

CITY OF EL PASO, TEXAS
AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM

DEPARTMENT: Streets and Maintenance Department
AGENDA DATE: July 14, 2015
CONTACT PERSON/PHONE: Ted Marquez, P.E., Street and Maintenance Director, 212-7000
DISTRICT(S) AFFECTED: All

STRATEGIC GOAL:

Goal 7 – Enhance and Sustain El Paso’s Infrastructure Network

SUBJECT:

That the City Manager is authorized to sign the Takeover Agreement between the City and SureTec Insurance Company (“Surety”), for the Surety to provide services through the Completion Contract, Evergreen Lawn Service, pursuant to the terms of Contract No. 2013-078, Groups I, III, and IV and the responsibilities of the Performance Bond for the remaining term of the contract which will end of March 11, 2016; and that the City will pay the Surety a contract amount of \$8,639.91 per month for the services under Group I, \$2,978.00 per month for four (4) months and \$1,644.00 for three (3) months for the services under Group III, and an amount not to exceed \$22,595.83 for Group IV.

BACKGROUND / DISCUSSION:

The agreement between the City of El Paso and SureTec Insurance is to enable the surety company to undertake the completion of contracts 2013-078 by subcontracting Evergreen Lawn Service. The City will agree to pay the original contract amounts for the services provided under contracts 2013-078 Groups I, III, and IV.

SELECTION SUMMARY:

N/A

PRIOR COUNCIL ACTION:

Council awarded Contract 2013-078 on July 9, 2013.

AMOUNT AND SOURCE OF FUNDING:

\$99,919 for seven months for contract 2013-078
2305-532-32120-P3215-522210 Environmental Service Fee Fund – Groundskeeping Contracts

BOARD / COMMISSION ACTION:

N/A

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:

Name	Signature	Date
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**COUNCIL PROJECT FORM
(Consent to Assignment)**

*******POSTING LANGUAGE BELOW*******

Please place the following item on the **CONSENT** agenda (under **PURCHASING REQUESTS, ETC.**) for the Council Meeting of **July 14 , 2015**.

That the City Manager is authorized to sign the Takeover Agreement between the City and SureTec Insurance Company ("Surety"), for the Surety to provide services through the Completion Contract, Evergreen Lawn Service, pursuant to the terms of Contract No. 2013-078, Groups I, III, and IV and the responsibilities of the Performance Bond for the remaining term of the contract which will end of March 11, 2016; and that the City will pay the Surety a contract amount of \$8,639.91 per month for the services under Group I, \$2,978.00 per month for four (4) months and \$1,644.00 for three (3) months for the services under Group III, and an amount not to exceed \$22,595.83 for Group IV.

Department: Streets & Maintenance Department
District: All

*******ADDITIONAL INFO BELOW*******

RESOLUTION

WHEREAS, on March 12, 2013 the City of El Paso (“City”) awarded Contract No. 2013-078 Eastside Grounds and Street Tree Maintenance-City Medians, Groups I, III, and IV to Three C’s Contractors, Inc.(“Contractor”) for a term of three (3) years; and

WHEREAS, Contractor provided a Performance Bond through SureTec Insurance Company (“Surety”) in favor of the City to secure the performance obligations of Contractor; and

WHEREAS, on December 2, 2014, Contractor informed the City that the Contractor would not continue to provide the services under the contract; and

WHEREAS, the City contacted the Surety to secure the performance of Contract No. 2013-078 Groups I, III, and IV for the remaining term of the contract pursuant to the obligations of the Performance Bond; and

WHEREAS, the Surety agrees to undertake the completion of Contract No. 2013-078, Groups I , III, and IV by subcontracting Evergreen Lawn Service (“Completion Contractor”); and

WHEREAS, the City agrees to pay the original contract amount for the services under Contract No. 2013-078, Groups I, III, and IV.

WHEREAS, the City and Surety desires to enter into a Takeover Agreement for the Surety to undertake the completion of Contract No. 2013-078, Groups I, III, IV by subcontracting the Completion Contract which will perform for the remaining term of the contract.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

The City Manager is authorized to sign the Takeover Agreement between the City and SureTec Insurance Company (“Surety”), for the Surety to provide services through the Completion Contract, Evergreen Lawn Service, pursuant to the terms of Contract No. 2013-078, Groups I, III, and IV and the responsibilities of the Performance Bond for the remaining term of the contract which will end on March 11, 2016; and that the City will pay the Surety a contract amount of \$8,639.91 per month for the services under Group I, \$2,978.00 per month for four (4) months and \$1,644.00 for three (3) months for the services under Group III, and an amount not to exceed \$22,595.83 for Group IV.

ADOPTED THIS _____ DAY OF _____ 2015.

(Signatures continue on following page)

THE CITY OF EL PASO:

Oscar Leeser
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Sol M. Cortez
Assistant City Attorney

Ted Marquez, Director
Streets & Maintenance

TAKEOVER AGREEMENT

Project: Ground Maintenance-City Medians No. 2013-078

This Takeover Agreement (the "Agreement") is made and entered into this 14th day of July 2015, by and between SureTec Insurance Company (the "Surety") and the City of El Paso, Texas (the "Owner.")

