

Agenda Item Request Form

Hays County Commissioners' Court

9:00 a.m. Every Tuesday

Request forms are due in the County Judge's Office

No later than **2:00 p.m.** on **WEDNESDAY.**

Phone (512) 393-2205 Fax (512) 393-2282

AGENDA ITEM: Approve award of Bid #2011-B06 "Cemetery Maintenance" to Dripping Springs Lawn.

CHECK ONE: ☒ **XCONSENT** ☐ **ACTION** ☐ **EXECUTIVE SESSION**

 ☐ **WORKSHOP** ☐ **PROCLAMATION** ☐ **PRESENTATION**

PREFERRED MEETING DATE REQUESTED: July 26, 2011

AMOUNT REQUIRED:

LINE ITEM NUMBER OF FUNDS REQUIRED:

REQUESTED BY: Herzog/Borcherding

SPONSORED BY:

SUMMARY: See attached tabulation

JUL 26 2011

FILED:
HAYS COUNTY COMMISSIONERS' COURT

Resolution # 28246 VOL U PC 635

2011-B06

Cemetery Maintenance

CEMETERY LOCATIONS:		Dripping Springs Lawn	Greater TX Landscape	Oldham Fence	Maintenance Mgt	
San Pedro	\$	600.00	\$ 633.00	\$ 1,050.00	\$ 660.00	
Guadalupe	\$	350.00	\$ 500.00	\$ 1,050.00	\$ 220.00	
San Marcos/Blanco	\$	400.00	\$ 1,080.00	\$ 1,900.00	\$ 770.00	
Kyle Family Pioneer	\$	180.00	\$ 167.00	\$ 612.00	\$ 140.00	
Cementerio Del Rio	\$	350.00	\$ 453.00	\$ 1,050.00	\$ 370.00	
Coronado	\$	125.00	\$ 333.00	\$ 437.00	\$ 190.00	
Cocke	\$	150.00	\$ 203.00	\$ 350.00	\$ 190.00	
Hays Co. Indigent	\$	100.00	\$ 300.00	\$ 437.00	\$ 165.00	
Additional Services						
Per Man Hr Rate:	\$	40.00	\$ 38.00	\$ 87.50	\$ 27.50	

\$ 2,255.00 \$ 3,669.00 \$ 6,886.00 \$ 2,705.00

CEMETERY MAINTENANCE
IFB #2011-B06

ORIGINAL

CONTRACT

STATE OF TEXAS
COUNTY OF HAYS

WHEREAS, The attached "Bid Package" which includes the **Cover Sheet, Instructions, Specifications, and Bid Sheet(s)** for the item(s) being published for competitive bid, were solicited pursuant to Texas Local Government Code 262.021; and

WHEREAS, the Hays County Commissioners' Court as the governing body of Hays County did on July 26, 2011 award a contract to Dripping Spring Lawn (Vendor/Bidder) for furnishing the materials, equipment, supplies and/or services in quantities and at prices as set forth in the above-attached "Bid Package"; and

THEREFORE, Knowing all men by these present, that this contract is entered into by Hays County, Texas (hereinafter called "County") and the undersigned Vendor (hereinafter called "Vendor" or "bidder").

WITNESSETH

THAT IN ACCORDANCE with the above attached Bid Package in every particular, the Vendor will perform in accordance with the terms thereof and the County agrees to make payment for such items or services purchased on appropriate Purchase Orders in accordance with the items of said Bid Package which is made a part of this contract and incorporated herein for all purposes. THAT IN ACCORDANCE with the attached the County's acceptance of equipment, supplies and services shall be contingent on (1) they conform, (2) they were delivered (if applicable), and (3) services have been satisfactorily performed in the sole determination of the County.

Prior Agreements Superseded

This Contract, with the entire Bid Package incorporated herein for all purposes, including any required supporting literature, brochures, and/or data sheets or sample, constitutes the sole agreements of the parties to the agreement and supersedes all oral or written previous and contemporary agreements between the parties and relating to matters herein.

Amendment

No amendment, modification or alteration of the terms of this contract shall be binding unless same is in writing, dated subsequent to the date of this contract, and duly executed by authorization representatives of each party.

IN TESTIMONY WHEREOF: Witness our hands at Hays County, Texas, effective as of the date awarded above, if any.

VENDOR

BY: _____

AUTHORIZED AGENT

BY: _____

COUNTY JUDGE

ATTEST

Liz Gonzalez, Hays County Clerk

****Failure to sign the Contract page(s) may disqualify the bid from being considered by the Commissioners' Court. However, this contract is not valid until awarded in Commissioners' Court and signed by both parties.**



Vendor/Bidder's Affirmation

1. Vendor/Bidder affirms that they are duly authorized to execute this Contract, that this company, corporation, firm, partnership or individual has not prepared this bid in collusion with any other bidder, and that the contents of this bid as to price, terms or conditions of said bid have not been communicated by the undersigned nor by any employee or agent to any other person engages in this type of business prior to the official opening of this bid.
2. Vendor/Bidder hereby assigns to Purchaser any and all claims for overcharges associated with this Contract which arise under the antitrust laws of the United States, 15 USCA Section 1 et seq., and which arise under the antitrust laws of the State of Texas, Tex. Bus. & Com. Code, Section 15.01, et seq.
3. Pursuant to 262.076 (a) of the Texas Local Government Code, Vendor/Bidder, hereby affirms that Vendor/Bidder:

☒ Does not own taxable property in Hays County.

☒ Does not owe any ad valorem taxes to Hays County or is not otherwise indebted to Hays County.

Dripping Springs Lawn Care
Name of Contracting Company

Monte H Glosson J.R.
Contact Name

Owner / President
Title

31640 Ranch Road 12
Mailing Address

Dripping Springs Texas
City State Zip Code


Signature of Company Official Authorizing Bid/Offer

Monte H Glosson J.R.
Printed Name

512-672-9595 — monte@dripping Springs Lawn Care
Phone Fax E-mail address

Conflict of Interest Disclosure

Beginning January 1, 2006 a new State Law (Chapter 176 of the Texas Local Government Code) requires the filing of Conflict of Interest Questionnaires by individuals and businesses..

