

RESOLUTION

As a result of the public health emergency created by COVID-19, the Federal, State and local bans on meetings or gatherings, and pursuant to Governor Cuomo's Executive Order 202.1 issued on March 12, 2020, as amended from time to time, the City of Syracuse Industrial Development Agency (the "**Agency**") held a meeting on the 18th day of May, 2021, at 8:00 a.m., local time, electronically which was made available via Webex at: <https://syrgov.webex.com/syrgov/j.php?MTID=mf85888b2abcf240ee7b1b8bad91ce0fe>; (or by accessing the link on the Agency's website) and using meeting number 173 172 3216 and password GxbPQTzv867; or via telephone at (408) 418-9388 with access code: 173 172 3216, in conjunction with the matter set forth below.

The meeting was called to order by the Chair and upon the roll being duly called, the following members were:

PRESENT VIA TELE/VIDEOCONFERENCE (in accordance with the Governor's Executive Order 202.1): Kathleen Murphy, Steven Thompson, Kenneth Kinsey, Rickey T. Brown and Dirk Sonneborn

THE FOLLOWING PERSONS WERE ALSO PRESENT VIA TELE/VIDEOCONFERENCE (in accordance with the Governor's Executive Order 202.1): Staff Present: Judith DeLaney, Susan Katzoff, Esq., John Vavonese, Lori McRobbie Others Present: Christopher Bianchi, David Pida, Scott Dumas, Charles Wallace, Gail Cawley, Sarah Stevens, Christine Stevens, Ryan Benz, Rick Moriarty

The following resolution was offered by Dirk Sonneborn and seconded by Steve Thompson:

RESOLUTION APPROVING AGREEMENT WITH CUSTOM LAWN-SCAPES, INC. IN CONNECTION WITH LANDSCAPING SERVICES TO BE PERFORMED ON CERTAIN PROPERTY OWNED BY THE AGENCY

WHEREAS, the policy of the State of New York (the "**State**") set forth in Title 1 of Article 18-A of the General Municipal Law of the State, as amended (the "**IDA Act**"), is to promote the economic welfare, recreation opportunities and prosperity of its inhabitants and to actively promote, attract, encourage and develop recreation, economically sound commerce and industry through governmental action for the purpose of preventing unemployment and economic deterioration by the creation of industrial development agencies and to protect and promote the health of the inhabitants of the State and to increase trade through promoting the development of facilities to provide recreation for the citizens of the State and to attract tourists from other states; and

WHEREAS, City of Syracuse Industrial Development Agency (the "**Agency**") constitutes an industrial development agency established under the IDA Act and Chapter 641 of the Laws of

1979 of the State of New York, as amended from time to time (together with the IDA Act, the "*Act*") and is thereby authorized and empowered to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreation facilities, including industrial pollution control facilities, educational or cultural facilities, railroad facilities and certain horse racing facilities, thereby advance the job opportunities, health, general prosperity and economic welfare of the people of the State and improve their recreation opportunities, prosperity and standard of living; and

WHEREAS, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to acquire, hold and dispose of personal property for its corporate purposes; with the consent of the municipality, to use agents, employees and facilities of the municipality and pay the municipality its agreed proportion of the compensation or costs therefor; to appoint officers, agents and employees and pay their compensation out of funds of the Agency; make contracts and leases; to use gifts, grants, loans or contributions for any of its corporate purposes; and to all things necessary or convenient to carry out its purposes and exercise the powers expressly given in the IDA Act; and

WHEREAS, the Agency owns property located at 900 West Fayette Street in the City of Syracuse commonly known as Lipe Art Park (the "*Property*") and needs to maintain the grounds, including but not limited to, landscaping (the "*Work*"); and

WHEREAS, the Work is considered to be public works subject to NYS General Municipal Law Section 103; and

WHEREAS, in accordance with its procurement policy, the Agency sought three bids for the Work including bids from MWBE companies. Only one of the companies responded. Custom Lawn Scapes, Inc. (the "*Company*") responded with a proposal to undertake the Work pursuant to a contract on the same terms as they performed the Work last year; and

