

**Agenda Item No: CA-e**  
**Meeting Date: June 27, 2022**

**Subject:** Approve Resolution 22-47; Approving an Agreement between the City and Bonita Bichler for Gardening Services.

**Background:** Bonita (Boni) will provide general maintenance, planting, and other gardening services for certain areas located in the City. She will be replacing Cathy Patrick who resigned her position for family reasons.

The terms of the agreement are affective as of the date the agreement is signed and does not have a specific termination date. The expected duration of service is every year during peak growing season (April to October.) The areas she will concentrate on will be the City Hall entrance, and stone sign garden, the Dave Osborne Park sign area, the berm at Clem Dufour Park, the Colorado Blvd and Highway 52 trail head and the Annex courtyard.

Boni will be compensated for all supplies and replacement plants she purchases for the City along with her hours worked by submitting monthly invoices to the Public Works Department for approval and remittance to the Finance Department.

**Recommended Action:** Approve Resolution 22-47; Approving an Agreement between the City and Bonita Bichler for Gardening Services.

**RESOLUTION NO. 22-47**

**A RESOLUTION APPROVING AN AGREEMENT BY AND BETWEEN THE CITY OF  
DACONO AND BONITA BICHLER FOR GARDENING SERVICES**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DACONO,  
COLORADO:**

**Section 1.** The proposed Agreement by and between the City of Dacono and Bonita Bichler for gardening services is hereby approved in essentially the same form as the copy of such Agreement accompanying this resolution.

**Section 2.** The Mayor is hereby authorized to execute the Agreement, and is further authorized to negotiate and approve on behalf of the City such revisions to the Agreement as the Mayor determines are necessary or desirable for the protection of the City, so long as the essential terms and conditions of the Agreement are not altered.

INTRODUCED, READ, and ADOPTED this 27<sup>th</sup> day of June, 2022.

CITY OF DACONO, COLORADO

\_\_\_\_\_  
Adam Morehead, Mayor

ATTEST:

\_\_\_\_\_  
Valerie Taylor, City Clerk

## AGREEMENT FOR GARDENING SERVICES

**THIS AGREEMENT FOR GARDENING SERVICES** (“Agreement”) is entered into by and between the City of Dacono, a Colorado home rule municipal corporation (the “City”), and Bonita “Boni” Bichler, an individual (“Contractor”).

WHEREAS, the City desires to engage Contractor for the purpose of providing gardening services to the City as further set forth in the Scope of Services (the “Services”), and Contractor desires to provide such Services to the City.

The parties to this Agreement hereby agree as follows:

**Section 1. Scope of Services.** Contractor shall provide the Services as described in the attached *Exhibit A*, which is incorporated herein by reference. City shall not be obligated to use Contractor for any specific project or for any projects at all during the term of this Agreement. Contractor shall bill City on a monthly basis for Services actually completed and costs incurred at the time of billing rendered at the hourly rates designated in *Exhibit A*. In its sole discretion, the City may contract with other contractors to provide the same or similar services during the term of this Agreement.

**Section 2. Term.** The term of this Agreement shall commence upon the signing of this Agreement by the City and shall have no termination date. The City and the Contractor shall have the right to terminate this Agreement at any time upon providing 30 days’ written notice of termination to the other party. The City’s only obligation in the event of termination shall be payment of fees and expenses incurred up to and including the effective date of termination.

**Section 3. Assignment.** This Agreement shall not be assigned by Contractor without the written consent of the City.

**Section 4. Notices.** All notices required or permitted under this Agreement shall be in writing and shall be given by hand delivery, or by United States first class mail, postage prepaid, registered or certified, return receipt requested, addressed to the party for whom it is intended at the following address:

If to the City:

City of Dacono  
Attn: City Manager  
512 Cherry Avenue  
P.O. Box 186  
Dacono, CO 80514

If to the Contractor:

Bonita Bichler  
7245 Ellingwood Ave  
Frederick, CO 80504

Any such notice or other communication shall be effective when received as indicated on the delivery receipt if by hand delivery, or on the United States mail return receipt if by United States mail. Either party may by similar notice given, change the address to which future notices or other communications shall be sent.

