

INVITATION TO BID

**City of Denison
Invitation to Bid – 2025 – 2026 Code Compliance Mowing**

NOTICE IS HEREBY GIVEN that the City of Denison (“City”) will accept sealed bids from qualified firms to provide mowing services within the city limits of Denison on properties with structures, rights of ways and vacant lots identified by Code Compliance that are in violation of the City of Denison ordinances regarding high grass and weeds in excess of 12+ inches in length. Code Compliance will compile lists of properties for abatement. Services would include, but not be limited to, mowing, edging, weed eating and debris removal and disposal.

Completed Bids must reach the office of the City Clerk, no later than **Friday, April 11, 2025, at 10:00 a.m.** Sealed Bids will be immediately opened and read aloud publicly following the close of the bid period. Any bid response received after closing time will be returned unopened. Bid responses may be modified or withdrawn at any time prior to the time set for opening bids.

Completed bid responses must be submitted to: **City of Denison
Attn: Chris Wallentine, City Clerk
300 W. Main St.
Denison, TX 75020**

Completed bid responses must be submitted in a sealed envelope clearly marked “Bid for 2025-2026 Code Compliance Mowing.”

Copies of the bid package may be obtained beginning on March 18, 2025 at Denison City Hall located at:
City of Denison – Code Compliance
300 W. Main
Denison, Texas 75020
Ph: (903) 465-2720

Or by emailing Robert Lay at rlay@denisontx.gov

The City reserves the right to reject any and all bids or to waive any informality in the bidding procedure, to accept only part of a bid (in the event of multiple-item bids), to award multiple bids on a non-exclusive award basis, and to accept the bid that the City considers to be in its own best interests, without regard to whether or not such bid is the best price or lowest received. Bids may be held by the City for a period not to exceed ninety (90) days from the date of the opening. Bid responses must be in accordance with the laws of the State of Texas. No bid may be withdrawn less than forty-five (45) days after date on which bids are opened. The City is exempt from all State of Texas and federal taxes. Technical questions should be directed to Robert Lay (Neighborhood Services Manager), 903-465-2720 ext. 2457.

Bidders must submit a Cashier’s or Certified Check, issued by a bank satisfactory to the City, or Bid Bond issued by a bonding company satisfactory to the City, payable without recourse to the order of the City of Denison in an amount equal to 5% of \$50,000.00, which is the estimated amount of the awarded contract, as a guaranty that bidder will enter into a contract. Bid responses without required check or bid bond will not be considered.

The successful bidder must furnish a Performance Bond in the amount of \$50,000.00 from a Surety Company holding a permit from the State of Texas to act as Surety.

A non-mandatory, but highly recommended, pre-bid meeting will be held on Monday, April 7, 2025 at 3:00 p.m. in Council Chambers at Denison City Hall, 300 W. Main Street, Denison, Texas 75020.

