



**City of Clarksville
800 W. Main Street
Clarksville, TX 75426**

Invitation to Bid

**ANNUAL REQUIREMENTS
FOR
2021 JANITORIAL SERVICES**

**CITY OF CLARKSVILLE
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INVITATION TO BID - 2021 JANITORIAL SERVICES

The enclosed **INVITATION TO BID** (ITB) and accompanying **SPECIFICATIONS** are for your convenience in bidding on the enclosed referenced **JANITORIAL SERVICES** for purchase by the City of Clarksville.

Questions may be addressed to the Finance Department at the address listed below. The sealed bids are due by **3:00 p.m. on Monday, December 14, 2020** at the following address:

City of Clarksville – City Manager
800 W. Main Street
Clarksville, TX
903-427-3834 Ext. 255
citymanager@suddenlinkmail.com

Bids may be submitted by mail or hand delivery to the following address:

City of Clarksville – City Manager
Bid for 2021 Janitorial Services
800 W. Main Street
Clarksville, TX 75426

The award is intended to be included for consideration on the **December 15, 2020** Regular City Council meeting at **6:00 p.m.**

Each bid delivered to the City shall be sealed and marked "2021 Janitorial Services" on the exterior of the bid. No email or faxed bids will be accepted. Each bid shall be **manually signed and dated by a person having the authority to bind the firm in a contract. Bids that are not signed and dated will be rejected.**

Please note that all bids **must be received at the designated location as shown**. Bids received after the deadline will not be considered for the award of the contract and shall be considered void and unacceptable. The sealed bids are due by **3:00 p.m. on Monday, December 14, 2020**. **The sealed bids will be opened and tabulated at 3:15 p.m. same date and place.**

The City of Clarksville will receive sealed bids for: **2021 Janitorial Services.**

IT IS UNDERSTOOD that the City Council of the City of Clarksville reserves the right to reject any or all bids for any or all products and/or services covered in this invitation for bids and to waive any informalities or defects in such bids.

Bidders should carefully examine all terms, conditions, specifications and related documents. Should a bidder find discrepancies in or omissions from the specifications or related documents, or should there be doubt as to their meaning, the City of Clarksville's City Manager should be notified immediately for clarification prior to submitting the bid. In the event of any conflict between the terms and conditions of these requirements and the specifications, the specifications shall govern. In the event of any conflict of interpretation of any part of this overall document, the City of Clarksville's interpretation shall govern.

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CITY OF CLARKSVILLE GENERAL CONDITIONS

FUNDING: Funds for payment have been provided through the City of Clarksville budget approved by the City Council for this fiscal year only. State of Texas statutes prohibit 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 fiscal year shall be subject to budget approval.

LATE BIDS: Bids received in the City of Clarksville Administration Department after submission deadline will be considered void and unacceptable. The City of Clarksville is not responsible for lateness or non-delivery of mail, carrier, etc., and the date/time stamp in the Administration Department shall be the official time of receipt.

ALTERING BIDS: Bids cannot be altered or amended after submission deadline. Any interlineations, alteration, or erasure made before opening time must be initialed by the signer of the bid, guaranteeing authenticity.

WITHDRAWAL OF BID: A bid may not be withdrawn or canceled by the Contractor without the permission of the City for a period of ninety (90) days following the date designated for the receipt of bids, and Contractor so agrees upon submittal of their bid.

SALES TAX: The City of Clarksville is exempt by law from payment of Texas State Sales Tax and Federal Excise Tax. Contractor shall include any sales taxes from concession sales of taxable items on City property in the total price of the sale and shall be responsible to report and pay such taxes in a timely manner.

BID AWARD: The City of Clarksville reserves the right to make an award that is in the best interest of the City. Purchase price will not be the only consideration in making the award. Contractors will be evaluated on the basis of purchase price, the reputation of the Contractor and of the Contractor's goods or services, the quality of the Contractor's goods or services, the Contractor's past relationship with the City of Clarksville, the total long-term cost to the City of Clarksville to acquire the Contractor's goods or services and any relevant criteria specifically listed within this request for bids. In addition, Contractors must not be in arrears in the payment of taxes or other liabilities due the City of Clarksville at the time of bid submittal. The City of Clarksville also reserves the right to not make an award or to award to multiple Offerors.

