

FIFTH AMENDMENT TO AGREEMENT

This Fifth Amendment to Agreement ("Fifth Amendment") is entered January 21, 2020 by the City of Pleasanton ("City") and Monte Vista Memorial Investment Group (MVMIG), LLC, a Limited Liability Corporation whose address is 3656 Las Colinas Road, Livermore, CA 94551, and telephone number is 408-499-2197 ("Contractor").

Whereas, City and Contractor entered into an Agreement for Burial Services, Marker Installation, and Ground Maintenance services on December 7, 2016, as amended by the First Amendment dated November 17, 2017, the Second Amendment dated December 27, 2017, the Third Amendment dated February 5, 2019, the Fourth Amendment dated January 1, 2020 (collectively the "Agreement"); and

Whereas, Section 3 of the Agreement allows the parties to extend the term; and

Whereas, the parties desire to further amend the Agreement.

Now, therefore, in exchange for valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1. Section 1.6 of the Agreement, "Marker installation" is amended to read: "The contractor shall install headstones and markers within seven (7) days of notification by the City Sales and Management Contractor. Contractor shall ensure site layout and preparation and install headstones and markers. Headstones shall be handled in a manner that prevents damage. Contractor shall ensure that flat markers shall be uniform in height (parallel with the ground and no more than one (1) inch above grade) and horizontally and vertically aligned. Contractor shall provide headstone re-setting as needed. The Contractor is not responsible for the purchase and delivery of the monuments, headstones and markers to the cemetery."
2. Section 3 of the Agreement, "Terms" is amended to read: "The contract shall commence on January 1, 2017 and shall expire on December 31, 2020. The City and Contractor shall retain the right to renew this Agreement for an additional one-year period."
3. Exhibit A, Scope of Consultant's Services, Section 2 "Burial Services and Grounds Maintenance" is amended to read:

(To be used in conjunction with the City Standard Specifications and Standard Details, and the State Standard Specifications and Standard Plans)

All work shall be in accordance with the City of Pleasanton Standard Specifications and Details dated November 2016.

All work not specifically called out as "Extra Work" in the below scope of work sections shall be considered "Basic Maintenance".

SECTION 1. MAINTENANCE SCHEDULE

The following table indicates the minimum frequency of work to be performed for each specific type of work.

FREQUENCY: W – Weekly, BW – Bi-weekly, M – Monthly, Q – Quarterly,
TY – Twice Yearly, Y – Yearly, EX – Extra Work, N/A – Not Applicable

ANNUAL SCHEDULE: The Contractor shall provide the City with an annual schedule which generally conforms with the following:

A. NON-IRRIGATED TURF AREAS

	FREQUENCY
1. Soil Analysis	EX
2. Leaf, Litter and Trash Removal	W
3. Weed Control	M
4. Irrigation Scheduling	N/A
5. Irrigation Repair Check	N/A
6. Fertilize	N/A
7. Mow	W during growing season
8. Edge	BW during growing season

B. GROUNDCOVERS/VINES

	FREQUENCY
1. Leaf, Litter and Trash Removal	W
2. Weed Control	W
3. Irrigation Scheduling	8 times yearly
4. Irrigation Repair Check	Q
5. Fertilize	As Needed
6. Pre-emergent Herbicide	As Needed
7. Pest/Disease Control	As Needed
8. Prune/Edge	As Needed (No less than every 3 mos.)

C. SHRUBS

	FREQUENCY
1. Leaf, Litter and Trash Removal	W
2. Weed Control	W
3. Irrigation Scheduling	8 times yearly
4. Irrigation Repair Check	Q
5. Fertilize	As Needed
6. Pest/Disease Control	As Needed
7. Staking/Removal/Rebracing	As Needed
8. Replacement of Mulch	Y

D. NON-VEGETATED AREAS

	FREQUENCY
1. Leaf, Litter and Trash Removal	W
2. Weed Control	Q
3. Pre-emergent Herbicide	Y