WHEREAS, the Agency is desirous of entering into a contract, for an amount not to exceed \$2,900 with the Company to undertake the Work in the at the Property from May 8, 2021 through November 30, 2021 (the "*Contract*"); and

WHEREAS, Custom Law Scapes has performed services for the Agency in the past and the Agency has been very satisfied with the work performed; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law of the State of New York, as amended, and the regulations of the Department of Environmental Conservation of the State of New York promulgated thereunder (collectively referred to hereinafter as "*SEQRA*"), the Agency is required to make a determination as to whether the "action" (as said quoted term is defined in SEQRA) to be taken by the Agency may have a "significant impact on the environment" (as said quoted term is utilized in SEQRA). The Agency has classified the execution and delivery of the Contract and the performance of the Work as a "Type II" action as that term is defined under SEQRA, and therefore no further review is required; and

NOW, THEREFORE, be it resolved by the members of the City of Syracuse Industrial Development Agency as follows:

Section 1. It is the policy of the State to promote the economic welfare, recreation opportunities and prosperity of its inhabitants and to actively promote, attract, encourage and develop recreation and economically sound commerce and industry for the purpose of preventing unemployment and economic deterioration.

Section 2. It is among the purposes of the Agency to acquire real property, promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of certain facilities, including commercial facilities, and thereby advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their recreation opportunities, prosperity and standard of living.

Section 3. The Agency hereby makes the following findings and determinations:

(a) The action authorized pursuant to this Resolution constitutes a Type II action under SEQRA and no further review is required.

(b) The Agency has the statutory authority to enter into the Contract for the performance of the Work and hereby authorizes same in accordance with the terms of this Resolution.

(c) The undertaking of the Work and the execution and delivery of the Contract is in furtherance of the Agency's corporate purposes and supports projects previously undertaken by the Agency and helps prevent economic deterioration and promote economic development, recreational opportunities and prosperity of the inhabitants of the City and help attract, encourage and develop recreation, economically sound commerce and industry in the Lakefront Redevelopment Area as well as the general prosperity and economic welfare of the people of the City in furtherance of the purposes of the Act.

Section 4. The Agency hereby authorizes the undertaking of the Work, subject to the execution of the Contract by and between the Agency and Company on substantially the same terms as attached hereto at **Exhibit "A"**. The (Vice)Chair and the Executive Director of the Agency are each hereby authorized, on behalf of the Agency, to negotiate, execute and deliver the Contract in accordance with the terms hereof and upon advice of counsel. The execution thereof by the (Vice)Chair or Executive Director shall constitute conclusive evidence of such approval.

Section 5. Should any court of competent jurisdiction determine that the Agency is not authorized under the Act to participate in the Contract, this Resolution shall automatically become null, void and of no further force and effect with respect thereto, and the Agency shall have no liability to the Company hereunder or otherwise.

Section 6. Bousquet Holstein PLLC, as counsel to the Agency, is hereby authorized to work with the Company and others to prepare, for submission to the (Vice)Chair and/or the Executive Director, all documents necessary to carry out the intent of this Resolution and to finalize the Contract.

Section 7. No covenant, stipulation, obligation or agreement contained in this Resolution or any other document referred to above shall be deemed to be the covenant, stipulation, obligation or agreement of any member, officer, agent or employee of the Agency in his or her individual capacity. None of the members or officers of the Agency shall be liable or be subject to any personal liability or accountability by reason of the execution of any document referred to above.

Section 8. The Secretary and/or staff of the Agency is hereby authorized and directed to distribute copies of this Resolution to and to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

Section 9. A copy of this Resolution shall be placed on file in the office of the Agency where the same shall be available for public inspection during business hours.

The question of the adoption of the foregoing Resolution was duly put to vote on a roll call, which resulted as follows:

	AYE	NAY
Kathleen Murphy	X	
Steven Thompson	X	
Kenneth Kinsey	X	
Rickey T. Brown	X	
Dirk Sonneborn	X	

The foregoing Resolution was thereupon declared duly adopted.