CONTRACT: This bid, when properly accepted by the City of Clarksville, shall become part of a Contract equally binding between the successful Contractor and the City. No different or additional terms will become a part of this Contract with the exception of Change Orders.

CHANGE ORDERS: No oral statement of any individual shall modify or otherwise change, or affect the terms, conditions or Specifications stated in the resulting Contract. All Change Orders to the Contract will be made in writing by the City Manager.

DELIVERY TIME: Successful Contractor shall notify the City Manager, or designee, immediately if the janitorial schedule cannot be met. If delay is foreseen, successful Contractor(s) shall give written or verbal notice to the City Manager, or designee. The City has the right to extend delivery time if reason appears valid. Successful Contractor(s) must keep the City Manager, or designee, advised at all times of the janitorial status.

CONFLICT OF INTEREST: No public official shall have an interest in this Contract, except in accordance with Local Government Code Chapter 171 requiring the filing of an affidavit and abstaining from voting or discussion on such award.

DISCLOSURE OF CERTAIN RELATIONSHIPS Effective January 1, 2008 Chapter 176 of the Texas Local Government Code requires that any vendor or person considering doing business with a local government entity disclose in the Questionnaire Form CIQ, the vendor or person's affiliation or business relationship that might cause a conflict of interest with a local government entity. By law, this questionnaire must be filed with the records administrator of the City of Clarksville not later than the 7th business day after the date the person becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code. A person commits an offense if the person violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor. The forms required to comply with Chapter 176 are available at <https://www.ethics.state.tx.us/data/forms/conflict/CIQ.pdf>.

ETHICS: The Contractor shall not offer or accept gifts of anything of value nor enter into any business arrangement with any employee, official or agent of the City of Clarksville. Contractor shall maintain an up to date 1295 Form with the Texas Ethics Commission naming the city as the governmental agency. The 1295 Form is available at:

<https://www.ethics.state.tx.us/TECCertInt/pages/login/certLogin.jsf>.

EXCEPTIONS/SUBSTITUTIONS: All bids meeting the intent of this Invitation for Bid will be considered for award. Contractors taking exception to the Specifications, or offering substitutions, shall state these exceptions in the section provided or by attachment as part of the bid. In the absence of such, a list shall indicate that the Contractor has not taken exceptions and shall hold the Contractor responsible to perform in strict accordance with the Specifications of the ITB. The City of Clarksville reserves the right to accept any and all, or none, of the exception(s)/substitution(s) deemed to be in the best interest of the City.

ADDENDA: 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 the City of Clarksville City Manager's Office. Addenda will be available on the city's website.

BID MUST COMPLY with all federal, state, county, and local laws concerning these types of service(s).

MINIMUM STANDARDS FOR RESPONSIBLE PROSPECTIVE CONTRACTORS: A prospective Contractor must affirmatively demonstrate Contractor's responsibility. A prospective Contractor must meet the following requirements:

1. Have adequate financial resources, or the ability to obtain such resources as required;
2. Be able to comply with the required bid delivery schedule;
3. Have a satisfactory record of performance;
4. Have a satisfactory record of integrity and ethics;
5. Be able to pass a background check;
6. Be otherwise qualified and eligible to receive an award.

The City may request representation and other information sufficient to determine Contractor's ability to meet these minimum standards listed above.

CONTRACTOR SHALL PROVIDE with this bid response, all documentation required by this Invitation

for Bid; as well as an up-to-date vendor packet complete with the W9 filed with the city. Failure to provide this information may result in rejection of bid.

