

1. Requested Motion(s):

Meeting Date: September 6, 2011

Award Contract for Cultural Facilities Landscape Maintenance (RFP-11-02-CR) to GrandScapes Landscape & Maintenance in the estimated annual amount of \$ 25,238.44.

Why the action is necessary:

Town Council approval required for contracts exceeding \$25,000.

What the action accomplishes:

Authorizes execution of an annual landscape maintenance contract for Mound House and Newton Park.

2. Agenda:

- Consent
- Administrative

3. Requirement/Purpose:

- Resolution
- Ordinance
- Other

4. Submitter of Information:

- Council
- Town Staff
- Town Attorney

5. Background:

The Town of Fort Myers Beach advertised RFP-11-02-CR in the *Fort Myers News Press* on Tuesday June 28th for landscape maintenance of the Mound House and Newton Park properties including mowing and weeding of lawn and planting areas, tree trimming and pruning, fertilization, pesticide/herbicide applications, irrigation maintenance and mulching services. Seven vendors obtained the package of project documents, four vendors attended the pre-proposal meeting on Thursday July 7th, and two vendors submitted proposals by the deadline at 2:00pm Monday July 25th.

Town Council authorized staff to begin negotiations with GrandScapes Landscape & Maintenance and successfully negotiated a contract to provide all services within budget. The proposed contract term is for one-year with the option for three (3) additional one-year renewals.

All services outlined in the Cultural Facilities Landscape Maintenance are reimbursable to the Town through the Town's beach and shoreline maintenance grant with the Tourist Development Council.

Attached for additional information is: Service Provider Agreement with GrandScapes.

6. Alternative Action:

7. Management Recommendations:

Approve proposed contract.

Town Manager	Town Attorney	Finance Director	Public Works Director	Community Development Director	Cultural Resources Director	Town Clerk
						

9. Council Action:

- Approved
- Denied
- Deferred
- Other

SERVICE PROVIDER AGREEMENT

This SERVICE PROVIDER AGREEMENT is entered into on this 24 day of 8, 2011, by and between the Town of Fort Myers Beach, 2523 Estero Boulevard, Fort Myers Beach, FL 33931, a chartered municipality of the State of Florida (hereafter "Town"), and Grandscape Landscapes and Maintenance, with an address of 4084 Arnold Avenue, Unit 8, Naples, FL 34104 (hereafter "Provider"), for the Provider to render the following services to the Town – Landscape maintenance of the Mound House historical site and Newton Park as further described in Exhibit "A".

1. Scope of Services. Provider shall perform the services and work as set forth in "Scope of Services" which is attached hereto as Exhibit "A" and made a part of this Agreement. Provider warrants and represents that it is qualified, willing and able to provide and perform all such services in accordance with the terms of this Agreement. The parties shall have the ability to change the Scope of Services by mutual written agreement, except that the Town shall have the unilateral right to delete services hereunder for any reason without compensation to Provider other than for services already performed.
2. Term. The term of this Agreement shall commence on _____ through September 30, 2012 with the option for three (3) renewals of one (1) year each for a possible total of four (4) years.
3. Payment Obligation. The Town shall pay for all requested and authorized services rendered hereunder by the Provider and completed in accordance with this Agreement, as set forth in Exhibit "B," which is attached hereto and made a part of this Agreement. The Provider's invoice statements shall contain a breakdown of charges, description of service(s) and work provided and/or performed, and, where appropriate, supportive documentation of charges consistent with the basis of compensation set forth in this Agreement. In the event of a dispute as to the Town's payment obligation, the Town shall pay the undisputed amount, if any, within thirty (30) days.
4. Provider's Obligations. The Provider's obligations shall include, but are not limited to, the following:
 - a) Licensure. The Provider shall maintain all licenses and/or certifications required by any governmental agencies responsible for regulating and licensing the services provided and performed by the Provider.
 - b) Provision of Services. The Provider shall perform all services pursuant to this Agreement in accordance with generally accepted standards of professional practice and in accordance with the laws, statutes, ordinances, codes, rules, regulations and requirements of governmental agencies which regulate or have jurisdiction over the services to be provided and/or performed by the Provider. All personnel assigned by Provider hereunder will be qualified to perform such duties. Provider shall designate one (1) person as the point of contact for the Town regarding its duties hereunder. Provider is solely responsible for all taxes incurred by Provider and shall make all deductions required of employers by state, federal and local laws.
 - c) Non-Waiver. Neither review, approval, nor acceptance by Town of data, studies, reports, memoranda, and incidental professional services, work and materials furnished hereunder by the Provider, shall in any way relieve Provider of responsibility for the adequacy, completeness and accuracy of its services, work and materials.
 - d) Indemnity and Hold Harmless. The Provider shall be liable and agrees to be liable for, and shall indemnify, defend and hold the Town harmless for any and all claims, suits, judgments or damages, losses and expenses including court costs, expert witness and professional consultation services, and attorneys' fees (including but not limited to appellate attorney fees) arising out of the Provider's errors, omissions, willful action(s) and/or negligence. The Provider shall not be liable to, nor be required to indemnify the Town for any portions of damages arising out of any error, omission, and/or negligence of the Town, its employees, agents, or representatives.

