# TALLYN'S REACH AUTHORITY

www.TallynsReachMetroDistrict.com

# NOTICE OF REGULAR MEETING AND AGENDA

**DATE:** March 15, 2022

**TIME:** 6:00 p.m.

LOCATION: <u>VIA TELECONFERENCE</u>

**ACCESS:** You can attend the meetings in any of the following ways:

1. To attend via Microsoft Teams Videoconference use the below link:

https://teams.microsoft.com/l/meetup-join/19%3ameeting\_OWMyN2NjOTQtYzJjMi00MWY2LWFkYWYtYmE4NDIwYWQzYjM2%40thread.v2/0?context=%7b%22Tid%22%3a%224aaa468e-93ba-4ee3-ab9f-6a247aa3ade0%22%2c%22Oid%22%3a%227e78628f-89cd-4e97-af6c-60df84b55ffe%22%7d

2. To attend via telephone, dial 1-720-547-5281 and enter the following additional information:

Phone Conference ID: 899 974 86#

<b>Board of Directors</b>	Office	Term Expires
David Patterson	President	May 2023
BJ Pell	Vice President / Assistant Secretary	May 2022
Harry Yosten	Treasurer	May 2022
Mike Dell'Orfano	Assistant Secretary	May 2022
Craig Wagner	Assistant Secretary	May 2022

#### I. ADMINISTRATIVE MATTERS

- A. Call to order and approval of agenda.
- B. Present disclosures of potential conflicts of interest.
- C. Confirm quorum, location of meeting and posting of meeting notices.
- D. Public comment.

Members of the public may express their views to the Board on matters that affect the Authority that are not otherwise on the agenda. Comments will be limited to three (3) minutes per person. Comments will be taken in the order reflected on the sign in sheet.

#### II. CONSENT AGENDA

The items listed below are a group of items to be acted on with a single motion and vote by the Board. An item may be removed from the Consent Agenda to the regular Agenda, if desired. Items on the Consent Agenda are then voted on by a single motion, second, and vote by the Board.

- A. Approval of Minutes of November 16, 2021 special meeting (enclosure).
- B. Ratification and/or approval of claims (enclosure).
- C. Agreements and/or contracts to be approved and/or ratified:
  - a. Independent Contractor Agreement with Brightview Landscape Services, Inc. for Tree Pruning, dated November 22, 2021 (enclosure).
  - b. Independent Contractor Agreement with Brightview Landscape Services, Inc. for December Winter Watering, dated November 22, 2021 (enclosure).
  - c. Addendum to Independent Contractor Agreement with Ark Ecological Services, LLC for Open Space Management for Fall 2022, dated November 23, 2021 (enclosure).
  - d. Independent Contractor Agreement with Brightview Landscape Services, Inc. for 2022 Plant Health Care, dated November 22, 2021 (enclosure).
  - e. Independent Contractor Agreement with Brightview Landscape Services, Inc. for Turf to Native Conversion, dated November 8, 2021 (enclosure).
  - f. Independent Contractor Agreement with Brightview Landscape Services, Inc. for Annual Flowers, dated November 16, 2022 (enclosure).
  - g. Addendum to Independent Contractor Agreement with MFish Graphics for Traffic Sign Upgrades, dated December 21, 2021 (enclosure).
  - h. Independent Contractor Agreement with Radiant Lighting Services, Inc. for 2022 Lighting Maintenance, dated January 1, 2022 (enclosure).
  - i. Independent Contractor Agreement with Brightview Landscape Services, Inc. for Deep Root Fertilization, dated March 3, 2022 (enclosure).
  - j. Independent Contractor Agreement with Brightview Landscape Services, Inc. for Retention Pond Cleanout, dated March 3,2022 (enclosure).
  - k. Independent Contractor Agreement with Norton Building and Remodel, Inc. for Bathroom Remodel, dated February 14, 2022 (enclosure).
  - 1. Independent Contractor Agreement with Brightview Design Group, Inc., for Median Landscape Planting, dated March 3, 2022 (enclosure).
  - m. Independent Contractor Agreement with Aquatic Chemical Solutions, Inc., for Coping Stone Replacement dated September 21, 2021 (enclosure).

#### III. FINANCIAL MATTERS

- A. Review and consider approval of cash position schedule (enclosure).
- B. Review and consider approval of 2021 Draft Audit (enclosure).
- C. Other.

#### IV. LEGAL MATTERS

A. Discuss Consolidation and Termination of Authority.

#### V. MANAGER MATTERS

- A. Mail Chimp rate increase effective February 1, 2022 (enclosure).
- B. Discuss funding for July 4<sup>th</sup> HOA event.
- C. Review and consider approval of proposal from Brightview Landscape Services for additional cost to empty dog stations a second time each week (enclosure).
- D. Discussion of delinquency report.
- E. Landscape Committee:
  - a. Report to the Board.
  - b. Discussion on flagpoles and monuments (enclosure).
- F. Discussion of 2022 Swim Season.
- G. Update on 2022 projects.

# VI. ADJOURNMENT

The next regular meeting is scheduled for July 19, 2022 at 6:00 p.m.

# MINUTES OF A SPECIAL MEETING OF THE BOARD OF DIRECTORS OF THE TALLYN'S REACH AUTHORITY HELD NOVEMBER 16, 2021

A special meeting of the Board of Directors of the Tallyn's Reach Authority (referred to hereafter as the "Board") was convened on Tuesday, November 16, 2021, at 6:00 p.m. This Board meeting was held via Microsoft Teams. The meeting was open to the public.

#### ATTENDANCE

**Directors in Attendance Were:** 

David Patterson, President

BJ Pell, Vice-President/Assistant Secretary

Harry Yosten, Treasurer

Mike Dell'Orfano, Assistant Secretary

The absence of Assistant Secretary Wagner was noted and excused.

#### Also in Attendance Were:

Blair Dickhoner, Esq.; White Bear Ankele Tanaka & Waldron ("WBA") Celeste Terrell, Nic Carlson, Thuy Dam; CliftonLarsonAllen LLP Manager ("CLA")

Kimberly Armitage; YMCA

Brian Crandall; Tallyns Reach MD No. 3 Assistant Secretary

#### ADMINISTRATIVE MATTERS

Call to Order: The meeting was called to order at 6:54 p.m.

**Agenda:** Following review and discussion, upon a motion duly made by Director Yosten, seconded by Director Pell and, upon vote, unanimously carried, the Board approved the Agenda, as presented, and excused the absence of Director Wagner.

<u>Disclosures of potential conflicts of interest:</u> Attorney Dickhoner advised the Board that, pursuant to Colorado law, certain disclosures might be required prior to taking official action at the meeting. Attorney Dickhoner reported that disclosures for those directors that provided White Bear Ankele Tanaka & Waldron with notice of potential or existing conflicts of interest were filed with the Secretary of State's Office and the Board at least 72 hours prior to the meeting, in accordance with Colorado law, and those disclosures were acknowledged by the Board. Attorney Dickhoner inquired into whether members of the Board had any additional disclosures of potential or existing conflicts of interest with regard to any matters scheduled for discussion at the meeting. No additional disclosures were noted. The participation of the members present was necessary to obtain quorums or to otherwise enable the Board to act.

