



City Council Memorandum

To: Mayor Fasbender & City Councilmembers
From: Chris Jenkins, Parks & Recreation Director
Date: April 1, 2024
Item: TH HWY 61 Median Maintenance

Council Action Requested: Accept quote and approve contract with Precision Landscaping and Construction, INC.

Background Information: The City of Hastings hires a contractor to perform specific annual maintenance within the TH HWY 61 Median. Precision Landscaping and Construction, INC. has performed this work for a number of years, and have performed well and have been very responsive to city needs and requests.

This contracted work has not been subject to official agreements in the past, however in an effort to ensure both parties have accurate and legal obligations to one another, an agreement is recommended now and for future contracted work.

Staff recommend accepting Precision Landscaping and Construction, INC's quote and approving the contract for services attached.

A note for 2024, the addition of mulch in the landscape bed within the TH HWY 61 Median is not an annual application, but it is time to add mulch in 2024 and can be accomplished during regularly scheduled maintenance.

Financial Impact: This is an annual budget expense.
Precision Landscaping and Construction, INC quoted price for both:
\$12,909.68

Advisory Commission Discussion: None

Council Committee Discussion: None

Attachments:

- Contract for Services and vendor quotes

AGREEMENT FOR SERVICES
TH HWY 61 MEDIAN MAINTENANCE

THIS AGREEMENT (“Agreement”) is made and executed this 1st day of April, 2024, by and between the City of Hastings, 101 4th Street, Hastings, Minnesota 55033, (“City”) and Precision Landscaping & Construction, INC, 14923 Jacob Ave, Hastings, MN 55033 (“Contractor”).

WHEREAS, the City has accepted the proposal of the Contractor for certain Services; and

WHEREAS, Contractor desires to perform the Services for the City under the terms and conditions set forth in this Agreement.

NOW THEREFORE, in consideration of the mutual consideration contained herein, it is hereby agreed as follows:

1. SERVICES.

a. City agrees to engage Contractor as an independent contractor for the purpose of performing certain Services (“Services”), as defined in the following documents:

i. A proposal dated February 29, 2024, incorporated herein as Exhibits A.

ii. A proposal dated February 29, 2024, incorporated herein as Exhibits B.

(Hereinafter “Exhibits”)

iii. Where terms and conditions of this Agreement and those terms and conditions included in the Exhibits specifically conflict, the terms of this Agreement shall apply.

b. Contractor covenants and agrees to provide Services to the satisfaction of the City in a timely fashion, as set forth in the Exhibits, subject to Section 9 of this Agreement.

c. Contractor agrees to comply with all federal, state, and local laws and ordinances applicable to the Services to be performed under this Agreement, including all safety standards. The Contractor shall be solely and completely responsible for conditions of the job site, including the safety of all persons and property during the performance of the Services. The Contractor represents and warrants that it has the requisite training, skills, and experience necessary to provide the Services and is appropriately licensed and has obtained all permits from all applicable agencies and governmental entities.

2. PAYMENT.

a. City agrees to pay the Contractor and the Contractor agrees to receive and accept payment for Services as set forth in the Exhibits.

- b. Any changes in the scope of the work of the Services that may result in an increase to the compensation due the Contractor shall require prior written approval by the authorized representative of the City or by the City Council. The City will not pay additional compensation for Services that do not have prior written authorization.
 - c. Contractor shall submit itemized bills for Services provided to City on a monthly basis, unless otherwise stated in the Exhibits. Bills submitted shall be paid in the same manner as other claims made to City.
 - d. Prior to payment, the Contractor will submit evidence that all payrolls, material bills, subcontractors and other indebtedness connected with the Services have been paid as required by the City.
3. TERM. The Agreement shall commence on the date listed in the initial paragraph of this Agreement and continue until terminated pursuant to Section 5.
4. BONDS. If the Services provided by Contractor as set forth in the Exhibits and this Agreement exceeds \$100,000, Contractor shall furnish performance and payments bonds covering faithful performance of all the Contractor's obligations, including without limitation warrant obligations, and of all payment obligations arising under this Agreement.
5. TERMINATION AND REMEDIES.
 - a. Termination for Convenience. This Agreement may be terminated by either party upon 30 days' written notice delivered to the other party at the addresses listed in Section 15 of this Agreement. Upon termination under this provision, if there is no default by the Contractor, Contractor shall be paid for Services rendered and reimbursable expenses through the effective date of termination.
 - b. Termination Due to Default. This Agreement may be terminated by either party upon written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement. The non-performing party shall have fifteen (15) calendar days from the date of the termination notice to cure or to submit a plan for cure that is acceptable to the other party.
 - c. Remedies. Notwithstanding the above, the Contractor shall not be relieved of liability to the City for damages sustained by the City as a result of any breach of this Agreement by the Contractor. The City may, in such event:
 - i. Withhold payments due to the Contractor for the purpose of set-off until such time as the exact amount of damages due to the City is determined.
 - ii. Perform the Services, in which case, the Contractor shall within 30 days after written billing by the City, reimburse the City for any costs and expenses incurred by the City.