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- e) Non-Public Information. The Provider agrees, during the term of this Agreement, not to divulge, furnish or make available to any third person, firm, or organization, without the Town's prior written consent, or unless incident to the proper performance of Provider's obligations hereunder, or as provided for or required by law, any non-public information concerning the services to be rendered by Provider. Provider shall require all of its employees and subcontractor(s) to comply with the provisions of this paragraph.
 - f) Statutory Duties. The duties and obligations imposed upon the Provider by this Agreement and the rights and remedies available to the Town hereunder shall be in addition to, and not a limitation of, any otherwise imposed or available by law or statute.
 - g) Disclosure. The Provider warrants it has not employed or retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for it, any fee, commission, percentage, gift or other compensation contingent upon or resulting from the award or making of this Agreement.
5. Commencement and Completion of Work. The Town shall provide written notice to the Provider that it is authorized to commence work. The Provider thereafter shall commence work promptly and shall carry on all such services and work as may be required in a timely and diligent manner to completion. Should the Provider fail to commence, provide, perform, and/or complete any of the services and work required hereunder in a timely and diligent manner, the Town may consider such failure as justifiable cause to terminate this Agreement, in addition to any other remedies the Town may have.
6. Insurance. The Provider shall obtain and maintain the following insurance coverages:
- a) Workers Compensation Coverage to comply for all employees for Statutory Limits in compliance with the applicable State and Federal laws;
 - b) Employers liability with a minimum limit per accident in accordance with statutory requirements.
 - c) Commercial General Liability Insurance with minimum limits of \$100,000 per occurrence and \$300,000 aggregate for Bodily Injury Liability and a minimum limit of \$100,000 for Property Damage Liability, or a minimum combined single limit of \$100,000.
 - d) Business Automobile Liability Insurance with minimum limits of \$500,000 per person and \$500,000 per accident for Bodily Injury Liability and a minimum limit of \$500,000 for Property Damage Liability, or a minimum combined single limit of \$500,000, with coverage including owned vehicles, hired and non-owned vehicles, and employee non-ownership.

Each Certificate of Insurance shall include the name and type of policy and coverages provided; the amount or limit applicable to each coverage provided; the date of expiration of coverage; the designation of the Town of Fort Myers Beach as additional insured and as certificate holder, except as to Professional Liability Insurance and for Workers' Compensation Insurance. Should any of these policies be cancelled before the expiration date thereof, Provider shall instruct the issuing company to mail thirty (30) days written notice to the Town of such cancellation.

7. Inclusion of Additional Documents. Any request for bids and/or request for proposal and all exhibits or other attachments thereto as issued by the Town are hereby incorporated by reference. In addition, the following Exhibits are attached hereto and hereby incorporated by reference: RFP 11-02-CR, and Provider's response thereto.
8. Termination of Agreement. Either party may terminate this Agreement without cause upon thirty (30) calendar days' prior written notice to the other, in which case the Town shall compensate the Provider

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for all services performed prior to the effective date of termination and reimbursable expenses then due. In addition, the Town shall have the ability to terminate this Agreement at any time for cause.

9. Assignment, Transfer and Subcontracts. The Provider shall not assign or transfer any of its rights, benefits or obligations hereunder, except for transfers that result from the merger or consolidation of Provider with a third party. The Provider shall have the right, subject to the Town's prior written approval, to employ other persons and/or firms to serve as subcontractors to Provider in connection with its performance of services and work pursuant to this Agreement.
10. Maintenance of Records. The Provider will keep and maintain adequate records and supporting documentation applicable to all of the services, work, information, expense, costs, invoices and materials provided and performed pursuant to this Agreement. Said records and documentation will be retained by the Provider for a minimum of two (2) years from the date of termination of this Agreement, or for such period as required by law. The Town and its authorized agents shall, with reasonable prior notice, have the right to audit, inspect and copy all such records and documentation as often as the Town deems necessary during this Agreement the next succeeding two (2) years.
11. References to Town. All references to "the Town" or "the Town of Fort Myers Beach" shall be deemed to include its employees, agents, and/or authorized representatives.
12. Modification. Except as set forth in Paragraph 1 above, modifications to this Agreement shall only be valid when made in writing and signed by both parties. In the event of any conflict between the requirements, provisions, and/or terms of this Agreement and any subsequent written modification hereto, the most recently executed document shall take precedence.
13. Miscellaneous Provisions.
 - a) Applicable Law. This Agreement shall be governed by the laws, rules and regulations of the State of Florida. The venue for any litigation arising out of this agreement shall be in Lee County, Florida.
 - b) Attorneys Fees. The prevailing party in any litigation arising out of the agreement is entitled to recover reasonable attorney's fees from the non-prevailing party.
 - c) Non-Discrimination. The Provider covenants that in the furnishing of services hereunder, no person on the grounds of race, color, national origin, handicap, or sex shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination.
 - d) Headings. The headings of the Articles, Sections, Exhibits, and Attachments in this Agreement are for the purpose of convenience only and shall not be deemed to expand, limit or change the provisions contained in such Articles, Section, Exhibits and Attachments.
 - e) Entire Agreement. This Agreement, including any Exhibits, constitutes the entire Agreement between the parties and shall supersede all prior agreements or understandings, written or oral, relating to the matters set forth herein.
 - f) Notices. All notices hereunder shall be in writing and shall be sent via U.S. Postal Service, first class mail, to the other party's address as listed at the beginning of this Agreement. Either party may change its address by prior written notice to the other party.

