

## ACTION FORM BRYAN CITY COUNCIL

<b>DATE OF COUNCIL MEETING:</b> June 24, 2014		<b>DATE SUBMITTED:</b> June 6, 2014	
<b>DEPARTMENT OF ORIGIN:</b> Streets and Drainage		<b>SUBMITTED BY:</b> J. Barfknecht	
<b>MEETING TYPE:</b>	<b>CLASSIFICATION:</b>	<b>ORDINANCE:</b>	<b>STRATEGIC INITIATIVE:</b>
<input type="checkbox"/> BCD	<input type="checkbox"/> PUBLIC HEARING	<input checked="" type="checkbox"/> 1ST READING	<input type="checkbox"/> PUBLIC SAFETY
<input type="checkbox"/> SPECIAL	<input type="checkbox"/> CONSENT	<input type="checkbox"/> 2ND READING	<input checked="" type="checkbox"/> SERVICE
<input checked="" type="checkbox"/> REGULAR	<input checked="" type="checkbox"/> STATUTORY		<input checked="" type="checkbox"/> ECONOMIC DEVELOP.
<input type="checkbox"/> WORKSHOP	<input type="checkbox"/> REGULAR		<input checked="" type="checkbox"/> INFRASTRUCTURE
			<input type="checkbox"/> QUALITY OF LIFE
<b>AGENDA ITEM DESCRIPTION:</b> Consider approving an interlocal agreement with the City of College Station for the landscape maintenance of Health Science Center Parkway.			
<p><b>SUMMARY STATEMENT:</b> On December 15, 2011, the cities of Bryan and College Station signed an Inter-Local Cooperation and Joint Development Agreement (ILA) that outlined understandings and obligations with respect to certain infrastructure projects and a joint economic development program known as the Joint Research Valley Bio-Corridor Development Project. On February 26, 2013, the City of Bryan City Council approved a construction contract to Larry Young Paving, Inc., for the not to exceed amount of \$3,831,309.74, to construct phases 1A and 2B outlined in the ILA. This project is expected to be complete at the end of June and accepted by the City for maintenance.</p> <p>The ILA outlines that both cities will be responsible for maintenance of the landscaping within their respective cities. However, for a more uniform look and consistent maintenance both cities desire to have the same contractor provide the service along HSC Parkway. The City of College Station received a quote from their right-of-way contractor, Green Teams, on March 26, 2014, for \$29,790. The City of Bryan received a quote from its contractor, Rios Tree Service, Inc., for \$18,000. Both of these contractors were approached because both are currently providing service in the area. The work for Rios Tree Service will be change ordered into their contract if the ILA is approved.</p> <p>Staff recommends approving the ILA with College Station for the landscape maintenance of HSC Parkway.</p>			
<b>STAFF ANALYSIS AND RECOMMENDATION:</b> Water Services respectfully requests City Council approve the ILA with the City of College Station for the landscape maintenance of HSC Parkway. Having one contractor will be beneficial to both Cities and provide a uniform look for this corridor.			
<b>OPTIONS (In Suggested Order of Staff Preference):</b>			
<ol style="list-style-type: none"> <li>1. Approve the ILA.</li> <li>2. Do not approve the ILA and provide direction to staff.</li> <li>3. Do not approve ILA.</li> </ol>			
<b>ATTACHMENTS:</b> ILA			
<b>FUNDING SOURCE:</b> General Fund.			
<b>APPROVALS:</b> Jayson E. Barfknecht 06/06/14; Hugh R. Walker, 06/06/2014			

**APPROVED FOR SUBMITTAL:** Kean Register, 06-06-2014

**APPROVED FOR SUBMITTAL:** Janis K. Hampton, 06-12-2014

Revised 05/2013

**INTERLOCAL AGREEMENT  
BETWEEN THE CITY OF BRYAN AND  
THE CITY OF COLLEGE STATION  
FOR RIGHT OF WAY MOWING AND LANDSCAPING SERVICES  
ALONG THE HSC PARKWAY LOCATED WITHIN THE BOUNDARIES OF BOTH BRYAN  
AND COLLEGE STATION.**

This Interlocal Agreement (“Agreement”) is effective as of the \_\_\_\_ day of \_\_\_\_\_, 2014, by and between the City of Bryan, a Texas Home Rule Municipal Corporation, (hereinafter referred to as “Bryan”) and the City of College Station, a Texas Home Rule Municipal Corporation, (hereinafter referred to as “College Station”) each acting herein by and through its City Council, to establish the terms and compensation for right-of-way mowing and landscaping services along the Health Science Center Parkway (“HSC Parkway”) located within the municipal boundaries of Bryan and College Station.