RECITALS:

WHEREAS, on or about March 12, 2013, Three C's Contractors, Inc. (the "Former Contractor") and the Owner entered into a contract (the "Original Contract") for the Former Contractor to furnish all labor and material and perform all work for Contract No. 2013-078 Ground Maintenance - City Medians (Groups I, III, & IV) (the "Project") in accordance with the terms and provisions of the Original Contract, including all contract documents forming a part of the Original Contract. This is a three-year contract with an option to extend for two years if the option is exercised prior to the expiration of the original term. Expiration of original term is March 11, 2016; and

WHEREAS, on or about March 12, 2013, as required by law and under the terms of the Original Contract, the Former Contractor and the Surety made, executed, and delivered to the Owner a performance bond and a payment bond, Bond No. 4390646 (collectively, the "Bonds"), both in the penal sum of \$441,948.00; and

WHEREAS, on or about January 15, 2015, Owner contacted the Surety regarding the Former Contractor's abandonment of the performance of the Original Contract and the Owner has called upon the Surety to fulfill its obligations as surety under the terms of the Performance Bond; and

WHEREAS, some subsidiary work may remain on items for which full or partial payment has been made; and

WHEREAS, the Surety is willing to undertake the completion of the Original Contract in accordance with the terms of the Performance Bond and this Agreement. Note that the Performance Bond delivered to the Owner contains a "Surety Not Bound to Renew" subparagraph within the Bond Rider furnished with the Bond stating that Surety shall not be liable for extensions or renewals of the bonded obligation beyond the initial term of 3 years unless Surety so states in a rider signed by an officer of Surety; and

WHEREAS, the Owner does not desire to exercise the option to extend the Contract beyond the initial 3-year term.

NOW, THEREFORE, in consideration of the agreements and undertakings hereinafter set forth, and for other good and valuable consideration, the receipt and adequacy therefor being hereby acknowledged, the Owner and Surety agree as follows:

AGREEMENT:

1. The Surety hereby undertakes to cause the performance of the terms, covenants, and conditions of the Original Contract, including all modifications thereto, and agrees to be bound by the Original Contract. The Owner acknowledges that the Surety, by its execution of this Agreement, is acting in its capacity as the surety for the Former Contractor in making arrangements for the performance and completion of the Original Contract, and not as a completing contractor, and that the Surety is not assuming any obligations or liabilities beyond those set forth in the Bonds. As to the completion of the Original Contract, except as otherwise provided in this Agreement, the Surety is entitled to all rights, title, and interest of the Former Contractor in and to the Original Contract in all respects as if the Surety were the original party to the Original Contract. The term "Contractor" as used in the Original Contract, shall be deemed, after the effective date of this Agreement, to refer to the Surety rather than to the Former Contractor.
2. The Owner acknowledges that the Surety will subcontract the performance of the work under the Original Contract to Evergreen Lawn Service (the "Completion Contractor"). The Surety shall complete all the work on items containing subsidiary work for which full or partial payment has been made. The Surety's obligation to complete the work at the original bid prices shall remain in full force and effect.
3. The Surety shall satisfy the required insurance obligations under the Original Contract by providing evidence of the required insurance coverage carried by the Completion Contractor, with the Surety being named as an additional insured under the policy or policies. Work will not be allowed to commence until the Owner receives satisfactory insurance.
4. The Surety shall notify the Owner of its intent to start work in writing.
5. The period of performance under the Original Contract's 3-year duration period expires March 11, 2016.
6. The Owner and the Surety agree that as of the date of this Agreement:
 - (a) The authorized annual amount of the Original Contract's Group I scope, including all approved change order amounts, is the sum of \$103,903.92. (\$93,600 per annum Base Bid, plus \$10,303.92 per annum Change Order No. 1). This results in Monthly Billing Rate of \$8,658.66.

Eight (8) billing periods remain until contract expiration. Therefore, the contract balance to complete Group I scope is the sum of \$ 69,269.28;
 - (b) The authorized annual amount of the Original Contract's Group III scope, including all approved change order amounts, is the sum of \$29,066. The Monthly Billing Rate is \$2,978 per month in the months March through October and \$1,644 per month in the months November through February.

Eight (8) billing periods remain until contract expiration. Therefore, the contract balance to complete Group III scope is the sum of \$ 18,488.00;

- (c) The authorized annual amount of the Original Contract's Group IV scope, including all approved change order amounts, is the sum of \$24,650. This sum is based a schedule of six (6) unit-priced pay items, times a pre-determined minimum annual quantity for each Citywide "on demand" pruning and tree/bush removal item;
- (d) Through October 31, 2014, the last month in which Former Contactor worked on the Original Contract scope, Owner has paid in full for all worked invoiced by Former Contactor. No retainage has been withheld by Owner from Former Contactor's invoices;

As of the date of the execution of this Agreement, the Owner represents and warrants that, according to the records available to it, the above stated amounts are accurate. The Surety reserves the right to verify the accuracy of the above amounts.

