ACTION FORM
BRYAN CITY COUNCIL

DATE OF COUNCIL MEETING:	October 22, 2013	**DATE SUBMITTED:**	October 8, 2013
DEPARTMENT OF ORIGIN:	Public Works	**SUBMITTED BY:**	E. Zaragoza

MEETING TYPE:	CLASSIFICATION:	ORDINANCE:	STRATEGIC INITIATIVE:
☐ BCD	☐ PUBLIC HEARING	☐ 1ST READING	☒ PUBLIC SAFETY
☐ SPECIAL	☒ CONSENT	☐ 2ND READING	☒ SERVICE
☒ REGULAR	☐ STATUTORY		☒ ECONOMIC DEVELOP.
☐ WORKSHOP	☐ REGULAR		☒ INFRASTRUCTURE
			☐ QUALITY OF LIFE

AGENDA ITEM DESCRIPTION: Consider approving a contract in the not to exceed amount of $62,528 for right-of-way mowing in Area #2 to Green Team, Inc.

SUMMARY STATEMENT: On August 30, 2011, eight (8) sealed bids were received and publicly opened for contract mowing associated with Request for Bid (RFB) No. 11-041 "Annual Contract for Mowing Services: Right-of-Way, Water Services Facilities, and Code Enforcement". This RFB was formulated in three areas to capture the best market rate for the desired service: Area 1. Right-of-Way, Area 2. Water Services Facilities, and Area 3. Code Enforcement.

The Area 1. Right-of-Way mowing bid specifications had the City broken down into three sections (Areas #1-3). Each vendor could bid on each of the three sections or only one section. The billing terms to the City were flexible from weekly, every two weeks, or monthly, to accommodate vendors with different sized operations. The purpose for designing the bid in this fashion was to allow as many vendors as possible to bid, depending on their equipment and manpower. The contracts also were designed to be two (2) year contract agreements. The contract has a price escalation clause of a maximum of 8% over the term of the contract, which can be applied between years one and two to account for fuel and other price increases to the contractor. After the initial two (2) year term, one (1) year extensions would be allowed if both the vendor and City agreed to the extensions. The total length of the contract can be up to a maximum of five (5) years.

On September 27, 2011, the City Council approved and awarded the right-of-way (ROW) mowing contract to two (2) vendors: Pro Green Landscape Solution and Rios Tree Service, Inc. As mentioned above, the City was divided into three separate ROW mowing areas with Rios Tree Service awarded Area #1 and Pro Green Landscape awarded Areas #2 & #3. Although Rio Tree Service has fulfilled their contractual obligations maintaining Area #1, Pro Green Landscape was unable to fulfill their contractual obligations. Therefore the City canceled the Pro Green Landscape portion of the contract for Areas #2 & #3 based on "non-performance" on August 15, 2013. Upon the cancellation of Pro Green Landscape's contract, City staff temporarily took over the ROW mowing for Areas #2 & #3. Although having the City perform the mowing in Areas #2 & #3 is not ideal, the time of year and low demand for mowing made it possible for City staff to maintain the areas without impact to current operations.

A continuation of services without rebidding under RFB No. 11-041 is possible by contracting with the next low bidders. Based on this, Area #2 would be awarded to Green Team, Inc. in the amount of $62,528. Staff believes that pricing submitted under RFB No. 11-041 reflects prices at or below current market conditions. Rebidding of service may result in pricing above RFB No. 11-041 given changes within the market since the release of RFB No. 11-041.

Although the overall contract totals will be above the approved budgeted amount, staff has done a good job of maintaining costs within the adopted budget. Extended dry periods and low demand for mowing during the winter

months (December – February) have made it possible for staff to maintain the contract within budget throughout the years. In the past two years there has been a significant savings comparative to the contract totals. Below are some historical and projected expenses associated with Area #2 compared to the contractual amount.