The questionnaire requires disclosures describing certain business and gift giving relationships (if any) the filers may have with the Hays County Commissioners Court members and other elected/appointed officials.

The new law applies to:

- Businesses and individuals who contract with Hays County
- Businesses and individuals who seek to contract with Hays County, (regardless of whether a bidder is awarded the contract), and
- Agents who represent such businesses in their business dealings with Hays County

The forms for reporting are available at
www.ethics.state.tx.us/whatsnew/conflict_forms.htm

If you have any questions about compliance, please consult your own legal counsel. Compliance is the individual responsibility of each individual, business, and agent who is subject to the law's filing requirement.

If you are required to file a Conflict of Interest Questionnaire, you should file with the Hays County Clerk by mailing the completed form to:

Hays County Clerk
137 Guadalupe Street
San Marcos, Texas 78666

1. GENERAL DEFINITIONS:

- (a) "Auditor" means the Hays County Auditor or his/her designee.
- (b) "Commissioners Court" means Hays County Commissioners Court.
- (c) "Contract" means the contract awarded pursuant to the Invitation for Bids.
- (d) "Contractor" means a person or firm receiving an award of contract from Commissioners Court.
- (e) "County" means Hays County, Texas, a political subdivision of the State of Texas.
- (f) "County Building" means any County owned buildings and does not include buildings leased by County.
- (g) "Is doing business" and "has done business" mean:
 - (1) Paying or receiving in any calendar year any money or other valuable thing which is worth more than \$250 in the aggregate in exchange for personal services or for purchase of any property or property interest, either real or personal, either legal or equitable; or
 - (2) Lending or receiving a loan of money; or goods or otherwise creating or having in existence any legal obligation or debt with a value of more than \$250 in the aggregate in a calendar year;
 - (3) But does not include any retail transaction for goods or services sold to a Key Contracting Person at a posted, published, or marked price available to the general public.
- (h) "Key Contracting Person" means any person or business listed in Exhibit A to Affidavit.
- (i) "Purchasing Manager" means the Hays County Purchasing Manager.
- (j) "Sub-contractor" means a person or firm doing business with a Contractor.
- (k) "FOB" means Free on Board and indicates that the supplier pays shipping and insurance costs from the point of manufacture or procurement to its specified destination, at which point the County will take responsibility.

2. FUNDING: Funds for payment on this Contract have been provided through the County budget approved by Commissioners Court for this fiscal year only. State of Texas statutes prohibit the obligations and expenditure of public funds beyond the fiscal year for which a budget has been approved. However, the cost of items or services covered by this Contract is considered a recurring requirement and is included as a standard and routine expense of Hays County to be included in each proposed budget within the foreseeable future. County Commissioners expect this to be an integral part of future budgets to be approved during the period of this Contract except for unanticipated needs or events which may prevent such payments against this Contract. However, County cannot guarantee the availability of funds, and enters into this Contract only to the extent such funds are made available. The Fiscal Year for County extends from October 1st of each calendar year to September 30th of the next calendar year.

3. FUNDING OUT: Despite anything to the contrary in this Contract, if, during budget planning and adoption, Commissioners Court fails to provide funding for this Contract for the following fiscal year of County, County may terminate this Contract after giving Contractor thirty (30) calendar days written notice that this Contract is terminated due to the failure to fund it.

4. INVOICING/PAYMENTS:

- (a) Contractor shall provide County with an Internal Revenue Form W-9, Request for Taxpayer Identification Number and Certification, that is completed in compliance with the Internal Revenue Code and its rules and regulations before any Contract funds are payable.
- (b) As a minimum, invoices shall include: (i) name, address, and telephone number of Contractor and similar information in the event payment is to be made to a different address; (ii) County Contract or Purchase Order number; (iii) identification of products or services as outlined in this Contract; (iv) quantity or quantities, applicable unit prices, total prices, and total amount; and (v) any additional payment information called for by this Contract. County will not pay invoices that are in excess of the amount authorized by the purchase order.
- (c) Payment shall be made by check or warrant by County upon satisfactory delivery and acceptance of products and services and submission of an invoice to the address below:

County Auditor
Ste. 100, 111 E. San Antonio
San Marcos, Texas 78666
- (d) Payment shall be deemed to have been made on the date of mailing of the check or warrant. For purposes of payment discounts, time will begin upon satisfactory delivery of products and services and/or submission of acceptable

invoice, whichever is last. Partial payments will not be made unless specifically requested and approved by County prior to Contract award.
(e) Accrual and payment of interest on overdue payments shall be governed by TEX. GOV'T CODE ANN., ch. 2251.

5. COUNTY TAXES: If the Contractor subsequently becomes delinquent in the payment of County taxes, it will be grounds for cancellation of the contract. Despite anything to the contrary, if the contractor is delinquent in payment of County property taxes at the time of invoicing, Contractor assigns any payments to be made for performance under this contract to the County Tax Assessor-Collector for the payment of delinquent taxes.

6. PROMPT PAYMENT ACT: TEX. GOV'T CODE ANN., ch 2251 (Vernon Supp. 1995) requires that payments be made within 30 calendar days. If County fails to pay within 30 days, 1% percent per month interest must be added at the time payments are made. The law does not apply if the terms of a federal grant, contract, regulation, or statute prevent local governments from making timely payments with federal funds. Contractors and subcontractors must pay their suppliers 1% percent per month interest if the supplier is not paid within 10 calendar days after the contractor or subcontractor receives payment. Contractors must apply for interest payments within 6 months of submitting a proper invoice if they believe such interest was due but not paid. Interest begins accruing 30 days after either of the following, whichever is later: (i) satisfactory delivery or performance has been completed, or, (ii) a correct invoice is received at the designated place.