INSTRUCTION TO BIDDERS

1. The City is seeking bids from qualified vendors to provide services for mowing, edging, right of way mowing, weed eating, debris removal and misc. landscaping and cleanup projects within the City of Denison.
2. All completed bids must be presented in a sealed envelope, addressed to the City Clerk. Mailed or courier delivered bid responses will be treated in every respect as though filed in person and will be subject to the same requirement. Bids received after the bid submission deadline will be returned unopened. Prior to bid submission deadline, any submitted bid response may be withdrawn at the discretion of the contractor, but no bid response may be withdrawn for a period of forty-five (45) days after the sealed bids have been opened, pending the execution of a contract with successful contractor.
3. Each contractor shall, by careful examination, satisfy himself as to the nature and location of the work, the conformation of the ground, the character, quality and quantity of the facilities needed preliminary to and during the execution of the work, the general and local conditions, and all other matters which can in anyway affect the work or the cost thereof under the contract. No verbal agreement or conversation with any officer, agent, or employee of the City, either before or after the execution of the contract, shall affect or modify any of the terms or obligations therein.
4. Requests for information must be submitted in writing to the City of Denison: 300 W. Main Street, Denison, Texas 75020. All requests for information shall be received no later than three (3) calendar days prior to bid submission deadline. Any additional information given through the request for information process will be administered as an addendum to the proposal package and will be administered to all contractors on record as holding this proposal package. Addenda may be sent by fax, mail, or email as provided thereon the contractor bid holder information form. Failure to receive any prepared addenda to the project shall not relieve the contractor from their responsibility to submit a complete bid. Any bid response deemed to not be complete shall not be accepted. All addenda issued shall become part of the bid response package and be acknowledged in the bid response.
5. Bid responses shall be submitted on the forms provided and must be signed by the contractor or his authorized representative. Any corrections to entries made on bid forms should be initialed by the person signing the Bid response. Contractors must quote on all landscape and/or mowing items appearing on the base bid response forms. Alternate bids will not be considered unless specifically called for. Faxed or electronic bid responses will not be considered. Bid responses by wholly owned proprietorships or partnerships will be signed by all members. Bid responses of corporations will be signed by an officer of the firm and his signature attested by the secretary thereof who will affix the corporate seal to the bid responses.
6. This is an REQUEST FOR BIDS. This means that while price will be a heavily weighted evaluation criterion, however, it will NOT be the sole determining factor of the award.
 - a. 80% of the Evaluation score will be based upon LUMP SUM COSTS AND UNIT PRICING. The bid responses will be compared on the basis of a lump sum price, which will include and cover the furnishing of materials and the performance of all labor requisite or proper and completing of all the work called for under the accompanying contract, and in the manner set forth and described in the specifications.
 - b. 20% of the Evaluation score will be based on CONTRACTOR'S QUALIFICATIONS. Contractor must have been in the landscaping maintenance and/or mowing business for at least three (3) years. The City may make such investigations as are deemed necessary to determine the ability of the contractor to perform the work and the contractor shall furnish to him all such additional information and data for this purpose as may be requested. The City reserves the right to reject the bid responses if the information submitted by the contractor, or investigation of the contractor fails to satisfy the City that such contractor is property qualified to carry out the obligations of the Contract and to complete the work contemplated therein.
7. The City reserves the right to reject any and all bids or to waive any informality in the bidding. Bids may be held by the City for a period not to exceed forty-five (45) days from the date of the opening of bids.
8. Bid responses must be submitted to the City no later than **Friday, April 11, 2025 at 10:00 a.m.**

BIDDER'S AFFIDAVIT OF NON-COLLUSION

The undersigned bidder or agent, being duly sworn on oath, says that he/she has not, nor has any other member, representative, or agent of the firm, company, corporation or partnership represented by him, entered into any combination, collusion or agreement with any person relative to the price to be bid by anyone at such letting nor to prevent any person from bidding nor to include anyone to refrain from bidding, and that this bid is made without reference to any other bid and without any agreement, understanding or combination with any other persons in reference to such bidding.

He/She further says that no person or persons, firms, or corporation has, have or will receive directly or indirectly, any rebate, free gift, commission or thing of value on account of such sale.

OATH AND AFFIRMATION

I HEREBY AFFIRM UNDER THE PENALTIES FOR PERJURY THAT THE FACTS AND INFORMATION CONTAINED IN THE FOREGOING BID FOR CODE COMPLIANCE MOWING ARE TRUE AND CORRECT.

Dated this ____ day of _____, 20 ____.

Company Name – Please print

By: _____
Name/Title – Please Print

Signature

SEAL if Corporation

ACKNOWLEDGEMENT

STATE OF _____

COUNTY OF _____

Before me, a Notary Public, personally appeared the above named and swore that the statements contained in the foregoing document are true and correct.

Subscribed and sworn to me this _____ day of _____, _____.

Notary Public Signature

My Commission Expires: _____

NOTICE OF HB 1295 DISCLOSURE

Certificate of Interested Parties (Form 1295):

In 2015, The Texas Legislature adopted House Bill 1295, which added Section 2252.908 to the Texas Government Code. Beginning January 1, 2016, a business entity which:

1. Enters into a contract which must be approved by the Denison City Council
2. For good or services
3. To be used by the City of Denison

is required to complete a Certificate on Interested Parties Form 1295 on the Texas Ethics Commission website. The disclosure requirement applies to a contract (including an amendment, extension, or renewal) entered into on or after January 1, 2016. Business entities required to comply include for-profit and non-profit entities.

The Texas Ethics Commission adopted rules to implement the law and adopted the Certificate of Interest Parties form (Form 1295). The Commission states that it does not have any additional authority to enforce or interpret House Bill 1295.

Form 1295 requires disclosure of interested parties (a) who have a controlling interest in a business entity with whom the government entity contracts or (b) who actively participate in facilitating a contract or negotiating the terms of a contract (such as a broker, advisor, or attorney for business entity) if the person received compensation from the business entity (but is not an employee of the entity) and communicates directly with the government entity regarding the contract. A person has a controlling interest if the person: (1) has an ownership interest or participating interest in a business entity by virtue of units, percentage, shares, stock, or otherwise that exceeds 10 percent; has membership on the board of directors or other governing body of a business entity of which the board or other governing body is composed of not more than 10 members' or (3) serves as an officer of a business entity that has four or fewer officers, or serves as one of the four officers most highly compensated by a business entity that has more than four officers.

