

REQUEST FOR COUNCIL ACTION

SUBJECT: Parkstrip Landscape Maintenance

SUMMARY: Approve a contract with Terracare Associates for Fairway Estates annual landscape maintenance services. The annual contract will be for an 8 month period April-November with 5-one year options to renew, for an amount not to exceed \$5,610.00.

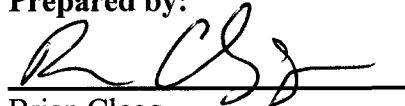
FISCAL IMPACT: Funds for the weekly maintenance of the Fairway Estates Common areas are in the Fairway Estates Special Services Recreation District (SSRD) account for the 2016/17 budget.

STAFF RECOMMENDATION: Staff recommends approval of the contract with Terracare Associates for Fairway Estates annual landscape maintenance services. The annual contract will be for an 8 month period April-November with 5-one year options to renew, for an amount not to exceed \$5,610.00.

MOTION RECOMMENDED: "I move to adopt Resolution No. ~~16123~~ approving and authorizing the Mayor to execute a Terracare Associates for Fairway Estates annual landscape maintenance services. The annual contract will be for an 8 month period April-November with 5-one year options to renew, for an amount not to exceed \$5,610.00.

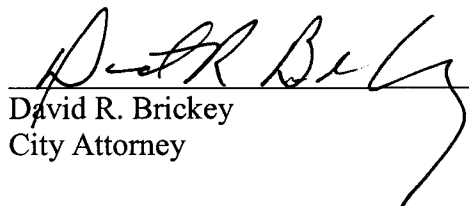
Roll Call vote required

Prepared by:



Brian Clegg
Parks Director

Reviewed as to Legal Sufficiency:



David R. Brickey
City Attorney

Recommended by:



Mark R. Palesh
City Manager

BACKGROUND DISCUSSION:

In June 2016 staff prepared an RFP for weekly landscape maintenance for the Fairway Estates Common areas. Two companies' submitted proposals, Terracare Associates was selected as the apparent low, responsible bidder.

Attachments:

Resolution

Contract

THE CITY OF WEST JORDAN, UTAH
A Municipal Corporation

RESOLUTION NO. 16-123

**A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH
TERRACARE ASSOCIATES, FOR FAIRWAY ESTATES LANDSCAPE MAINTENANCE SERVICES**

Whereas, the City Council of the City of West Jordan has reviewed the contract (a copy of which is attached as **Exhibit A**) with Terracare Associates, for Fairway Estates landscape maintenance services in the amount not to exceed of \$5,610.00; and

Whereas, the City Council desires to award the contract to Terracare Associates, which award shall not be binding upon the City of West Jordan unless and until the contract is fully executed by the parties; and

Whereas, the proposed contract between the City of West Jordan and Terracare Associates for Fairway Estates landscape maintenance services in an amount not-to-exceed \$5,610.00 has been reviewed; and

Whereas, the City Council of the City of West Jordan has determined that the attached contract with Terracare Associates for an amount not-to-exceed \$5,610.00 is acceptable for the purpose of completing Fairway Estates landscape maintenance

NOW, THEREFORE, IT IS RESOLVED BY THE CITY COUNCIL OF WEST JORDAN, UTAH:

- Section 1. The contract for the Fairway Estates landscape maintenance services is hereby awarded to Terracare Associates, which award shall not be binding upon the City of West Jordan until the contract is fully executed by the parties.
- Section 2. After approval as to legal form by the City Attorney, the Mayor is hereby authorized to execute a contract between the City of West Jordan and Terracare Associates, in an amount not to exceed \$5,610.00.
- Section 3. This Resolution shall take effect immediately.

Adopted by the City Council of West Jordan, Utah, this 27th day of July 2016.

Kim V. Rolfe
Mayor

ATTEST:

MELANIE BRIGGS, MMC
City Clerk

THE CITY OF WEST JORDAN, UTAH
A Municipal Corporation

RESOLUTION NO. **16-123**

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH
TERRACARE ASSOCIATES, FAIRWAY ESTAES LANDSCAPE MAINTENANCE SERVICES

Voting by the City Council	"AYE"	"NAY"
Council Member Dirk Burton	_____	_____
Council Member Jeff Haaga	_____	_____
Council Member Zach Jacob	_____	_____
Council Member Chris McConnehey	_____	_____
Council Member Chad Nichols	_____	_____
Council Member Sophie Rice	_____	_____
Mayor Kim V. Rolfe	_____	_____

CITY OF WEST JORDAN CONTRACT

1. CONTRACTING PARTIES: This contract is between the City of West Jordan, a municipality and political subdivision of the State of Utah and the following CONTRACTOR:

Name and Address of Contractor

Terracare Associates
6906 South 300 West
Midvale, UT 84047

LEGAL STATUS OF CONTRACTOR

- [] Sole Proprietor
[] Non-Profit Corporation
[X] For-Profit Corporation
[] Partnership
[] Government Agency
[] Limited Liability Company
Federal Tax ID# _____

- 2. GENERAL PURPOSE OF CONTRACT: The general purpose of this contract is to provide annual landscape maintenance services for Fairway Estates.
3. PROCUREMENT: This contract is entered into as a result of the Invitation for Bids which was submitted to the City on 06/28/2016 by the contractor.
4. CONTRACT PERIOD: Effective date: 08/01/2016 Termination date: 11/30/2016, unless terminated early or extended in accordance with the terms and conditions of this contract.
5. RENEWAL OPTIONS: Five one-year renewal options provided the city and the contractor mutually agree to exercise the renewals. Renewal dates will be April to November of each year.
6. CONTRACT COSTS: CONTRACTOR will be paid a maximum of \$5,610.00 for costs authorized by this contract.
7. INSURANCE: The contractor shall maintain not less than: (a) \$2,000,000.00 automobile insurance, (b) \$2,000,000 bodily injury liability, (c) \$2,000,000.00 general liability insurance with \$3,000,000.00 general aggregate, and (d) worker's compensation as required by state statute, during the duration of this contract.
8. ATTACHMENT A: Standard Terms and Conditions
ATTACHMENT B: Scope of Work/Invitation to Bid
ATTACHMENT C: Insurance Certificate - Naming the City, its officers, employees, and volunteers as additional insured with respect to liability.
ATTACHMENT D: Payment Bond - Not Required
ATTACHMENT E: Performance Bond
ATTACHMENT F: Workers Compensation Certificate
Any conflicts between Attachment A and other Attachments will be resolved in favor of Attachment A.
8. DOCUMENTS INCORPORATED INTO THIS CONTRACT BY REFERENCE BUT NOT ATTACHED:
a. All other governmental laws, regulations, or actions applicable to the goods and/or services authorized by this contract.
b. City of West Jordan's Procurement Policies, and the proposal which was submitted to the City on 06/28/2016 by the contractor.
9. ATTORNEY'S FEES AND COST: The prevailing party shall have the right to collect from the other party its reasonable cost and necessary disbursements and attorney's fees incurred in enforcing this Agreement.

IN WITNESS WHEREOF, the parties sign and cause this contract to be executed.

CONTRACTOR

CITY OF WEST JORDAN

Contractor's signature

Mayor's signature

Type or Print Name and Title

Attest:

Approved As To Form:

City Recorder

City Attorney

Date: _____

Date: _____

Date: _____

Corporate Acknowledgment

STATE OF _____)
 :SS
COUNTY OF _____)

On this ____ day of _____, 20____, personally appeared before me, _____, who being by me duly sworn did say that he/she is the _____ of _____, a corporation, and that the foregoing instrument was signed in behalf of said corporation by authority of its Board of Directors, and he/she acknowledged to me that said corporation executed the same.

NOTARY PUBLIC

My Commission Expires:

Residing in _____ County, _____

ATTACHMENT A: STANDARD TERMS AND CONDITIONS

1. **AUTHORITY:** Provisions of this Contract are pursuant to the authority set forth in the West Jordan Municipal Code Section 2-7-301 et seq. Mandatory applicable state and federal law and regulations also apply.
2. **CONTRACT JURISDICTION, CHOICE OF LAW, AND VENUE:** The provisions of this Contract shall be governed by the laws of the State of Utah. The parties will submit to the jurisdiction of the courts of the State of Utah for any dispute arising out of this Contract or the breach thereof. Venue shall be in Salt Lake County.
3. **RECORDS ADMINISTRATION:** The CONTRACTOR shall maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the CONTRACTOR for costs authorized by this contract. These records shall be retained by the CONTRACTOR for at least four years after the contract terminates, or until all audits initiated within the four years, have been completed, whichever is later.
4. **AUDIT OF RECORDS:** The CONTRACTOR agrees to allow City, State, and Federal auditors, access to all the records to this contract, for audit and inspection, and monitoring of services. Such access will be during normal business hours, or by appointment.
5. **CONFLICT OF INTEREST:** Contractor represents that none of its officers or employees are officers or employees of the City of West Jordan, unless disclosure has been made in accordance with City ordinances and policies. Further, contractor certifies that it has not offered or given any gift or compensation prohibited by local, state, or federal law, to any officer or employee of the City of West Jordan to secure favorable treatment with respect to being awarded this Contract.
6. **INSURANCE:** The contractor shall maintain not less than: (a) \$2,000,000.00 automobile insurance, (b) \$2,000,000.00 general liability insurance with \$3,000,000.00 general aggregate, and (c) worker's compensation as required by state statute, during the duration of this contract.
7. **CONTRACTOR, AN INDEPENDENT CONTRACTOR:** Contractor shall be an independent contractor, and as such shall have no authorization, express or implied to bind the City of West Jordan to any agreements, settlements, liability or understanding whatsoever, and agrees not to perform any acts as agent for the City, except as expressly set forth herein. The CONTRACTOR shall be responsible for the payment of all income tax and social security amounts due as a result of payments received from the CITY for these contract services. Persons employed by the CITY and acting under the direction of the CITY shall not be deemed to be employees or agents of the CONTRACTOR.
8. **INDEMNITY CLAUSE:** The CONTRACTOR agrees to indemnify, save harmless, and release the CITY OF WEST JORDAN, and all its officers, agents, volunteers, and employees from and against any and all loss, damages, injury, liability, suits, and proceedings arising out of the performance of this contract which are caused in whole or in part by the negligence of the CONTRACTOR'S officers, agents, volunteers, or employees, but not for claims arising from the City's sole negligence.
9. **EQUAL OPPORTUNITY CLAUSE:** The CONTRACTOR agrees to abide by the provisions of Title VI and VII of the Civil Rights Act of 1964 (42USC 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age; and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities. Also, the CONTRACTOR agrees to abide by Utah's Executive Order, dated June 30, 1989, which prohibits sexual harassment in the work place.
10. **SEPARABILITY CLAUSE:** A declaration by any court, or any other binding legal source, that any provision of this contract is illegal and void shall not affect the legality and enforceability of any other provision of this contract, unless the provisions are mutually dependent.
11. **RENEGOTIATION OR MODIFICATIONS:** This contract may be amended, modified, or supplemented only by written amendment to the contract, executed by the parties hereto, and attached to the original signed copy of the contract.
12. **DEBARMENT:** The CONTRACTOR certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract), by any governmental department or agency. If the CONTRACTOR cannot certify this statement, attach a written explanation for review by the City.
13. **TERMINATION:** Unless otherwise stated in the Special Terms and Conditions, this contract may be terminated, with cause by either party, in advance of the specified termination date, upon written notice being given by the other party. The party in violation will be given ten (10) working days after notification to correct and cease the violations, after which the contract may be terminated for cause. This contract may be terminated without cause, in advance of the specified expiration date, by either party, upon 30 days prior written notice being given the other party. On termination of this contract, all accounts and payments will be processed according to the financial arrangements set forth herein for approved services rendered to date of termination.
14. **SALES TAX EXEMPTION:** The City of West Jordan's sales and use tax exemption number is E39555. The tangible personal property or services being purchased are being paid from City funds and used in the exercise of the City's essential functions. If the items being purchased are construction materials, they will be converted into real property by employees of the City.
15. **WARRANTY:** The contractor agrees to warrant and assume responsibility for all products or services that it licenses, contracts, or sells to the City of West Jordan under this contract for a period of one year, unless otherwise specified and mutually agreed upon elsewhere in this contract. Product liability disclaimers and/or warranty disclaimers from the seller are not applicable to this contract unless otherwise specified and mutually agreed upon elsewhere in this contract. In general, the contractor warrants that: (1) the product or services will do what the salesperson said it would do, (2) the product or services will live up to all specific claims that the manufacturer makes in their advertisements, (3) the product or services will be suitable for the ordinary purposes for which such product is used, (4) the product or services will be suitable for any special purposes that the City of West Jordan has relied on the contractor's skill or judgment to consider when it advised the City about the product or services, (5) the product has been properly designed and manufactured, and (6) the product is free of significant defects or unusual problems about which the City has not been warned. Remedies available to the City of West Jordan include the following: The contractor will repair or replace (at no charge to the City) the product or services whose nonconformance is discovered and made known to the contractor in writing. If the repaired and/or replaced product or services proves to be inadequate, or fails of its essential purpose, the contractor will refund the full amount of any payments that have been made. Nothing in this warranty will be construed to limit any rights or remedies the City of West Jordan may otherwise have under this contract or provided under the Uniform Commercial Code of the State of Utah.

ATTACHMENT B: SCOPE OF WORK

ATTACHMENT C: INSURANCE CERTIFICATE

ATTACHMENT E: PERFORMANCE BOND

ATTACHMENT F: WORKERS COMPENSATION CERTIFICATE