**RECITALS**

**WHEREAS**, V.T.C.A., Government Code, Chapter 791, the Texas Interlocal Cooperation Act, provides that any one or more public agencies may contract with each other for the performance of governmental functions or services for the promotion and protection of the health and welfare of the inhabitants of this State and the mutual benefit of the parties; and

**WHEREAS**, Bryan and College Station desire to participate in the mowing of a certain right-of-way located within the municipal boundaries of both Bryan and College Station, along the HSC Parkway starting at Turkey Creek and ending at the intersection of the right-of-way of HSC Parkway and HWY 47; and

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements herein contained, the undersigned parties agree as follows:

1. Services. Bryan agrees to provide mowing and landscaping services for the right-of-way along HSC Parkway within the municipal boundaries of College Station through Bryan’s mowing contract with Rios Tree Service, Inc. (hereinafter “Contractor”). The scope of work and annual schedule of services is attached hereto as Exhibit “A”.
2. Reimbursement for Services. Bryan will invoice College Station every six (6) months, and College Station shall reimburse Bryan within thirty (30) days of the date on which the bill is received by College Station for payment.
3. Term. The term of this Contract will begin on the date this Contract is signed by all required parties and shall be in full force and effect until one year from the anniversary date hereof. Thereafter, this Agreement shall automatically renew for one (1) additional one year term, subject to termination by either party upon thirty (30) days written notice.
4. Entire Agreement. It is understood that this Agreement contains the entire agreement between the parties and supersedes any and all prior agreements, arrangements, or understandings between the parties relating to the subject matter. No oral understandings, statements, promises, or inducements contrary to the terms of this Agreement exist. This Agreement cannot be changed or terminated orally. No verbal agreement or conversation with any officer, agent, or employee of any

party before or after the execution of this Agreement shall affect or modify any of the terms or obligations hereunder.

5. Amendment. No Amendment to this Agreement shall be effective and binding unless and until it is reduced to writing and signed by duly authorized representatives of both parties.

6. Termination - Notice. Either party may terminate this Contract at any time upon thirty (30) days written notice to the other party.

7. **Governmental Immunity and Hold Harmless.** Subject to the limitations as to damages and liability under the Texas Tort Claims Act, and without waiving its governmental immunity, each party to this Agreement agrees to hold harmless each other, its governing board, officers, agents and employees for any liability, loss, damages, claims or causes of action caused, or asserted to be caused, directly or indirectly by any other party to this Agreement, or any of its officers, agents or employees as a result of its performance under this Agreement.

8. Consent to Suit. Nothing in this Agreement will be construed as a waiver or relinquishment by any party of its right to claim such exemptions, privileges and immunities as may be provided by law

9. Written Notice. Unless otherwise specified, written notice shall be deemed to have been duly served if delivered in person or sent by certified mail to the business address as listed herein.

CITY OF COLLEGE STATION:

City Manager  
City of College Station  
P. O. Box 9960  
College Station, Texas 77842

CITY OF BRYAN:

City Manager  
City of Bryan  
P.O. Box 1000  
300 South Texas Avenue  
Bryan, Texas 77803

10. Waiver. Failure of any party, at any time, to enforce a provision of this Agreement, shall in no way constitute a waiver of that provision, nor in anyway affect the validity of this Agreement, any part hereof, or the right of either party thereafter to enforce each and every provision hereof. No term of this Agreement shall be deemed waived or breach excused unless the waiver shall be in writing and signed by the party claimed to have waived. Furthermore, any consent to or waiver of a breach will not constitute consent to or waiver of or excuse any other different or subsequent breach.

11. Assignment. This Agreement and the rights and obligations contained herein may not be assigned by any party without the prior written approval of the other parties to this Agreement.