FILING PROCESS:

Form 1295 is available in electronic format on the Texas Ethics Commission website at:

<https://www.ethics.state.tx.us/filinginfo/1295/>

A business entity entering a contract for goods or services with the City of Denison must use the website application to enter the required information on Form 1295 and then print a copy of the form. A certification of filing will be issued by the Commission containing a unique certification number established by the Commission. An authorized agent of the business entity must sign the printed copy of the Form. The original executed (with certification of filing) must be filed with the City Clerk of the City of Denison. The City is then required to acknowledge Form 1295. The information for the completed Form 1295 will then be posted on the Commissions website.

PROJECT: 2025-2026 City of Denison Code Compliance Mowing

DATE: _____

TO: City Clerk - City of Denison
300 W. Main Street
Denison, Texas 75020

SUBMITTED BY: _____
Bidder Name

The undersigned, as Contractor hereby declares that the only person or persons interested in the bid as principal or principals is or are named herein, and that no other person than herein mentioned has any interest in this bid or in the contract to be entered into; that this bid is made without connection with any other person, company, or parties making a bid; and that it is in all respects fair and in good faith without collusion or fraud.

It is understood that the following quantities of work shown are approximate only and are intended principally to serve as a guide in evaluating bids.

It is further agreed that materials to be furnished and the quantities of work to be done at the unity prices bid may be increased or diminished as may be considered necessary, in the opinion of the City or City's representatives, to complete the work fully as planned and contemplated, and that all quantities of work whether increased or decreased are to be performed at the unit prices set forth herein the bid response except as provided for in the specifications.

It is further agreed that lump sum pricing may be increased to cover additional work ordered by the City or City's representatives, but not shown on the plans or required in the specifications, in accordance with the provisions of the general conditions. Similarly, lump sum pricing may be decreased to cover deletion of work so ordered.

The City of Denison reserves the right to reject any and all bids or to waive any informality in the bidding procedure, to accept only part of a bid (in the event of multiple-item bids), to award multiple bids on a non-exclusive award basis, and to accept the bid that the City considers to be in its own best interests, without regard to whether or not such bid is the best price or lowest received . In the event of the award of a contract to the undersigned, the undersigned will furnish a performance bond for Fifty Thousand Dollars (\$50,000) to secure proper compliance with the terms and provisions of the contract, to insure and guarantee the work until final completion, and acceptance, and to guarantee payment of all lawful claims for labor performed and materials furnished in fulfillment of the contract.

The work proposed to be done shall be deemed satisfactorily completed and accepted when fully completed and finished in accordance with the plans and specifications to the satisfaction of the City and City's representatives.

The undersigned certifies that the bid prices contained herein this bid response have been carefully checked and are submitted as correct and final.

Receipt is hereby acknowledged of the following addenda to the bid response/contract documents:

Addendum No. 1: _____, Received _____
Date Undersigned Initials

Addendum No. 2: _____, Received _____
Date Undersigned Initials

Addendum No. 3: _____, Received _____
Date Undersigned Initials

DESCRIPTION

PROJECT SPECIFICATIONS

1. **INSURANCE:** This pay item is for the cost of preparation, acquisition, and furnishing of and to secure property compliance with the terms and provisions of the contract, to insure and guarantee the work until final completion, and acceptance, and to guarantee payment of all lawful claims for labor performed and material furnished in fulfillment of the contract. This item shall also include any insurance, indemnity, worker verification, and mobilization costs for equipment and labor for the work.

Insurance: The firm/individual shall, at firm/individual's sole expense, maintain a policy of comprehensive liability insurance insuring the City's interests against claims for personal injury, bodily injury, death and property damage arising out of the firm/individual's performance of services and required duties under this Agreement with a combined single limit of not less than \$1,000,000 and an aggregate of \$2,000,000 covering personal injury liability, bodily injury liability, and property damage liability. The firm/individual shall in addition to general liability, at firm/individual's sole expense, maintain a policy of statutory Workers compensation insurance as required by state law. The firm/individual shall in addition to general liability and Workers compensation, at a firm/individual's sole expense, maintain a policy of Automobile liability insurance with a minimum of \$1,000,000 combined single limit. The City must be endorsed as an additional insured on such policy. The firm/individual shall provide the City with current Certificates of Insurance and all endorsements evidencing the firm/individual's compliance with this paragraph.