	FY 2012		FY 2013		FY2014 (Projection)	
	Contract Total	FY Expenses	Contract Total	FY Expenses	Contract Total	FY Projection
ROW Area #2	$57,505	$22,370	$57,505	$35,485	$62,528*	$50,000
Actual/Projected Savings		**$35,135**		**$22,020**		**$7,505**

***The contractual total for area #2 is $62,528; staff understands that there is only $57,505 budgeted for ROW Mowing in FY14 for area #2. It will be up to staff to manage and stay under the budgeted amount while providing proper maintenance to the area.

Public Works respectfully request the City Council approve and award funding for contracts with Green Team, Inc. for Area #2 for $62,528 to perform right-of-way mowing. The original contract (2011) was for two (2) years with the possibility of three (3) additional one (1) year extensions. Consequently, this proposed annual contract is the first extension to the original contract. If this contract extension is approved, the City of Bryan shall have the option of extending this price agreement, subject to approval of funding and review of the service provided by the vendor, for two (2) additional one (1) year terms to be extended one (1) year at a time. This contract term will begin November 1, 2013 and expire October 31, 2014.

STAFF ANALYSIS AND RECOMMENDATION: Public Works respectfully request the City Council approve and award funding to Green Team Inc., in the amount of $62,528. Mowing service is needed to ensure the proper upkeep and aesthetical value of City resources and facilities. Green Team Inc. will be able to provide adequate service to maintain the ROW areas. By contracting with this contractor, and another contractor proposed under a separate Council Action Form, mowing services will be adequate to maintain the ROW areas.

A separate Council Action Form addresses ROW Mowing Areas #1 and #3.

OPTIONS (In Suggested Order of Staff Preference):

1. Approve the award of a one year price agreement with Green Team, Inc. for Area #2.
2. Do not approve the award of a one year price agreement and rebid.

ATTACHMENTS:

1. Green Team, Inc. Contract for Services (model contract without cost inserted)
2. Exhibit A (separate pdf)

FUNDING SOURCE: General Fund

APPROVALS: Jayson E. Barfknecht 10/08/13; Hugh R. Walker, 10/08/2013

APPROVED FOR SUBMITTAL: CITY MANAGER Kean Register, 10/14/2013

APPROVED FOR SUBMITTAL: CITY ATTORNEY Janis K. Hampton 10/14/2013

Revised 05/2013

CONTRACT

FOR

"Annual Contract for Mowing Services: Right-of-Way, Water Services Facilities, and Code Enforcement"

RFB #11-041

This Contract, dated _____, 2013, is between the **City of Bryan**, a Texas home-rule municipal corporation, (the City) and ***Green Team, Inc.*** (the Service Provider), whereby the Service Provider agrees to provide the City with certain services as described herein and the City agrees to pay the Service Provider for those services.

1. Scope of Services

In consideration of the compensation stated in **paragraph 2**, the Service Provider agrees to provide the City with the services as described in ***Exhibit A, RFB #11-041, Right of Way Mowing Services – Area 2,*** which is incorporated herein by reference for all purposes, and which services may be more generally described as follows:

Right of Way Mowing Services – Area 2

2. Payment

In consideration of the Service Providers provision of the services in compliance with all terms and conditions of this Contract, the City shall pay the Service Provider according to the terms set forth in ***Exhibit A, RFB #11-041, Right of Way Mowing Services – Area 2***. Except in the event of a duly authorized change order, approved by the City in writing, the total cost of all services provided under this Contract may not exceed ***$XXXX***

3. Time of Performance

A. All work and services provided under this Contract must be completed according to the Scope of Services described in ***Exhibit A, RFB #11-041, Right of Way Mowing Services – Area 2***.

B. **Time is of the essence of this Contract.** The Service Provider shall be prepared to provide the services in the most expedient and efficient manner possible in order to complete the work by the times specified and described in ***Exhibit A, RFB #11-041, Right of Way Mowing Services – Area 2.***

4. Contract Term

This contract term shall begin effective November 1, 2013 and shall expire October 31, 2014 with the option of extending, subject to approval of funding and review of the service

provided by the Service Provider, for two (2) additional one (1) year terms to be extended one (1) year at a time.