SUCCESSFUL CONTRACTOR SHALL defend, indemnify and hold harmless the City of Clarksville and all its officers, agents and employees from all suits, actions, or other claims of any character, name and description brought for or on account of any injuries or damages received or sustained by any person, persons, or property on account of any negligent act or fault of the successful Contractor, or of any agent, employee, subcontractor or Contractor in the execution of, or performance under, any Contract which may result from bid award. Successful Contractor indemnifies and will indemnify and hold harmless the City from liability, claim or demand on their part, agents, servants, customers, and/or employees whether such liability, claim or demand arise from event or casualty happening or within the occupied premises themselves or happening upon or in any of the halls, elevators, entrances, stairways or approaches of or to the facilities within which the occupied premises are located. Successful Contractor shall pay any judgment with costs which may be obtained against the City growing out of such injury or damages. In addition, **Contractor shall obtain and file with the City Manager a Standard Certificate of Insurance and applicable policy endorsement evidencing the required coverage and naming the City of Clarksville as an additional insured on the required coverage.**

WAGES: Successful Contractor shall pay or cause to be paid, without cost or expense to the City of Clarksville, all Social Security, Unemployment and Federal Income Withholding Taxes of all such employees and all such employees shall be paid wages and benefits as required by Federal and/or State Law.

TERMINATION OF CONTRACT: This Contract shall remain in effect until Contract expires including renewals, delivery and acceptance of products and/or performance of services ordered or terminated by either party with a thirty (30) day written notice prior to any cancellation. The successful Contractor must state therein the reasons for such cancellation. The City of Clarksville reserves the right to award canceled Contract to next lowest and best Contractor as it deems to be in the best interest of the City of Clarksville.

TERMINATION FOR DEFAULT: The City of Clarksville reserves the right to enforce the performance of this Contract in any manner prescribed by law or deemed to be in the best interest of the City in the event of breach or default of this Contract. The City of Clarksville reserves the right to terminate the Contract immediately in the event the successful Contractor fails to:

1. Meet schedules;
2. Maintain Confidentiality; and
3. Otherwise perform in accordance with the Specifications and Conditions in the Invitation to Bid.

Contractor, in submitting this bid, agrees that the City of Clarksville shall not be liable to prosecution for damages in the event that the City declares the Contractor in default.

NOTICE: Any notice provided by this bid (or required by law) to be given to the successful Contractor by the City of Clarksville shall conclusively deemed to have been given and received on the next day after such written notice has been deposited in the mail in the City of Clarksville, Texas by Registered or Certified Mail with sufficient postage affixed thereto, addressed to the successful Contractor at the address so provided; provided this shall not prevent the giving of actual notice in any other manner.

CONTRACT ADMINISTRATOR: Under this Contract, the City of Clarksville may appoint a Contract

Administrator with designated responsibility to ensure compliance with Contract requirements, such as but not limited to, acceptance, inspection and delivery. The Contract Administrator will serve as liaison between the City of Clarksville City Manager and the successful Contractor.

INVOICES/TIMESHEETS shall show: (a) name and address of successful Contractor, (b) itemized location(s) and cost for same hand-delivered or mailed to the City of Clarksville, Attn: City Manager 800 W. Main Street, Clarksville, Texas, 75426. Invoices/Timesheets **MUST** be submitted by the 5th of the month for work performed in the previous month. All Janitorial services assigned to the Contractor must be completed BEFORE turning in the Invoice/Timesheet.

PAYMENT will be made on a NET 30 basis with confirmation of work billed being done by the Contract Administrator or City Manager. Payment for services will be considered at each month's City Council meeting held on the 3rd Tuesday at 6:00 p.m.

REMEDIES: The successful Contractor and the City of Clarksville agree that both parties have all rights, duties and remedies available as stated in the Uniform Commercial Code, as applicable.

VENUE: This Agreement will be governed and construed according to the laws of the State of Texas. This Agreement is performable in the City of Clarksville.

ASSIGNMENT: The successful Contractor(s) shall not sell, assign, transfer or convey this Contract, in whole or in part, without prior written consent of the City of Clarksville.

INSURANCE policy to be furnished by successful Contractor(s) shall include, by endorsement to the policy, a statement that a notice shall be given to the City of Clarksville by Certified Mail thirty (30) days prior to cancellation or upon any material change in coverage.