- 7. The Owner agrees that the amount of the Original Contract, including all approved change orders, minus the amount paid and any special deductions, is dedicated to the completion of the Original Contract pursuant to this Agreement. Upon resumption of the work after the default, monthly progress payments will be made to the Surety in accordance with the terms of the Original Contract as to the time, amount, and method of payment.
- 8. Insofar as the Owner has any right, title, or interest therein, the Owner agrees that the Surety and its Completion Contractor shall have the right to use, without charge, any of the equipment, materials, and appurtenances furnished or supplied by the Former Contractor that may be stored on or about the premises of the Project site or materials that may have been fabricated for use in connection with the Original Contract, whether or not presently upon the Project site.
- 9. The Surety shall be represented at the Project by the Completion Contractor. Prior to the issuance of the Notice to Proceed, the Surety shall specifically authorize in writing an individual with the Completion Contractor to be its representative (the "Authorized Individual") solely for the purposes set forth in this paragraph. The Authorized Individual will represent the Surety in dealing with the Owner on day to day construction issues with respect to the Project. Payments from the Owner shall be made payable to the Surety and transmitted to the Surety at the following address, unless and until the Owner is notified in writing of any different addresses:

SureTec Insurance Company
Attn: Jimmy Sparks
9737 Great Hills Trail, Ste., 320
Austin, TX 78759

10. All payments made by the Surety for the performance of the Original Contract shall be credited against the penal sum of the Performance Bond
11. In no event shall the Owner withhold any payments from the Surety because of or on account of any claims, liens, suits, or demands by and persons or entities furnishing or alleging to have furnished labor and/or materials to the Project. The Payment Bond shall remain in full force and effect in accordance with its terms and provisions. The total liability of the Surety under the Payment Bond is limited to and shall not exceed the penal sum of the Payment Bond in the amount of \$441,948.00. All Payment Bond payments made by the Surety shall be credited against the penal sum of the Payment Bond. Nothing in this Agreement constitutes a waiver of such penal sum or an increase in the liability of the Surety under the Payment Bond.
12. This Agreement is solely for the benefit of the Owner and the Surety. The Owner and the Surety do not intend by any provision of this Agreement to create any rights in or increase the rights of any third-party beneficiaries, nor to confer any benefit upon or enforceable rights under this Agreement or otherwise upon anyone other than the Owner and the Surety. Specifically, the Owner and the Surety acknowledge that nothing in this Agreement shall extend or increase the rights of any third-party claimants or the liabilities or obligations of the Surety under the Bonds.
13. This Agreement constitutes the whole of the understanding, discussions, and agreements by and between the Owner and the Surety. The terms and provisions of this Agreement are contractual and not mere recitals. The Owner and the Surety acknowledge that there have been no oral, written, or other agreements of any kind as a condition precedent to or to induce the execution and delivery of this Agreement. Any written or oral discussions conducted prior to the effective date of this Agreement shall not in any way vary or alter the terms of this Agreement.
14. This Agreement shall not be changed, amended, or altered in any way except in writing and executed by both the Owner and the Surety.
15. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original.
16. This Agreement shall be governed by and controlled by the laws of the State of Texas.

17. Any notices which are required to be given by the terms of this Agreement or the Bonds shall be made as follows:

As to the Owner:

Via certified mail, return receipt requested, postage prepaid to:

As to the Surety:

Via certified mail, return receipt requested, postage prepaid to:

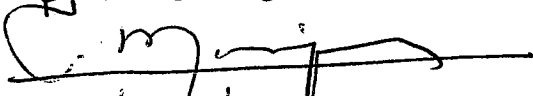
SureTec Insurance Company
Attn: Jimmy Sparks
9737 Great Hills Trail, Ste., 320
Austin, TX 78759

18. This Agreement is effective as of the date first written above.
19. This Agreement shall be binding upon the parties and their respective successors and assigns.
20. In the event that one or more provisions of this Agreement shall be declared to be invalid, illegal, or unenforceable in any respect, unless such invalidity, illegality, or unenforceability shall be tantamount to a failure of consideration, the validity, legality, and enforceability of the remaining provisions contained in this Agreement shall not in any way be affected or impaired thereby.
21. It is understood and agreed by the Owner and the Surety that this Agreement shall be construed without regard to any presumption or other rule requiring construction against the party causing this Agreement to be drafted.

(This section left intentionally blank.)

IN WITNESS WHEREOF, the parties have executed this Agreement on the date indicated above, and each of the undersigned personally represent and warrant that they have the full right, power, and authority to execute this Agreement on behalf of the respective parties.

Approved as to Form
Sol M. Cortez
Assistant City Attorney

Approved as to Content

Ted Moryl
Director Streets and Maintenance

OWNER

City of El Paso

By: _____

Printed Name: _____

Its: _____

SURETY

SureTec Insurance Company

By: _____

Printed Name: _____

Its: _____