

## Amendment No. 1

This AMENDMENT #1 is to the attached AGREEMENT that was entered into on 1<sup>st</sup> day or July 2022 by and between the **City of Killeen** (referred to herein as “City”) and Heart of Texas Landscape & Irrigation Co., (referred to herein as “Contractor”), collectively the “Parties”.

In consideration of the premises and of the mutual covenants and agreements contained in this Amendment and corresponding Exhibits B & A, Agreement and corresponding Exhibits A & B, and RFP 22-12, Landscape Services the Parties hereby agree as follows:

Scope of Agreement. The purpose of this Amendment to the Agreement is to enlist the services of Contractor as outlined in the attachment A.

Term of Agreement. This amendment to the agreement will commence on July 1, 2023 and be for an initial one (1) year term, with up to three (3) additional one (1) year renewal terms if both parties agree in writing at least ninety (90) days before the end of the initial term. Any price increases, when renewing the agreement, must be submitted to the City at least one hundred and twenty (120) days prior to a potential renewal. Prices may not be increased by more than 10% per year.

Consideration. Contractor agrees to provide the services stated in Attachment A for the cost outlined in the monthly service breakdown in Attachment A:

Payment. The Client agrees to pay the Contractor at its address in Bell County, Texas such amount as is due and owing under the terms of this contract **within (NET 30) days** of the billing date. Acceptable forms of payment include cash, checks, money orders, debit cards, and credit cards (**a credit card convenience fee will be applied**). **STARTING JULY 1ST 2019 – If paying by credit card a 3% convenience fee will be added to the total payment due. If paying by check or cash this convenience fee will not apply.** A payment not postmarked by the due date will be considered late and a payment not received before the next billing date will incur service and finance charges at the rate of 1.5% per month (18% annually), or at the maximum rate allowed by law. Notwithstanding the foregoing, the Client also agrees that should any payment not be made before the next billing date the Contractor may at his option declare this contract terminated without further notice, cease all services and immediately invoice for work actually done. Failure to exercise said option at any given time does not void this contract nor does it prevent the Contractor from doing so at a later date.

Independent Contractor. Contractor shall act as an Independent Contractor. Under no circumstances shall Contractor be deemed an employee or partner of Owner.

Applicable Laws: Contractor shall follow all applicable local, State, and Federal laws, and regulations.

Standard of Care. The standard of care for all services performed or furnished by Contractor under this Contract will be the care and skill ordinarily used by members of the Contractor’s profession practicing under similar circumstances at the same time and in the same locality.

Insurance. Contractor shall procure and maintain insurance in the following amounts:

Worker's Compensation	Statutory
Automobile Liability	\$500,000 Combined single Limit for each accident (Bodily injury and property damage).
General Liability	\$1,000,000 each occurrence (Bodily injury and property damage).
Professional Liability	\$1,000,000 general aggregate.

On all policies, except Worker's Compensation and Professional Liability, City shall be listed as an additional insured with a full waiver of subrogation. A certificate of coverage shall be provided to the City prior to commencing work on the Project.

Subcontracts and Assignments. Contractor's rights and obligations hereunder are deemed to be personal and may not be transferred or assigned. Any assignments shall be void and of no effect.

Indemnification. To the fullest extent permitted by law, City or Contractor, as applicable, shall indemnify and hold harmless the other party, and the other party's officers, directors, partners and employees from and against any and all costs, losses and damages (including, without limitation, all fees and charges of attorneys and other professionals, and all court or dispute resolutions costs) caused by the negligent acts or omissions of the City or Contractor, as applicable, or their respective officers, directors, partners, employees and consultants with respect to the performance under this Agreement or the Project.

Termination. This Contract may be terminated by either party for cause upon thirty (30) calendar days' written notice, provided such cause cannot be reasonably cured within such thirty (30) day period. If cancelled within the first 12 months the City will pay for the remaining service trips on the contract. This can be calculated by dividing the annual service fee by the annual service visit count stated in Attachment A.

Non-Discrimination Covenants. Contractor verifies that it does not boycott Israel as defined in Texas Government Code Chapter 808, does not boycott energy companies as defined in Texas Government Code Chapter 809 and does not discriminate against firearms entities or firearm trade associations as defined in Texas Government Code Chapter 2274 and will not do so during the term of the contract entered into with the City of Killeen.

Texas Law. This Contract shall be subject to and governed by the laws of the State of Texas. The Parties agree that for venue purposes, any and all lawsuits, disputes, or causes of action shall be in Bell County, Texas.

Severability. Any provision of this Contract providing for indemnity, insurance or a duty that necessarily will not be completed until after the expiration or termination of this Contract shall continue in full force and effect until such a time as all duties have been fully performed.

