



City of Auburn
Home of Auburn University

MEMORANDUM

TO: Megan McGowen Crouch, City Manager

THROUGH: Keith Williams, Executive Director of Public Services

FROM: Daniel Ballard, Public Works Director

DATE: November 25, 2024

SUBJECT: Landscape Maintenance of Islands and Medians

The Public Works Department is requesting City Council approval to enter into a contract with Bodine's Landscape Services, Inc, for the provision of landscape maintenance services on various islands and medians throughout the City. Landscape maintenance at these locations is necessary to maintain safe and aesthetically pleasing gateways and corridors to the City.

The City of Auburn solicited bids from area contractors on October 22, 2024 for the costs of labor, equipment, and materials necessary to complete the annual Landscape Maintenance for Islands and Medians. Only one responsive and responsible bid was received. As permissible under Alabama Competitive Bid Law, the single bid was rejected and this project was rebid with the following bids received on November 19, 2024:

<u>Contractor:</u>	<u>Base Bid Price:</u>
Bodine's Landscape Services, Inc	\$74,480
Cutting Edge Lawn Care, LLC	\$81,000

In consideration of the bids received and the approved budget for these services, I recommend execution of a contract with Bodine's Landscape Services, Inc, in the amount \$74,480/year for this project. The initial contract is for services rendered between December 1, 2024, through September 31, 2025, and allows for two (2) one (1) year renewals at the City's discretion. Upon renewal, the annual contract performance period will run between October 1 through September 30.

RESOLUTION NO. _____

WHEREAS, the City Council of the City of Auburn has determined that it is in the best interest of the City of Auburn to maintain safe and attractive landscaping on its islands and medians, for the purpose of enhancing the aesthetic quality of the City's principal corridors and gateways; and

WHEREAS, the City of Auburn solicited sealed bids, as required under Alabama law, for the costs of labor, materials, and equipment necessary to perform the annual Landscape Maintenance for Islands and Medians; and

WHEREAS, sealed bids were opened on November 19, 2024, and Bodine's Landscape Services, Inc. was identified as the lowest responsible and responsive bidder, with a bid of \$74,480.

NOW THEREFORE BE IT RESOLVED that the City Council of the City of Auburn, Alabama, does hereby authorize the City Manager to execute a landscape maintenance contract with Bodine's Landscape Services, Inc, to provide comprehensive landscape maintenance of various islands and medians throughout the City.

ADOPTED AND APPROVED by the City Council of the City of Auburn, Alabama, this the 3rd day of December 2024.

Mayor

ATTEST:

City Manager

CONTRACT

THIS AGREEMENT made and entered into by and between Bodine's Landscape Services, Inc., hereinafter called the CONTRACTOR and the City of Auburn, Alabama,

WITNESSETH:

That the CONTRACTOR for the consideration fully set out hereby agrees with the CITY as follows:

That the CONTRACTOR shall furnish all labor, materials and/or equipment and perform all of the work in the manner and form as provided by the following: Advertisement for Bids, Instructions to Bidders, the Proposal, General Conditions, Special Conditions, Specifications, Performance Bond, Drawings, Labor and Material Payment Bond, Schedule of Estimated Quantities and Bid Prices, and Addenda, which are attached hereto and made a part hereof, as if fully contained herein:

LANDSCAPE MAINTENANCE FOR ISLANDS AND MEDIANS

By signing this contract, the contracting parties affirm, for the duration of the agreement, that they will not violate federal immigration law, or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the state of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom.

Any subcontractor who works on this project or service must be enrolled in E-Verify. By signing this contract, you are acknowledging your understanding of the requirement and have a system for assuring compliance.

By signing this agreement, the CONTRACTOR hereby attests that it is currently in compliance with Alabama Legislative Act 2016-312 (the "Act"). The CONTRACTOR hereby agrees to maintain compliance with the Act during the term of this Agreement. The CONTRACTOR understands and agrees that should it violate the Act during the term of this agreement, such violation will be an Event of Default, giving the City the right to immediately terminate this Agreement and to seek damages, including, but not limited to, consequential, special, indirect damages and liquidated damages.

ARTICLE 1 - ENGAGEMENT AND SCOPE

1.1 The City hereby engages the CONTRACTOR to provide landscape maintenance services in accordance with the Contract Documents (defined in Section 4.1 hereof), including the CONTRACTOR's "Proposal", which is attached hereto and made a part hereof, with respect to landscape maintenance services for the project named above, and the tasks described in Section 1.2 hereof (the "Work"), and the CONTRACTOR hereby accepts such engagement, upon the terms

and conditions hereinafter set forth.