5. Warranty, Indemnification, Release & Insurance

A. As an experienced and qualified Service Provider, the Service Provider agrees that the services provided by the Service Provider reflect the professional and industry standards, procedures, and performances. The Service Provider agrees the selection and supervision of personnel, and the performance of services under this Contract, will be pursuant to the standard of performance in the profession. The Service Provider agrees that the Service Provider will exercise diligence and due care and perform in a good and workmanlike manner all of the services pursuant to this Contract. Approval of the City shall not constitute, or be deemed, a release of the responsibility and liability of the Service Provider, its employees, agents, or associates for the exercise of skill and diligence to promote the accuracy, competency and quality of the services provided, nor shall the City's approval be deemed to be the assumption of responsibility by the City for any defect or error in the aforesaid services provided by the Service Provider, its employees, associates, agents, or subcontractors.

B. The Service Provider shall promptly correct any defective work furnished by the Service Provider at no cost to the City. The City's approval, acceptance, use of, or payment for, all or any part of the services hereunder itself shall in no way alter the Service Providers obligations or the City's rights hereunder.

C. In all activities or services performed hereunder, the Service Provider is an independent contractor and not an agent or employee of the City. The Service Provider and its employees are not the agents, servants, or employees of the City. As an independent contractor, the Service Provider shall be responsible for the services and the final work product contemplated under this Contract. Except for materials furnished by the City, the Service Provider shall supply all materials, equipment, and labor required for the services to be provided under this Contract. The Service Provider shall have ultimate control over the execution of the services. The Service Provider shall have the sole obligation to employ, direct, control, supervise, manage, discharge, and compensate all of its employees or subcontractors, and the City shall have no control of or supervision over the employees of the Service Provider or any of the Service Providers subcontractors.

D. The Service Provider must at all times exercise reasonable precautions on behalf of, and be solely responsible for, the safety of its officers, employees, agents, subcontractors, licensees, and other persons, as well as their personal property, while in the vicinity of the Project or any of the work being done on or for the Project. It is expressly understood and agreed that the City shall not be liable or responsible for the negligence of the Service Provider, its officers, employees, agents, subcontractors, invitees, licensees, and other persons.

E. Responsibility for damage claims (indemnification): Service Provider shall defend, indemnify and save harmless the City and all its officers, agents, and employees from all suits, actions, or claims of any character, name and description brought for or on account of any injuries or damages received or sustained by any person or persons or

property resulting from the Service Provider's negligent performance of the work, or by or on account of any claims or amounts recovered under the Workmen's Compensation Law or any other law, ordinance, order or decree, and his sureties shall be held until such suit or suits, action or actions, claim or claims for injury or damages as aforesaid shall have been settled and satisfactory evidence to the effect furnished the City. Service Provider shall defend, indemnify and save harmless the City, its officers, agents and employees in accordance with this indemnification clause only for that portion of the damage caused by Service Provider's negligence.

F. **Release**. The Service Provider releases, relinquishes, and discharges the City, its officers, agents, and employees from all claims, demands, and causes of action of every kind and character, including the cost of defense thereof, for any injury to, sickness or death of the Service Provider or its employees and any loss of or damage to any property of the Service Provider or its employees that is caused by or alleged to be caused by, arises out of, or is in connection with the Service Provider's negligent performance of the work. Both the City and the Service Provider expressly intend that this release shall apply regardless of whether said claims, demands, and causes of action are covered, in whole or in part, by insurance.

G. **Insurance**. The Contractor agrees to maintain, on a primary basis, for the duration of this contract the insurance coverage's and limits as described below. The Contractor must deliver to the City a certificate(s) of insurance evidencing that such policies are in full force and effect within 5 business days of notification of the City's intent to award a contract. Failure to meet the insurance requirements and provide the required certificate(s) and any necessary endorsements within five business days **may cause the bid to be rejected.** The City reserves the right to obtain complete, certified copies of all required insurance policies at any time.

The requirements as to types and limits, as well as the City's review or acceptance of insurance coverage to be maintained by Contractor, is not intended to nor shall in any manner limit or qualify the liabilities and obligations assumed by the Contractor under the contract or purchase order.