E. HANGING FLOWER BASKETS

	FREQUENCY
1. Leaf, Litter and Trash Removal	W
2. Weed Control	W
3. Irrigation Scheduling	8 times yearly
4. Irrigation Repair Check	Q
5. Fertilize	TY (Spring & Fall)
7. Plant Replacement	TY (Spring & Fall) and As Needed
8. Replacement of Mulch	TY(Spring & Fall) and As Needed

F. PAVED AREAS

	FREQUENCY
1. Leaf, Litter and Trash Removal	W
2. Weed Control	W
3. Graffiti Removal	EX
4. Adding and Compacting DG	EX
5. Repair of Ruts Caused by off Road Parking or Erosion	EX

SECTION 2. GENERAL CONDITIONS

2.01 General

The Contractor shall not be held responsible for plant losses due to maladies beyond the Contractor's control; this includes, but is not limited to, disease or insect attack for which there is no legal recommended control, acts of vandalism, earthquakes, fires, unusual storms, and related events. Report all such conditions to the City in writing, and submit a proposal for the repair of the work. Obtain the City's approval prior to proceeding with the work affected.

2.02 Replacement of Plants

The Contractor shall remove dead and irreparably damaged groundcover, trees, shrubs, hanging flower basket plantings, or other plant material and replace it at his own expense when such death or damage is due to Contractor's failure to provide maintenance in accordance with the provisions herein. Contractor shall remove and replace such plant material within two weeks of notification by the City. Plants shall be replaced with material of equivalent size and variety to material being removed unless other material is approved by the City. All replacement material shall be approved by the City before installation by the Contractor.

2.03 Work Not Included

- A. Repairs or replacement of losses and damages not covered by the contract, except as noted.
- B. New planting and other special services, except with City's request or approval in writing and agreement to pay.

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- C. Major vandalism or damage caused by natural disasters.

SECTION 3. SPECIAL CONSIDERATIONS

3.01 Special Considerations

3.01A Management Goals

On a scale of 1 to 5, maintain all landscape areas at a 3.5 to 5.0 (excellent to outstanding).

3.01B Site Inspections

Regular site visits by the City Cemetery Manager and/or Landscape Architect and the Contractor's Representative will be on a quarterly basis at a minimum to ensure that the rating of 3.5 to 5.0 is maintained, to consider changes to the maintenance practices, and to direct special operations.

3.01C Schedule

Provide with Monthly Maintenance Invoice with a Monthly Service Recap.

3.01D Areas

The cost to maintain all landscaped areas described by the specifications must be based on conditions as they exist at the time of the bid.

3.01E Irrigation System Care

All irrigation repairs as noted in 3.04 of this section are included.

3.01F Exceptions

No exceptions to these specifications will be allowed unless approved in writing by the Project Administrator.

3.02 Natural or Open Space

Natural or rough areas shall be maintained in neat appearance suitable to the intent of the area. Areas with large mature trees shall be kept free of dead wood on the grounds. Wild grasses shall be cut and raked at least semi-annually or additionally as directed by the City. Fire control work is considered as part of this contract and shall be provided by the Contractor. Large broadleaf weeds shall be controlled either chemically or manually removed.

3.03 Debris Control

- A. All clippings, trimmings, cuttings, trash and rubbish associated with landscape maintenance shall be promptly removed from the site.

- B. The property shall be toured each visit to pick up and dispose of debris such as bottles, papers, cartons, and similar items to keep the grounds neat in appearance.
- C. Large items of debris, such as large appliances or couches, abandoned on the properties by others shall be removed to a suitable dump site by the City or by the Contractor as Additional Cost Work if approved by the City. Notify the City immediately when such dumping occurs.

3.04 Irrigation System Care

All irrigation systems shall be checked and adjusted each Spring and periodically throughout the growing season. Clean filter screens on pumps, backflow devices and drip systems as needed. All heads and valves flagged for repairs shall be repaired within one watering period or two working days – whichever is the shorter time frame. Necessary repairs to clocks, wiring, or necessary system modifications will be brought to the attention of the City for authorization to proceed with repairs or replacement. Cost estimates shall be provided by the Contractor. All repairs to the irrigation system shall be made within one watering period or within two working days from observation of damage. If repairs take longer than that, the contractor is responsible for hand watering the plant material as necessary to keep it in a healthy unstressed condition.