7. FOB POINT: Delivery of all products under this contract, if any, shall be made Free on Board to final destination, at the address shown in this contract or as indicated on each Purchase Order placed against this contract. The title and risk of loss of the goods shall not pass to County until acceptance takes place at the F.O.B. point.

8. INSPECTION AND ACCEPTANCE: The County office or department receiving items pursuant to this contract shall inspect and accept only those items that are satisfactory to them, and reject those items which are damaged or which do not conform to specifications. Contractor shall be responsible for the proper labeling, packing, and delivery to final destination, including replacement of rejected deliveries.

9. VARIATION IN QUANTITY: No variation in the quantity of any item called for by this contract will be accepted unless such variation has been caused by conditions of loading, shipping, or packing, or allowances in manufacturing processes, and then only to the extent, if any, specified elsewhere in this contract.

10. OFFICIALS NOT TO BENEFIT: If a member of Commissioners Court belongs to a cooperative association, the County may purchase equipment or supplies from the association only if no member of the Commissioners Court will receive a pecuniary benefit from the purchase, other than as reflected in an increase in dividends distributed generally to members of the association.

11. NONDISCRIMINATION; CIVIL RIGHTS/ADA COMPLIANCE:

- (a) Contractor shall not engage in employment practices that have the effect of discriminating against employees or prospective employees because of age, race, color, sex, creed, national origin or handicapped condition.
- (b) Contractor shall provide all services and activities required in a manner that would comply with the Civil Rights Act of 1964, as amended, the Rehabilitation Act of 1973, Public Law 93-1122, Section 504, and with the provisions of the Americans With Disabilities Act of 1990, Public Law 101-336 [S 933] if Contractor were an entity bound to comply with these laws.

12. CHANGES:

- (a) This Contract may be amended only by written instrument signed by both County and Contractor. It is acknowledged by Contractor that NO OFFICIAL, EMPLOYEE, AGENT OR REPRESENTATIVE OF COUNTY HAS ANY AUTHORITY, EITHER EXPRESS OR IMPLIED, TO CHANGE THE SCOPE OF THIS CONTRACT OR OTHERWISE AMEND THIS CONTRACT, OR ANY ATTACHMENTS HERETO, UNLESS EXPRESSLY GRANTED THAT AUTHORITY BY THE COMMISSIONERS COURT.
- (b) Contractor shall submit all requests for changes to this Contract or any attachment(s) to it to the Purchasing Manager. The Purchasing Manager shall present Contractor's requests to Commissioners Court for consideration.

13. REPRESENTATIONS:

(a) Contractor represents that he has thoroughly examined the drawings, specifications, schedule, instructions and all other contract documents. Contractor has made all investigations necessary to be thoroughly informed regarding plant and facilities for delivery of material, equipment and/or services as required by the proposal conditions.

(b) The Contractor's delivery time includes weekends and holidays.

(c) Contractor certifies that he is a qualified, bondable business entity that he is not in receivership or contemplates it, and has not filed for bankruptcy. He further certifies that the Company, Corporation, Partnership, or Sole Proprietorship is not delinquent with respect to payment of County property taxes.

(d) Contractor warrants that all applicable patents and copyrights which may exist on items that will be supplied under the contract have been adhered to and further warrants that County shall not be liable for any infringement of those rights. Warranties granted County shall apply for the duration of this contract or for the life of equipment or supplies purchased, whichever is longer. County must not extend use of the granted exclusive rights to any other than County employees or those with whom County has established a relationship aimed at furthering the public interest, and then only for official public uses. County will not knowingly or intentionally violate any applicable patent, license, or copyright. Contractor must indemnify County, its officers, agents, and employees against all claims, suits, and liability of every kind, including all expenses of litigation, court costs, and attorney's fees arising in connection with any alleged or actual infringement of existing patents, licenses or copyrights applicable to items sold.

(e) The Contractor warrants that upon execution of a contract with the County, he will not engage in employment practices which have the effect of discriminating against employees or prospective employees because of age, religion, race, color, sex, creed, handicap, or national origin and will submit reports as the County may require to assure compliance.

(f) Contractor warrants to County that all items delivered and all services rendered will conform to the specifications, drawings, or other descriptions furnished or incorporated by reference, and will be of merchantable quality, good workmanship, and free from defects. Contractor further agrees to provide copies of applicable warranties or guarantees to the Purchasing Manager. Copies will be provided within 10 days after the Notice of Award is issued. Return of merchandise under warranty shall be at Contractor's expense.

(g) The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees and established commercial selling agencies maintained by the Contractor to secure business. For breach of this warranty, County shall have the right to terminate this contract without liability, or in its discretion to deduct from the contract price, or otherwise recover, the full amount of commission, percentage, brokerage, or contingent fee.

14. SUBCONTRACTS:

(a) Contractor shall not enter into any subcontracts for any service or activity relating to the performance of this Contract without the prior written approval or the prior written waiver of this right of approval from County. IT IS ACKNOWLEDGED BY CONTRACTOR THAT NO OFFICER, AGENT, EMPLOYEE OR REPRESENTATIVE OF COUNTY HAS THE AUTHORITY TO GRANT SUCH APPROVAL OR WAIVER UNLESS EXPRESSLY GRANTED THAT SPECIFIC AUTHORITY BY THE COMMISSIONERS COURT.

(b) If a subcontract is approved, Contractor must make a "good faith" effort to take all necessary and reasonable steps to insure HUBs maximum opportunity to be subcontractors under this Contract. Contractor must obtain County approval of all proposed HUB subcontractors through the Purchasing Agent. Failure by Contractor to make a good faith effort to employ HUBs as subcontractors constitutes a breach of this Contract and may result in termination of this Contract.

15. ASSIGNMENT:

(a) The parties to this Contract shall not assign any of the rights or obligation hereunder without the prior written consent of the other party. NO OFFICIAL, EMPLOYEE, REPRESENTATIVE OR AGENT OF COUNTY HAS THE AUTHORITY TO APPROVE ANY ASSIGNMENT UNDER THIS CONTRACT UNLESS THAT SPECIFIC AUTHORITY IS EXPRESSLY GRANTED BY COMMISSIONERS COURT.