ANY QUESTIONS concerning this Invitation for Bid and Specifications should be directed to the City Manager at 903-427-3834 Ext. 261.

BIDDERS CERTIFICATION:

I, the undersigned, by signing the following statement agree that I have read and understand all of the terms and conditions, specifications, and requirements contained on each page of this Invitation for Bid. I also understand that if this bid is accepted by the City of Clarksville that all of the terms and conditions, specifications, and requirements submitted in my bid and any additions, changes, or deletions made during negotiations will be made a part of this bid under a binding contract between my company and the City of Clarksville, Texas. I also certify that this bid is made without previous understanding, agreement, or connection with any person, firm, or corporation making a bid for the same materials, and is in all fair and without collusion or fraud:

OUR company is a (Check One):

- _____ Corporation (The bid MUST be signed by an Officer of the company)
- _____ Partnership (The bid MUST be signed by a General Partner)
- _____ Joint Venture (The bid MUST be signed by an Officer of the company)
- _____ Sole Proprietor (The bid MUST be signed by the Owner)

Company Name: _____

Address of Principal Place of Business:

Mailing Address (if different):

Phone: _____

Fax: _____

Email: _____

Authorized Representative: _____

Signature: _____

Date: _____

Acknowledgement of Addenda (if any) : #1 _____ #2 _____ #3 _____

SPECIFICATIONS FOR 2021 JANITORIAL SERVICES:

WEEKLY

- A. Clean and sanitize all bathrooms and the kitchen to include, but not limited to, toilets inside and outside, sinks, countertops, mirrors, and walls when Needed.
- B. Sanitize all door handles, including locks, phones and phone receivers
- C. Take out all trash from the trash cans, including the kitchen, parking lot and offices placing it in the dumpster in the back-parking lot.
- D. Wash all dishes in the kitchen sink.
- E. Clean all windows.
- F. Change Lightbulbs and air conditioning filters, as needed
- G. Replenish all supplies needed for use such as light bulbs, dusting towels, hand sanitizer, hand soap, paper towels, and toilet paper.

BI-WEEKLY/MONTHLY

- H. Sweep/Mop/Vacuum all floors. Hardwood floors will need to be mopped using vinegar to prevent streaking.
- I. Dust all areas including, but not limited to, all electronics, Air Conditioning vents and returns, light fixtures, pictures in the hallways, pictures in the Foyer, the bench in the foyer, the pictures in the Council Chambers, the Dias, pictures in offices, desk, bookshelves, wall shelving, and file cabinets.

JANITORIAL SCHEDULE:

The janitorial contract will begin on or near December 21st each year and continue through December 31. City Hall and the Police Department will be cleaned once a week for each week of the contract. The contractor will pick which day of the week, except Tuesday, and will clean the same day each week unless it is a holiday and/or the offices are closed.

Contractor References

Customer Name: _____

Address: _____

Contact: _____ Telephone #: _____

Scope of work performed: _____

Length of Service: _____

Customer Name: _____

Address: _____

Contact: _____ Telephone #: _____

Scope of work performed: _____

Length of Service: _____

Customer Name: _____

Address: _____

Contact: _____ Telephone #: _____

Scope of work performed: _____

Length of Service: _____

Required Documents for Bid Submittal

Document Description	Confirm each item included with Bid Submittal (X)
Bidders Certification (Page 9)	
Certificate of Liability Insurance	
Conflict of Interest Questionnaire (Form CIQ)	
Exhibit A & B (completing each exhibit being included in bid submittal)* (Pages 12 -14)	
Completed Contractor Reference Sheet (Page 15)	
Signed Contract (two <u>original</u> copies) Pages 17-25	

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JANITORIAL SERVICES AGREEMENT

THIS JANITORIAL SERVICES AGREEMENT (“Agreement”) is entered into by and between the CITY OF CLARKSVILLE, a Texas general law Type A municipality (the “City”), and _____, [type of business] (“Contractor”) (the City and Contractor shall be 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 Annual Requirements for Janitorial Services, in accordance with the Contract Documents listed below, but generally described as janitorial services throughout the City on City owned property (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 Janitorial 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. Conflict of Interest Questionnaire Coversheet;
- E. Conflict of Interest Questionnaire;
- F. All modifications to Contract Documents issued after execution of this Agreement and accepted by the City and Contractor in writing; and
- G. All required Insurance Certificates.