- A. Any damages to system caused by Contractor's operations shall be repaired without charge to the City. Repairs shall be made within one watering period or immediately upon discovery. Upon notification from the City of the damage it shall be repaired within one watering period or within two working days, whichever is shorter. Contractor shall report such damage immediately to the City.
- B. Accidental damage such as reported cases of vandalism shall be reported promptly to the City, together with an estimate of costs for repairs. This applies also to changes and additions needed. Faulty electrical controllers shall be reported to the City, and upon approval, repairs shall be made by the Contractor at City expense. In any case, repairs shall be made within one watering period or within two working days, whichever is shorter.
- C. In early spring, Contractor shall check all systems for proper operation. Lateral lines shall be flushed out after removing the last sprinkler head or two at each end of the lateral. All heads are to be adjusted as necessary for unimpeded coverage.
- D. The City should train Representative of Contractor on programming, operation and emergency system shut down of the controller. The City is responsible to provide the Contractor the key for the controller, and initial Programming.
- E. The irrigation system shall be adjusted as necessary to prevent overspray onto paved areas and run-off down the gutters. Contractor shall be specifically responsible for identifying areas of inadequate coverage, over-watering and system malfunctions, and making proper adjustments or repairs. Contractor shall adjust times to provide necessary water. Multiple repeat cycles shall be utilized as needed to provide best irrigation efficiency.
- F. Repair and replace as necessary, the irrigation system and all its piping from the backflow prevention device to each of the irrigation heads. It is understood that throughout the life of the project, incidental replacement of irrigation heads and risers, quick couplers, valves and

pipng will be necessary due to vandalism, vehicle damage, malfunction, and so on. **Repair and/or replacement of all damaged sprinkler heads and riser assemblies, quick couplers, valves and piping are a part of this contract, and will be paid for as "Extra Work"**. Provide receipt for materials as verification for "extra" reimbursable.

- G. Maintain in good condition all automatic sprinkler valve boxes and their cover lids. This includes removal of any plant growth inside of the boxes, and removing any excessive dirt or debris from inside box so that valve is completely exposed inside of box. Standing water in the valve boxes shall not be allowed to remain permanently.
- H. All valves should be kept in such condition that they are able to be manually operated at the box by the air bleed pet-cock.
- I. The height of all sprinkler control boxes shall be maintained at approximately one-half (1/2) inch above the surface of the surrounding grade.
- J. Repair and replace all quick coupling valves and lines which are not operating properly.
- K. Repairs to clocks, wiring or necessary system modifications shall be the Contractor's responsibility; however, they are considered as "Extra Work". A cost estimate shall be provided to the City and such repair shall be approved by the City prior to initiation.
- L. Moisture in soil shall be checked with a soil probe to determine moisture requirements for all plant areas.

3.05 Sidewalks, Crush Granite Paths, Off Road Parking and Drive Aisles (Roads)

- A. Debris of silt resulting from erosion and other landscape debris, shall be removed from sidewalks and drive aisles.
- B. When necessary the contractor will use water hose to remove silt and mud not removable by blowers, shovels or brooms.
- C. Debris caused by vehicles or equipment not related to the Contractor's Service and Maintenance Operations shall be reported to the city. This repair will be considered "Extra Work", A cost estimate shall be provided to the City and such repair shall be approved by the City prior to initiation.

3.06 Drainage Systems Maintenance

- A. All drainage systems on the properties for purposes of rain water or irrigation water collection, whether surface swales or underground pipes, shall be maintained in a clean condition free of debris, erosion waste, weeds or any blockage. Natural creeks and streams are not included.
- B. When a drainage system is blocked by debris from off the site or by erosion waste from off-site major storm damage, correction will be made by the City after prompt notification by the Contractor or considered "Extra Work" as approved by the City.

3.07 Erosion Control

The Contractor shall not be responsible for structural maintenance or repair or replacement of the following: parking areas, drive aisles, or sidewalks except for such structural maintenance, repair or replacement resulting from damage caused by the Contractor or his agents.