STATE OF NEW YORK)
) SS.:
COUNTY OF ONONDAGA)

I, the undersigned Secretary of the City of Syracuse Industrial Development Agency, **DO HEREBY CERTIFY** that I have compared the annexed extract of the minutes of the meeting of the City of Syracuse Industrial Development Agency (the "**Agency**") held on May 18, 2021, with the original thereof on file in my office, and that the same (including all exhibits) is a true and correct copy of the proceedings of the Agency and of the whole of such original insofar as the same relates to the subject matters referred to therein.

I FURTHER CERTIFY that: (i) all members of the Agency had due notice of such meeting; (ii) pursuant to Section 104 of the Public Officers Law (Open Meetings Law), as temporarily amended by Executive Order 202.1 issued on March 12, 2020, as amended from time to time ("**EO 202.1**"), such meeting was open to the general public and public notice of the time and how to participate in such meeting was duly given in accordance with such Section 104 and EO 202.1; (iii) the meeting was in all respects duly held; and (iv) there was a quorum present throughout.

I FURTHER CERTIFY that, as of the date hereof, the attached resolution is in full force and effect and has not been amended, repealed or rescinded.

IN WITNESS WHEREOF, I have set my hand and affixed the seal of the Agency on 6/2/2021 _____.

City of Syracuse Industrial Development Agency

DocuSigned by:

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Rickey T. Brown, Secretary

(S E A L)

EXHIBIT "A"

CONTRACTOR'S AGREEMENT

AGREEMENT made this day of **May, 2021** (the "Agreement") by and between the City of Syracuse Industrial Development Agency, a public benefit corporation organized and existing under the laws of the State of New York, having offices at 207 East Washington Street, 6th Floor, Syracuse, New York 13202 (hereinafter the "Agency") and having offices at hereinafter the "Contractor").

WITNESSETH

WHEREAS, it is the intention of the Agency to retain a contractor to provide maintenance and other services in connection with certain real property located at 900 West Fayette Street in the City of Syracuse (the "Property"); and

WHEREAS, procurement of maintenance and other services is subject to the Agency's Procurement Policy, revised as of March 2013; and

WHEREAS, the Contractor has responded to the Agency's request for quotations ("RFQ") and based upon Contractor's response to the RFQ the Agency wishes to retain the Contractor and the Contractor wishes to render the maintenance and other services in connection with the Property; and

WHEREAS, the Agency's Board of Directors authorized this Agreement by Resolution dated, and this Agreement is subject to such authorization;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Agency and Contractor agree as follows:

ARTICLE 1. Contractor's Services

Section 101. The Contractor shall perform and be responsible for the services set forth herein and all services set forth in Exhibit "A", which is attached hereto and made a part of this Agreement (the "Services"). The Contractor shall provide the Services specifically for the Property as designated on the map attached hereto as Exhibit "B" and made a part of this Agreement. In the event of a conflict or ambiguity between the provisions of this Agreement and Exhibits A or B, the provisions of this Agreement shall control.

ARTICLE 2. Term

Section 201. The term of this Agreement shall commence on **May 8, 2021** and end on **November 30, 2021**.

ARTICLE 3. Compensation

Section 301. The compensation to be provided the Contractor for providing the Services hereunder shall not exceed the authorization established by the Agency's Board of Directors in its Resolution authorizing this Agreement and shall not exceed the limits proscribed by the Agency's Procurement Policy. The authorization fixed by the Agency's Board of Directors for this Agreement is a not to exceed amount of \$ _____ for all Services under this Agreement.

Section 302. The Agency's Board of Directors retains the sole authority to authorize additional services and fix the compensation therefore. Any services rendered by the Contractor in connection with the Property will be deemed part of the Services agreed to be provided herein unless the Agency's Board of Directors gives prior approval authorizing such services as additional services.

Section 303. Requests for payment shall certify the amount and nature of the services completed, the basis of such, and shall be subject to the normal Agency payment procedures. The Agency may request additional information prior to authorizing payments.