Indemnity: The firm/individual and its successor and assigns hereby agree to indemnify, defend (with counsel acceptable to the City) and hold the City, its elected officials, officers, employees and volunteers harmless from any and all liens, encumbrances, costs, demands, claims, judgments, injuries, employee claims and/or damage caused or arising out of (a) the acts and omissions of firm/individual and its agents, servants, employees and/or contractors and (b) any work performed by the firm/individual, its agents, servants, employees, consultants and/or contractors. The terms and conditions of this provision shall remain effective after the expiration or termination of this agreement, so long as the event for which the indemnification is needed occurred prior to such expiration or termination.

Worker Status Verification System: The bidder agrees to register and participate in a Status Verification System such as E-Verify, to verify the work eligibility status of the bidder's new employees that are employed in the state. The bidder further agrees to have each contractor or subcontractor who works for or under main contractor certify by affidavit that the contractor or subcontractor has verified through a Status Verification System the employment status of each new employee of the respective contractor or subcontractor.

****SAFETY**.** Safety is of the utmost importance. All personnel performing the work of this item and other items shall adhere to strict safety policy and procedures. All personnel shall be fluent in all required safety policy and procedure and safety meetings conducted by holder of this contract and personnel performing the work of this contract are required. Park users, pedestrians, citizens, shoppers, patrons, vehicles, bicyclists, and leashed animals have the right of way when in conflict with personnel performing the work of this contract. All work shall cease if work shall cause an unsafe condition for the persons, property or animals. Any harm/damage caused to persons, property or animals is subject to legal and criminal investigation/proceedings. In no case shall mowers, steel blade edger, straight-line edger and leaf blowers be operated within 50 feet of people, property and vehicles. If exception to the distance is made by contract holder and/or their personnel, it will be at their own discretion and additional safety measures to ensure protection of property and vehicles shall be implemented.

QUALIFICATIONS

1. Must be bondable in an amount not less than the required amounts stated herein.
2. Must have equipment and staff adequate for scope of work
3. Contractor must have been in the landscaping maintenance and/or mowing business for at least three (3) years or be able to provide portfolio of work demonstrating capabilities
4. Must be able to provide proof of insurance requirements

SAMPLE CODE COMPLIANCE MOWING SERVICES AGREEMENT

THIS CODE COMPLIANCE MOWING SERVICES AGREEMENT (“Agreement”) is entered into by and between the CITY OF DENISON, a Texas home rule municipal corporation (the “City”), and

_____, [individually and doing business as _____; a Texas corporation, limited liability company] (“Contractor”) (each individually a “Party” and collectively referred to herein as the “Parties”).

In consideration of the mutual promises and covenants herein and the payment to be made from City to Contractor, Contractor agrees to perform all work as set forth in the City’s Bid/Proposal for 2021 - 2022 Code Compliance Mowing Services, in accordance with the Contract Documents listed below, but generally described as mowing services throughout the City on City owned property, right of ways and vacant lots, including, but not limited to, mowing, edging, weed control and debris removal and disposal (the “Services”).

The “Contract Documents” consist of the following items, which items, Contractor acknowledges have previously been provided to or created by Contractor and which items are incorporated into this Agreement by reference as though fully set out in this Agreement:

- A. This Code Compliance Mowing Services Agreement;
- B. City’s Invitation to Bid including all attachments, specifications, and all addenda issued prior to execution of this Agreement;
- C. Contractor’s Executed Bid Proposal in response to City’s Invitation to Bid;
- D. Bidder’s Affidavit of Non-Collusion;
- E. Conflict of Interest Questionnaire Coversheet;
- F. Conflict of Interest Questionnaire;
- G. All modifications to Contract Documents issued after execution of this Agreement and accepted by the City and Contractor in writing; and
- H. All required Insurance Certificates, and affidavits.

In addition to the above Contract Documents, Contractor shall obtain a performance bond satisfactory to the City, executed by a Surety Company authorized to conduct business in the State of Texas in the contract amount of \$50,000.00.

In case of any conflict between the terms of this Assignment and the terms of the Contract Documents, the terms of this Agreement shall control.

ARTICLE I
TERM OF AGREEMENT

This Agreement shall begin on May 1, 2025 (the “Effective Date”) and expire on the earlier of December 31, 2025 (the “Initial Term”), or when the Services reach the maximum amount of \$50,000.00, unless terminated earlier pursuant to the terms of this Agreement. Following the Initial Term, the City has the sole option to renew this Agreement for three (3), one (1) year consecutive renewals, each a “Renewal Term”.

