING REGARDLESS OF ANY CLAIMS, ALLEGATIONS OR FINDINGS OF NEGLIGENCE AGAINST ANY INDEMNIFIED PARTY, BUT SHALL NOT APPLY IF THE CLAIM RESULTS SOLELY FROM THE NEGLIGENCE OF AN INDEMNIFIED PARTY. CONTRACTOR SHALL KEEP THE PROJECT FREE OF ALL LIENS REPRESENTING CLAIMS WHICH PURPORT TO BE BASED ON ANY LANDSCAPING SERVICES OR MATERIALS ALLEGEDLY PROVIDED AT THE REQUEST OR ON THE AUTHORITY OF THE CONTRACTOR OR ANY OF ITS SUBCONTRACTORS. "INDEMNIFIED PARTIES" MEANS THE DISTRICT, ITS ADMINISTRATORS, EMPLOYEES, AGENTS, SERVANTS, TRUSTEES, AND ATTORNEYS.

10. **Limit of Liability.** Notwithstanding any other provision in this Contract to the contrary, Contractor specifically agrees to look solely to the District's interest in the Landscaping Services for the payment or performance of any of District's obligations hereunder, and District, its partners, shareholders and/or other direct or indirect equity Districts of District, shall never be personally liable for such payment or performance.
11. **Binding Effect.** The parties intend that the terms, conditions, and provisions of this Contract shall be legally binding upon and inure to the benefit of and be enforceable by each of the parties hereto and their respective successors and assigns.
12. **Default.** If either party shall default in the performance of any of its obligations, the non-defaulting party may send a written notice reasonably describing the default. If the defaulting party, within a reasonable time (not to exceed three (3) days after receipt of the notice) does not cure the default, the non-defaulting party may with three (3) days written notice, terminate this Contract and/or pursue all other available remedies as may be available at law or in equity.
13. **Attorneys' Fees.** Pursuant to Texas Local Government Code §271.159, attorneys' fees incurred by either the District or the Contractor shall not be awarded to any party in any legal proceedings or dispute involving this Contract.

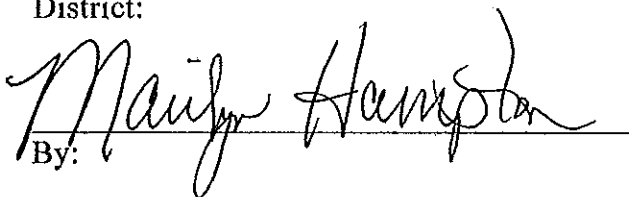
14. **Venue.** The Contractor understands and agrees that that exclusive venue for any litigation arising from this Contract shall be in Denton County, Texas, and the Contractor consents to such exclusive jurisdiction.
15. **Taxes.** The Contractor understands and agrees that the District is exempt from payment of any Texas Sales Tax or Federal Excise Tax as allowed by law.
16. **Non-Assignment.** Neither the District nor the Contractor may assign their duties or obligations under this Contract without the express written permission of the other party.
17. **Entire Agreement.** This Contract and the Exhibits hereto constitute the full understanding between the District and Contractor as of the date of execution of this Contract.
18. **Amendments.** This Contract may not be altered, changed or amended, except by an instrument in writing signed by both parties hereto.
19. **Authority.** Each person signing this Contract on behalf of a party hereto represents and warrants that such person has full authority to enter into this Contract on behalf of that party.
20. **Notices.** Any notice, approval or other communication required hereunder must be in writing and shall be deemed given if delivered by hand or mailed by registered mail or certified mail addressed to the parties hereto indicated above. Either party may change its address upon thirty (30) days' written notice to the other party.
21. **Severability.** In case anyone or more provisions set forth in this Contract shall for any reason be held invalid, illegal or unenforceable in any respect, any such invalidity, illegality or unenforceability shall not affect any other provision of this Contract, and this Contract shall be construed as if such invalid, illegal or unenforceable provision had never been incorporated therein.
22. **No Discrimination.** Contractor will not discriminate against any employee or applicant for employment by Contractor because of race, creed, color, age, sex, marital status or national origin. Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, sex, marital status or national origin. Contractor agrees to post in conspicuous places notices setting forth the provision of this Section.
23. **Confidentiality.** Except as otherwise provided herein, Contractor shall hold in confidence and not disclose to others, business or technical information disclosed to Contractor by District or acquired by Contractor in the course of performing the

Landscaping Services hereunder for District. The obligations of confidentiality do not apply to information that (i) is or becomes part of the public domain, or (ii) is required to be publicly disclosed under law.