Survival. Any provision of this Contract providing for indemnity, insurance or a duty that necessarily will not be completed until after the expiration or termination of this Contract shall continue in full force and effect until such a time as all duties have been fully performed.

Non-waiver. Failure to enforce any provision of this Contract by either party shall not constitute a waiver of that provision for purposes of the subsequent enforcement of that provision or the remainder of this Contract.

*Contract Verification.* Texas law provides that a governmental entity may not enter into certain contracts for goods and services with a company unless the company provides written verification regarding aspects of the company's business dealings.

- Texas Government Code, Chapter 2271 – the company must verify that it does not boycott Israel and will not boycott Israel during the term of the contract. Boycott Israel is defined in Government Code Chapter 808.
- Texas Government Code, Chapter 2274 – the company must verify that it does not boycott energy companies and will not boycott energy companies during the term of the contract. Boycott energy company is defined in Government Code Chapter 809.
- Texas Government Code, Chapter 2274 – the company must verify that it does not have a practice, policy, guidance or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of the contract against a firearm entity or firearm trade association. Verification is not required from a sole source provider. Discriminate, firearm entity and firearm trade association are defined in Government Code Chapter 2274.

Affected by the above statutes are contracts 1) with a company with ten (10) or more full-time employees, and 2) valued at \$100,000 or more to be paid wholly or partly from public funds. A contract with a sole proprietorship is not included.

*Entire Agreement.* This Amendment and Exhibits shall represent the entire agreement by and between the Parties and it may not be changed except by written amendment duly executed by all Parties.

SIGNED, ACCEPTED AND AGREED to this \_\_\_\_ day of \_\_\_\_\_, 2023 by the undersigned Parties who acknowledge that they have read and understand this Amendment to the Agreement and that the Amendment is issued in accordance with local, State and Federal laws, and this undersigned Parties hereby execute this legal document voluntarily and of their own free will.

City

Contractor

\_\_\_\_\_  
City Manager  
City of Killeen



Printed: Manuel Colón  
Heart of Texas Landscape & Irrigation



www.hotlandscape.com

City Of Killeen  
Main Project 2023

Exhibit A

**PROPOSAL**

This proposal is based on 42 trips per year on the following schedule:

January	<u>2</u>	May	<u>4</u>	September	<u>4</u>
February	<u>2</u>	June	<u>5</u>	October	<u>4</u>
March	<u>5</u>	July	<u>4</u>	November	<u>2</u>
April	<u>4</u>	August	<u>4</u>	December	<u>2</u>

Each trip will include these services in the primary areas as applicable to your property: (1) Pick up litter on areas to be mowed; (2) Mow primary lawn areas (3) Edge and weed eat all walks, curbs, and drives; may be chemically treated where not unsightly; and (4) blow or otherwise clean up debris caused by our work.

Periodic maintenance during the annual contract term will include the services and frequencies indicated:

Fertilize primary lawn area. Spring & Fall (2X) with materials formulated for best turf development

Mow grass areas designated by client, 42 times.

Shear shrubs and ground cover as needed.

Weed and edge beds

Addendum Attachment "A" attached.

Irrigation Check - Monthly

Winter Rye Grass

**All additional services out of contract will be performed with an approved estimate**

Annual Price: \$286,138.34 Includes Tax \*\*\*

Monthly Price: \$23,844.86 Includes Tax \*\*\*

\*\*\* \_\_\_\_\_ REPRESENTATIVE INITIALS ACKNOWLEDGING PRICE

Thanks again for your consideration. Please feel free to call if you need further information or desire a revision in this proposal. If you wish to institute the program as proposed, please carefully read the terms and indicate your acceptance by your signature.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
DATE

\_\_\_\_\_  
OWNER/REPRESENTATIVE

**Manuel Colon**  
\_\_\_\_\_  
HEART OF TEXAS LANDSCAPE & IRRIGATION CO, INC.



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Other services included in contract or available upon request:

**We practice Integrated Pest Management.**

**Other than fertilizer/pre-emergent herbicides, we only treat the pest as the pest becomes prevalent**

- 1) Turf is fertilized in the spring with a slow release sulfur coated urea fertilizer with iron, sulfur & zinc trace elements. A winterize is applied in early fall.
- 2) Shrubs and trees are fertilized in the spring if fertilizer is included in the contract. (see page 1)
- 3) Post emergent herbicides in turf is included for class A Turf
- 4) Disease or insects on turf, shrubs, or trees will treated as part of Integrated pest management
- 5) Mistletoe removal or treatment is not included.
- 6) Sucker removal and crape myrtle pods that can be reached from the ground, up to eight feet, are part of shrub trimmings.
- 7) Fall leaf removal will occur when majority of trees have dropped. Oak leaf removal in late February-early March when the majority of trees have dropped.
- 8) Fire ant baits control using Fipronil will be applied to Class A areas.
- 9) Tree trimming will be complete following City of Killeen schedual.
- 10) Tree trimming up to eight feet is included in the contract. Any tree trimming over eight feet will be upon request for an additional charge.
- 11) Perennial cut backs will be performed in Winter after the first freeze. Roses will be cut back after Valentine's Day.