ARTICLE II
CONTRACTOR’S DUTIES AND RESPONSIBILITIES

1. Contractor shall coordinate all Services with the City’s designated representatives, which shall be the City Manager or their designee.
2. Contractor shall provide a schedule for response to requested Services in order that the City can fully inspect the work in progress, spot potential problems, look for discrepancies and assist the Contractor to make certain that the properties receive the required attention.
3. Contractor shall secure at its own expense all materials, supplies, machinery, equipment, tools, superintendence, labor, personnel, insurance, and other accessories and services necessary to provide the Services in accordance with the Contract Documents. Additionally, Contractor undertakes to properly maintain all equipment so that Services are performed timely and to a professional standard.
4. Contractor shall conform with the Section 13-101 of the City of Denison’s Code of Ordinances (the “Code of Ordinances”) in performing services under this Agreement during the hours of 7:00 a.m. and 7:00 p.m.
5. Contractor shall not make or cause to be made any alterations, additions, or improvements to any properties. Contractor may be required to remove, at its expense, any alterations, additions, or improvements done by Contractor, its agents or subcontractors.
6. Contractor shall ensure that their employees maintain a courteous and respectful attitude toward the public at all times. At no time, may they solicit, request or receive gratuities of any kind. Contractor must direct its employees to avoid loud and/or profane language at all times during the performance of duties. Any employee of Contractor who engages in misconduct or is incompetent or negligent in the proper performance of duties or is disorderly, dishonest, intoxicated, or discourteous must be removed from service under this Agreement by Contractor.
7. Contractor shall ensure that their employees adhere to strict safety policies and procedures as stated in the Contract Documents.
8. Contractor shall be liable and accountable for any and all damages resulting from Services performed by the Contractor. The Contractor shall be fully responsible for the protection of all persons, including members of the public, Contractor’s employees, employees of the City, and employees of other contractors or subcontractors; and all public and private property including structures and utilities above and below the ground. The Contractor shall give reasonable notice to the City when such properties are liable to injury or damage through the performance of the Services and shall make all necessary arrangements with the City, or other property owners as the case may be, relative to the removal, replacement or protection of such property or utilities.
9. Contractor agrees that, in performance of the Services under this Agreement, Contractor will qualify under and comply with any and all applicable federal, State and local laws and regulations now in effect, or hereafter enacted during the term of this Agreement, which are applicable to Contractor, its employees, agents or subcontractors, if any, with respect to the work and services described herein.
10. Contractor will cooperate with the City in filing of liens, as necessary, on the properties that received Services provided under this Agreement.

ARTICLE III

CITY'S DUTIES AND RESPONSIBILITIES

1. City shall allow reasonable access to the properties subject to a code violation that are subject to the performance of Services under this Agreement.
2. City shall provide to Contractor a list of lots subject to code enforcement that will require abatement of a nuisance as defined in the Code of Ordinances.
3. City shall routinely make inspections to determine compliance with this Agreement. In the event the City observes non-compliance, the Contractor will be notified and shall be given a period, not to exceed thirty (30) days from the date of notification by the City, of time to correct the problem.
4. City shall timely pay all invoices for Services as provided in Article IV, subject to additions and deductions provided for in the Contract Documents.

ARTICLE IV PAYMENT FOR SERVICES

In accordance with the bid award, the Contract Documents and this Agreement, the City agrees to pay Contractor up to **FIFTY THOUSAND AND NO/100 DOLLARS (\$50,000.00)** for the performance of the Services under this Agreement. However, Contractor agrees and acknowledges that this amount is not a guaranteed amount owed to Contractor and such request for Services will be based on actual need. Contractor shall send detailed invoices for each individual mowing list within time prescribed. The City will have thirty (30) days from receipt of the invoice to pay. Payment shall be conditioned on all Services having been provided in accordance with the terms of this Agreement. In no event shall the Contractor receive funds if Services are not provided. If, in the opinion of the City, the Contractor has not or is not satisfactorily performing the Services covered by the Contract Documents, and within forty-eight (48) hours of receipt of a written demand from the City for performance, has not cured any defect in performance specifically itemized in such demand, the City may, at its option:

- a. Withhold payment;
- b. Consider all of any part of this Agreement breached and terminate the Agreement pursuant to Article V; or
- c. May hire another Contractor to cure any defects in performance or complete all Services covered by the Contract Documents for the remaining term of this Agreement.
- d. In any event, Contractor shall be liable to City for any costs incurred in excess of the amounts in the Contract Documents.

