

City of Scottsbluff, Nebraska

Tuesday, February 16, 2016

Regular Meeting

Item Reports1

Council to consider the Maintenance Agreement with Anita's Greenscaping, Inc. for parking lot garden maintenance and authorize the Mayor to execute the agreement.

Staff Contact: Nathan Johnson, Assistant City Manager

AMENDED MAINTENANCE AGREEMENT

This Maintenance Agreement ("Agreement") is made between the City of Scottsbluff, Nebraska, a Municipal Corporation, hereinafter called "City," and Anita's Greenscaping Inc., a Nebraska corporation, hereafter called "Contractor."

1. Areas of Maintenance: The City owns several areas in and around its corporate limits which require maintenance. Those areas include:

- a. Parking Lot 2, 1700 1st Avenue ("Midwest")
- b. Parking Lot 3, 1815 1st Avenue ("WNAC")
- c. Parking Lot 12, 126 West 18th Street ("Southeast of Public Safety Building")
- d. Parking Lots 8 and 16, 1701 Avenue A ("JoAnns")
- e. Parking Lots 1 and 10, 1617 and 1620 Avenue A
- f. West Nebraska Arts Center, 106 East 18th Street
- g. East Overland Entry way, 1300 1st Avenue **Invoiced Separately;**
and
- h. Public Safety Building Rain Garden 198 West 19th Street
Invoiced Separately.

2. Term: The term of this Agreement covers the maintenance requirements from March 1, 2015 to November 1, 2018 or until Fall cleanup, whichever is the last to occur. These maintenance requirements shall be conducted in three seasonal phases as described in paragraphs 4., 5. and 6.

3. Maintenance Seasonal Phases: The Contractor agrees that they will provide three separate seasonal maintenance phases for the areas described in paragraph 1. Those three seasonal phases include a spring cleanup phase, a summer maintenance phase and a fall/winter phase. During all phases, Contractor agrees to use Round-Up for weed control and to use the appropriate fertilizer for plants and trees to promote a health growth.

4. Spring Cleanup Phase: Contractor agrees that the spring cleanup phase will include an initial clean up to begin in March as the weather permits. Spring cleanup will include:

- a. Picking up trash that gathered over the winter, pruning and/or cutting back grasses and perennials, shrubs shall be pruned to reduce size for visual obstruction and to eliminate dead, diseased or broken branches. Trees shall be structurally pruned to ANSI 300 standards.
- b. Contractor will provide mulch. Contractor will provide a quote for mulch and installation when needed or requested. All mulch shall be in a small diameter and organic. Contractor will restore mulch depth to 1 inch around perennials and up to 3 inches around trees and shrubs. Mulch shall not touch any tree trunk. Mulch will be billed after acceptance of Contractor's quote and installation of material.

- c. Contractor may use pre-emergent in a 6 inch band on bed edges adjacent to cement areas. Any pre-emergent must be labeled for use around trees, shrubs and grasses. Contractor agrees to use no other pre-emergent.

5. Summer Maintenance Phase: Contractor agrees to begin its summer maintenance phase between April 1st and to continue through October 1st of the growing season.

- a. The summer maintenance shall incorporate a watering schedule to set and maintain a drip system for watering as well as to inspect the drip system monthly, at a minimum, to insure emitters are clear, tubing free of leaks, and release proper amounts of water.
- b. Contractor agrees to check, at a minimum, each week to insure that trees and plants have adequate water. The parties agree the goal is for the beds to become self-sustaining after establishment and therefore, Contractor will monitor, at least weekly, to determine the appropriate amount of water needed to maintain the health and welfare of the plants and trees. The water should follow low water use guidelines for regular watering during establishment.
- c. Contractor agrees to let the plants seed down, the plants will be dead-headed in the event of storm damage, trash will be picked up, the plant beds will be weeded and monitored for disease and insect issues. Contractor agrees to notify the storm water department if issues are discovered. In addition, the Contractor agrees to replace and move mulch away from the crowns of plants as needed after storms, monitoring the staking of trees to include removing stakes from all established trees and addressing tree stakes and straps as needed.

The City advises and the Contractor understands that trees currently growing are on a separate valve system in all of the locations, except Lot 4, and that rain sensors are available in the system for Lots 1 and 10. The Contractor agrees, if possible, the drip system should remain off after plants are established allowing sites to function naturally. Both parties understand and agree the watering and maintenance frequency is expected to vary depending upon rainfall, irrigation settings and fertility programs, Contractor agrees to use its best efforts to adjust watering and maintenance to the conditions.

6. Fall/Winter Phase: The Contractor agrees that the fall phase will include a leaf and debris clean up in the Fall of each year, after the leaves have fallen from trees. The Contractor then agrees to call the Storm Water Department to schedule a meter shutoff.