**Quorum:** The Board confirmed a quorum for the meeting, the meeting location and posting of meeting notice.

**Public Comment:** None.

**ESRI Map Project:** Mr. Carlson reviewed the ESRI map project with the Board.

**2022** Annual Administrative Resolution: Following review and discussion, upon a motion duly made by Director Pell, seconded by Director Yosten and, upon vote, unanimously carried, the Board adopted Resolution No. 2021-11-01, 2022 Annual Administrative Resolution.

2022 Insurance Renewal and Documents Needed to Obtain or Maintain Insurance Coverage Through the Colorado Special Districts Property and Liability Pool or TCW Risk Management and Authorize Membership in the Special District Association: Following review, upon a motion duly made by Director Yosten, seconded by Director Pell and, upon vote, unanimously carried, the Boards approved of the 2022 insurance renewal and the documents needed to obtain or maintain insurance coverage through the Colorado Special Districts Property and Liability Pool or TCW Risk Management and authorized membership in the Special District Association.

#### CONSENT AGENDA

Ms. Terrell reviewed the Consent Agenda with the Board and noted that any item may be removed from the Consent Agenda to the regular Agenda upon the request of any Director. Upon a motion duly made by Director Dell'Orfano, seconded by Director Yosten and, upon vote, unanimously carried, the following items on the Consent Agenda were approved, ratified and/or adopted, as appropriate and amended:

- A. Minutes of September 21, 2021 Special Meeting as amended.
- B. Claims.
- C. Independent Contractor Agreement for Cheatgrass Management with Ark Ecological Services, LLC
- D. Independent Contractor Agreement for 2021-2022 Fall/Spring Color Landscaping Services with CoCal Landscape Services Inc.
- E. First Addendum to Independent Contractor Agreement for 2022 Landscape Services with Brightview Landscape Services, Inc.
- F. Second Addendum to Independent Contractor Agreement for 2022 Landscape Services with Brightview Landscape Services, Inc.
- G. Legal Services Agreement with IDEA Law Group, LLC for foreclosure counsel.
- H. Independent Contractor Agreement for 2021 Decor with Sav-a-Tree
- I. Independent Contractor Agreement for Traffic Sign Upgrades with MFish Graphics.
- J. Independent Contractor Agreement for Drainage Investigation and Improvements with IMEG Corp.

#### FINANCIAL MATTERS

September 30, 2021 Unaudited Financial Statements and Cash Position Schedule: Ms. Dam reviewed the Unaudited Financial Statements and Cash Position Schedule with the Board. Following review, upon a motion duly made by Director Yosten, seconded by Director Pell and, upon vote, unanimously carried, the Board accepted the September 30, 2021 Unaudited Financial Statements and Cash Position Schedule as presented.

Public Hearing on 2022 Budget and Resolution No. 2021-11-02 to Adopt the 2022 Budget: The public hearing to consider the proposed 2022 Budget was opened at 7:08 p.m.

It was noted that Notice stating that the Board would consider adoption of the 2022 Budget and the date, time and place of the public hearing was published pursuant to statute. No written objections were received prior to the public hearing.

No public comments were received, and the public hearing was closed at 7:38 p.m.

Ms. Dam presented the 2022 Budget to the Board an noted the Budget needed to be amended to add in \$25,000 in engineering, lower native grass management to \$100,000, election costs to increase to \$120,000 and capital streets to increase to \$150,000.

Following review and discussion, upon a motion duly made by Director Yosten, seconded by Director Pell and, upon vote, unanimously carried, the Board approved the 2022 Budget, subject to revisions as discussed, and adopted Resolution No. 2021-11-02.

In conjunction with adopting the 2022 Budget, the Board determined to set the Operations Fee at \$220 per quarter for single family homes and \$71,400 per quarter for the Sanctuary Apartments. The Board directed legal counsel to prepare a fee resolution, effective January 1, 2022, reflecting the increase to the Operations Fee.

Engagement Letter with Wipfli LLP to Prepare the 2021 Audit: Following review, upon a motion duly made by Director Pell, seconded by Director Yosten and, upon vote, unanimously carried, the Board approved the engagement letter with Wipfli LLP to prepare the 2021 Audit for an amount of \$5,100.

#### LEGAL MATTERS

Termination of License and Shared Cost Agreement for Landscape and Irrigation with Fieldstone at Tallyn's Reach Homeowners Association Inc., Dated November 29, 2018: Attorney Dickhoner and Director Yosten reviewed with the Board. Following review, upon a motion duly made by Director Dell'Orfano, seconded by Director Pell and, upon vote, unanimously carried, the Board terminated the License and Shared Cost

Agreement for landscape and irrigation with Fieldstone at Tallyn's Reach Homeowners Association Inc., dated November 29, 2018.

<u>Social Media Policy Resolution No. 2021-11-03:</u> Attorney Dickhoner provided an overview to the Board. Following review, upon a motion duly made by Director Dell'Orfano, seconded by Director Yosten and, upon vote, unanimously carried, the Board adopted Resolution No. 2021-11-03, Social Media Policy.

Consolidation of Tallyn's Reach Metropolitan District Nos. 2 and 3 and Dissolution of the Authority: Attorney Dickhoner discussed with the Board.

#### MANAGER MATTERS

HOA Event Planning for 2022 for a Total of \$35,170.00: Ms. Terrell reviewed with the Board. Following review and discussion, upon a motion duly made by Director Yosten, seconded by Director Dell'Orfano and, upon vote, unanimously carried, the Board approved the proposed events presented, but will not provide the funds for the events.

<u>Disinfection of Clubhouse for Rentals:</u> The owners will disinfect the space themselves and the Board decided to no longer charge the fogger fee.

CliftonLarsonAllen LLP ("CLA") Master Service Agreement and Related Statements of Work: Following review, upon a motion duly made by Director Dell'Orfano, seconded by Director Pell and, upon vote, unanimously carried, the Board approved the Master Service Agreement and related statements of work with CLA, subject to final review by legal counsel.

<u>Discussion of Delinquency Report:</u> Ms. Terrell provided the report to the Board prior to the meeting.

<u>Landscape Committee:</u> Director Yosten noted that some residents are dumping grass on Authority grounds. Ms. Terrell will follow up with the residents.

Ms. Terrell provided an update on the retaining wall project.

**Report to the Board:** Director Yosten provided an update to the Board.

<u>Services to Other Entities:</u> Ms. Terrell, Director Yosten and Director Pell provided an overview. Attorney Dickhoner was contacted by the City of Aurora and discussed an intergovernmental agreement.

<u>Meeting Dates for 2022:</u> The Board determined to set their 2022 meetings on the third Tuesday of March, July, September and November.

**Swim Team:** Following discussion, upon a motion duly made by Director Pell, seconded by Director Dell'Orfano and, upon vote, unanimously carried, the Board approved keeping the same schedule for the Swim Team for 2022 as 2021.

<u>ADJOURNMENT</u>	There being no further business to come before the Board, upon a motion
	duly made by Director Yosten, seconded by Director Pell and, upon vote,
	unanimously carried, the Board adjourned the meeting at 8:24 p.m.