The rights or remedies provided for herein shall not limit the City, in case of any default by the Contractor, from asserting any other right or remedy allowed by law, equity, or by statute.

- d. Upon termination of this Agreement, the Contractor shall furnish to the City copies or duplicate originals of all documents or memoranda prepared for the City not previously furnished.
6. SUBCONTRACTORS. Contractor shall not enter into subcontracts for any of the Services provided for in this Agreement without the express written consent of the City, unless specifically provided for in the Exhibits. The Contractor shall pay any subcontractor involved in the performance of this Agreement within the ten (10) days of the Contractor's receipt of payment by the City for undisputed services provided by the subcontractor.
7. STANDARD OF CARE. In performing its Services, Contractor will use that degree of care and skill ordinarily exercised, under similar circumstances, by reputable members of its profession in the same locality at the time the Services are provided.
8. INSPECTION OF WORK. All materials and workmanship will be subject to inspection, examination, and testing by the City, who will have the right to reject defective material and workmanship or require its correction.
9. DELAY IN PERFORMANCE. Neither City nor Contractor shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the nonperforming party. For purposes of this Agreement, such circumstances include, but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; war, riots, and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage; judicial restraint; and inability to procure permits, licenses or authorizations from any local, state, or federal agency for any of the supplies, materials, accesses, or services required to be provided by either City or Contractor under this Agreement. If such circumstances occur, the nonperforming party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement. Contractor will be entitled to payment for its reasonable additional charges, if any, due to the delay.
10. CITY'S REPRESENTATIVE. The City has designated CHRIS JENKINS to act as the City's representative with respect to the Services to be performed under this Agreement. He shall have complete authority to transmit instructions, receive information, interpret, and define the City's policy and decisions with respect to the Services covered by this Agreement.
11. PROJECT MANAGER AND STAFFING. The Contractor has designated JOBY NOLAN to be the primary contact for the City in the performance of the Services. The primary contact shall be assisted by other staff members as necessary to facilitate the completion

of the Services in accordance with the terms established herein. Contractor may not remove or replace the designated staff without the approval of the City.

12. INDEMNIFICATION.

- a. Contractor and City each agree to defend, indemnify, and hold harmless each other, its agents and employees, from and against legal liability for all claims, losses, damages, and expenses to the extent such claims, losses, damages, or expenses are caused by its negligent acts, errors, or omissions. In the event claims, losses, damages, or expenses are caused by the joint or concurrent negligence of Contractor and City, they shall be borne by each party in proportion to its own negligence.
- b. Contractor shall indemnify City against legal liability for damages arising out of claims by Contractor's employees or subcontractors, including all liens. City shall indemnify Contractor against legal liability for damages arising out of claims by City's employees or subcontractors.

13. INSURANCE. During the performance of the Services under this Agreement, Contractor shall maintain the following insurance:

- a. Commercial General Liability Insurance, with a limit of \$1,500,000 for any number of claims arising out of a single occurrence, pursuant to Minnesota Statutes, Section 466.04, or as may be amended.
- b. Workers' Compensation Insurance in accordance with statutory requirements.
- c. Automobile Liability Insurance, with a combined single limit of \$1,000,000 for each person and \$1,000,000 for each accident.

Contractor shall furnish the City with certificates of insurance, which shall include a provision that such insurance shall not be canceled without written notice to the City. The City shall be named as an additional insured on the Commercial General Liability Insurance policy.

14. WARRANTIES. Contractor warrants and guarantees that title to all work, materials, and equipment covered by any invoice, will pass to City no later than the Completion Date. Contractor warrants that all work will be free from defects and that all materials will be new and of first quality. If within one (1) year after final payment any work or material is found to be defective, Contractor shall promptly, without cost to the City, correct such defect.

15. NOTICES. Notices shall be communicated to the following addresses:

If to City: City of Hastings
 101 4th Street
 Hastings, MN 55033
 Attention: Chris Jenkins

Or e-mailed: cjenkins@hastingsmn.gov

If to Contractor: Precision Landscaping & Construction, INC
14923 Jacob Ave
Hastings, MN 55033
Attention: Joby Nolan

Or emailed: joby@precisionlandscape-inc.com

16. INDEPENDENT CONTRACTOR STATUS. All services provided by Contractor, its officers, agents and employees pursuant to this Agreement shall be provided as employees of Contractor or as independent contractors of Contractor and not as employees of the City for any purpose.