ARTICLE V TERMINATION AND BREACH

1. Termination for Convenience. Either party may terminate this Agreement without cause upon thirty (30) days written notice.
2. Termination for Cause. In the event of a breach of the terms and conditions of this Agreement by either party hereunder, the non-breaching party may elect to terminate this Agreement upon providing the defaulting party with a written notice of such default, and allowing the breaching party a period of ten (10) days from and after the date of such notice to cure the breach complained of to the satisfaction of the non-breaching party. In the event said breach is not cured within said ten (10) day period, this Agreement shall be terminated (for-cause) as of the last day of said period.
3. Non-appropriation of Funds. If for any reason, at any time during any term of this Agreement, the Denison City Council fails to appropriate funds sufficient for the City to fulfill its obligations under this Agreement,

the City may terminate this Agreement to be effective on the later of (i) thirty (30) days following delivery by the City to the Contractor of written notice of the City's intention to terminate or (ii) the last date for which funding has been appropriated by the City Council for the purposes set forth in this Agreement.

ARTICLE VI **LIABILITY AND INDEMNIFICATION**

THE CONTRACTOR AGREES TO DEFEND, INDEMNIFY, AND HOLD THE CITY, ITS REPRESENTATIVES, OFFICERS, AGENTS, AND EMPLOYEES HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, LAWSUITS, ACTIONS, COSTS, AND EXPENSES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, THOSE FOR PROPERTY DAMAGE OR LOSS AND/OR PERSONAL INJURY, INCLUDING, BUT NOT LIMITED TO, DEATH, THAT MAY RELATE TO, ARISE OUT OF, OR BE OCCASIONED BY (I) CONTRACTOR'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS AGREEMENT OR (II) ANY ACT OR OMISSION OF THE CONTRACTOR, ITS OFFICERS, AGENTS, ASSOCIATES, EMPLOYEES, CONTRACTORS OR SUBCONTRACTORS IN THE PERFORMANCE OR NONPERFORMANCE OF THIS AGREEMENT.

IF ANY ACTION OR PROCEEDING SHALL BE BROUGHT BY OR AGAINST THE CITY IN CONNECTION WITH ANY SUCH LIABILITY OR CLAIM, CONTRACTOR, ON NOTICE FROM CITY, SHALL DEFEND SUCH ACTION OR PROCEEDING, AT CONTRACTOR'S EXPENSE, BY OR THROUGH ATTORNEYS REASONABLY SATISFACTORY TO CITY.

IN THE EVENT THAT ANY CITY-OWNED OR PRIVATELY-OWNED PROPERTY, SUCH AS UTILITIES, UTILITY INFRASTRUCTURE IMPROVEMENTS, EQUIPMENT, TURF, ETC., ARE DAMAGED OR DESTROYED DURING PERFORMANCE OF THE SERVICES UNDER THIS AGREEMENT DUE TO NEGLIGENCE OR ACTS OF OMISSIONS OF THE CONTRACTOR, THE CONTRACTOR SHALL BE SOLELY RESPONSIBLE FOR ALL REPAIRS OR REPLACEMENTS. IN THE EVENT OF DAMAGE DUE TO ACTS OF THE CONTRACTOR, THE CONTRACTOR SHALL REPLACE OR REPAIR THE DAMAGE AT NO COST TO THE CITY. THE CITY SHALL DETERMINE WHETHER ANY DAMAGE HAS BEEN DONE, THE AMOUNT OF THE DAMAGE, THE REASONABLE COSTS OF REPAIRING THE DAMAGE, AND WHETHER THE CONTRACTOR IS RESPONSIBLE. THE CITY SHALL BE THE SOLE JUDGE OF THE DAMAGE TO CITY-OWNED PROPERTIES, IN WHICH JUDGMENT SHALL BE EXERCISED REASONABLY. ANY DAMAGE BY THE CONTRACTOR SHALL BE REPAIRED OR REPLACED BY THE CONTRACTOR TO THE REASONABLE SATISFACTION OF THE CITY WITHIN THIRTY (30) DAYS OF RECEIPT OF WRITTEN NOTIFICATION FROM THE CITY. CONTRACTOR COVENANTS AND AGREES TO HOLD THE CITY HARMLESS FOR ANY AND ALL DAMAGE TO PRIVATELY-OWNED PROPERTY, INCLUDING BUT NOT LIMITED TO, CLAIMS BY THIRD-PARTIES FOR CONTRACTOR'S NEGLIGENCE OR ACTS OF OMISSIONS.