The foregoing constitutes a true and correct copy of the minutes of the abovereferenced meeting

Secretary for the Meeting

# Tallyn's Reach Authority Interim Claims

# November 12, 2021 - March 9, 2022

Process Date	Vendor	Payment Method	<u>An</u>	<u>nount</u>
11/16/2021	CoCal Lands Services Inc.	Bill.com Check	\$	31,084.80
11/16/2021	CliftonLarsonAllen, LLP	Bill.com EFT		18,271.04
11/16/2021	Ark Ecological Services, LLC	Bill.com EFT		11,234.81
11/16/2021	White Bear Ankele Tanaka & Waldron	Bill.com EFT		10,215.41
11/16/2021	Xcel Energy	Bill.com Check		1,829.43
11/16/2021	GeoLens	Bill.com Check		1,076.25
11/16/2021	Rocky Mountain Flag Company LLC	Bill.com Check		995.62
11/16/2021	MFish Graphics LLC	Bill.com EFT		141.00
11/16/2021	Radiant Lighting Services Inc.	Bill.com Check		130.00
11/19/2021	LRE Water	Bill.com Check		6,067.69
11/19/2021	Waste Management of Denver	Other		507.83
12/1/2021	Aurora Water	Other		13,905.26
12/8/2021	CliftonLarsonAllen, LLP	Bill.com EFT		8,952.89
12/8/2021	YMCA of Metropolitan Denver	Bill.com Check		8,687.19
12/8/2021	CoCal Lands Services Inc.	Bill.com Check		1,210.00
12/8/2021	Falch & Falch Inc.	Bill.com Check		850.00
12/8/2021	Xcel Energy	Bill.com Check		742.10
12/8/2021	RLI Surety	Bill.com Check		500.00
12/8/2021	CenturyLink	Bill.com Check		403.42
12/16/2021	Brook Bell	Bill.com Check		200.00
12/16/2021	Jamie Kelly	Bill.com Check		178.00
12/22/2021	Chavez Services LLC	Bill.com Check		15,800.00
12/30/2021	Aurora Water	Other		1,107.73
12/31/2021	CoCal Lands Services Inc.	Bill.com Check		50,882.50
12/31/2021	Fieldstone HOA	Bill.com Check		37,131.93
12/31/2021	CO Spec Dist Prop & Liab Pool	Bill.com Check		17,940.00
12/31/2021	ET Irrigation Management Specialist LLC	Bill.com Check		16,075.00
12/31/2021	Ark Ecological Services, LLC	Bill.com EFT		11,942.93
12/31/2021	White Bear Ankele Tanaka & Waldron	Bill.com EFT		10,459.88
12/31/2021	CliftonLarsonAllen, LLP	Bill.com EFT		10,288.85
12/31/2021	Idea Law Group LLC	Bill.com Check		9,518.23
12/31/2021	BrightView Landscape	Bill.com Check		7,200.00
12/31/2021	MFish Graphics LLC	Bill.com EFT		3,347.50
12/31/2021	GeoLens	Bill.com Check		3,228.75
12/31/2021	YMCA of Metropolitan Denver	Bill.com Check		2,782.21
12/31/2021	Weed Wranglers, Inc	Bill.com Check		975.00
12/31/2021	Tallyns Reach Master Association Inc	Bill.com Check		798.12
12/31/2021	Xcel Energy	Bill.com Check		775.68
12/31/2021	Waste Management of Denver	Vendor Direct Virtual Card		509.83
12/31/2021	Radiant Lighting Services Inc.	Bill.com Check		380.92
12/31/2021	CenturyLink	Bill.com Check		373.42

# Tallyn's Reach Authority Interim Claims

# November 12, 2021 - March 9, 2022

Process Date	Vendor	Payment Method	<u>Amount</u>
12/31/2021	Around the Corner Handyman LLC	Bill.com Check	294.68
12/31/2021	Glenn & Lavon Berg	Bill.com Check	200.00
12/31/2021	Falch & Falch Inc.	Bill.com Check	134.00
1/25/2022	MFish Graphics LLC	Bill.com EFT	6,927.54
1/25/2022	Trent Abraham	Bill.com Check	200.00
2/1/2022	SavATree	Vendor Direct Virtual Card	12,576.00
2/2/2022	BrightView Landscape	Bill.com Check	29,345.00
2/2/2022	CliftonLarsonAllen, LLP	Bill.com EFT	18,172.90
2/2/2022	MFish Graphics LLC	Bill.com EFT	12,991.00
2/2/2022	White Bear Ankele Tanaka & Waldron	Bill.com EFT	4,134.40
2/2/2022	Idea Law Group LLC	Bill.com Check	2,731.00
2/2/2022	YMCA of Metropolitan Denver	Bill.com Check	2,141.00
2/2/2022	Xcel Energy	Bill.com Check	1,061.40
2/2/2022	Aurora Water	Other	1,054.17
2/2/2022	CenturyLink	Bill.com Check	373.42
2/2/2022	Tallyns Reach Master Association Inc	Bill.com Check	360.33
2/2/2022	Radiant Lighting Services Inc.	Bill.com Check	130.00
2/2/2022	Aurora Media Group	Bill.com Check	102.30
2/2/2022	Around the Corner Handyman LLC	Bill.com Check	75.00
3/4/2022	BrightView Landscape	Bill.com Check	51,527.58
3/4/2022	CliftonLarsonAllen, LLP	Bill.com EFT	16,079.46
3/4/2022	White Bear Ankele Tanaka & Waldron	Bill.com EFT	7,386.96
3/4/2022	CoCal Lands Services Inc.	Bill.com Check	6,400.00
3/4/2022	Logic Integration	Bill.com Check	4,124.37
3/4/2022	YMCA of Metropolitan Denver	Bill.com Check	3,092.68
3/4/2022	Idea Law Group LLC	Bill.com Check	1,524.75
3/4/2022	Special District Association	Bill.com EFT	1,237.50
3/4/2022	Xcel Energy	Bill.com Check	964.93
3/4/2022	CenturyLink	Bill.com Check	591.95
3/4/2022	Radiant Lighting Services Inc.	Bill.com Check	163.00
			\$ 504,798.54

# INDEPENDENT CONTRACTOR AGREEMENT TREE PRUNING

This INDEPENDENT CONTRACTOR AGREEMENT, including any and all exhibits attached hereto (the "Agreement"), is entered into as of the 22<sup>nd</sup> day of November, 2021, by and between TALLYN'S REACH AUTHORITY, a contractual authority and political subdivision of the State of Colorado (the "Authority"), and BrightView Landscape Services, Inc., a Colorado corporation (the "Contractor"). The Authority and the Contractor are referred to herein individually as a "Party" and collectively as the "Parties."

#### RECITALS

WHEREAS, Tallyn's Reach Metropolitan District Nos. 2 and 3 (each a "District" and collectively the "Districts") were organized pursuant to and in accordance with the provisions of §§ 32-1-101, et seq., C.R.S. for the purpose of constructing, financing, operating and maintaining certain public facilities and improvements for itself, its taxpayers, residents and users; and

WHEREAS, pursuant to § 32-1-1001(1)(d)(I), C.R.S., the Districts are empowered to enter into contracts and agreements affecting the affairs of the Districts; and

WHEREAS, pursuant to § 32-1-1001(1)(i), C.R.S., the Districts are empowered to appoint, hire and retain agents, employees, engineers and attorneys; and

WHEREAS, pursuant to their consolidated service plan and §29-1-203, C.R.S., the Districts may coordinate or contract with one another to provide any function, service or facility that they may be authorized to provide individually; and

WHEREAS, on February 12, 2018, the Districts entered into the Tallyn's Reach Authority Establishment Agreement (the "Establishment Agreement") to establish the Authority, a separate legal entity that is a political subdivision and political corporation of the State of Colorado; and

WHEREAS, pursuant to § 29-1-203.5(2), C.R.S., and the Establishment Agreement, the Board of Directors of the Authority (the "Board") shall have the management control and supervision of all the business and affairs of the Authority; and