- A. Erosion resulting from failure to maintain properly rooted plant material on slopes shall be the responsibility of the Contractor to correct and accomplish necessary cleanups.
- B. Erosion resulting from major storm damage that requires major slope reconstruction and/or installation of additional drainage facilities shall be the City's responsibility.

3.08 Records

Written records of watering schedules, fertilization, pest control spraying, and other maintenance work shall be maintained by the Contractor. Written records describing all products and materials used during maintenance also shall be maintained by the Contractor. A copy of the record shall be provided to the City on a monthly basis.

3.09 Control, Supervision and Approval Authority

- A. Unless otherwise provided by specific provisions, Contractor's operations and activities pursuant to this agreement shall be under the control and supervision of the Director of Library and Recreation or her authorized representative, and such person shall exercise such control and supervision for and on behalf of the City where so designated in this agreement.
- B. Whenever, under the provisions of this agreement, the Contractor is prohibited from doing something unless Contractor first obtains the approval or consent of the City, such approval and consent must be obtained from the Director of Library and Recreation, or her authorized representative.

3.10 Graffiti

Graffiti shall be removed from the site within one week of notification by the City. The areas in which graffiti removal is required includes sound walls, controller boxes, valve boxes and any other surface in the maintenance areas. The cost of graffiti removal shall be paid for as "Extra Work".

SECTION 4. NON-IRRIGATED TURF

4.01 General

The Contractor shall maintain all non-irrigated turf areas by performing the following operations and other work incidental thereto:

4.02 Mowing

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Upright grasses/weeds shall be mowed to a uniform height not-to-exceed 4 inches in warm weather and 4 inches during the rainy season. Mower blades shall be kept sharp so as not to damage the turf. Cut all large turf areas using a rotary riding mower. For those areas with slopes 3 to 1 or steeper, use specialty mowers specifically designed for steep slope areas. Push mowers shall only be used in those areas where a ride mower cannot be used. Provide a list of the mowers you intend to use on the project to the Project Administrator for approval at the pre-job conference.

4.03 Edging

Turf shall be edged along borders, walls, curbs, fences, paths, rocks, gravestones, etc., for neat appearance where needed. Clippings shall be removed from planting beds and walks.

Edges shall be trimmed weekly during the growing season. Clippings shall be vacuumed or blown off walks back into turf areas. Clippings shall not be blown into the streets nor allowed to collect in drainage ways. Clippings shall be caught and removed from the site. Contractor shall be responsible for any damage caused by his operations.

Nylon line or other whip edger's shall not be used to edge ground cover areas or within two feet of any trees or shrubs. Contractor is responsible for any damage caused by this equipment.

4.04 Weed Control

Non-irrigated turf areas shall be carefully spot-treated with selective herbicides to control broadleaf weeds and weed grasses as weather and turf conditions dictate.

4.05 Debris Control

The property shall be reviewed weekly to ensure that debris such as bottles, papers, cartons and similar items are disposed of to keep the grounds neat in appearance.

SECTION 5. ORNAMENTATION AND GROUND COVER

5.01 General

The Contractor shall maintain all ground cover, including hard fescue areas, on the site(s) covered by this agreement in a healthy, thriving condition by performing the following operations and other work incidental thereto:

5.02 Weed Control

Eliminate weeds, including undesirable grasses such as tall fescue, nut grass, rye, etc., preferably with IPM techniques, but also with pre-emergent herbicides and/or selective systematic herbicides. Hoe weeds as little as possible since this may result in plant damage. Hand-pull weeds that are not effectively controlled by chemical herbicides.

- A. All planting beds, hanging flower baskets, and graveled areas shall be kept weed free.

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- B. All debris resulting from weeding operations shall be removed from the project area on the same day that the weeding operation occurs.
- C. Should the Contractor desire to use a chemical weed control program, he shall develop said program and submit it in writing as part of this bid. The City shall be notified at least seven (7) days before each use. Credit for herbicide application (pre and post emergents) will only be given when Contractor notifies the City prior to said application.
- D. All tree wells are to be kept weed and grass free for an area extending out a minimum of 2.5' from the trunk of the tree in any direction. (See also Section 6.05 under Tree and Shrub Care.) A three inch layer of organic mulch should be maintained in the tree wells. Care should be taken to pull mulch away from the trunk of the tree a minimum of two inches.

5.03 Ground Cover Areas

All ornamental plant material and ground covers shall be judiciously pruned maintaining the natural structure of the plant. All vegetation shall be maintained and clear of all walkways. Perform edging so that groundcover "feathers back" from border of groundcover area, forming a natural appearance; do not shear or create vertical edges.

5.04 Watering

Water enough so that moisture penetrates throughout the root zone as often as necessary to maintain healthy growth.

5.05 Dead Plant Material

If large sections of plant material are damaged or destroyed due to vandalism, such replacement material will be provided or paid for by the City, but shall be installed by the Contractor as "Extra Work". Documentation such as photos, a cost estimate, and a Public Safety report for vandalism shall be provided to the City for such plant material. Receipts for all plant material provided by the Contractor shall be given to the City.

5.06 Insect and Disease Control

All ornamental plant material will be inspected throughout the year to ensure against disease and insect infestation. If an infestation occurs, appropriate plant protection shall be taken. Should a pesticide be required, it shall be applied by a licensed pesticide applicator by state and local regulations and as weather and environmental conditions permit. Any pruning necessary to remove infested or infected material is included in this contract at no additional cost.

- A. Prior to applying any pesticides the Contractor shall have a "Commercial Pest Control Operator's License" as required by law.
- B. The spray materials shall meet all Federal, State and local requirements.
- C. The Contractor shall use an insecticide spray that prevents or controls insect infestations.

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- D. Application of insect and disease control materials shall be within the time best suited, according to the manufacturer's specifications and application rates, for the eradication of the insects and diseases.
- E. Any new or existing plants or soil that are damaged by either the lack of a needed application or the over-application of controlled materials shall be replaced by the Contractor at his expense.
- F. Snails and slugs shall be controlled by the use of an approved non-arsenical metaldehyde bait as prescribed by a qualified pest control advisor.

5.07 Watering

Contractor shall submit proposed cool season and warm season watering schedules.

5.08 Fertilizing

Ground cover and ornamental plants shall be fertilized in agreement with the attached frequency schedule. Fertilization application will be based on a soils analysis or the recommendation of the Project Administrator. City staff will be final authority for type and quantity of fertilizer to be applied.

5.09 Mulching

The Contractor shall provide and maintain mulch at a depth of three inches (3") in all planting areas which are mulched on the commencement date of this agreement or for which mulch is determined to be necessary by the Project Administrator due to Contractor's replacement of plants. Mulching material shall be organic, chipped wood mulch, or other such material as approved by the City. Mulch shall not be artificially colored. Mulch shall be supplied by the City and will be available at the Operations Yard at 3333 Busch Road. Mulch shall be applied as necessary at the direction of the Project Administrator, and shall be paid for as "Extra Work", except where noted as otherwise such as in the Hanging Flower baskets.

SECTION 6. TREE, SHRUB, AND HANGING FLOWER BASKET CARE

6.01 General

Maintain trees, shrubs, and hanging flower baskets in a healthy, thriving condition by performing all necessary operations.

City will supply baskets and plants for seasonal replanting.

6.02 Watering

Plants should not be watered until a moisture check has been made of representative plants in the landscape. Use a probe or other tool to check the moisture in the root ball and the soil surrounding the root ball. Also, a need for water should dictate the frequency of watering by an automatic or manual

irrigation system. Contractor shall submit proposed watering schedules for project along with bid documents.

6.03 Pruning

6.03A Broadleaf Trees

Pruning shall be the responsibility of the City and shall be pruned in conformance with ISA guidelines.

6.03B Coniferous Trees

Pruning shall be the responsibility of the City and shall be pruned in conformance with ISA guidelines.

6.03C Shrubs

The objectives of shrub pruning are the same as for trees. Shrubs shall not be clipped into balled or boxed forms. All pruning cuts shall be made to lateral branches or buds, or flush with the trunk. "Stubbing" will not be permitted. Plant replacement required due to poor pruning practices shall be the responsibility of the Contractor.

6.03D Dividing Perennials

After some years, dividing plants will become necessary to maintain a pleasing density and to renew plant vigor. Monitor plants yearly for clumpiness, reduced flowering, and other symptoms that indicate a need for dividing.

When directed by the Director of Library and Recreation, or her authorized representative, dig plants up, and carefully separate tubers or root masses, using a sharp knife. Prepare planting bed with fresh amendment in accordance with industry standards, rototilling to break up clods, etc. Replant separated plants to fill bed area with room for expansion; compost weak, damaged and excess plants. Water thoroughly after replanting.

6.04 Staking

Remove stakes as soon as they are no longer needed. Stakes and ties shall be inspected at least twice per year to prevent girdling of trunks or branches, and to prevent rubbing that causes bark wounds and cambium damage. Contractor shall train trees and shrubs off stakes, and adjust stakes and ties as necessary.

6.05 Weed Control

Keep basins and areas between plants free of weeds and turf. Avoid frequent soil cultivation that destroys shallow roots. Where there is not adequate plant material to suppress weeds, mulch is preferred to either spray or mechanical removal of weeds.



6.06 Fertilization

Once, late in spring, fertilize recently established plants with a soluble nitrate fertilizer. Avoid applying fertilizer to the root ball and base of main stem; rather, spread evenly under plant to drip line. Rates will vary from about a cup of nitrate fertilizer, (depending on nitrogen percentage) around a newly installed small plant to about one half (1/2) lb. of actual nitrogen per inch of trunk diameter measured four feet from the ground for mature trees.

4. Exhibit A, Scope of Consultant's Services, Section 3. "Compensation" is amended to read:

The City will pay a non-refundable administrative fee to Contractor for the above services in the amount of \$12,000. \$12,000 will be available at the commencement of the contract, and paid within 30 days of receipt of invoice from Contractor for administrative fee.

The Contractor will invoice the City for burial services once duties have been performed at the below rates. If burial fees and Maintenance cost exceed the total compensation of \$184,580, parties will negotiate on good faith to adjust the contract. Grounds maintenance may be billed monthly at \$5,200 per month and irrigation maintenance may be billed monthly at \$390 per month for a total of \$67,080 per year plus an additional \$15,000 allowance for extra work as needed.

Burial Services		
Interments	Weekday	Weekend and Holiday
Open & Closing of Grave - Casket Vault Burials Preparing graveside for services	\$1200	\$1500
Open & Closing of Grave – Urn Vault Burials Preparing graveside for services	\$550	\$625
Installation of Cement Vaults Single/Double	\$1500/1800	\$2000/2450
Installation of Cremains Vaults		
General Consulting on Cemetery		
Andy Martinez	\$200	
Disinterment's		
Casketed Remains	\$1900	\$2700
Cremated Remains	\$700	\$900
Crypt	Request Quote	
Niche	Request Quote	

Grave Markers & Monuments		
Installation of Flat Marker	\$325	\$400
Repair of Existing Marker or Monument	Request Quote	
Flat Marker Fabrication		
Flat Marker Fabrication. (Fee in addition to installation fee.)	\$200	\$300
Flat Marker Removal	\$100	\$150
Cost for "Extra Work"		
The listed hours and prices include the composite price for labor and equipment, including all incidental power tools, hand tools and vehicles, as well as all overhead costs. Excludes specialty tools required for unique situations.		
Staff Position	Loaded Hourly Rate by Position	
Site Supervisor, Senior Maintenance and Cemetery Services	\$82	
Senior Cemetery Ground Keeper	\$50	
Maintenance and Cemetery Services	\$50	

5. Other than amended above, the Agreement remains in full force and effect.

In witness whereof, authorized representatives of the parties have executed this Fifth Amendment to the Agreement as of the date and year first above written.

CITY OF PLEASANTON

Nelson Fialho, City Manager

ATTEST:

Karen Diaz, City Clerk

APPROVED AS TO FORM:

Daniel G. Sodergren, City Attorney

CONTRACTOR

By: Michael G. Kliment
Signature

Print name
Title: President Cemetery Services

[If Consultant is a corporation, signatures must comply with California Corporations Code §313]

By: Thomas J. Soderstrom
Signature

Print name
Title: Chairman, Monte Vista Investment Group, LLC