CONTRACTOR COVENANTS AND AGREES THAT CITY SHALL IN NO WAY NOR UNDER ANY CIRCUMSTANCES BE RESPONSIBLE FOR ANY PROPERTY BELONGING TO CONTRACTOR, ITS MEMBERS, EMPLOYEES, AGENTS, CONTRACTORS, SUBCONTRACTORS, INVITEES, LICENSEES, OR TRESPASSERS, WHICH MAY BE STOLEN, DESTROYED, OR IN ANY WAY DAMAGED, AND CONTRACTOR HEREBY INDEMNIFIES AND HOLDS HARMLESS CITY FROM AND AGAINST ANY AND ALL SUCH CLAIMS. THE CITY DOES NOT GUARANTEE POLICE PROTECTION AND WILL NOT BE LIABLE FOR ANY LOSS OR DAMAGE SUSTAINED BY CONTRACTOR, ITS MEMBERS, EMPLOYEES, AGENTS, CONTRACTORS, SUBCONTRACTORS, INVITEES, LICENSEES, OR TRESPASSERS ON ANY OF THE CITY PROPERTIES.

ARTICLE VII **INSURANCE**

Prior to the commencement of any work under this Agreement, Contractor shall purchase and maintain throughout the term of the Agreement, with an insurance company licensed to transact business in the state of Texas, an "occurrence basis" insurance policy or policies indemnifying, defending and saving harmless City from all damages which may be occasioned to any person, firm, or corporation, whether damages are by reason of any willful or negligent act or acts on part of Contractor, its agents or employees, with limits no less than:

- a. Commercial Liability Insurance: One Million and no/100 Dollars (\$1,000,000.00) combined single limit per occurrence or its equivalent with a Two Million and no/100 Dollars (\$2,000,000.00) aggregate for bodily injury, personal injury, and property damage.
- b. Vehicle Liability: One Million and no/100 Dollars (\$1,000,000.00) combined single limit per accident for bodily injury and property damage.
- c. Worker's Compensation/Industrial Insurance: Limits as required by the State of Texas.

The general liability provisions in automobile liability policies are to contain, or be endorsed to contain, the following provisions:

- (i) City, its officers, officials, employees, and volunteers are to be covered as insureds as respects: liability arising out of activities performed by or on behalf of Contractor; products and completed operations of Contractor; premises owned, occupied, or used by Contractor; or automobiles owned, leased, hired, or borrowed by Contractor.
- (ii) Contractor's insurance coverage shall be primary insurance as City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by City, its officers, officials, employees, or volunteers shall be in excess of City's insurance and shall not contribute with it.
- (iii) Any failure to comply with reporting provisions of the policy shall not affect coverage provided to City, its officers, officials, employees, or volunteers.
- (iv) Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- (v) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, nor reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to City.

ARTICLE VIII **MISCELLANEOUS PROVISIONS**

1. **Immunity.** The Parties agree that the City has not waived its sovereign immunity by entering into and performing its obligations under this Agreement.

2. **Assignment/Non-Transferable.** The Parties agree that neither this Agreement nor the work to be performed or goods/services provided hereunder will be assigned or transferred without the prior written consent of the City.

3. **Successors and Assigns.** The Parties, and their partners, assigns, successors, subcontractors, executors, officers, agents, employees, representatives, and administrators are hereby bound to the terms and conditions of this Agreement.

4. **Execution and Consideration.** This Agreement is executed by the Parties hereto without coercion or duress for any substantial consideration, the sufficiency of which is forever confessed.

5. **Notices.** Any notice provided or permitted to be given under this Agreement must be in writing and may be served by depositing same in the United States mail, addressed to the Party to be notified, postage pre-paid and registered or certified with return receipt requested, or by delivering the same in person to such Party

via facsimile or a hand-delivery service, Federal Express or any courier service that provides a return receipt showing the date of actual delivery of same to the addressee thereof. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee. For purposes of notice, the addresses of the Parties shall be as follows:

To City:

City of Denison
Bobby Atteberry, City Manager
300 W. Main Street
Denison, TX 75020

With a copy to:
Messer, Rockefeller & Fort, P.L.L.C.
Attn: Julie Fort
6371 Preston Rd., Ste. 200
Frisco, Texas 75034
TEL: (972) 668-6400

To Contractor:

6. Cumulative Remedies. All rights and remedies of the Parties under this Agreement shall be cumulative, and none shall exclude any other right or remedy provided by law, or by any other provisions of the Agreement. All such rights and remedies may be exercised and enforced concurrently and whenever, and as often, as occasion for their exercise arises.