**Section 5. Delays.** Any delays in or failure of performance by any party of the party's obligations under this Agreement shall be excused if such delays or failure are a result of acts of God, fires, floods, strikes, labor disputes, accidents, regulations or orders of civil or military authorities, shortages of labor or materials, or other causes, similar or dissimilar, which are beyond the control of such party.

**Section 6. Entire Agreement.** This Agreement represents the entire agreement between the parties and there are no oral or collateral agreements or understandings. This Agreement may be amended only by an instrument in writing signed by the parties. If any other provision of this Agreement is held invalid or unenforceable, no other provision shall be affected by such holding, and all of the remaining provisions of this Agreement shall continue in full force and effect.

**Section 7. Waiver.** A waiver by any party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either party.

**Section 8. Governing Law and Venue.** This Agreement shall be deemed entered into in Weld County, Colorado, and shall be governed by and interpreted under the laws of the State of Colorado. Any action arising out of, in connection with, or relating to this Agreement shall be filed in the District Court of Weld County of the State of Colorado, and in no other court.

**Section 9. Binding Effect.** This Agreement shall inure to the benefit of, and be binding upon, the parties, their respective legal representatives, successors, heirs, and assigns; provided, however, that nothing in this paragraph shall be construed to permit the assignment of this Agreement except as otherwise expressly authorized herein.

**Section 10. Indemnification.** Contractor expressly agrees to indemnify and hold harmless City or any of its officers or employees from any and all claims, damages, liability, or court awards including attorney's fees that are or may be awarded as a result of any loss, injury or damage sustained or claimed to have been sustained by anyone, including, but not limited to, any person, firm, partnership, or corporation, to the extent caused by the negligent acts, errors or omissions of Contractor or any of Contractor's employees or agents in performing work pursuant to this Agreement. In the event that any such suit or action is brought against City, City will give notice within ten (10) days thereof to Contractor. The parties understand and agree that the City

is relying on, and does not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, § 24-10-101, *et seq.*, C.R.S., as from time to time amended, or otherwise available to the City, its officers, or its employees.

**Section 11. Insurance.**

1. Contractor shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to this Agreement by reason of its failure to secure liability insurance or by reason of its failure to secure insurance in sufficient amounts of sufficient durations, or sufficient types to cover such liability.
2. Contractor shall at its own expense be required to keep in full force and effect during the term of this Agreement automobile liability and physical damage insurance for any vehicle used in performing services for the City, in amounts not less than prescribed by the laws of the State of Colorado.
3. Contractor's automobile liability and physical damage insurance shall be endorsed to include the City, and its elected and appointed officers and employees, as additional insureds, unless the City in its sole discretion waives such requirement. Every policy required above shall be primary insurance, and any insurance carried by the City, its officers, or its employees, shall be excess and not contributory insurance to that provided by the Contractor. Such policies shall contain a severability of interests provision. Contractor shall be solely responsible for any deductible losses under the required policies.
4. Certificates of insurance shall be provided by Contractor as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect, and shall be subject to review and approval by the City. No required coverage shall be cancelled, terminated or materially changed until at least 30 days prior written notice has been given to the City. The City reserves the right to request and receive a certified copy of any policy and any endorsement thereto.

**Section 12. Subcontractors.** If pre-approved by the City, Contractor may utilize subcontractors to assist with non-specialized works as necessary to complete projects. Contractor will submit any proposed sub-contractor and the description of their services to the City for approval. The City will not work directly with the subcontractors.

**Section 13. Independent Contractor.** It is the expressed intent of the parties that the Contractor is an independent contractor and not the agent, employee or servant of the City, and that:

**(A) CONTRACTOR IS NOT ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS UNLESS UNEMPLOYMENT COMPENSATION COVERAGE IS PROVIDED BY CONTRACTOR OR SOME OTHER ENTITY.**

**(B) CONTRACTOR IS OBLIGATED TO PAY FEDERAL AND STATE INCOME TAX ON ANY MONEYS PAID PURSUANT TO THIS AGREEMENT. NO STATE, FEDERAL OR LOCAL TAXES OF ANY KIND SHALL BE WITHHELD OR PAID BY THE CITY.**

(C) Notwithstanding anything in this Agreement to the contrary, the parties agree the relationship between the parties to this Agreement is as follows:

(1) Contractor does not have the authority to act for the City, or to bind the City in any respect whatsoever, or to incur any debts or liabilities in the name of or on behalf of the City.