Your signature below indicates that you have read the information and have understood the scope of services to be provided by Heart of Texas:

\_\_\_\_\_  
DATE

\_\_\_\_\_  
DATE

\_\_\_\_\_  
OWNER/REPRESENTATIVE

**Manuel Colon**  
\_\_\_\_\_  
**HEART OF TEXAS LANDSCAPE & IRRIGATION**



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1) The proposal constitutes a part of this contract by and between the HEART OF TEXAS LANDSCAPE & IRRIGATION CO, INC herein after referred to as the "Contractor," and the "Client" City of Killeen, TX

2) The services specified in this contract will be completed in a workmanlike manner as near to the scheduled day as possible. However, the Contractor shall not be responsible or liable for, nor shall this contract be voided by interruptions and delays caused by Acts of God, bad weather, strikes, lockouts, or any other event beyond the control of the Contractor. This does not relieve the Contractor of resuming the services as soon as conditions permit, nor does it relieve the Client of prompt payment of the regular monthly installments as billed.

3) The Contractor hereby agrees to provide workers compensation insurance, unemployment compensation and any other insurance required by law, as well as general liability and property damage coverage. The Contractor hereby also hereby agrees to collect and pay promptly all employees withholding and FICA taxes and hold the Client harmless in this matter when all due payments due to the Contractor have been made. The Contractor hereby agrees to use all products utilized providing the services called for in this contract in accordance with labeled instructions. The Contractor does not in any way warrant the fitness of the goods supplied under this contract and expressly disclaims all express or implied warranties of merchantability or fitness of any good or service supplied under this contract

4) The Client agrees to pay the Contractor at its address in Bell County, Texas such amount as is due and owing under the terms of this contract **within (NET 30) days** of the billing date. Acceptable forms of payment include cash, checks, money orders, debit cards, and credit cards a credit card convenience fee will be applied. **STARTING JULY 1ST 2019 – If paying by credit card a 3% convenience fee will be added to the total payment due. If paying by check or cash this convenience fee will not apply.** A payment not postmarked by the due date will be considered late and a payment not received before the next billing date will incur service and finance charges at the rate of 1.5% per month (18% annually), or at the maximum rate allowed by law. Notwithstanding the foregoing, the Client also agrees that should any payment not be made before the next billing date the Contractor may at his option declare this contract terminated without further notice, cease all services and immediately invoice for work actually done. Failure to exercise said option at any given time does not void this contract nor does it prevent the Contractor from doing so at a later date. \_\_\_\_\_ REPRESENTATIVE INITIALS

5) This contract shall continue on an annual basis and will renew unless canceled on 30 day written notice along with payment for work actually done. **This contract is susceptible to an annual increase.** \_\_\_\_\_ REPRESENTATIVE INITIALS

6) If the Client wishes to cancel this contract within the initial 12 months, they may do so by submitting a 30 day written cancellation letter and paying for remaining service visits on the contract. This can be calculated by dividing the annual service fee (tax included) by the annual service visit count stated on the contract.

7) Both "per trip" and "equal installment" billings will be dated the 1st day of each month of the contract period and are due and payable by or before the 1st of the month. The amount of "per trip" billing is determined by division of the annual cost by the number of trips annually. This monthly charge is determined by the number of trips made during the month of billing. The amount of "equal installments" billing is determined by division of the annual cost by twelve.

8) If it is necessary for the Contractor to place this contract in the hands of attorney for the purpose of collecting any amount past due and owing under the contract, the Client agrees to pay Contractor's reasonable attorney's fees, expenses and costs.