7. Equipment: The Contractor will provide its own equipment, lubricants, bags, labor and all other things necessary to perform the work described herein to complete the three phases. The Contractor will be responsible to the City only for the manner in which the work is done and is not subject to the City's control concerning the details of how the work is to be done, except as noted. Contractor will be deemed as an independent contractor and under no circumstances will be deemed an employee of the City.

8. City's Obligation: The City will be responsible for the irrigation systems in the Areas of Maintenance set forth in paragraph 1. Herein, including winterization of the systems each Fall. The City will work with Contractor when notified of issues in regard to the drip or irrigation systems. The City will pay the Contractor the sum of \$8,900.00 for each year during the term of this Agreement (City's Obligation"). Payments will be made on a monthly basis with payment to be made no later than 15 days after submission by the Contractor of invoices for the monthly payment as set forth in this paragraph. In addition, the City's Obligation will include reimbursement to Contractor for the purchase and use of fertilizer, pre-emergent, or weed killer at the locations listed in paragraph 1 of this Agreement. Reimbursement will occur within 15 days of presentation and approval by the City of statements showing the cost and amount of application of those items. Items of additional maintenance, not set forth herein, will be considered over and above the City's Obligation and must be agreed to and will be paid according to paragraph 13.e. of this Agreement.

Contractor agrees that Locations g. (East Overland Entry way) and h. (Public Safety Building Rain Garden) will be invoiced separately to the Scottsbluff Storm Water Department.

9. Indemnification: To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless the City, and its council members, officers, agents, and employees (each "indemnified party") from and against and reimburse the indemnified party on demand for any damages, payment, loss, claim, cost or expense (including professional fees and reasonable costs of investigation incurred in defending against any such damages, payment, loss, claim, cost or expense) made or incurred by or asserted against an indemnified party as a result of or in connection with Contractor's actions or inactions under this Agreement or the actions or inactions of any contractor, subcontractor, consultant, sub-consultant, or agent of the Contractor, provided that nothing herein shall require Contractor to indemnify, defend or hold harmless an indemnified party for payments, losses, claims, costs, or expenses resulting from the indemnified party's own negligence.

10. Assignment: This Agreement may not be assigned by Contractor without the prior written consent of the City.

11. Termination: This Agreement may be terminated by the City in the event the Contractor:

- a. Acts with gross negligence or willful misconduct in connection with the performance of any of its responsibilities.
- b. Defaults in the performance of any of the duties set forth in this Agreement.
- c. Acts against the best interests of the City in any material respect.
- d. Upon ten days written notice provided by the City.

12. **Insurance:** During all times Contractor performs services for the City, Contractor agrees to maintain in effect a policy of professional liability insurance protecting Contractor and its employees in an amount of not less than \$1,000,000.00. Contractor shall maintain in effect a policy of Workers' Compensation Insurance as required by law. Contractor shall also maintain in effect an insurance policy in an amount of not less than \$1,000,000.00 which protects Contractor and the City from damages resulting from Contractor's conduct. Certificates showing that Contractor has the required insurance shall be filed with the City and updated as necessary. Certificates shall provide not less than ten days prior written notice of cancellation or material changes of terms of the policy. All such certificates shall name the City as an additional insured.

13. **Miscellaneous:**

- a. The parties shall comply with and apply Nebraska law, without reference to the conflicts of law provisions thereof, in the performance and interpretation of this Agreement.
- b. Contractor shall not subcontract or assign any portion of the services required hereunder without the prior written consent of the City.
- c. This Agreement represents the entire understanding between the Contractor and the City and it supersedes all prior representations or agreements whether written or oral. This Agreement may be altered only by a written amendment signed by both the Contractor and the City.
- d. If for any reason, whatsoever, any one or more of the provisions or any portion of any provision of this Agreement shall be held or deemed to be inoperative, unenforceable, or invalid as applied to any particular case or in all cases, such circumstances shall not have the effect of rendering such provision invalid in any other case or of rendering any other provision of this Agreement inoperative, unenforceable, or invalid.
- e. Additional maintenance in the Areas of Maintenance listed herein are excluded from this Agreement and will be in addition to the City's Obligation in under this Agreement. Additional maintenance for those areas shall be discussed and agreed to by both parties before it becomes the City's Obligation. Contractor will quote the additional maintenance by time and materials prior to commencement and the additional maintenance will be billed after completion only when both parties are in agreement the additional maintenance should be completed.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date set forth below.

[SIGNATURE PAGE WILL FOLLOW]

DATED: Feb. 3, 2016.

CITY OF SCOTTSBLUFF, NEBRASKA

By _____
Mayor

ATTEST:

City Clerk

ANITA'S GREENSCAPING INC.
a Nebraska corporation,

By Anita Gall
Anita Gall, President