(b) The terms, provisions, covenants, obligations and conditions of this Contract are binding upon and inure to the benefit of the successors in interest and the assigns of the parties to this Contract if the assignment or transfer is made in compliance with the provisions of this Contract.

(c) Contractor remains responsible for the performance of this Contract

when there is a change of name or change of ownership. If a change of name is required, the Purchasing Manager shall be notified immediately. No change in the obligation of or to Contractor will be recognized until it is approved by Commissioners Court.

16. DISPUTES AND APPEALS: The Purchasing Manager acts as the County representative in the issuance and administration of this contract in relation to disputes. Any document, notice, or correspondence not issued by or to the Purchasing Manager or other authorized County person, in relation to disputes is void unless otherwise stated in this contract. If the Contractor does not agree with any document, notice, or correspondence issued by the Purchasing Manager, or other authorized County person, the Contractor must submit a written notice to the Purchasing Manager within ten (10) calendar days after receipt of the document, notice, or correspondence, outlining the exact point of disagreement in detail. If the matter is not resolved to the Contractor's satisfaction, Contractor may submit a written Notice of Appeal to the Commissioners Court, through the Purchasing Manager, if the Notice is submitted within ten (10) calendar days after receipt of the unsatisfactory reply. Contractor then has the right to be heard by Commissioners Court.

17. MEDIATION: When mediation is acceptable to both parties in resolving a dispute arising under this Agreement, the parties agree to use a mutually agreed upon mediator, or a person appointed by a court of competent jurisdiction, for mediation as described in Section 154.023 of the Texas Civil Practice and Remedies Code. Unless both parties are satisfied with the result of the mediation, the mediation will not constitute a final and binding resolution of the dispute. All communications within the scope of the mediation shall remain confidential as described in §154.073 of the Texas Civil Practice and Remedies Code, unless both parties agree, in writing, to waive the confidentiality.

18. FORCE MAJEURE

If the performance by either party of any of its obligations under this Contract is interrupted or delayed due to an act of God or the common enemy or as the result of war, riot, civil commotion, sovereign conduct, or the act or conduct of any person or persons not a party to this Contract, then it shall be excused from performance for such period of time as is reasonably necessary to remedy the effects thereof.

19. NON-WAIVER OF DEFAULT:

(a) No payment, act or omission by County may constitute or be construed as a waiver of any breach or default of Contractor which then exists or may subsequently exist. NO OFFICIAL, AGENT, EMPLOYEE OR REPRESENTATIVE OF COUNTY MAY WAIVE ANY BREACH OF ANY TERM OR CONDITION OF THIS CONTRACT UNLESS EXPRESSLY GRANTED THAT SPECIFIC AUTHORITY BY THE COMMISSIONERS COURT.

(b) All rights of County under this Contract are specifically reserved and any payment, act or omission shall not impair or prejudice any remedy or right to County under it. Any right or remedy in this Contract shall not preclude the exercise of any other right or remedy under this Contract or under any law, nor shall any action taken in the exercise of any right or remedy be deemed a waiver of any other rights or remedies.

20. TERMINATION FOR DEFAULT: Failure by either County or Contractor to perform any provisions of this Contract shall constitute a breach of contract. Either party may require corrective action within ten (10) calendar days after date of receipt of written notice citing the exact nature of the other's breach. Failure to take corrective action or failure to provide a satisfactory written reply excusing such failure within the ten (10) calendar days shall constitute a default. The defaulting party shall be given a twenty (20) calendar day period within which to show cause why this Contract shall not be terminated for default. All notices for corrective action, breach, default or show cause on behalf of County shall be issued by the Purchasing Manager or County legal representative only, and all replies to the same shall be made in writing to the County Purchasing Manager or County legal representative at the address provided herein. Notices issued by or to anyone other than the Purchasing Manager or County legal representative shall be null and void, and shall be considered as not having been issued or received. County reserves the right to enforce the performance of this Contract in any manner prescribed by law in case of default and may contract with another party with or without competition or further notification to the contractor. At a minimum, Contractor shall be required to pay any difference in the cost of securing the services covered by this Contract, or compensate for any loss or damage to the County derived hereunder if it becomes necessary to contract with another

source because of a default, plus reasonable administrative costs and attorney's fees. In the event of termination for default, County, its agents or representatives, shall not be liable for loss of any profits anticipated under this Contract.

21. TERMINATION FOR CONVENIENCE: County reserves the right to terminate this Contract upon thirty (30) days written notice for any reason deemed by the Commissioners Court to serve the public interest, or resulting from any governmental law, ordinance, regulation, or court order. Termination for convenience shall not be exercised with the sole intention of awarding the same or similar contract requirements to another source. In the event of such termination, County shall pay Contractor those costs directly attributable to work done in preparation for compliance with this Contract prior to termination; provided, however, that no costs shall be paid which are recoverable in the normal course of the business in which Contractor is engaged, nor shall County pay any costs which can be mitigated through the sale of supplies or inventories. If County pays for the cost of supplies or materials obtained for use under this Contract those supplies or materials shall become the property of County and shall be delivered to the FOB point shown in this Contract, or as designated by the Purchasing Manager. County shall not be liable for loss of any profits anticipated under this Contract.

22. GRATUITIES: Contractor shall not provide any gratuity in any form, including entertainment, gifts, or otherwise, to any employee, buyer, agent, or representative of County with a view to securing a contract, or securing favorable treatment with respect to the award or amendment, or the making of any determination with respect to the performance of this Contract. County may terminate this Contract if it is found that gratuities of any kind including entertainment, or gifts were offered or given by the Contractor or any agent or representative of the Contractor, to any County Official or employee with a view toward securing favorable treatment with respect to this contract. If this Contract is terminated by the County pursuant to this provision, County shall be entitled, in addition to any other rights and remedies, to recover from the Contractor at least three times the cost incurred by Contractor in providing the gratuities.