INSURANCE COVERAGE & LIMIT TABLE

WORKERS' COMPENSATION INSURANCE & EMPLOYERS' LIABILITY INSURANCE Contractor shall maintain workers compensation insurance for statutory limits and employers' liability insurance with limits not less than $500,000 each accident and $500,000 by disease. Contractor waives all rights against the City of Bryan for recovery of damages to the extent these damages are covered by the workers compensation and employers' liability or umbrella liability insurance obtained by Contractor. **Contractor shall provide evidence of this by Waiver of Subrogation in favor of the City of Bryan**.

COMMERCIAL GENERAL LIABILITY Contractor shall maintain Commercial General Liability (CGL) with a limit of not less than $1,000,000 per occurrence. CGL shall be written on a standard ISO occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury, and liability assumed under an insured contract

including the tort liability of another assumed in a business contract. No coverage shall be deleted from the standard policy without notification of individual exclusions and acceptance by the City. **The City of Bryan shall be listed as an additional insured**.

BUSINESS AUTOMOBILE LIABILITY INSURANCE Contractor shall maintain Business Automobile Liability insurance with a limit of not less than $1,000,000 each accident. Business Auto Liability shall be written on a standard ISO version Business Automobile Liability, or its equivalent, providing coverage for all owned, non-owned and hired automobiles. Contractor waives all rights against the City of Bryan for recovery of damages to the extent these damages are covered by the business auto policy or umbrella liability insurance obtained by Contractor or under any auto physical damage coverage. If the contractor does not own the automobiles **and** furnishes satisfactory evidence of this, then this requirement may allow the contractor to agree to maintain only Hired and Non-Owned Auto Liability. This amended coverage requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto policy.

UMBRELLA or EXCESS LIABILITY Contractor may satisfy the minimum liability limits required under an Umbrella or Excess Liability policy. The annual aggregate limit shall not be less than the highest "each occurrence" limit. Contractor agrees to endorse City as an additional insured, unless the Certificate states the Umbrella or Excess Liability provides coverage on a pure "True Follow Form" basis.

CONTRACTOR'S INSURANCE TO BE PRIMARY Contractor's insurance shall be deemed primary with respect to any insurance or self-insurance program carried by the City.

WAIVER OF SUBROGATION Waiver of subrogation in favor of the City of Bryan for each required policy. When required by the insurer or should a policy condition not permit Contractor to enter into a pre-loss agreement to waive subrogation without an endorsement, then Contractor agrees to notify the insurer and request the policy be endorsed with a Waiver of Transfer of rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which includes a condition specifically prohibiting such an endorsement, or voids coverage should Contractor enter into such an agreement on a pre-loss basis.

DEDUCTIBLES, COINSURANCE PENALTIES, & SELF-INSURED RETENTION Any deductibles or self-insured retentions must be declared. Contractor shall agree to be fully and solely responsible for any costs or expenses as a result of a coverage deductible, coinsurance penalty, or self-insured retention; including any loss not covered because of the operation of such deductible, coinsurance penalty, or self-insured retention.

SUBCONTRACTOR'S INSURANCE Contractor shall agree to cause each subcontractor employed by Contractor to purchase and maintain insurance of the type specified, provided the Contractor's insurance does not afford coverage on behalf of the subcontractor.

CONTRACTOR'S INSURANCE FOR OTHER LOSSES Contractor shall assume full responsibility for all loss or damage from any cause whatsoever to any tools owned, rented or

used in connection with the Contract including any tools, machinery, equipment, storage devices, containers, sheds, temporary structures, scaffolding, fences, forms, braces, jigs, screens, bracket, vehicles and the like owned or rented by Contractor, or Contractor's agents, subcontractors, suppliers, or employees. Contractor shall require any applicable insurance for this physical damage to provide a waiver of a right of subrogation against the City.

EVIDENCE OF INSURANCE Contractor shall furnish the City with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements. Certificates must be submitted using the ACORD form and all endorsements must be included with the submittal.

Failure of the City to demand such certificate(s) or other evidence of full compliance with these insurance requirements or failure of the City to identify a deficiency from evidence that is provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

All certificates shall provide for at least thirty (30) days written notice to the City of Bryan prior to cancellation or a material change to policy, or ten (10) days prior written notice for cancellation due to non-payment of premiums.