12. No Warranties. Bryan as the entity providing the services through its Contractor states that it offers no warranties of any kind expressed or implied, including but not limited to fitness for use.

13. Partnership/Joint Venture. Nothing herein shall in any way be construed or intended to create a partnership or joint venture between the parties or to create the relationship of principal and agent between or among any of the parties. None of the parties hereto shall hold itself out in a manner contrary

to the terms of this paragraph. No party shall become liable for any representation, act or omission of any other party contrary to the terms of this paragraph.

14. Force Majeure. With the exception of reimbursement of services, no party shall have any liability to the other hereunder by reason of any delay or failure to perform any obligation or covenant if the delay or failure to perform is occasioned by force majeure, meaning any act of God, storm, fire, casualty, unanticipated work stoppage, strike, lockout, labor dispute, civil disturbance, riot, war, national emergency, act of Government, act of public enemy, or other cause of similar or dissimilar nature beyond its control.

15. Place of Performance. Performance and all matters related thereto shall be in Brazos County, Texas, United States of America.

16. Governing Law. The validity, construction and effect of this agreement and any and all extension and/or modifications thereof shall be governed by the laws of the State of Texas.

17. Venue. Any action between the parties arising from this agreement shall be maintained in the courts of Brazos County, Texas. This agreement is governed by the laws of the State of Texas with venue lying in Brazos County, Texas.

18. Severability. Should any provision of this agreement be declared to be invalid by any court of competent jurisdiction, such provision shall be severed and shall not affect the validity of the remaining provisions of this agreement.

19. Authority to Enter Contract. Each party has the full power and authority to enter into and perform this Agreement and the person signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement. The persons executing this Agreement hereby represent that they have authorization to sign on behalf of their respective corporations.

20. Agreement Read. The parties acknowledge that they have read, understand and intend to be bound by the terms and conditions of this Agreement.

21. Effective Date. This agreement shall not be binding upon the parties until it has been properly approved by the legislative bodies of the respective parties and signed by their respective authorized representative. If the parties sign this Agreement on different dates, the later date shall be the effective date of this Agreement for all purposes.

22. Duplicate Originals. The parties may execute this Agreement in duplicate originals, each of equal dignity.

(The remainder of this page intentionally left blank)

**SIGNED** this the \_\_\_\_ day of \_\_\_\_\_, 2014.

ATTEST:

**CITY OF BRYAN**

\_\_\_\_\_  
Mary Lynne Stratta, City Secretary

\_\_\_\_\_  
Jason P. Bienski, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Janis K. Hampton, City Attorney

**CITY OF COLLEGE STATION**

APPROVED:

\_\_\_\_\_  
Nancy Berry, Mayor

\_\_\_\_\_  
Kelly Templin, City Manager

ATTEST:

\_\_\_\_\_  
Jeff Kersten, Asst. City Manager/CFO

\_\_\_\_\_  
Sherry Mashburn, City Secretary

\_\_\_\_\_  
Carla Robinson, City Attorney

**Exhibit A**

----- Estimate -----

Rios Tree Service, Inc.

232 Guadalupe Bend  
Boerne, TX 78006  
(210)519-7488  
[riostreeservice@att.net](mailto:riostreeservice@att.net)

Estimate No.: 1194  
Date: 04/14/2014  
Exp. Date: \$18,000.00

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Address:  
City of Bryan/Finance Department  
P O Box 1000  
Bryan, TX 77805  
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Ticket Address: Health Science Center Parkway

<u>Date</u>	<u>Activity</u>	<u>Quantity</u>	<u>Rate</u>	<u>Amount</u>
04/14/2014	To manage Health Science Center Parkway starting at Turkey Creek and finishing at HWY47/HSC ROW intersection.			
04/14/2014	Pre and Post weed control Chemical Application 2 times annually	2	75.00	150.00
04/14/2014	Prune all trees located in center medians 2 times annually	2	275.00	550.00
04/14/2014	Shear shrubs located in center medians 8 times annually	8	150.00	1,200.00
04/14/2014	Weed ornamental beds and tree wells located in center medians 28 times annually	28	350.00	9,800.00
04/14/2014	Right of Way mowing 18 times annually	18	350.00	6,300.00

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**Total: \$18,000.00**