23. COVENANT AGAINST CONTINGENT FEES: Contractor represents and warrants that no persons or selling agency has been retained to solicit this Contract upon an understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial selling agencies maintained by the Contractor to secure business. For breach or violation of this warranty, County shall have the right to terminate this Contract without liability, or in its discretion to, as applicable, add to or deduct from the Contract price for consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

24. COUNTY ACCESS: Contractor shall maintain and make available for inspection, audit or reproduction by any authorized representative of County all books, documents, and other evidence pertinent to the costs and expenses of this Contract, including but not limited to both direct and indirect costs, cost of labor, material, equipment, supplies, and services, and all other costs and expenses of whatever nature for which reimbursement is claimed under this Contract. All required records shall be maintained until an audit is completed and all required questions arising therefrom are resolved, or three (3) years after completion of the contract term, whichever occurs first; provided, however, the records will be retained beyond the third year if an audit is in progress or the finding of a completed audit have not been resolved satisfactorily.

25. FORFEITURE OF CONTRACT:

- (a) The selected Offeror must forfeit all benefits of the contract and County must retain all performance by the selected Offeror Contractor and recover all consideration or the value of all consideration paid to the selected Offeror pursuant to the contract if:
- (b) The selected Offeror was doing business at the time of submitting its proposal offer or had done business during the 365- day period immediately prior to the date on which its proposal offer was due with one or more Key Contracting Persons if the selected Offeror failed to disclose the name of any such Key Contracting Person in its offer; or
- (c) The selected Offeror does business with a Key Contracting Person after the date on which the offer that resulted in the contract is submitted and prior to full performance of the contract.

26. CONTRACTOR CLAIMS NOTIFICATION:

(a) If any claim, or other action, that relates to Contractor's performance under this Contract, including proceedings before an administrative agency, is made or brought by any person, firm, corporation, or other entity against Contractor, Contractor shall give written notice to County of the following information within ten (10) working days after being notified of it:

- (1) The existence of the claim, or other action;
- (2) The name and address of the person, firm, corporation or their entity that made a claim, or that instituted any type of action or proceeding;
- (3) The alleged basis of the claim, action or proceeding;
- (4) The court or administrative tribunal, if any, where the claim, action or proceeding was instituted; and
- (5) The name or names of any person against whom this claim is being made.

(b) Except as otherwise directed, Contractor shall furnish to County copies of all pertinent papers received by Contractor with respect to making these claims or actions and all court pleadings related to the defense of these claims or actions.

27. CERTIFICATION OF ELIGIBILITY: This provision applies if the anticipated Contract exceeds \$100,000. By submitting a bid or proposal in response to this solicitation, the bidder/proposer certifies that at the time of submission, he/she is not on the Federal Government's Excluded Parties List System (www.epls.gov), which details a listing of suspended, ineligible, or debarred contractors. In the event of placement on the list between the time of bid/proposal submission and time of award, the bidder/proposer will notify the Hays County Purchasing Manager. Failure to do so may result in terminating this Contract for default.

28. CONTRACTOR LIABILITY, INDEMNIFICATION AND CLAIMS NOTIFICATION: Contractor shall indemnify County, its officers, agents, and employees, from and against any and all third party claims, losses, damages, causes of action, suits, and liability of every kind whether meritorious or not and, including all expenses of litigation, court costs, and reasonable attorney's fees, arising in connection with the services provided by Contractor under this Contract. It is the expressed intention of the Parties to this Contract, both Contractor and County, that the indemnity provided for in this paragraph is indemnity by Contractor to indemnify and protect County from the consequences of Contractor's actions.

29. CONSTRUCTION OF CONTRACT:

- (a) This Contract is governed by the laws of the United States of America and the State of Texas and all obligations under this Contract are performable in Hays County, Texas. Venue for any dispute arising out of this Contract will lie in the appropriate court of Hays County, Texas.
- (b) If any portion of this Contract is ruled invalid, illegal, or unenforceable in any respect by a court of competent jurisdiction, the remainder of it shall remain valid and binding.
- (c) Headings and titles at the beginning of the various provisions of this Contract have been included only to make it easier to locate the subject matter covered by that part, section or subsection and are not to be used in construing this Contract.
- (d) When any period of time is stated in this Contract, the time shall be computed to exclude the first day and include the last day of period. If the last day of any period falls on a Saturday, Sunday, or a day that Hays County has declared a holiday for its employees, these days shall be omitted from the computation. All hours in this Contract are stated in Central Standard Time from 2:00 o'clock a.m. on the first Sunday of November until 2:00 o'clock a.m. on the second Sunday of March and in Central Daylight Saving Time from 2:00 o'clock a.m. on the second Sunday of March until 2:00 o'clock a.m. on the first Sunday of November or such other dates as may be adopted for the activation of Daylight Savings Time in the United States in future years.
- (e) Words of any gender in this Contract shall be construed to include any other gender and words in either number shall be construed to include the other unless the context clearly requires otherwise.
- (f) Provisions, Words, Phrases, and Statutes, whether incorporated by actual use or by reference, shall be applied to this Contract in accordance with Texas Government Code, §§ 312.002 and 312.003.

30. ADDITIONAL GENERAL PROVISIONS:

- (a) Contractor must comply with all Federal and State laws and regulations, City and County ordinances, orders, and regulations, relating in any way to this Contract.
- (b) Contractor must secure all permits and licenses, pay all charges and fees, and give all notices necessary for lawful operations.
- (c) Contractor must pay all taxes and license fees imposed by the Federal

and the State Governments and their agencies and political subdivisions upon the property and business of Contractor.

(d) Despite anything to the contrary in this Contract, if the Contractor is delinquent in payment of property taxes at the time of providing services, Contractor assigns the amount of any payment to be made for services provided under this Contract equal to the amount Contractor is delinquent in property tax payments to the Hays County Tax Assessor-Collector for the payment of the delinquent taxes.