1.2 The CONTRACTOR shall provide, furnish and perform all necessary labor and services and provide and furnish all necessary supplies, materials and equipment required to complete the work in accordance with the Contract Documents. The work to be done shall include the following:

AS OUTLINED IN ATTACHED EXHIBITS AND PROPOSAL

1.3 If the CONTRACTOR is of the opinion that any services requested hereunder are beyond the scope of the Work as provided in the Contract Documents, the CONTRACTOR shall promptly notify the City in writing of such opinion and the reasons for the same, with specific references to the Contract Documents.

1.4 No additional services beyond the scope of the Work as provided in the Contract Documents shall be performed by the CONTRACTOR unless the City shall, in writing, have specifically directed such services to be performed, and a Change Order (hereafter defined) shall have been signed by the City and the CONTRACTOR. In the event of noncompliance with the foregoing, the CONTRACTOR shall neither have nor make any claim for additional compensation by reason of a claim for additional services.

1.5 The term "Change Order" as used herein is a written order to the CONTRACTOR, issued and signed by the City after execution of this Agreement, authorizing a change in the Work. Unless the CONTRACTOR requests a modification in such Change Order, the CONTRACTOR shall sign the Change Order and return a copy thereof to the City within ten (10) business days after it has received the same. The CONTRACTOR shall have ten (10) business days from its receipt of a Change Order within which to request a modification thereto. Failure of CONTRACTOR to respond to a Change Order within such ten (10) day period shall be deemed to signify CONTRACTOR's acceptance of such Change Order as if CONTRACTOR had signed the same without modification. If CONTRACTOR requests a modification of a Change Order, the City shall have ten (10) business days from receipt of such request to accept such modification in writing. If City has not responded within ten (10) business days, such request is deemed to be rejected.

ARTICLE 2 - TERM AND FORCE MAJEURE

2.1 Subject only to Change Order(s) or the provisions for termination set forth in Article 9 below, the CONTRACTOR shall commence the work on December 1, 2024, and shall perform the services described in the attached proposal through September 30, 2025, unless extended by the project manager. At its discretion, the City may elect to renew this agreement annually, for a period of up to two (2) additional years. Upon renewal, the contract performance period shall be from October 1 through September 30.

2.2 If the CONTRACTOR is delayed at any time in the progress of the work by labor disputes,

fire, adverse weather conditions not reasonably anticipated, unavoidable casualties, or any other causes beyond the CONTRACTOR's control and without the fault or negligence of CONTRACTOR, the CONTRACTOR shall prepare and submit to the City within five (5) calendar days of the occurrence a written report of its assessment of the occurrence and any proposed amendment to the Term. The CONTRACTOR shall proceed with due diligence to alleviate any such delay and shall continue in the performance of its obligations hereunder. The City may determine, in its sole discretion, after the receipt of such notice of delay from the CONTRACTOR, whether to terminate this Agreement in accordance with Article 9 hereof or extend the Term by Change Order for such time as the City may determine.

ARTICLE 3 - COMPENSATION AND METHOD OF PAYMENT

3.1 The City shall pay the CONTRACTOR a fee for completion of the work determined in accordance with the Cost Proposal. The fee payable to the CONTRACTOR hereunder shall not exceed the "Contract Price" of Seventy Four Thousand Four Hundred Eighty dollars and 00/100 cents (\$74,480.00) unless the CONTRACTOR has requested, and the City has authorized in writing, an increased amount. Should the CONTRACTOR anticipate exceeding the Contract Price, the CONTRACTOR shall notify the City in writing and request a Change Order stating in detail the reasons why the Contract Price will be exceeded and the CONTRACTOR's best estimate of the number of hours and additional expenses the CONTRACTOR will require to complete the work. If a request to increase the Contract Price is made but not accepted, the CONTRACTOR shall still be obligated to continue providing services until the work is completed. If the City and the CONTRACTOR agree upon a modification to the Contract Price, a Change Order shall be issued with respect thereto.

3.2 The CONTRACTOR shall submit an invoice to the City for the work performed upon completion of the project task. Each such invoice shall also contain the CONTRACTOR's certification that the task or portion of the work described in the invoice has been completed in accordance with the Contract Documents, that the amount of all items due has been paid, and that the amount of such invoice is due to the CONTRACTOR.

3.3 If, however, the City objects to all or any portion of any invoice, the City shall so notify the CONTRACTOR of the same, stating the reasons for the objection. The City shall be entitled to withhold payment of any amounts in dispute. The parties shall immediately make every effort to settle any disputed portion of the invoice.

ARTICLE 4 - CONTRACT DOCUMENTS

4.1 The Contract Documents consist of this Agreement, CONTRACTOR's proposal, and attached Exhibit(s), all Amendments and all accepted Change Orders. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work. The Contract Documents are complementary, and what is required by anyone shall be deemed to be required by all. In the event of any conflict between the terms of this Agreement and the

other Contract Documents, the terms of this Agreement shall control.