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

ARTICLE I **TERM OF AGREEMENT**

This Agreement shall begin on December 21, 2020 (the “Effective Date”) and expire on December 31, 2021, (the “Initial Term”) unless terminated earlier pursuant to the terms of this Agreement.

At the end of the Initial Term, the City shall have the sole right and option to renew for three (3) one (1) year terms (each a “Renewal Term” and collectively, the “Term”) upon thirty (30) days’ written notice to the Contractor prior to the expiration of the Initial Term or then-current Renewal Term, as the case may be.

ARTICLE II
CONTRACTOR'S DUTIES AND RESPONSIBILITIES

1. Contractor shall perform services in accordance with the Specifications contained in the City's Invitation to Bid.
2. Contractor shall coordinate all Services with the City's designated representatives, which shall be the City Manager, or their designee.
3. Contractor shall provide a schedule for maintenance activities to the City each month 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.
4. Contractor shall secure at its own expense all materials, supplies, 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.
5. Contractor shall perform services under this Agreement at any time during normal office hours of 8:00 a.m. and 5:00 p.m.
6. Contractor shall not make or cause to be made any alterations, additions, or improvements to City property without the prior written consent of the City. All alterations, additions, and improvements to City property made with the written consent of the City shall, upon completion and acceptance by the City, become the property of the City. Contractor may be required to remove, at its expense, any alterations, additions, or improvements not meeting specifications as approved by the City.
7. 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.
8. Contractor shall ensure that their employees adhere to strict safety policies and procedures.
9. 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 property including structures and utilities. 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 relative to the removal, replacement or protection of such property.
10. 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.

ARTICLE III **CITY'S DUTIES AND RESPONSIBILITIES**

1. City shall allow reasonable access to the City owned properties that are subject to the performance of Services under this Agreement.
2. 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.
3. 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 for the performance of the Services under this Agreement in accordance with the fees established, attached hereto and incorporated herein for all purposes. Contractor shall send detailed invoices by the fifth (5th) of the month for the prior month's completed work. The City will have thirty (30) days from receipt of the invoice to pay. Contractor acknowledges that payment for services will be considered at each month's City Council meeting held on the 3rd Tuesday at 6:00 p.m. Payment shall be conditioned on all ground maintenance service 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; and/or
- b. Consider all of or any part of this Agreement breached and terminate the Agreement pursuant to Article V; and/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 thirty (30) 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 thirty (30) 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 Clarksville 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 THE CONTRACTOR'S EXPENSE, BY OR THROUGH ATTORNEYS REASONABLY SATISFACTORY TO CITY.

IN THE EVENT THAT ANY CITY-OWNED PROPERTY, SUCH AS BUILDINGS, UTILITIES, UTILITY INFRASTRUCTURE IMPROVEMENTS, EQUIPMENT, 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 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: twenty five thousand and no/100 Dollars (\$25,000.00) combined single limit per occurrence or its equivalent with a fifty thousand and no/100 Dollars (\$50,000.00) aggregate for bodily injury, personal injury, and property damage.
- b. Worker's Compensation/Industrial Insurance: Limits as required by the State of Texas.

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

- (i) Any failure to comply with reporting provisions of the policy shall not affect coverage provided to City, its officers, officials, employees, or volunteers.
- (ii) 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.
- (iii) 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 Clarksville
Julie Arrington, City Manager
800 West Main Street
Clarksville, TX 75426

With a copy to:
Messer, Fort & McDonald, P.L.L.C.
Attn: Julie Forte
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 Red River 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. 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 CLARKSVILLE

By: _____
Julie Arrington, City Manager

Date: _____

ATTEST:

Damien Carrasco, City Secretary

APPROVED AS TO FORM:

Craig Smith, City Attorney

CONTRACTOR:

Name

Title

Date