Section 304. Contractor's acceptance of the final payment under this Agreement shall constitute and operate as a release to the Agency of all claims and liabilities arising out of the Agreement and the work hereunder.

Section 305. If this Agreement is terminated other than for cause, the Contractor shall be paid the reasonable value of services performed up to the date of termination but in no event more than the amount set forth above. The Agency shall have the absolute right to terminate the Agreement or the Services hereunder and such shall not be considered a breach of contract.

ARTICLE 4. General Provisions

Section 401. Insurance

The Contractor shall secure, at its expense: (i) a general liability insurance policy with contractual liability coverage having minimum limits of \$1,000,000 per occurrence and \$2,000,000 annual aggregate for personal injury and property damage; (ii) automobile liability insurance having a combined single limit of \$1,000,000 for bodily injury and property damage per occurrence/policy aggregate; (iii) commercial umbrella/excess insurance having limits of not less than \$2,000,000; (iv) Workers' Compensation and Employer's Liability Insurance, and all other insurance required by law, for all of its employees engaged in work under this contract. The Workers' Compensation and Employer's Liability Insurance policy or policies must cover the obligations of the Contractor in accordance with the provisions of New York Workers' Compensation Law, including Article 9 of the new York Workers' Compensation Law, known as the Disability Benefits Law, and any and all rules, regulations and procedures promulgated pursuant to the New York Workers' Compensation Law.

This Agreement shall be void and of no effect unless the Contractor procures the insurance policies described above and maintains the same in force during the term of this Agreement and for a period of three years thereafter with the limits noted above.

The Agency and the City shall be named as additional insureds on the Contractor's general liability policy, and the Certificates of Insurance shall provide for 30 days prior written notice of cancellation by certified mail to the City of Syracuse Industrial Development Agency. Certificates of such insurance coverage shall be delivered to the Agency and provide for 30 days prior written notice of cancellation by certified mail to the Agency. The certificates and notices shall be sent to Judith DeLaney, Executive Director, City of Syracuse Industrial Development Agency, 201 East Washington Street, 6th Floor, Syracuse, New York 13202.

Section 402. Indemnity and Defense

The Contractor shall defend, indemnify and hold harmless the Agency, (with counsel approved by the Agency's attorney) the City of Syracuse (the "City") (with counsel approved by the Corporation Counsel), and all of their respective officers, employees, or agents from any and all liability, suits, claims, damage, cost, or expense arising from injury or death to persons, damage to property, or claims against the Agency or the City arising from or caused in whole or in part by the Contractor's performance of services for the Agency pursuant to this Agreement.

The Contractor shall defend, indemnify and hold harmless the Agency (with counsel approved by the Agency's attorney), the City (with counsel approved by the Corporation Counsel), and all of their respective officers, employees, or agents from any and all liability, suits, claims, damage, cost, or expense arising from injury or death to persons, damage to property, or claims against the Agency or the City arising from or caused by any willful misconduct or intentional act of the Contractor.

The Contractor shall reimburse the Agency and/or the City for all costs or expenses incurred in the defense of any claim brought against the Agency and/or the City, and their respective officers, employees or agents arising out of or caused in whole or in part by the negligence or intentional acts of the Contractor in the performance of the Services for the Agency.

The Contractor agrees to repair any damages caused by the Contractor to the Property as quickly as possible. In the event such damage is not corrected within thirty (30) days, the Agency shall have the right to correct same and to either (i) deduct the cost thereof from any amounts due the Contractor hereunder, or (ii) submit a statement of the costs incurred for repair of the damage to Contractor, which the Contractor agrees to reimburse within thirty (30) days.

Section 403. Termination

The Agency shall have the absolute right to terminate this Agreement and such action shall not be deemed a breach of contract. The Agency may terminate this Agreement immediately upon notice delivered or mailed to Contractor.