(e) In this subsection, "County Building" means any County-owned buildings and does not include buildings leased by County. Contractor must not execute any mortgage, or issue any bonds, shares of stock, or other evidence of interest in County Buildings.

31. INTERPRETATION OF CONTRACT:

(a) This document contains the entire agreement between the parties relating to the rights granted and the obligations assumed. Any prior agreements or representations not expressly set forth in this agreement are of no force. Any oral representations or modifications concerning this agreement shall be of no force except a subsequent modification in writing signed by the Purchasing Manager. No official, representative, employee, or agent of the County has any authority to modify or amend this contract except pursuant to specific authority to do so granted by the Commissioners Court.

(b) If inconsistency exists between provisions of this solicitation, the inconsistency shall be resolved by giving precedence in the following ascending order of precedence:

- (1) The Schedule of Items/Services
- (2) Terms and Conditions of Invitation for Bids;
- (3) General Provisions;
- (4) Other provisions, whether incorporated by reference or otherwise; and
- (5) The specifications.

(c) If any contract provision shall for any reason be held invalid, illegal, or unenforceable in any respect, invalidity, illegality, or unenforceability shall not affect any other provision, and this contract shall be construed as if invalid, illegal or unenforceable provision had never been contained.

(d) This contract shall be governed by the laws of Texas and all obligations are performable in Hays County, Texas.

(e) If a word is used with reference to a particular trade or subject matter or is used as a word of art, the word shall have the meaning given by experts in that particular field.

(f) Words in the present or past tense include the future tense. The singular includes the plural and the plural includes the singular. The masculine gender includes the feminine and neuter genders.

(g) The headings in this contract have been included only to make it easier to locate the subject covered by each provision and are not to be used in construing this contract.

(h) Provisions, words, phrases, and statutes, whether incorporated by actual use or by reference, shall be applied to this contract in accordance with TEX. GOV'T CODE ANN., SEC 312.002, 312.003 (Vernon 1991).

32. MODIFICATIONS:

(a) The County Purchasing Manager may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one of the following:

- (1) Drawings, designs or specifications when the supplies to be furnished are to be specifically manufactured for the County in accordance with the drawings, designs, or specifications.
- (2) Method of shipment or packing.
- (3) Place of deliveries.
- (4) Correction of errors of a general administrative nature or other mistakes, the correction of which does not affect the scope of the contract, or does not result in expense to the Contractor.
- (5) Description of items to be provided.
- (6) Time of performance (i.e. hours of day, days of week, etc)

(b) If any such change causes an increase or decrease in the cost of, or time required for, performance of any part of the work under this contract whether, or not changed by the order, the Commissioners Court shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract. The Contractor must submit any "proposal for adjustment" under this clause within thirty (30) calendar days from the date of receipt of the written order. However, if the County Purchasing Manager decides that the facts justify it, the County Purchasing Manager may receive and act upon a proposal submitted before final payment of the contract. If the Contractor's proposal includes the cost of property made obsolete or excess by the change, the County shall have the right to prescribe the manner of disposition of the property. Failure to agree to any adjustment shall be a

dispute under the Disputes and Appeals clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

34. PRICE CHANGES: The prices offered shall remain firm for the period of the contract. The prices offered shall also remain firm for the option years should the County choose to exercise the option to renew, except for changes that are industry wide and beyond the control of the contractor. If such changes do occur, it will be the responsibility of the contractor to provide documentation to Hays County substantiating the changes to the bid prices. Any price changes must be approved by Hays County.

35. INSURANCE AND LIABILITY: Unless superceded by Special Provisions of this IFB, during the period of this contract, contractor shall maintain at his expense, insurance with limits not less than those prescribed below. With respect to required insurance, Contractor shall;

(a) Name County as additional insured as its interests may appear.

(b) Provide County a waiver of subrogation.

(c) Provide County with a thirty (30) calendar day advance written notice of cancellation or material change to said insurance.

(d) Provide the County Purchasing Manager at the address shown on Page 1 of this contract, a Certificate of Insurance evidencing required coverage within ten (10) calendar days after receipt of Notice of Award. **Also, please assure your certificate contains the contract number as indicated on the Contract Award form when issued by Hays County.**

(e) Submit an original certificate of insurance reflecting coverage as follows:

	<u>Automobile Liability:</u>
Bodily Injury (Each person)	\$250,000.00
Bodily Injury (Each accident)	\$500,000.00
Property Damage	\$100,000.00
	<u>General Liability (Including Contractual Liability):</u>
Bodily Injury	\$500,000.00
Property Damage	\$100,000.00
	<u>Excess Liability:</u>
Umbrella Form	Not Required
	<u>Labor Liability:</u>
Worker's Compensation	Meeting Statutory Requirements

CEMETERY MAINTENACE
IFB #2011-B06
HAYS COUNTY, TEXAS

I. GENERAL CONDITIONS

A. Bids are solicited for furnishing the services set forth in this Invitation for Bid. Completed bids must be received in the Purchasing Office before 2:00 p.m. on the "opening date". All bids must be in a sealed envelope clearly marked with the bid number and opening date.

B. Bids received in the County Purchasing Office after submission deadline shall be returned unopened and will be considered void and unacceptable. Hays County is not responsible for lateness of mail, carrier, etc. and time/date stamp clock in the Purchasing office shall be the official time of receipt. Hays County does not accept fax bids.

C. Bids may be withdrawn at any time prior to the official opening. Alterations made before opening time must be initialed by bidder guaranteeing authenticity.

D. The county is tax exempt; therefore tax shall not be included in this offer.

E. The bidder agrees, if this bid is accepted, to furnish any and all items upon which prices are offered, at the price(s) and upon the terms and conditions contained in the specifications. The period for acceptance of this bid proposal will be thirty (30) calendar days unless a different period is noted by bidder.

F. The County reserves the right to accept or reject in part or in whole any bids submitted, and to waive any technicalities for the best interest of the county.