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

TOWN OF FORT MYERS BEACH

ATTEST:

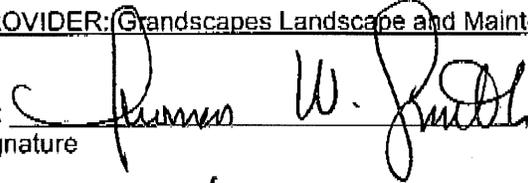
BY: _____
Terrance Stewart, Town Manager

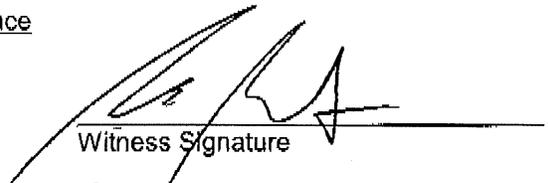
BY: _____
Michelle Mayher, TOWN CLERK

APPROVED AS TO LEGAL FORM:

BY: _____
Fowler White Boggs, TOWN ATTORNEY

PROVIDER: Granscapes Landscape and Maintenance

By: 
Signature


Witness Signature

THOMAS WADE SMITH
Printed name of person signing

Marc Wagner
Printed name of witness

GENERAL MANAGER
Title (printed)

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EXHIBIT "A"

TO THE SERVICE PROVIDER CONTRACT DATED THIS 24 DAY OF 08, 2011 BETWEEN THE TOWN AND GRANDSCAPES LANDSCAPE AND MAINTENANCE, PROVIDER.

1. SCOPE OF SERVICES:

The Provider shall perform the following services under this Agreement:

Routine weekly and monthly service:

Grounds Maintenance: Mowing, weed removal, trim lining of hard surfaces, and beds, pruning, hedge trimming to current code, blowing of all hard surfaces, spot spraying hard surfaces and beds. All trees under twelve (12) feet maintained weekly as needed.

Periodic Services (estimated frequency):

Arbor Care: In excess of twelve (12) feet pruned, groomed, and cleaned of all hardwoods and palms. (3X/year).

Pesticide and Fertilization: Granular insecticide, spraying of systemic insecticide and fungicide. (6 applications).

Irrigation: Monthly wet checks and cleaning of heads as needed.

Mulching: Materials and labor for application of Cypress Mulch B (Newton) and Pine Straw (Mound House) to an average depth of three (3) inches. (1X/Year).

The Town reserves the right to add or delete periodic services, modify the frequency of any routine or periodic services, in any manner that best serves the needs of the Town of Fort Myers Beach.

All work performed by Provider to conform to the specifications of Request for Proposals RFP-11-02-CR and any addenda issued thereto. Grounds maintenance to be scheduled to not interfere with public programs at either facility

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EXHIBIT "B"

TO THE SERVICE PROVIDER CONTRACT DATED THIS 24th DAY OF 08, 2011
BETWEEN THE TOWN AND GRANDSCAPES LANDSCAPE AND MAINTENANCE, PROVIDER.

PAYMENT TERMS

1. Payment terms are as follows:

a. Total cost of all labor and materials:

Routine weekly and monthly service:

	<u>Mound House</u>	<u>Newton</u>
Grounds Maintenance	\$ 9,281.25	\$ 3,712.50
Irrigation wet checks	\$ 1,125.00	\$ 750.00
	<u>\$ 10,406.25</u>	<u>\$ 4,462.50</u>
monthly fee	\$ 867.19	\$ 371.88

Periodic Services:

Arbor Care	\$ 468.75	\$ 265.63	/each
Pest & Fertilization	\$ 343.75	\$ 231.25	/each
Cypress Mulch B (Newton)		\$ 3.0375	/bag
Pine Straw (Mound House)	\$ 4.3875		/bale

- b. Work to be inspected and approved by the Town prior to issuing payment.
- c. Invoice to be submitted by Provider to Town after the Town has completed and approved all work and materials.
- d. Payment will be made by Town within 30 days of receipt of invoice from Provider.



AUG 25 2011

FAX COVER SHEET

RECEIVED BY

Att: Peter

Re: Mounds and Newton Maintenance Contract

Attached is our signed contract for your Mounds and Newton project if you have any questions please contact me at w.smithgrandscapes@gmail.com or call 239)269-6607. I will see you Monday morning.

Wade Smith