WHEREAS, the Authority desires to engage the Contractor to perform certain services as are needed by the Authority to serve the property within and without its boundaries; and

WHEREAS, the Contractor has represented that it has the professional experience, skill and resources to perform the services, as set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and stipulations set forth herein, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

# TERMS AND CONDITIONS

- perform the services described in Exhibit A, attached hereto and incorporated herein by this reference (the "Services"): (a) in a professional manner, to the satisfaction of the Authority, using the degree of skill and knowledge customarily employed by other professionals performing similar services; (b) within the time period and pursuant to the Scope of Services specified in said Exhibit A; and (c) using reasonable commercial efforts to minimize any annoyance, interference or disruption to the residents, tenants, occupants and invitees within the Authority. Exhibit A may take any form, including forms which may include price and payment terms. In the event of any conflict between terms set forth in the body of this Agreement and terms set forth in Exhibit A, the terms in the body of this Agreement shall govern. Contractor shall have no right or authority, express or implied, to take any action, expend any sum, incur any obligation, or otherwise obligate the Authority in any manner whatsoever, except to the extent specifically provided in this Agreement (including Exhibit A) or through other authorization expressly delegated to or authorized by the Authority through its Board of Directors.
- 2. <u>TERM/RENEWAL</u>. This Agreement shall be effective as of the dated date hereof and shall terminate on the earlier to occur of: (i) termination pursuant to Section 18 hereof; (ii) completion of the Services; or (iii) December 31, 2022. Notwithstanding the foregoing, unless terminated pursuant to subsection (i) or (ii) above, or unless the Authority determines not to appropriate funds for this Agreement for the next succeeding year, this Agreement shall automatically renew on January 1 of each succeeding year for an additional one (1) year term.
- 3. <u>ADDITIONAL SERVICES</u>. The Authority may, in writing, request the Contractor provide additional services not set forth in **Exhibit A**. The terms and conditions of the provision of such services shall be subject to the mutual agreement of the Contractor and the Authority pursuant to a written service/work order executed by an authorized representative of the Authority and the Contractor or an addendum to this Agreement. Authorization to proceed with additional services shall not be given unless the Authority has appropriated funds sufficient to cover the additional compensable amount. To the extent additional services are provided pursuant to this Section 3, the terms and conditions of this Agreement relating to Services shall also apply to any additional services rendered.
- 4. REPAIRS/CLAIMS. The Contractor shall notify the Authority immediately of any and all damage caused by the Contractor to Authority property and that of third parties. The Contractor will promptly repair or, at the Authority's option, reimburse the Authority for the repair of any damage to property caused by the Contractor or its employees, agents or equipment. In addition, the Contractor shall promptly notify the Authority of all potential claims of which it becomes aware. The Contractor further agrees to take all reasonable steps to preserve all physical evidence and information which may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and to grant to the Authority the opportunity to review and inspect such evidence, including the scene of any damage or accidents. The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Services and shall provide all reasonable protection to prevent damage or injury to persons and property, including any material and equipment related to the Services,

whether in storage on or off site, under the care, custody, or control of the Contractor or any of its subcontractors.

# 5. <u>GENERAL PERFORMANCE STANDARDS</u>.

- a. The Contractor has by careful examination ascertained: (i) the nature and location of the Services; (ii) the configuration of the ground on which the Services are to be performed; (iii) the character, quality, and quantity of the labor, materials, equipment and facilities necessary to complete the Services; (iv) the general and local conditions pertaining to the Services; and (v) all other matters which in any way may affect the performance of the Services by the Contractor. Contractor enters into this Agreement solely because of the results of such examination and not because of any representations pertaining to the Services or the provision thereof made to it by the Authority or any agent of the Authority and not contained in this Agreement. The Contractor represents that it has or shall acquire the capacity and the professional experience and skill to perform the Services and that the Services shall be performed in accordance with the standards of care, skill and diligence provided by competent professionals who perform services of a similar nature to those specified in this Agreement. If competent professionals find that the Contractor's performance of the Services does not meet this standard, the Contractor shall, at the Authority's request, re-perform the Services not meeting this standard without additional compensation.
- b. The Contractor shall use reasonable commercial efforts to perform and complete the Services in a timely manner. If performance of the Services by the Contractor is delayed due to factors beyond the Contractor's reasonable control, or if conditions of the scope or type of services are expected to change, Contractor shall give prompt notice to the Authority of such a delay or change and receive an equitable adjustment of time and/or compensation, as negotiated between the Parties.
- c. The Services provided under this Agreement shall be adequate and sufficient for the intended purposes and shall be completed in a good and workmanlike manner.
- d. The Contractor agrees that it has and will continue to comply with all Laws while providing Services under this Agreement. "Laws" means: (i) federal, state, county and local or municipal body or agency laws, statutes, ordinances and regulations; (ii) any licensing bonding, and permit requirements; (iii) any laws relating to storage, use or disposal of hazardous wastes, substances or materials; (iv) rules, regulations, ordinances and/or similar directives regarding business permits, certificates and licenses; (v) regulations and orders affecting safety and health, including but not limited to the Occupational Safety and Health Act of 1970; (vi) Wage and Hour laws, Worker Compensation laws, and immigration laws.
- e. The responsibilities and obligations of the Contractor under this Agreement shall not be relieved or affected in any respect by the presence of any agent, consultant, subconsultant or employee of the Authority. Review, acceptance or approval by the Authority of the Services performed or any documents prepared by the Contractor shall not relieve the Contractor of any responsibility for deficiencies, omissions or errors in said Services or documents, nor shall it be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

6. MONTHLY STATUS REPORT. The Contractor shall provide to the Authority, at the Authority's request, on or before the 25th of each month, a narrative progress and status report describing work in progress and results achieved during the reporting period, including a description of the Services performed during the invoice period and the Services anticipated to be performed during the ensuing invoice period ("Monthly Report").

# 7. <u>COMPENSATION AND INVOICES.</u>

- a. <u>Compensation</u>. Compensation for the Services provided under this Agreement shall be in accordance with the compensation schedule attached hereto as **Exhibit A**. The Contractor shall be responsible for all expenses it incurs in performance of this Agreement and shall not be entitled to any reimbursement or compensation except as provided in **Exhibit A** of this Agreement, unless said reimbursement or compensation is approved in writing by the Authority in advance of incurring such expenses. Any direct reimbursable costs for materials will be reimbursable at the Contractor's actual cost, provided that the Contractor shall make a reasonable attempt to notify the Authority of the estimated amount of such reimbursable costs (or any material adjustments thereto subsequently identified) prior to commencing the requested services. Concurrent with the execution of this Agreement, the Contractor shall provide the Authority with a current completed Internal Revenue Service Form W-9 (Request for Taxpayer Identification Number and Certification) ("W-9"). No payments will be made to the Contractor until the completed W-9 is provided. The W-9 shall be attached hereto and incorporated herein as **Exhibit B**.
- b. <u>Invoices</u>. Invoices for the Services shall be submitted monthly, by the 10<sup>th</sup> of each month, during the term of this Agreement and shall contain the following information:
  - i. An itemized statement of the Services performed.
- ii. Any other reasonable information required by the Authority to process payment of the invoice, including project and/or cost codes as provided in any applicable written service/work order.

The Authority shall be charged only for the actual time and direct costs incurred for the performance of the Services. Invoices received by the Authority after the  $10^{\rm th}$  of each month may be processed the following month.