Section 404. Amendment & Extent of Agreement

This Agreement may only be amended by a written instrument signed by the Chairman of the Agency's Board of Directors and the Contractor, provided that no change with respect to compensation or additional services may be made without the prior authorization of the Agency's Board of Directors. Except as provided above, the Contractor waives any right to rely on any oral or written communications from any person or any the Agency officers, employees, and/or agents purporting to amend the provisions of this Agreement. This Agreement, including any documents incorporated herein by reference, represents the entire agreement between the parties with respect to its subject matter and supersedes all prior negotiations, representations, or agreements, either written or oral, with respect to that subject matter.

Section 405. Damages and Delays

The Contractor agrees that no charges or claims for damages shall be made by him for any delays or hindrances from any cause whatsoever.

Section 406. Governing Law

This Agreement shall be governed by the laws of the State of New York. It is agreed that each and every provision of law required by law to be included herein shall be deemed to be included as though set forth at length. The parties agree that this Agreement does not waive or dispense with the requirements of any law. Any controversy, dispute or disagreement arising out of, or relating to, this Agreement, the breach thereof, or the subject thereof shall be venued in a court of competent jurisdiction in Onondaga County, New York.

Section 407. Assignment and Subcontractors

Neither this Agreement nor the services agreed to be provided may be assigned, sublet, or contracted out without the approval of the Agency's Board of Directors.

Section 408. Bankruptcy

In addition to any other provisions of this Agreement with respect to its termination, this Agreement shall terminate immediately upon the filing by or against Contractor of any petition (voluntary or involuntary) in bankruptcy or for reorganization or for any arrangement under any bankruptcy or insolvency law or for a receiver or for a trustee involving any property of Contractor.

Section 409. Stipulation

The Contractor stipulates that no member of the Agency's Board of Directors or any other Agency officer or employee forbidden by law is interested in, or will derive income from, or is a party to this Agreement.

Section 410. Non-Discrimination

The Contractor hereby agrees not to discriminate against any employee or applicant for employment on the basis of sexual, race, age, or affectional preference or orientation.

Section 411. Independent Contractor

The Contractor, in accordance with its status as an independent contractor, covenants and agrees that it will conduct itself consistent with such status and that it will neither hold itself out as nor claim to be an officer or employee of the Agency.

Section 412. Waiver

Failure of the Agency to insist upon strict performance of any of the covenants or conditions of this Agreement shall not be construed as a waiver or relinquishment of any of the covenants or conditions contained herein, but the same shall remain in full force and effect.

Section 413. Laws

Contractor, its agents, and employees shall comply with all applicable federal, state, and local laws, ordinances, rules, and regulations pertaining to the fulfillment of obligations under this Agreement.

[Signature page follows]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date noted below.

CITY OF SYRACUSE INDUSTRIAL
DEVELOPMENT AGENCY

By: _____
Judith DeLaney, Executive Director

CONTRACTOR

By: _____
Print Name and Title

EXHIBIT A

LAWN MAINTENANCE

Description of Work: The work applies to all lawn/grass areas at the property commonly known as Lipe Art Park at 900 West Fayette Street. The work shall consist of mowing grass and vegetation control to the stone path to prevent vegetation.

Lawn care procedures shall comply with the following guidelines, all substitutions must be approved by the Agency prior to providing services. The contractor must provide the Agency a “weekly memo” reporting work completed during the week’s duration.

A. Mowing

1. Mow all lawn areas weekly or as needed to keep lawn height between 2 ½ - 3” high throughout the entire season.
2. Use a string trimmer to mow any areas not accessible to mower. (i.e. growth around elements in lawn, guy wires and poles.
3. Spring and fall cleanup shall consist of clearing turf of leaves and related debris.

B. Vegetation control in Brick Pavement areas (all walkways)

1. Existing paved areas, stone ground cover areas and in and around retaining walls are to be maintained free of vegetation. Applications of weed killers are acceptable.

C. Documentation

1. The contractor shall report to the Agency any evidence of general vandalism, broken or non-functioning irrigation system equipment, settled or damaged lawn areas, insect and disease infestation of lawns or drought conditions.