G. Invoices shall be sent directly to the Hays County Auditor, 111 E. San Antonio Street, Suite 100, San Marcos, Texas 78666, Attention: Accounts Payable. Payments will be processed after notification from the County Representative that all services have been performed satisfactorily.

H. Hays County terms of invoice are net 30 days from statement date.

I. The bid award shall be based on but not necessarily limited to, the following factors:

1. Total Price
2. Special needs and requirements of Hays County
3. Vendor's past performance record with Hays County
4. Hays County's evaluation of vendor's ability to provide services
5. References
6. Relevant Experience

J. If bid is accepted and approved by Commissioners Court, this bid becomes the contract. No negotiations, decisions, or actions shall be initiated or executed by any vendor as a result of any

discussions with any county employee. Only those communications that are in writing from the Purchasing Manager shall be considered as a duly authorized expression on behalf of the County. No oral agreements either expressed or implied will be considered in fulfilling this contract. No additional terms will become part of this contract with the exception of Commissioners Court approved change orders.

K. Any interpretations, corrections or changes to this invitation for bid and specifications will be made by addenda. Sole issuing authority of addenda shall be vested in Hays County Purchasing Manager. Addenda will be mailed to all who are known to have received a copy of this invitation for bid. Bidders shall acknowledge receipt of all addenda.

L. The County of Hays does not discriminate on the basis of race, color, national origin, sex, religion, age and disability in employment or the provision of services.

M. The successful bidder will be required to furnish proof of insurance for Workers' Comp (See TWCC Rule 110.110 attached) Auto Liability and General Liability before any work may begin.

N. The successful bidder expressly warrants that all service specified in the IFB will be performed with care and diligence and in accordance with all specifications of the IFB. The successful bidder agrees to correct any deficiencies in its performance of services upon notification by the County and without additional expense to the County.

O. Failure to perform any provision will constitute a default of contract, in which case, corrective action shall take place within ten (10) days from the date of written notice citing the nature of breach. Failure to take corrective action or to provide a satisfactory written reply excusing such failure within the prescribed ten (10) days will authorize the County to terminate this agreement by written notice.

P. Funds for payment have been provided through Hays County budget approved by the Commissioners Court for the fiscal year only. State of Texas prohibits the obligation and expenditure of public funds beyond the fiscal year for which a budget has been approved. Therefore, anticipated orders or other obligations that may arise past the end of the current Hays County fiscal year shall be subject to budget approval.

II. Specifications

A. **Scope:** The successful bidder agrees to provide cemetery/grounds maintenance as required in this IFB for the following locations:

1. San Pedro Cemetery, located on the corner of Posey Rd and CR 266, approx 5 acres
2. Guadalupe Cemetery, located on Post Road, approx 5 acres
3. San Marcos/Blanco Cemetery, located on post Road, approx 10 acres
4. Kyle Family Pioneer cemetery, located on Post Road, approx ½ acre
5. Cemeterio Del Rio, San Marcos, located off FM 621 (Staples Rd) approx 4 acres
6. Coronado Cemetery, Buda, located on Mathis Lane, approx 2 acres
7. Cocke Cemetery, off Hy Road, Buda, approx 1 acre
8. Hays County Indigent Cemetery, adjacent to San Pedro Cemetery, Approx. 3 acres

Normal Maintenance: The contractor shall provide all labor, equipment, tools, materials, chemicals, supplies, supervision, incidentals, and other items or services necessary to perform normal maintenance of cemeteries. Normal maintenance is defined as mowing all areas within the property limits, trimming around all gravesites, trimming along the interior and exterior of all fence lines (exterior fence line trimming is not required at some sites), removing and disposing of dead vegetation, removing and disposing of deteriorated grave decorations, pickup and disposal of trash, garbage, and litter, collection and disposal of fallen limbs, cutting and disposal of sprouted brush/saplings (2" diameter and less) as necessary or as directed by the County Representative. All materials collected for disposal shall be removed from the site on the day work is performed at each site. All cut brush and sapling stumps shall be treated with an approved herbicide. No tree or sapling stump removal will be required under Normal Maintenance. No whole tree removal will be required under Normal Maintenance.

Additional Maintenance Services: Additional maintenance services, as requested by the County Representative, shall be billed on a per man-hour basis. These additional services may include, but will not be limited to, ground-level tree trimming (pole-saw use), whole tree removal, windstorm debris cleanup, and clean-up of vandalized areas. Disposal of debris generated and collected by additional maintenance services shall be the responsibility of the County.

- B. A designated County Representative and the successful bidder shall tour properties a minimum of once every three (3) months to determine which saplings and brush, if any, are to be removed during the next maintenance cycle. Upon notification that maintenance is required, the work must be done within one week of the notification. The County Representative shall be notified in writing or by email two (2) days prior to work beginning on any site. The County Representative shall be notified by phone when crews arrive at each site.
- C. Weeds in the gravel on gravesites shall be treated with an approved herbicide. All small trees, overgrown shrubs, or other plant material which germinates or is currently growing

near headstones, curbs or other objects that could be damaged, shall be removed or cut and treated with herbicide.