8. <u>TIME FOR PAYMENT</u>. Payment for the Services shall be made by the Authority within thirty (30) days of receipt of: (i) a timely, satisfactory and detailed invoice in the form required by Section 7; and (ii) if applicable, a reasonably satisfactory and detailed Monthly Report, for that portion of the Services performed and not previously billed. The Authority may determine to waive or extend the deadline for filing the Monthly Report, or may make payment for Services to the Contractor notwithstanding a delay in filing the Monthly Report, upon reasonable request of the Contractor, if it is in the interest of the Authority to do so. In the event a Board meeting is not scheduled in time to review payment of an invoice, the Board hereby authorizes payment for Services, subject to the appropriation and budget requirements under Section 27 hereof, without the need for additional Board approval, so long as any payment required to be made does not exceed the amounts appropriated for such Services as set forth in the Authority's approved budget.

Such payment shall require review and approval of each Monthly Report and invoice by two officers of the Authority.

- INDEPENDENT CONTRACTOR. The Contractor is an independent contractor and nothing in this Agreement shall constitute or designate the Contractor or any of its employees or agents as employees or agents of the Authority. The Contractor shall have full power and authority to select the means, manner and method of performing its duties under this Agreement, without detailed control or direction from the Authority, and shall be responsible for supervising its own employees or subcontractors. The Authority is concerned only with the results to be obtained. The Authority shall not be obligated to secure, and shall not provide, any insurance coverage or employment benefits of any kind or type to or for the Contractor or its employees, sub-consultants, contractors, agents, or representatives, including coverage or benefits related but not limited to: local, state or federal income or other tax contributions, insurance contributions (e.g. FICA taxes), workers' compensation, disability, injury, health or life insurance, professional liability insurance, errors and omissions insurance, vacation or sick-time benefits, retirement account contributions, or any other form of taxes, benefits or insurance. The Contractor shall be responsible for its safety, and the safety of its employees, sub-contractors, agents, and representatives. All personnel furnished by the Contractor will be deemed employees or subcontractors of the Contractor and will not for any purpose be considered employees or agents of The Contractor is not entitled to worker's compensation benefits or the Authority. unemployment insurance benefits, unless unemployment compensation coverage is provided by the Contractor or some other entity other than the Authority, and the Contractor is obligated to pay federal and state income taxes on moneys by it earned pursuant to this Agreement.
- 10. <u>EQUAL OPPORTUNITY / EMPLOYMENT ELIGIBILITY</u>. This Agreement is subject to all applicable laws and executive orders relating to equal opportunity and non-discrimination in employment and the Contractor represents and warrants that it will not discriminate in its employment practices in violation of any such applicable law or executive order.

The Contractor hereby states that it does not knowingly employ or contract with illegal aliens and that the Contractor has participated in or has attempted to participate in the E-Verify Program or Department Program (formerly known as the Basic Pilot Program) (as defined in §8-17.5-101, C.R.S.) in order to verify that it does not employ any illegal aliens. The Contractor affirmatively makes the follow declarations:

- a. The Contractor shall not knowingly employ or contract with an illegal alien who will perform work under the public contract for services contemplated in this Agreement and will participate in the E-Verify Program or Department Program (as defined in §8-17.5-101, C.R.S.) 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 contemplated in this Agreement.
- b. The Contractor shall not knowingly 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 the services contemplated in this Agreement.

- c. The Contractor has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under the public contract for services through participation in either the E-Verify Program or the Department Program.
- d. The Contractor is prohibited from using either the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.
- e. If the Contractor obtains actual knowledge that a subcontractor performing the services under this Agreement knowingly employs or contracts with an illegal alien, the Contractor shall be required to:
- i. Notify the subcontractor and the Authority within three (3) days that the Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien.
- ii. Terminate the subcontract with the subcontractor if within three (3) days of receiving the notice required above 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 (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.
- f. The Contractor shall comply with any reasonable request by the Department of Labor and Employment made in the course of an investigation involving matters under this Section 10 that such Department is undertaking pursuant to the authority established in § 8-17.5-102, C.R.S.
- g. If the Contractor violates a provision of this Agreement pursuant to which § 8-17.5-102, C.R.S., applies the Authority may terminate this Agreement upon three (3) days written notice to the Contractor. If this Agreement is so terminated, the Contractor shall be liable for actual and consequential damages to the Authority.

# 11. CONTRACTOR'S INSURANCE.

- a. The Contractor shall acquire and maintain, at its sole cost and expense, during the entire term of this Agreement, insurance coverage in the minimum amounts set forth in **Exhibit C**, attached hereto and incorporated herein by this reference. A waiver of subrogation and rights of recovery against the Authority, its directors, officers, employees and agents is required for Commercial General Liability and Workers Compensation coverage. The Commercial General Liability and Comprehensive Automobile Liability Insurance policies will be endorsed to name the Authority as an additional insured. All coverage provided pursuant to this Agreement shall be written as primary policies, not contributing with and not supplemental to any coverage that the Authority may carry, and any insurance maintained by the Authority shall be considered excess. The Authority shall have the right to verify or confirm, at any time, all coverage, information or representations contained in this Agreement.
- b. Prior to commencing any work under this Agreement, the Contractor shall provide the Authority with a certificate or certificates evidencing the policies required by this

Agreement, as well as the amounts of coverage for the respective types of coverage, which certificate(s) shall be attached hereto as **Exhibit C-1**. If the Contractor subcontracts any portion(s) of the Services, said subcontractor(s) shall be required to furnish certificates evidencing statutory workers' compensation insurance, comprehensive general liability insurance and automobile liability insurance in amounts satisfactory to the Authority and the Contractor; provided, however, that sub-contractors of the Contractor shall not be required by the Authority to provide coverage in excess of that which is required hereunder of the Contractor. If the coverage required expires during the term of this Agreement, the Contractor or subcontractor shall provide replacement certificate(s) evidencing the continuation of the required policies.

c. The Contractor's failure to purchase the required insurance shall not serve to release it from any obligations contained in this Agreement; nor shall the purchase of the required insurance serve to limit the Contractor's liability under any provision in this Agreement. The Contractor shall be responsible for the payment of any deductibles on issued policies.

# 12. CONFIDENTIALITY AND CONFLICTS.

- Confidentiality. Any information deemed confidential by the Authority and given to the Contractor by the Authority, or developed by the Contractor as a result of the performance of a particular task, shall remain confidential. In addition, the Contractor shall hold in strict confidence, and shall not use in competition, any information which the Contractor becomes aware of under or by virtue of this Agreement which the Authority deems confidential, or which the Authority has agreed to hold confidential, or which, if revealed to a third party, would reasonably be construed to be contrary to the interests of the Authority. Confidential information shall not include, however, any information which is: (i) generally known to the public at the time provided to the Contractor; (ii) provided to the Contractor by a person or entity not bound by confidentiality to the Authority; or (iii) independently developed by the Contractor without use of the Authority's confidential information. During the performance of this Agreement, if the Contractor is notified that certain information is to be considered confidential, the Contractor agrees to enter into a confidentiality agreement in a form reasonably acceptable to the Authority and the Contractor. The Contractor agrees that any of its employees, agents or subcontractors with access to any information designated thereunder as confidential information of the Authority shall agree to be bound by the terms of such confidentiality agreement.
- b. <u>Personal Identifying Information</u>. During the performance of this Agreement, the Authority may disclose Personal Identifying Information to the Contractor. "**Personal Identifying Information**" means a social security number; a personal identification number; a password; a pass code; an official state or government-issued driver's license or identification card number; a government passport number; biometric data, as defined in § 24-73-103(1)(a), C.R.S.; an employer, student, or military identification number; or a financial transaction device, as defined in § 18-5-701(3), C.R.S. In compliance with § 24-73-102, C.R.S., the Contractor agrees to implement and maintain reasonable security procedures and practices that are: (i) appropriate to the nature of the Personal Identifying Information disclosed to the Contractor; and (ii) reasonably designed to help protect the Personal Identifying Information from unauthorized access, use, modification, disclosure, or destruction.