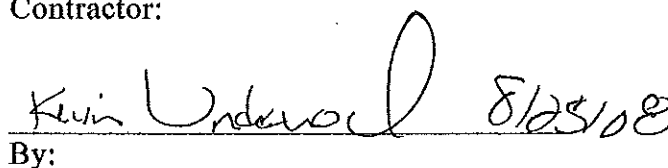
24. **Public Information Act.** The Contractor understands that the District is a governmental body subject to the Texas Public Information Act ("Act"). The Contractor understands that the District will comply with the Act, and with all opinions of the Texas Attorney General's office regarding the Act.
25. **Force Majeure.** Contractor will not be held responsible or liable for any breach, loss, damage, detention or delay caused by fire, explosion, theft, lightning, wind storm, earthquake, floods, storms, riots, civil commotion, malicious mischief, acts of God, or by any other cause beyond Contractor's reasonable control, whether or not the same is herein specified. Strikes or lockouts will not effect the terms and conditions outlined within this Contract.
26. **Criminal History Records.** The Contractor understands and agrees that, pursuant to Texas Education Code §22.0834(d), the Contractor, his agents, servants, or employees will not be allowed to perform any duties in connection with the Landscaping Services Contract at any District Facility until the District has obtained from the Contractor all National Criminal History Record Information ("NCHRI") for the Contractor and its agents, servants, and employees. The Contractor shall, prior to performing any work under the Landscaping Services Contract, certify to the District that the Contractor has obtained the NCHRI for the Contractor and its agents, servants, and employees and provide this NCHRI to the District.

IN WITNESS WHEREOF, the parties have executed this Contract effective the day and year set forth above.

District:


By: _____

Contractor:


By: _____ 8/25/08

SCHEDULE A

CLASSIC LANDSCAPES

P.O. Box 1247* Denton, TX 76202 * Telephone (940)387-6023

Property: Aubrey High School **Address:** 510 Spring Hill Road

City: Aubrey **State:** Texas **Zip:** 76227

Contact: Marilyn Hampton **Telephone:** (940)365-2434

Submitted To: Aubrey Independent School District

CLASSIC LANDSCAPES proposed to render the following landscape maintenance services during the term of this contract.

| Landscape Maintenance Services | JAN. | FEB. | MAR. | APR. | MAY. | JUN. | JUL. | AUG. | SEP. | OCT. | NOV. | DEC. | Total |
|--------------------------------|------|------|------|------|------|------|------|------|------|------|------|------|-------|
| 1. Mow, edge, trim. clean up | 1 | 1 | 3 | 2 | 3 | 2 | 2 | 3 | 2 | 2 | 2 | 2 | 25 |
| 2. Shrub trimming | | | | | | | | | | | | | |
| 3. Weed Flowerbeds | | | | | | | | | | | | | |
| 4. Blow Parking Lot | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 12 |
| 5. Spray Round-up | | | | 1 | | 1 | | 1 | | 1 | | | 4 |
| 6. Lawn Fertilizing | | | | | | | | | | | | | |
| 7. Bed Fertilizing | | | | | | | | | | | | | |
| 8. Tree Fertilizing | | | | | | | | | | | | | |
| 9. Leaf Removal | 1 | | | | | | | | | | 2 | 2 | 5 |
| 10. Lawn Pre-emergent | | | | | | | | | | | | | |
| 11. Lawn Post-emergent | | | | | | | | | | | | | |
| 12. Tree Trimming | | | | | | | | | | | | | |
| 13. Debris Removal | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 12 |
| 14. Bedding Mulch | | | | | | | | | | | | | |
| 15. Seasonal Color | | | | | | | | | | | | | |
| 16. Sprinkler check | | | | | | | | | | | | | |
| 17. Winter Rye | | | | | | | | | | | | | |

The recommended services and additional charges in this schedule are hereby approved and accepted and become a binding part of the attached contract.

CLASSIC LANDSCAPES _____ Date: _____

Accepted by: _____ Title: _____ Date: _____