(2) Contractor has and retains control of and supervision over the performance of Contractor's obligations hereunder and control over any persons employed by Contractor for performing the Services hereunder.

(3) The City will not provide training or instruction to Contractor or any of its employees regarding the performance of the Services hereunder.

(4) Except as provided in this agreement, the Contractor shall not receive benefits of any type from the City.

(5) Contractor is engaged in providing similar services to other clients and/or the general public and is not required to work exclusively for the City.

(6) All Services are to be performed solely at the risk of Contractor and Contractor shall take all precautions necessary for the proper and sole performance thereof.

(7) Contractor will not combine its business operations in any way with the City's business operations and each party shall maintain their operations as separate and distinct.

**Section 14. No Third Party Beneficiaries.** It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to City and Contractor, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other third party on such Agreement. It is the express intention of the parties that any person other than City or Contractor receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

**Section 15. Prohibition Against Hiring Illegal Aliens.** Contractor shall not knowingly employ or contract with an illegal alien to perform work under this contract. Contractor shall not enter into a contract with a subcontractor that fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract.

Contractor will participate in either the E-verify program or the Department program, as defined in C.R.S. §§ 8-17.5-101(3.3) and 8-17.5-101(3.7), respectively, in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under the public contract for services. Contractor is prohibited from using the E-verify program or the Department program procedures to undertake pre-employment screening of job applicants while this contract is being performed.

If Contractor obtains actual knowledge that a subcontractor performing work under this contract for services knowingly employs or contracts with an illegal alien, Contractor shall:

- a. Notify the subcontractor and the City within three days that the Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and
- b. Terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to this paragraph the subcontractor does not stop employing or contracting with the illegal alien; except that the Contractor shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

Contractor shall comply with any reasonable request by the Department of Labor and Employment made in the course of an investigation that the Department is undertaking pursuant to the authority established in C.R.S. § 8-17.5-102(5).

If Contractor violates a provision of this Contract required pursuant to C.R.S. § 8-17.5-102, City may terminate the contract for breach of contract. If the contract is so terminated, the Contractor shall be liable for actual and consequential damages to the City.

**CITY OF DACONO**

By: \_\_\_\_\_  
Adam Morehead, Mayor

**ATTEST:**

\_\_\_\_\_  
Valerie Taylor, City Clerk

**CONTRACTOR:**

By: \_\_\_\_\_

Title: \_\_\_\_\_

**STATE OF COLORADO**        )  
  ) **ss.**  
**COUNTY OF WELD**         )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2022 by \_\_\_\_\_ as \_\_\_\_\_ for \_\_\_\_\_.

Witness my official hand and seal.

My commission expires: \_\_\_\_\_.

( S E A L )

\_\_\_\_\_  
Notary Public

**EXHIBIT A**  
**Contractor's Scope of Services**

Rate of pay for temporary Contractor:  
\$27 per hour

Time of temporary contracted employment  
The beginning of growing season to the end (approximately April-October)

Scope of work to be performed during season (as needed):

City Hall Stone Sign Garden:

- Plant flowers and/or bushes
- Replace dead plants (if needed)
- Dead head flowers and bushes
- Remove weeds and debris

City Hall Entrance Garden:

- Deadhead flowers and bushes
- Replace dead plants (if needed)
- Remove weeds and debris

Dave Osborne Park Sign Garden:

- Clean up and separate overgrown ornamental grass
- Add plantings where needed for visual appeal
- Remove weeds and seeded lawn grass
- Clean out debris

Clem DuFour Park Berm:

- Deadhead flowers and bushes
- Replace dead plants (if needed)
- Remove weeds and debris

Colorado Blvd Trailhead Garden:

- Trim Overgrown bushes
- Remove weeds and dead plants
- Clean out debris

Annex Building:

- Remove weeds and debris

**Contractor's Pre-Contract Certification  
Regarding Employing Illegal Aliens**

The undersigned hereby certifies as follows:

That at the time of providing this certification, the undersigned does not knowingly employ or contract with an illegal alien; and that the undersigned will participate in the E-Verify program or the Department program, as defined in C.R.S. §§ 8-17.5-101(3.3) and 8-17.5-101(3.7), respectively, in order to confirm the employment eligibility of all employees who are newly hired for employment to perform under the public contract for services.

**Contractor:**

By \_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date