- c. <u>Conflicts</u>. Prior to the execution of, and during the performance of this Agreement and prior to the execution of future agreements with the Authority, the Contractor agrees to notify the Authority of conflicts known to the Contractor that impact the Contractor's provision of Services to the Authority.
- OWNERSHIP OF DOCUMENTS. All documents produced by or on behalf of the Contractor prepared pursuant to this Agreement, including, but not limited to, all maps, plans, drawings, specifications, reports, electronic files and other documents, in whatever form, shall remain the property of the Authority under all circumstances, upon payment to the Contractor of the invoices representing the work by which such materials were produced. At the Authority's request the Contractor will provide the Authority with all documents produced by or on behalf of the Contractor pursuant to this Agreement. The Contractor shall maintain electronic and reproducible copies on file of any such instruments of service involved in the Services for a period of two (2) years after termination of this Agreement, shall make them available for the Authority's use and shall provide such copies to the Authority upon request at no cost.
- LIENS AND ENCUMBRANCES. The Contractor shall not have any right or 14. interest in any Authority assets, or any claim or lien with respect thereto, arising out of this Agreement or the performance of the Services contemplated in this Agreement. The Contractor, for itself, hereby waives and releases any and all statutory or common law mechanic's, materialmen's or other such lien claims, or rights to place a lien upon the Authority's property or any improvements thereon in connection with any Services performed under or in connection with this Agreement, and the Contractor shall cause all permitted subcontractors, suppliers, materialmen, and others claiming by, through or under the Contractor to execute similar waivers prior to commencing any work or providing any materials in connection with the Services. The Contractor further agrees to execute a sworn affidavit respecting the payment and lien releases of all subcontractors, suppliers and materialmen, and release of lien respecting the Services at such time or times and in such form as may be reasonably requested by the Authority. The Contractor will provide indemnification against all such liens for labor performed, materials supplied or used by the Contractor and/or any other person in connection with the Services undertaken by the Contractor, in accordance with Section 15, below.

# 15. <u>INDEMNIFICATION</u>.

a. The Contractor shall defend, indemnify and hold harmless the Authority and each of its directors, officers, contractors, employees, agents and consultants (collectively, the "Authority Indemnitees"), from and against any and all claims, demands, losses, liabilities, actions, lawsuits, damages, and expenses (the "Claims"), including reasonable legal expenses and attorneys' fees actually incurred, by the Authority Indemnitees arising directly or indirectly, in whole or in part, out of the errors or omissions, negligence, willful misconduct, or any criminal or tortious act or omission of the Contractor or any of its subcontractors, officers, agents or employees, in connection with this Agreement and/or the Contractor's performance of the Services or work pursuant to this Agreement. Notwithstanding anything else in this Agreement or otherwise to the contrary, the Contractor is not obligated to indemnify the Authority Indemnitees for the negligence of the Authority or the negligence of any other Authority Indemnitee, except the Contractor. Except as otherwise provided by applicable law, this indemnification obligation will not be limited in any way by any limitation on the amount or types of damages, compensation or

benefits payable by or for the Contractor under workers' compensation acts, disability acts or other employee benefit acts, provided that in no event shall the Contractor be liable for special/consequential or punitive damages.

- b. In the event the Contractor fails to assume the defense of any Claims under this Section 15 within fifteen (15) days after notice from the Authority of the existence of such Claim, the Authority may assume the defense of the Claim with counsel of its own selection, and the Contractor will pay all reasonable expenses of such counsel. Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the Contractor under the terms of this indemnification obligation.
- c. Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the Contractor under the terms of this indemnification obligation. The Contractor shall obtain, at its own expense, any additional insurance that it deems necessary with respect to its obligations under this Agreement, including the indemnity obligations set forth in Section 15. This defense and indemnification obligation shall survive the expiration or termination of this Agreement.
- 16. <u>ASSIGNMENT</u>. The Contractor shall not assign this Agreement or parts thereof, or its respective duties, without the express written consent of the Authority. Any attempted assignment of this Agreement in whole or in part with respect to which the Authority has not consented, in writing, shall be null and void and of no effect whatsoever.
- 17. SUB-CONTRACTORS. The Contractor is solely and fully responsible to the Authority for the performance of all Services in accordance with the terms set forth in this Agreement, whether performed by the Contractor or a subcontractor engaged by the Contractor, and neither the Authority's approval of any subcontractor, suppliers, or materialman, nor the failure of performance thereof by such persons or entities, will relieve, release, or affect in any manner the Contractor's duties, liabilities or obligations under this Agreement. The Contractor shall not subcontract any Services without prior written approval by the Authority. The Contractor agrees that each and every agreement of the Contractor with any subcontractor to perform Services under this Agreement shall contain an indemnification provision identical to the one contained in this Agreement holding the Authority harmless for the acts of the subcontractor. Prior to commencing any Services, a subcontractor shall provide evidence of insurance coverage to the Authority in accordance with the requirements of this Agreement. The Contractor further agrees that all such subcontracts shall provide that they may be terminated immediately without cost or penalty upon termination of this Agreement, other than payment for services rendered prior to the date of any such termination.
- 18. TERMINATION. In addition to the termination provisions contained in Section 2, above, this Agreement may be terminated for convenience by the Contractor upon delivery of thirty (30) days prior written notice to the Authority and by the Authority by giving the Contractor thirty (30) days prior written notice. Each Party may terminate this Agreement for cause at any time upon written notice to the other Party setting forth the cause for termination and the notified Party's failure to cure the cause to the reasonable satisfaction of the Party given such notice within the cure period set forth in Section 19. If this Agreement is terminated, the Contractor shall be paid for all the Services satisfactorily performed prior to the designated termination date, including

reimbursable expenses due. Said payment shall be made in the normal course of business. Should either Party to this Agreement be declared bankrupt, make a general assignment for the benefit of creditors or commit a substantial and material breach of this Agreement in the view of the other Party, said other Party shall be excused from rendering or accepting any further performance under this Agreement. In the event of termination of this Agreement, the Contractor shall cooperate with the Authority to ensure a timely and efficient transition of all work and work product to the Authority or its designees. All time, fees and costs associated with such transition shall not be billed by the Contractor to the Authority.