7. Waiver of Breach. A waiver by either Party of a breach of the Agreement by the other Party does not constitute a continuing waiver or a waiver of any subsequent breach of the Agreement.

8. Parties Bound. The Agreement shall be binding upon, and inure to the benefit of, the Parties to the Agreement and their respective heirs, executors, administrators, legal representatives, successors, and assigns when permitted by this Agreement.

9. No Third-Party Beneficiaries. Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the Parties do not intend to create any third-party beneficiaries by entering into this Agreement.

10. Entire Agreement. This Agreement contains the entire agreement of the Parties with respect to the matters contained herein and may not be modified, amended or terminated except upon the provisions hereof or by the mutual written agreement of the Parties hereto. The subject matter of this Agreement is for landscape maintenance only and not any other matters that may exist between the Parties past, present or future.

11. Independent Contractor. In the performance of services pursuant to this Agreement, Contractor shall be an independent contractor and not an officer, agent, servant or employee of City. Contractor shall have exclusive control over the details of the service and work performed and over all persons performing such service and work. Contractor shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors, if any. Neither Contractor nor its officers, agents, employees or subcontractors shall obtain any right to retirement benefits, Workers' Compensation benefits, or any other benefits which accrue to City employees and Contractor expressly waives and claim it may have or acquire to such benefits.

12. Public Information. Contractor understands and acknowledges that City is a public entity under the laws of the State of Texas and, as such, all documents held by City are subject to disclosure under Chapter 552 of the Texas Government Code. Contractor shall clearly indicate to City what information it deems proprietary. If City is required to disclose any documents that may reveal any of Contractor's Proprietary Information to third parties under the Texas Government Code, or by any other legal process, law, rule, or judicial order by a court of competent jurisdiction, City will notify Contractor prior to disclosure of such documents, and give Contractor the opportunity to submit reasons for objections to disclosure. Contractor acknowledges that the Texas Attorney General or a court will make a determination as to the public nature of any Proprietary Information.

13. Venue. This Agreement shall be construed in accordance with the laws of the State of Texas and shall be performable in Grayson County, Texas.

14. Consideration. This Agreement is executed by the Parties hereto without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.

15. Counterparts. This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. A facsimile signature will also be deemed to constitute an original if properly executed.

16. Authority to Execute. The individuals executing this Agreement on behalf of the respective Parties below represent to each other and to others that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the Party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the Party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.

17. Force Majeure. Neither Contractor nor the City shall be required to perform any term, condition, or covenant in the Agreement so long as performance is delayed or prevented by force majeure, which shall mean acts of God, strikes, lockouts, material or labor restrictions by any governmental authority, civil riots, floods, and any other cause not reasonably within the control of the Party and which by the exercise of due diligence the Party is unable, wholly or in part, to prevent or overcome. Failure of a Party to timely perform an obligation hereunder shall only be excused as an event of force majeure described in this paragraph if a Party who cannot perform sends written notice to the other Party within thirty (30) days of the start of the event of force majeure: (a) stating the obligations that the Party cannot perform due to the event of force majeure; (b) describing in detail the event of force majeure that is preventing performance; and (c) providing a date by which such Party reasonably expects to be able to perform and the length of the force majeure event.

18. Miscellaneous Drafting Provisions. This Agreement shall be deemed drafted equally by the Parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any Party shall not apply. Headings in this Agreement are for the convenience of the Parties and are not intended to be used in construing this document.

19. Savings/Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

20. Prohibition on Boycotting Israel and Investments in Companies That Do Business with Iran, Sudan, or Any Other Foreign Terrorist Organizations. Contractor acknowledges that in accordance with Chapter 2270 of the Texas Government Code, the City is prohibited from entering into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. The terms “boycott Israel” and “company” shall have the meanings ascribed to those terms in Section 808.001 of the Texas Government Code. By signing this Agreement, Contractor certifies that Contractor’s signature provides written verification to the City that Contractor: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the Agreement. Contractor further verifies that they are not engaged in business with Iran, Sudan, or any foreign terrorist organization. The term “foreign terrorist organization” means an organization designated as a foreign terrorist organization by the United States Secretary of State as authorized by 8 U.S.C. Section 1189.

21. Representations. Each signatory represents this Agreement has been read by the Party for which this Agreement is executed and that such Party has had an opportunity to confer with its legal counsel.

Signature Page Follows

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement to be effective as of the date of the last of the parties to sign.

CITY OF DENISON

By: _____

Bobby Atteberry, Interim City Manager

Date: _____

ATTEST:

Christine Wallentine, City Clerk

CONTRACTOR:

Name:

Title: