

**ADDENDUM 1 – PUBLIC LANDSCAPING IMPROVEMENTS
(Cash, Escrow, Letter of Credit Form)**

1. **Incorporation and Definitions.** This Addendum 1 is hereby incorporated into the Public Improvement Construction and Assurance Agreement (the “Agreement”) to which it is attached. The purpose of Addendum 1 is to describe the separate warranty and release provisions for the landscaping portion of the Public Improvements to be completed by Applicant as required by the terms of the issuance of permits and approvals (the “Public Landscaping Improvements”).

2. **Effect of Addendum.** The Agreement shall apply to Public Improvements and Public Landscaping Improvements. This Addendum shall provide the warranty and release provisions applicable to Public Landscaping Improvements.

**ADDITIONAL TERMS AND CONDITIONS
FOR PUBLIC LANDSCAPING IMPROVEMENTS**

3. **Additional Definitions.** Terms defined in the Agreement shall have the same meaning as set forth therein unless otherwise defined herein. In addition:

(a) “Landscaping Assurance” shall mean the portion of the Proceeds attributable to the Public Landscaping Improvements as shown in Exhibit A to Addendum 1. The Landscaping Assurance shall be 100% of the estimated cost of the Public Landscaping Improvements as set forth in “Exhibit A to Addendum 1,” attached hereto and incorporated herein by reference. The Landscaping Assurance shall apply only to Public Landscaping Improvements.

(b) “Landscaping Warranty Commencement Date,” shall mean the date specified in writing by the City Manager for commencement of the warranty period for the Public Landscaping Improvements, or if not so specified, the date on which the City Manager executes the written authorization for the Landscaping Warranty Reduction as hereinafter described.

(c) “Landscaping Warranty Period,” shall mean the period of time commencing on the Landscaping Warranty Commencement Date and terminating on the same month and day one (1) year later.

(d) “Public Landscaping Improvements,” shall mean the landscaping portion of the Public Improvements.

4. **Reduction and Release of Landscaping Assurance.**

(a) **Interim Reductions.** There will be no interim reductions for the Landscaping Assurance, except if seasonal weather conditions prevent the public landscaping improvements from being completed, tested and inspected, the financial assurance may be reduced upon substantial completion of the public landscaping system, as determined by the city engineer. To the extent reasonably practical, the completed portion of the public landscaping improvements must be inspected by the City and found by the city engineer to be in full compliance with City ordinances, standards and specifications, and the approved engineering drawings. The amount of

the interim landscaping reduction shall be determined by the city engineer and shall not exceed seventy five percent (75%) of the initial assurance amount for the public landscaping system.

(b) Landscaping Assurance Reduction. After all Public Landscaping Improvements are complete, or substantially complete if weather prevents completion, Applicant may request reduction of the Landscaping Assurance. The reduction shall be determined and authorized as set forth in the Agreement. A portion of the Landscaping Assurance (the "Landscaping Retainage") will be retained throughout the Warranty Period. The Landscaping Retainage will be in an amount determined by the city engineer and will be at least ten percent (10%) of the initial amount.

(c) Final Release of Landscaping Retainage. Upon completion of the Landscaping Warranty Period, and verification by the City Engineer and the City Manager that the Public Landscaping Improvements have been installed and repaired to the satisfaction of the City pursuant to the Agreement, the Compliance Requirements and supplier and manufacturer recommendations, City agrees to release the Landscaping Retainage.

(d) Separate Acceptance and Release. Public Landscaping Improvements may be accepted separately from other Public Improvements. The Landscaping Retainage may be released separately.

5. Warranty and Maintenance of Landscaping Improvements.

(a) Warranty of Public Landscaping Improvements. Applicant hereby warrants that the Public Landscaping Improvements shall remain free from defects in materials, workmanship or design as determined by City, such that they continue to meet the Compliance Requirements for one (1) year after the Landscaping Warranty Commencement Date.

(b) Warranty Inspection and Punch List. The Warranty Inspection and Punch List will be performed and prepared, and compliance will be required as set forth in the Agreement. A separate Warranty Inspection and Punch List may be performed and prepared for the Public Landscaping Improvements.

(c) Maintenance of Public Landscaping Improvements. Applicant will submit to the City a maintenance plan for public landscaping. During the Warranty Period, the City will follow the public landscaping maintenance plan. Landscaping failure within the Warranty Period will be presumed to be due to defective materials or workmanship if the City certifies that the City, or its contractor, substantially followed the public landscaping maintenance plan.

6. Final Inspection.

(a) Final Landscaping Inspection and Punch List. At the end of the Landscaping Warranty Period, Applicant shall request and the City shall perform a City inspection as set forth in the Agreement. If the City substantially follows the public landscaping maintenance plan and the landscaping area has eroded, or plant material has died or has not shown growth, the Applicant will replant, reseed and stabilize all defective landscaping areas and complete all applicable Final Punch List items.

(b) Written Release Required. Final Release of the Landscaping Assurance shall be as set forth in the Agreement, and may be performed separately from other Public Improvements. The City shall authorize Final Release only after the City Manager determines that the plant material is not defective. If any defective landscaping is not repaired, the City may retain a portion of the Landscaping Assurance to insure such work is done or may make written demand for remittance of the proceeds of the Landscaping Assurance to the City.

EXHIBIT A to Addendum 1
ESTIMATED COST OF LANDSCAPING IMPROVEMENTS