- 19. <u>DEFAULT</u>. If either Party fails to perform in accordance with the terms, covenants and conditions of this Agreement, or is otherwise in default of any of the terms of this Agreement, the non-defaulting party shall deliver written notice to the defaulting party of the default, at the address specified in Section 20 below, and the defaulting party will have ten (10) days from and after receipt of the notice to cure the default. If the default is not of a type which can be cured within such ten (10)-day period and the defaulting party gives written notice to the non-defaulting party within such ten (10)-day period that it is actively and diligently pursuing a cure, the defaulting party will have a reasonable period of time given the nature of the default following the end of the ten (10)-day period to cure the default, provided that the defaulting party is at all times within the additional time period actively and diligently pursuing the cure. If any default under this Agreement is not cured as described above, the non-defaulting party will, in addition to any other legal or equitable remedy, have the right to terminate this Agreement and enforce the defaulting party's obligations pursuant to this Agreement by an action for injunction or specific performance.
- NOTICES. Any notice or communication required under this Agreement must be 20. in writing, and may be given personally, sent via nationally recognized overnight carrier service, or by registered or certified mail, return receipt requested. If given by registered or certified mail, the same will be deemed to have been given and received on the first to occur of: (i) actual receipt by any of the addressees designated below as the party to whom notices are to be sent; or (ii) three days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered or sent via nationally recognized overnight carrier service, a notice will be deemed to have been given and received on the first to occur of: (i) one business day after being deposited with a nationally recognized overnight air courier service; or (ii) delivery to the party to whom it is addressed. Any party hereto may at any time, by giving written notice to the other party hereto as provided in this Section 20 of this Agreement, designate additional persons to whom notices or communications will be given, and designate any other address in substitution of the address to which such notice or communication will be given. Such notices or communications will be given to the parties at their addresses set forth below:

Authority:

Tallyn's Reach Authority c/o CliftonLarsonAllen 8390 E. Crescent Parkway #500 Greenwood Village, CO 80111 Attention: Denise Denslow

Phone: (303) 265-7923

Email: denise.denslow@claconnect.com

With a Copy to: White Bear Ankele Tanaka & Waldron

2154 E. Commons Ave., Suite 2000

Centennial, CO 80122

Attention: Blair M. Dickhoner, Esq.

Phone: (303) 858-1800

E-mail: bdickhoner@wbapc.com

Contractor: BrightView Landscape Services, Inc.

8888 N. Motsenbocker Rd., Ste. A

Parker, CO 80134

Attention: Sara Rutman Phone: (303) 841-3003

Email: sara.rutman@brightview.com

- 21. <u>AUDITS</u>. The Authority shall have the right to audit, with reasonable notice, any of the Contractor's books and records solely as are necessary to substantiate any invoices and payments under this Agreement (including, but not limited to, receipts, time sheets, payroll and personnel records) and the Contractor agrees to maintain adequate books and records for such purposes during the term of this Agreement and for a period of two (2) years after termination of this Agreement and to make the same available to the Authority at all reasonable times and for so long thereafter as there may remain any unresolved question or dispute regarding any item pertaining thereto.
- 22. <u>ENTIRE AGREEMENT</u>. This Agreement constitutes the entire agreement between the Parties hereto relating to the Services, and sets forth the rights, duties, and obligations of each to the other as of this date, and hereby supersedes any and all prior negotiations, representations, agreements or arrangements of any kind with respect to the Services, whether written or oral. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force and effect. This Agreement may not be modified except by a writing executed by both the Contractor and the Authority.
- 23. <u>BINDING AGREEMENT</u>. This Agreement shall inure to and be binding on the heirs, executors, administrators, successors, and assigns of the Parties hereto.
- 24. <u>NO WAIVER</u>. No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other of the provisions of this Agreement, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided in this Agreement, nor shall the waiver of any default be deemed a waiver of any subsequent default.

#### GOVERNING LAW.

a. <u>Venue</u>. Venue for all actions arising from this Agreement shall be in the District Court in and for the county in which the Authority is located. The Parties expressly and irrevocably waive any objections or rights which may affect venue of any such action, including,

but not limited to, forum non-conveniens or otherwise. At the Authority's request, the Contractor shall carry on its duties and obligations under this Agreement during any legal proceedings and the Authority shall continue to pay for the Services performed under this Agreement until and unless this Agreement is otherwise terminated.

- b. <u>Choice of Law</u>. Colorado law shall apply to any dispute, without regard to conflict of law principles that would result in the application of any law other than the law of the State of Colorado.
- c. <u>Litigation</u>. At the Authority's request, the Contractor will consent to being joined in litigation between the Authority and third parties, but such consent shall not be construed as an admission of fault or liability. The Contractor shall not be responsible for delays in the performance of the Services caused by factors beyond its reasonable control including delays caused by Act of God, accidents, failure of any governmental or other regulatory authority to act in a timely manner or failure of the Authority to furnish timely information or to approve or disapprove of Contractor's Services in a timely manner.
- 26. GOOD FAITH OF PARTIES. In the performance of this Agreement, or in considering any requested approval, acceptance, consent, or extension of time, the Parties agree that each will act in good faith and will not act unreasonably, arbitrarily, capriciously, or unreasonably withhold, condition, or delay any approval, acceptance, consent, or extension of time required or requested pursuant to this Agreement.
- 27. SUBJECT TO ANNUAL APPROPRIATION AND BUDGET. The Authority does not intend hereby to create a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever. The Contractor expressly understands and agrees that the Authority's obligations under this Agreement shall extend only to monies appropriated for the purposes of this Agreement by the Board and shall not constitute a mandatory charge, requirement or liability in any ensuing fiscal year beyond the then-current fiscal year. No provision of this Agreement shall be construed or interpreted as a delegation of governmental powers by the Authority, or as creating a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever of the Authority or statutory debt limitation, including, without limitation, Article X, Section 20 or Article XI, Section 6 of the Constitution of the State of Colorado. No provision of this Agreement shall be construed to pledge or to create a lien on any class or source of Authority funds. The Authority's obligations under this Agreement exist subject to annual budgeting and appropriations, and shall remain subject to the same for the entire term of this Agreement.
- 28. GOVERNMENTAL IMMUNITY. Nothing in this Agreement shall be construed to waive, limit, or otherwise modify, in whole or in part, any governmental immunity that may be available by law to the Authority, its respective officials, employees, contractors, or agents, or any other person acting on behalf of the Authority and, in particular, governmental immunity afforded or available to the Authority pursuant to the Colorado Governmental Immunity Act, §§ 24-10-101, et seq., C.R.S.
- 29. <u>NEGOTIATED PROVISIONS</u>. This Agreement shall not be construed more strictly against one Party than against the other merely by virtue of the fact that it may have been

prepared by counsel for one of the Parties, it being acknowledged that each Party has contributed to the preparation of this Agreement.