If the event the Contractor fails to provide a current insurance certificate at any time during the contract period, the City reserves the right to withhold payment to the Contractor, stop work at any time on or after the expiration date of the required policies and until coverage is reinstated and/or cancel the contract or Purchase Order with the Contractor. If the Contractor fails to maintain the required insurance, the City also reserves the right, but not the obligation, to purchase the required insurance at Contractor's expense if the Contractor fails to maintain the required insurance.

Certificates and notices should be given to the City at the following address:

City of Bryan
Attn: Purchasing Department
1309 E. Martin Luther King Street
Bryan, TX 77803

Upon request, the contractor shall furnish the City of Bryan with certified copies of all insurance policies within 10 days of the City's written request.

RIGHT TO REVIEW AND ADJUST The City reserves the right to review these requirements and to modify insurance coverage and their limits when deemed necessary and prudent. Furthermore, the City reserves the right, but not the obligation, to review and reject any insurer providing coverage because of poor financial condition.

6. Termination

A. The City may terminate this Contract at any time upon **thirty (30)-calendar** days written notice. Upon the Service Provider's receipt of such notice, the Service Provider shall

cease work immediately. The Service Provider shall be compensated for the services satisfactorily performed prior to the termination date.

B. If, through any cause, the Service Provider fails to fulfill its obligations under this Contract, or if the Service Provider violates any of the agreements of this Contract, the City has the right to terminate this Contract by giving the Service Provider **five (5)** calendar days written notice. The Service Provider will be compensated for the services satisfactorily performed before the termination date.

C. No term or provision of this Contract shall be construed to relieve the Service Provider of liability to the City for damages sustained by the City because of any breach of contract by the Service Provider. The City may withhold payments to the Service Provider for the purpose of setoff until the exact amount of damages due the City from the Service Provider is determined and paid.

7. Miscellaneous Terms

A. This Contract has been made under and shall be governed by the laws of the State of Texas. The parties agree that performance and all matters related thereto shall be in Brazos County, Texas.

B. Notices shall be mailed to the addresses designated herein or as may be designated in writing by the parties from time to time and shall be deemed received when sent postage prepaid U.S. Mail to the following addresses:

The City of Bryan Attn: Jayson Barfknecht P.O. Box 1000 Bryan, Texas 77805	The Service Provider: Green Team, Inc.

C. No waiver by either party hereto of any term or condition of this Contract shall be deemed or construed to be a waiver of any other term or condition or subsequent waiver of the same term or condition.

D. This Contract represents the entire and integrated agreement between the City and the Service provider and supersedes all prior negotiations, representations, or agreements, either written or oral. This Contract may only be amended by written instrument approved and executed by the parties.

E. This Contract and all rights and obligations contained herein may not be assigned by the Service Provider without the prior written approval of the City.

F. The Service Provider, its agents, employees, and subcontractors must comply with all applicable federal and state laws, the charter and ordinances of the City of Bryan, and with all applicable rules and regulations promulgated by local, state, and national boards,

bureaus, and agencies. The Service Provider must obtain all necessary permits and licenses required in completing the work and providing the services required by this Contract.

G. The parties acknowledge that they have read, understood, and intend to be bound by the terms and conditions of this Contract.

CITY OF BRYAN:

APPROVED FOR PROCESSING:

_____
Jayson E. Barfknecht, Ph.D., P.E., Director of Public Works
Date:_____

APPROVED AS TO FORM:

_____
Janis K. Hampton, City Attorney
Date: _____

APPROVED:

_____
Kean Register, City Manager
Date: _____

_____
Jason P. Bienski, Mayor
Date: _____

ATTEST:

_____
Mary L. Stratta, City Secretary
Date: _____

SERVICE PROVIDER:

By: _____

(Service Provider - Corporate Seal)

Printed Name:_____
Title: _____

Date: _____

STATE OF TEXAS §
§ ACKNOWLEDGEMENT
COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____, 2013, by
_____ on behalf of _____.

_____
Notary Public in and for the State of Texas