17. RESPONSIBLE CONTRACTOR.

- a. In accordance with Minnesota Statutes, Section 16C.285, Contractor is hereby advised that the City cannot award a construction contract in excess of \$50,000 unless Contractor is a “responsible contractor” as defined in Minnesota Statutes, Section 16C.285, subdivision 3. Contractor must complete a Responsible Contractor Certificate verifying compliance with the minimum criteria specified in Minnesota Statutes, Section 16C.285, subdivision 3, to be eligible to provide the Services outlined in this Agreement. A Responsible Contractor Certificate must be signed under oath by an owner or officer of Contractor. Contractor is responsible for obtaining the required verifications of compliance with Minnesota Statute, Section 16C.285, subdivision 3 from all subcontractors, using a form provided by the City. Contractor must submit signed verifications from subcontractors upon the City’s request.
- b. Contractor or subcontractor who does not meet the minimum criteria established in Minnesota Statutes, Section 16C.285, subdivision 3, or who fails to verify compliance with the minimum requirements of this statute, will not be considered a “responsible contractor” and will be ineligible to provide the Services under this Agreement or otherwise work on the project in any capacity. Contractor and any subcontractor are advised that making any false statements verifying compliance with Minnesota Statutes, Section 16C.285 will render the Contractor or subcontractor ineligible to perform the Services of this Agreement and may result in termination of this Agreement by the City.
- c. Contractor shall not sublet, sell, transfer, delegate or assign the Services or any portion of the Services of this Agreement without abiding by the applicable provisions of the Minnesota Department of Transportation Standard Specifications for Construction, Section 1801.

18. GENERAL PROVISIONS.

- a. Assignment. This Agreement is not assignable without the mutual written agreement of the parties.
- b. Waiver. A waiver by either City or Contractor of any breach of this Agreement shall be in writing. Such a waiver shall not affect the waiving party's rights with respect to any other or further breach.
- c. Nondiscrimination. Contractor agrees that in the hiring of employees to perform Services under this Agreement, Contractor shall not discriminate against any person by reason of any characteristic protected by state or federal law.
- d. Governing Law. This Agreement shall be construed in accordance with the laws of the State of Minnesota and any action must be venued in Dakota County District Court.
- e. Amendments. Any modification or amendment to this Agreement shall require a written agreement signed by both parties.
- f. Severability. If any term of this Agreement is found be void or invalid, such invalidity shall not affect the remaining terms of this Agreement, which shall continue in full force and effect.
- g. Data Practices Compliance. All data collected by the City pursuant to this Agreement shall be subject to the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13.
- h. Entire Agreement. This Agreement constitutes the entire agreement of the parties and supersedes all prior communications, understandings and agreements relating to the subject matter hereof, whether oral or written.

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CITY OF HASTINGS

By: _____
Mary Fasbender, Mayor

By: _____
Kelly Murtaugh, City Clerk

Date: _____

CONTRACTOR

Signature: _____

Date: _____

Name: _____

Its: _____

Exhibit A

IX-03



14923 Jacob Ave. Hastings, MN 55033

651-437-2305

Info@precisionlandscape-inc.com

Sales Person: Joby

Quote AAAE014

Date : 02-29-2024

Email : cjenkins@hastingsmn.gov

Phone : 6514806175

For : City Of Hastings
100 2nd St E, Hastings, MN 55033, USA

Total Estimate: **\$5,430.00**

2024 Bridge Median Maintenance		Section Estimate: \$5,430.00
QUANTITY	MATERIAL	TOTAL ESTIMATED PRICE
1.00	Seasonal Bridge Median Maint. Includes deadhead, lane closure traffic control, permit, weeding	5430.00

Total Estimate: **\$5,430.00**

TERMS: 1/3 Down, 2nd third due upon project start, and full payment upon completion, unless other arrangements have been made.
All past due accounts will be charged a 1-1/2% (18% APR) service charge. All Credit Card transactions will be charged a 3% convenience fee.
All prices quoted are valid for 90 days from the date stated.

Exhibit B

IX-03



14923 Jacob Ave. Hastings, MN 55033

651-437-2305

Info@precisionlandscape-inc.com

Sales Person: Joby

Quote **AAAE013**

Date : 02-29-2024

Email : cjenkins@hastingsmn.gov

For : City Of Hastings
100 2nd St E, Hastings, MN 55033, USA

Phone : 6514806175

Total Estimate: **\$7,479.68**

Bridge Mulch		Section Estimate: \$7,479.68
QUANTITY	MATERIAL	TOTAL ESTIMATED PRICE
99.00	Double Shredded Hardwood	6781.5
1.00	Lane Closure/Permit	698.18

This project is only for 2024, mulch is not needed every year.

Total Estimate: **\$7,479.68**

TERMS: 1/3 Down, 2nd third due upon project start, and full payment upon completion, unless other arrangements have been made.
All past due accounts will be charged a 1-1/2% (18% APR) service charge. All Credit Card transactions will be charged a 3% convenience fee.
All prices quoted are valid for 90 days from the date stated.