ARTICLE 5 - CITY RESPONSIBILITIES

5.1 The City shall direct its officers, agents, other CONTRACTORS and employees to render all reasonable assistance and provide available data to the CONTRACTOR in connection with its performance of the Work under this Agreement. The City agrees to furnish to the CONTRACTOR copies of any previous reports, data and drawings which may be available and are pertinent to the Work. All such data provided shall remain the property of the City and shall be returned to the City promptly.

5.2 The City shall respond to all submitted request for information within two (2) business days.

ARTICLE 6 - CONTRACTOR'S REPRESENTATIONS, WARRANTIES AND RESPONSIBILITIES

6.1 The CONTRACTOR represents and warrants to the City that it has the authority to enter into this Agreement and to perform the Work, and that it is licensed to do business within the City of Auburn and authorized to conduct business in the State of Alabama. The CONTRACTOR further represents and warrants that all Work performed by it hereunder (a) will be in conformance with the terms of the Contract Documents; (b) will be performed in a skillful and workmanlike manner; (c) will be performed by the proper number of experienced, skilled and licensed personnel, qualified by education and experience to perform their assigned tasks; and (d) will conform to the standard of care, skill and diligence exercised by professionals performing the same or similar services.

CONTRACTOR is responsible for making an independent evaluation and judgment of all conditions affecting performance of the work, including without limitation applicable federal, state, and local laws and regulations, and all other contingencies or considerations.

CONTRACTOR's responsibilities under this section shall not be delegated. CONTRACTOR shall be responsible to City for acts, errors, or omissions of the CONTRACTOR's.

CONTRACTOR is responsible for making an independent evaluation and judgment of all conditions affecting performance of the work and shall prepare plans, reports, and/or other work products in such a way that additional costs will not be incurred beyond a project budget approved or amended by the City Manager or his or her designee.

Whenever the scope of work requires or permits review, approval, conditional approval or disapproval by City, it is understood that such review, approval, conditional approval or disapproval is solely for the purposes of administering this Agreement and determining whether the CONTRACTOR is entitled to payment for such work, and not be construed as a waiver of any breach or acceptance by the City of any responsibility, professional or otherwise, for the work, and shall not relieve the CONTRACTOR of responsibility for complying with the standard of

performance or laws, regulations, industry standards, or from liability for damages caused by negligent acts, errors, omissions, noncompliance with industry standards, or the willful misconduct of CONTRACTOR.

6.2 The CONTRACTOR shall at all times enforce strict discipline and good order among its employees and shall not employ for the work (a) any person, CONTRACTOR or corporation not skilled and licensed, if required, in the task assigned to him, or (b) anyone who might endanger himself, others or the project. The CONTRACTOR shall be responsible to the City for the acts and omissions of its employees, agents, and other persons performing any of the Work for the CONTRACTOR. The City reserves the absolute right to require the immediate removal of any such unskilled, untrained or unfit person, CONTRACTOR or corporation from participation in the Work.

ARTICLE 7 - PROTECTION OF PERSONS AND PROPERTY

7.1 The CONTRACTOR agrees to advise fully all of its employees and others working for the CONTRACTOR concerning environmental, safety and health procedures required by applicable state or federal law, regulation or order or required by the City; and to take the steps necessary to assure that such procedures are complied with.

ARTICLE 8 - INSURANCE AND HOLD HARMLESS AGREEMENT

The CONTRACTOR will be required to provide certificates of insurance showing that it carries, or has in force, automobile liability insurance, general liability insurance, and workers' compensation insurance. Limits of liability for automobile liability insurance shall be, at a minimum, \$1,000,000.00 combined single limit. Limits of liability for general liability insurance shall be, at a minimum, \$1,000,000.00 per occurrence, \$1,000,000.00 personal and advertising injury, \$1,000,000.00 general aggregate and \$1,000,000.00 products/completed operations aggregate. General liability insurance will include coverage for contractually assumed liability and the application of herbicides and pesticides. If the general liability insurance is on a claims made basis, the CONTRACTOR will maintain coverage in force for a period of two (2) years following completion of the work specified in the Agreement at the limits of coverage specified in this paragraph. Workers' compensation insurance shall provide statutory workers' compensation insurance and employers' liability coverage with limits of, at a minimum, \$500,000.00 each accident, \$500,000.00 disease – each employee and \$500,000.00 disease policy limit. If the Contractor is not required to provide workers compensation insurance the Contractor further acknowledges that Contractor is responsible for any similar type of benefits. The CONTRACTOR is responsible for the payment of any deductibles or self-insured retentions. The CONTRACTOR's insurance is primary and non-contributory. If the CONTRACTOR carries higher coverage limits than those specified above, the higher coverage limits will apply.