ACCEPTANCE DATE: \_\_\_\_\_

\_\_\_\_\_  
OWNER/REPRESENTATIVE

**Manuel Colon**  
\_\_\_\_\_  
HEART OF TEXAS LANDSCAPE & IRRIGATION CO, INC.



EXHIBIT B

[www.hotlandscape.com](http://www.hotlandscape.com)

P.O. Box 1236  
Belton, Texas 76513-1236

[www.hotlandscape.com](http://www.hotlandscape.com)

Fax: 254-939-2629  
Phone: 254-939-6795

**MONTHLY SERVICE BREAKDOWN**

Service	JAN	FEB	MAR	APRIL	MAY	JUNE	JULY	AUG	SEP	OCT	NOV	DEC	Total
Mow	2	2	5	4	4	5	4	4	4	4	2	2	42
Weedeat	2	2	5	4	4	5	4	4	4	4	2	2	42
Edging	2	2	5	4	4	5	4	4	4	4	2	2	42
Blowing	2	2	5	4	4	5	4	4	4	4	2	2	42
Shrub Trimming	AS NEEDED												0
Tree Trimming	1												1
Leaf Pickup	1												1
Fertilizer			1							1			2
Pre-emergent			1							1			2
Irrigation Check			1			1			1			1	4
Rye Overseed													0
Perennial Cutbacks	1												1

**REPRESENTATIVE INITIALS ACKNOWLEDGING SERVICE BREAKDOWN**

**List of additional services offered outside of the contract:**

- Post-emergent Herbicides (turf and bed weed treatment)
- Tree trimming - over 8'
- Insecticide/Fungicide
- Aerification
- Top-dressing
- Fire ant treatment/bait
- Mulch
- Seasonal Color
- Rye Grass

**\*Addendum to contract: City of Killeen Fire Department Stations starting on July 2023.**

**CITY OF KILLEEN  
MAIN PROJECT - 2023**

	<b>Properties</b>	<b>Address</b>	<b>Acreage</b>	<b>Cost</b>	<b>Irrigation parts</b>
2	City Hall	101 N College St	2.64	\$18,860.07	\$324.27
3	Code Enforcement Offices	100 E Avenue C	0.46	\$2,294.03	
4	Copper Mountain Library	3000 S WS Young Dr	1.39	\$9,284.22	\$100.00
5	Downtown Police	402 N 2nd St	2.09	\$7,584.72	\$100.00
8	Information Technology	101 E Avenue D	0.38	\$933.50	
9	Killeen Arts and Activities	801 N 4th St, Bldg B	3.90	\$25,889.97	\$500.00
10	Killeen Civic and Conference	3601 S WS Young Dr	20.74	\$42,801.97	\$850.00
12	Main Library	205 E Church Ave	1.74	\$9,408.75	\$100.00
13	Old Organized Crime	1523 Stonetree Dr	1.26	\$5,375.50	
14	PD Headquarters	3304 Community Blvd	16.64	\$38,521.47	\$750.00
15	Santa Fe Plaza	301-399 Santa Fe Plaza Dr	8.06	\$11,963.50	
16	Skyline	Street median on W Mary Jane Dr, across from 1600 Dallas St	0.06	\$2,150.95	
17	Special Events Center	3301 S WS Young Dr	6.55	\$5,788.00	
18	Utility Collections	210 W Avenue C	1.96	\$3,457.13	
19	Public Works:	3201-A S WS Young Dr	17.00	\$25,686.22	\$300.00
20	Central Fire Station	201 N. 28th St.	5.45	\$13,464.06	
21	Fire Training Academy	207 N. 28th St.	1.42	\$5,855.00	
22	Fire Station #1	3800 Westcliff Rd.	5.22	\$13,526.03	\$300.00
23	Fire Station #3	700 N. Twin Creek Dr.	1.00	\$4,874.00	
24	Fire Station #5	905 W Jasper Dr	0.65	\$2,205.50	
25	Fire Station #6	2001 E. Elms Rd.	2.26	\$3,755.15	
26	Fire Station #7	3701 Watercrest Rd.	1.53	\$7,967.15	
27	Fire Station #8	7252 E. Trimmier Rd.	2.96	\$10,653.98	\$250.00
28	Fire Station #9	5400 Bunny Trail	2.88	\$13,837.47	\$300.00

<b>TOTAL</b>	<b>108.24</b>	<b>\$286,138.34</b>	<b>\$3,874.27</b>
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The following services will be included:

Mowing, edging, weed eat, blowing and trash pick up from jobsite.

Mulch

Granite

Fertilizer Spring / Fall

Turf Herbicide

Shrub / Tree Care (up to 8ft)

Shrub / Tree Replacement

Ant poison

Weed control (beds, curbs, gravel)

\*The new pricing will include quarterly irrigation checks(4) a year,including system winterization by the end of November and a maximum budget of \$3,874.27 for parts / repairs in total. Any repair / parts estimate that exceeds the previous amount will be responsibility of the City of Killeen.

	<b>Acreage</b>	<b>Cost</b>	<b>Irrigation parts</b>
<b>GRAND TOTAL</b>	<b>108.24</b>	<b>\$286,138.34</b>	<b>\$3,874.27</b>