- D. The successful bidder shall furnish the County with a list of any and all herbicides proposed for use. The County shall have the authority to reject use of any herbicides it feels may cause damage to the environment or headstones. All herbicides will be applied by a licensed applicator, on the payroll of the Contractor, whose certification is on file at the Purchasing office.
- E. All fence lines, sidewalks, drives, walkway, and any concreted areas shall be edged either with approved herbicides, power equipment, or hand tools as directed by the County Representative.
- F. No soft headstones are known to exist in any listed cemetery. If such stones are found, it will be the contractor's responsibility to notify the County Representative. No further maintenance activities that physically touch these soft headstones will be allowed or required by the County.
- G. Contractor caused damages to fences, gates, grave markers and other fixed objects shall be repaired at the expense of the successful bidder. Items not repaired or are repaired improperly will be repaired by Hays County, with the costs deducted from the payment due to the successful bidder.
- H. Hays County will not be held liable for personal injuries sustained by Contractor employees or damage to contractor's equipment, tools, or vehicles that occur during the performance of duties specified in this IFB.
- I. The successful bidder shall be awarded a one (1) year contract with the County having the option to renew for three (3) additional one year periods. Refusal of either party to exercise this option to renew shall cause this contract to expire on the original expiration date.
- J. During the period of this contract, the successful bidder shall maintain at its expense, insurance with limits not less than those prescribed below:

Automobile Liability:

Bodily Injury (each person).....\$250,000.00
Bodily Injury (each accident).....\$500,000.00
Property Damage.....\$100,000.00

General Liability:

Bodily Injury.....\$500,000.00
Property Damage.....\$100,000.00

Workmen Compensation.....Statutory

Additionally, the following is required of the successful bidder:

- Name the County as additional insured
- Provide the County with a thirty (30) day advance written notice of cancellation or material change to said insurance
- Provide the Purchasing Manager, a Certificate of Insurance evidencing required coverage within ten (10) days after receipt of contract award

K. Documentation: Bidder shall submit the following documents:

1. Certificate of Insurance (after award)
2. Three references (with bid)
3. Name, title and telephone number of company representative who may be contacted regarding performance deficiencies (with bid)
4. Name and telephone number of the company representative who can be contacted regarding scheduling of work (with bid)

L. An optional pre-bid conference is scheduled for all prospective bidders on June 23, 2011 at 2:00 p.m. Pre-bid conference will be held at the Hays County RPTP (Road Dept) Office at 2171 Yarrington Road, San Marcos, Texas

1. Bidders having questions concerning specifications should submit them in writing or by email cindym@co.hays.tx.us to the Purchasing Manager. Questions should be submitted not later than (2) two days prior to the date set for the pre-bid conference so that appropriate information may be researched and made available during the pre-bid conference to all concerned.

M. Bidder is responsible for familiarization with the work required prior to the bidding. The bidder is encouraged to become familiar with, and take into consideration, site conditions which may affect the work.

N. Normal maintenance as directed by the County Representative will be performed **on a per site basis**. During the season in which wildflowers bloom, the flowers shall not mowed until seeds have dropped or as directed by the County Representative. **The County will pay on a per site basis**. Weather conditions and actual growth of grass will determine the maintenance schedule and the actual number of sites maintained. During the following months, maintenance shall be performed one (1) week before the holidays listed or as directed by the County Representative:

January: no maintenance expected

February: no maintenance expected

March: no maintenance expected

April: Easter-maintenance as directed during the week prior to Good Friday, avoid cutting large patches of wildflowers

May: Mother's Day-maintenance as directed during the week prior to Mother's Day, avoid cutting large patches of wildflowers---and maintenance required during the week prior to Memorial Day, avoid cutting large patches of wildflowers

June: Father's Day-maintenance as directed during the week prior to Father's Day

July: Independence Day-maintenance as directed during the week prior to Independence Day **August:** maintenance as directed by County Representative

September: Labor Day-maintenance as directed during the week prior to Labor Day

October: maintenance as directed during the last week of the month

November: Veteran's Day-maintenance as directed during the week prior to Veteran's Day and maintenance required during the week prior to Thanksgiving Day

December: Christmas-maintenance as directed during the week prior to Christmas

O. In addition to the schedule stated in "N" above, upon notice from the County Representative that normal maintenance is required at a site, the contractor shall perform the required work within one (1) week of notification.

BID SHEET
IFB #2011-B06

Bid Name: Cemetery Maintenance

Due Date: July 14, 2011 no later than 2:00 p.m.

Normal Maintenance - Price per Site:

1. San Pedro Cemetery \$ 600.00
2. Guadalupe Cemetery \$ 350.00
3. San Marcos/Blanco Cemetery \$ 400.00
4. Kyle Family Pioneer Cemetery \$ 180.00
5. Cemeterio Del Rio \$ 350.00
6. Coronado Cemetery \$ 125.00
7. Cocke Cemetery \$ 150.00
(May require "per man hour" work to get it into normal maintenance condition)
8. Hays County Indigent Cemetery \$ \$100.00

*initial
Recommended 3 DAY clean up
at Our hourly Rate.*

Additional services as directed by the County Representative:

Per Man-Hour Rate \$ 40.00

*Dripping Springs
Lawn Care*

The undersigned affirms that they are duly authorized to submit this bid, that this bid has not been prepared in collusion with any other bidder, and that the contents of this bid has not been communicated to any other bidder prior to the official opening of this bid.

Vendor Name: Dripping Springs Lawn Care

Rep's Name: Monte L. Glosson J.R.

Mailing Address: 31640 Ranch Road 12

Dripping Springs Texas 78620

Phone # 512-672-9595 Fax

Signature: 

Hays County reserves the right to accept or reject any and all bids.



OFFICE OF THE COUNTY AUDITOR

111 E. San Antonio St., Ste 100

San Marcos, Texas 78666

512-393-2283

www.co.hays.tx.us

Bill Herzog, CPA

County Auditor

bherzog@co.hays.tx.us

Cindy Maiorka CPPB

Purchasing Manager

cindym@co.hays.tx.us

ADDENDUM #1

June 27, 2011

TO: All Vendors Bidding

RE: IFB 2011-B06 Cemetery Maintenance

This addendum is being sent to inform vendors that the due date has been changed. The new due date is July 14, 2011 at 2 pm. Also there are changes that have been made to the specifications under Section II Specifications. Please take the time to read all pages of the document.

If you have any further questions please contact me at cindym@co.hays.tx.us.

Sincerely,

A handwritten signature in cursive script, reading "Cindy Maiorka CPPB", is written over a horizontal line.

Cindy Maiorka CPPB

Purchasing Manager

Please acknowledge receipt of this addendum by signing below and returning by email to cindym@co.hays.tx.us.

Signature

Company Name

Dripping Spring Lawn Care

Date

7-14-2011