The certificate of insurance shall provide the City of Auburn, Alabama (City) with thirty (30) days written notice of cancellation of any of the coverage named in said certificate except for nonpayment of premium for which ten (10) days written notice of cancellation will be provided.

The certificate of insurance will evidence waivers of subrogation in favor of the City for the coverages listed.

The City will be named as an additional insured under the CONTRACTOR's general liability insurance and automobile liability insurance policies.

The CONTRACTOR shall require certificates of insurance from subcontractors. Subcontractors will carry limits of insurance equal to or greater than those carried by the CONTRACTOR. These certificates shall evidence waivers of subrogation in favor of the CONTRACTOR and the City, and shall be made available to the City upon request.

The CONTRACTOR agrees, to indemnify, defend and hold harmless the City, its officials, representatives, agents, servants, and employees (collectively, City) from and against any and all claims, actions, lawsuits, damages, judgments, liability and expense, including reasonable attorneys' fees and litigation expenses, to the extent caused by the CONTRACTOR's negligent performance of the work under this Agreement and that of its sub-contractors or anyone for whom the CONTRACTOR is legally liable. This obligation will survive the payment of any losses by the CONTRACTOR's insurance company.

ARTICLE 9 – TERMINATION

9.1 If either party is of the opinion that the other party has breached the terms of Agreement, it may give the other party thirty (30) days written notice of such breach. The other party shall have thirty (30) days to cure such breach and if it fails to do so, and it has in fact breached the Agreement, then the party giving such notice may terminate this Agreement. Upon completion of the Work, as accepted by the City, or upon receipt of the aforesaid notice of termination, CONTRACTOR shall deliver to the City all of the following:

(a) Executed Release of Liens and Claims by stating that all bills have been paid and no claims exist against the City.

(b) Final itemized invoice for payment. The CONTRACTOR shall be paid for services performed that are not in dispute in accordance with the Contract Documents to the date of termination less any setoffs which the City may have.

ARTICLE 10 – MISCELLANEOUS

10.1 CONTRACTOR shall only take instructions from the person or persons who are authorized in writing by the City to give the same.

10.2 The Work shall be performed by CONTRACTOR in such a manner and at such times so as to not interfere or interrupt the City's operations.

10.3 This Agreement does not and shall not be construed to create any partnership or agency whatsoever.

10.4 This Agreement shall be subject to and governed by the laws of the State of Alabama. The Work and performance of same shall comply with all applicable City, county, state and federal codes, rules, regulations and orders.

10.5 Failure to insist upon strict compliance with any provision hereof shall not be deemed a waiver of such provision or any other provision hereof.

10.6 This Agreement may not be modified except by Change Order or written Amendment executed by the parties hereto.

10.7 The invalidity or unenforceability of any provision hereof shall not affect the validity or enforceability of any other provision.

10.8 Legal actions arising from this agreement will be filed in the Circuit Court of Lee County, Alabama, located in Opelika, Alabama or the Federal District Court for the Middle District of Alabama – Eastern Division located in Opelika, Alabama.

10.9 The CONTRACTOR may not assign this agreement without the written permission of the City.

10.10 During the performance of services under this Agreement, CONTRACTOR may gain access to and use City information regarding, but not limited to, procedures, policies, training, operational practices, and other vital information (hereafter collectively referred to as "City Information") which are valuable, special and unique assets of the City. CONTRACTOR agrees that it will not use any information obtained as a consequence of the performance of services under this Agreement for any purpose other than fulfillment of CONTRACTOR's scope of work, to protect all City Information and treat it as strictly confidential and proprietary to City, and that it will not at any time, either directly or indirectly, divulge, disclose or communicate in any manner any City Information to any third party, other than its own employees, agents who have a need for the City Information for the performance of services under this Agreement, without the prior written consent of City, or as required by law. CONTRACTOR shall treat all records and work product prepared or maintained by CONTRACTOR in the performance of this Agreement as confidential.

A violation by CONTRACTOR of this section shall be a material violation of this Agreement and will justify legal and/or equitable relief.

CONTRACTOR's obligations under this section shall survive the completion of services, expiration or termination of this Agreement.

(The rest of this page left intentionally blank)

IN WITNESS, THEREOF the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement in three copies each of which shall be deemed an original on the date first above written.

Made and entered into this _____ day of _____
2024.

WITNESS TO PRINCIPAL'S SIGNATURE

SIGNATURE OF PRINCIPAL

PRINCIPAL

NAME OF CONTRACTOR

CONTRACTOR'S BUSINESS ADDRESS

CITY, STATE

TELEPHONE

(SEAL)

THE CITY OF AUBURN, ALABAMA
A Municipal Corporation

ATTEST:

BY: _____

BY: _____

Lindsay Manley
Assistant City Clerk

Megan McGowen Crouch
ITS CITY MANAGER