- 30. <u>SEVERABILITY</u>. If any portion of this Agreement is declared by any court of competent jurisdiction to be invalid, void or unenforceable, such decision shall not affect the validity of any other portion of this Agreement which shall remain in full force and effect, the intention being that such portions are severable. In addition, in lieu of such void or unenforceable provision, there shall automatically be added as part of this Agreement a provision similar in terms to such illegal, invalid or unenforceable provision so that the resulting reformed provision is legal, valid and enforceable.
- 31. <u>NO THIRD PARTY BENEFICIARIES</u>. 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 the Parties 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 Parties receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.
- 32. <u>OPEN RECORDS</u>. The Parties understand that all material provided or produced under this Agreement may be subject to the Colorado Open Records Act, §§ 24-72-202, *et seq.*, C.R.S.
- 33. WARRANTY. The Contractor shall and does by this Agreement guarantee and warrant that all workmanship, materials, and equipment furnished, installed, or performed for the accomplishment of the Services (collectively, the "Work") will be of good quality and new, unless otherwise required or permitted by this Agreement. The Contractor further warrants that the Work will conform to all requirements of this Agreement and all other applicable laws, ordinances, codes, rules and regulations of any governmental authorities having jurisdiction over the Work. All Services are subject to the satisfaction and acceptance of the Authority, but payments for the completed Work will not constitute final acceptance nor discharge the obligation of the Contractor to correct defects at a later date. Such warranties set forth in this Agreement are in addition to, and not in lieu of, any other warranties prescribed by Colorado law.
- 34. TAX EXEMPT STATUS. The Authority is exempt from Colorado state sales and use taxes. Accordingly, taxes from which the Authority is exempt shall not be included in any invoices submitted to the Authority. The Authority shall, upon request, furnish Contractor with a copy of its certificate of tax exemption. Contractor and subcontractors shall apply to the Colorado Department of Revenue, Sales Tax Division, for an Exemption Certificate and purchase materials tax free. The Contractor and subcontractors shall be liable for exempt taxes paid due to failure to apply for Exemption Certificates or for failure to use said certificate.
- 35. <u>COUNTERPART EXECUTION</u>. This Agreement may be executed in several counterparts, each of which may be deemed an original, but all of which together shall constitute one and the same instrument. Executed copies hereof may be delivered by facsimile or email of a PDF document, and, upon receipt, shall be deemed originals and binding upon the signatories hereto, and shall have the full force and effect of the original for all purposes, including the rules of evidence applicable to court proceedings.

[Signature pages follow].

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date first above written. By the signature of its representative below, each Party affirms that it has taken all necessary action to authorize said representative to execute this Agreement.

#### **AUTHORITY:**

TALLYN'S REACH AUTHORITY, a contractual authority and political subdivision of the State of Colorado

David Patterson

Officer of the Authority

ATTEST:

By Pell

APPROVED AS TO FORM:

WHITE BEAR ANKELE TANAKA & WALDRON Attorneys at Law

— Docusigned by: Blair M. Dickloner

General Counsel for the Authority

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Brightview Landscape Services, Inc., a Colorado corporation

Printed Name

SS.

STATE OF COLORADO

COUNTY OF Douglas

The foregoing instrument was acknowledged before me this 1st day of December 2021, by Correct Wight, as the Branch Many or of BrightView Landscape Services, Inc.

Witness my hand and official seal.

My commission expires: July 21, 2023

MARTHA J MICELI **NOTARY PUBLIC** STATE OF COLORADO NOTARY ID 20034023907 MY COMMISSION EXPIRES JULY 21, 2023

#### **EXHIBIT A**

# SCOPE OF SERVICES/COMPENSATION SCHEDULE



November 22, 2021 Page 1 of 2

# Proposal for Extra Work at Tallyn's Reach Authority

Property Name

Tallyn's Reach Authority

Contact

Celeste Terrell

Property Address

24900 E Park Crescent Dr. Aurora, CO 80016

То

Tallyns Reach Authority 370 Interlocken Blvd Ste 500

Billing Address 370 Interlocken Blvd St Broomfield, CO 80021

Project Name

Tree Pruning

Project Description

Tree Pruning

Scope of Work

QTY	UoM/Size	Material/Description	Unit Price	Total
1.00	LUMPSUM	Prume 7 Cottonwood around Glubhouse playground to deadwood, thin and shape	\$4,500.00	\$4,500.00
1.00	LUMP SUM	Prune 7 Pines North of Clubhouse to deadwood, thin and shape	\$3,430.00	\$3,430.00
1.00	LUMP SUM	Prune dead tops of Pines south of Clubhouse parking lot	\$450.00	\$450.00
1.00	LUMP SUM	Prune Pines over dumpster to remove large broken limb	\$350.00	\$350.00

or internal use only

SO# JOB#

7654945

Service Line

400300615 130

Total Price

\$8,730.00

This proposal is valid for 60 days unless otherwise approved by Brightview Landscape Services, Inc. 8888 Mozerbooker Road, Suite A, Parker, CO 80134 ph. (322) 641-5003 fax (303) 643-3107

November 22, 2021

Page 2 612

#### TERMS & CONDITIONS

- The Contractor shall recognize and perform in accordance with expert femiliars appropriately and diswinds only contained or referred to federal motionals alial conform to led experientation.
- Work Force: Ecrosota shar cangular a qualified remisentative with expensions in cardinate meritamenteristication angulates of vision studioselar has management the secretors distribute competent and qualified and shall be reguly additionated in section the U.S.
  - License and Permits. Contactor seat mandar a tandence Contactor's feeter, if required by State or and one and we compay on at other tenese and permit requestrones of the Cay. State and Sederal Governments as well as all other requirements of two
- faxes. Contractor agrees to pay all applicable taxes including sales tax where applicable on material supplied.
- Insurance. Commodis agrees to provide General Liabitity Insurance. Automotive Liabitity Insurance Victorians Compensation Insurance and any other naturance required by law or Classif Owner as specified as wising prior to commissioners of were if not specified. Contractor will furnish insurance with \$1,000,000 (not of Labitity).
- Clability Contracts and independ the CircleConet and its agents and michigens bein and agents are fined party heatines that each off of Cardealine work to the where text satisfacts are explained for bear from stated by Cardealine's repligives in a deltime sometime. Certainty and the land microalined Certainty and the land contracts of Gos are colored as independently and that are damage that or true from Arts of Gos are colored as independently and the land. Certainty are contracted to Cardealine and have being the response to the agreement within soly (But days Ary sleggli treated, dams and/or camages resulting from any request that is not or properly carded by ClientDoner or not under ClientDoner management and control shall be the sale responsibility of the ClientDoner.
- Subcontractors. Converte process he night to his qualitative subcontractors to perform specialized functions of work requiring appropriated
- Additional Services Any additional ways to shown in the above semilectures material with control of the established only once segred without orders and will become an other change over a term the extension.
- 9. Access to Johante Conformer shall provide an officer to perform the ours. Conformer which harmed access to all reader of pashe among Conformer is in perform with an improved by the Conformer in officer indicates obtained timete, then promise becames hours and other resourcible periods of been Conformed as perform the only as readonably procured after the connect makes the use available for performance of the occess.
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- 11 Termination. The West Order may be taken that day the other party with construct many upon seven of a each days assumes writer factor. Desertions with the expected to pay for all information processed, and seven nonputed to the nate of termination with research to the page to terminate or deservations.
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Property Manager

Section .

Celeste Terrell November 22, 2021

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# EXHIBIT B

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#### **EXHIBIT C**

### INSURANCE REQUIREMENTS

NOTE: All insurance required and provided hereunder shall also comply with the provisions of Section 11 of this Agreement.

- 1. Standard Worker's Compensation and Employer's Liability Insurance covering all employees of Contractor involved with the performance of the Services, with policy amounts and coverage in compliance with the laws of the jurisdiction in which the Services will be performed.
- 2. Commercial General Liability Insurance with minimum limits of liability of not less than \$2,000,000 per occurrence for bodily injury and property damage liability; \$2,000,000 designated location, general aggregate; and \$1,000,000 umbrella. Such insurance will include coverage for contractual liability, personal injury and broad form property damage, and shall include all major divisions of coverage and be on a comprehensive basis including, but not limited to:
  - a. premises operations;
  - b. personal injury liability without employment exclusion;
  - c. limited contractual;
  - d. broad form property damages, including completed operations;
  - e. medical payments;
  - f. products and completed operations;
  - g. independent consultants coverage;
  - h. coverage inclusive of construction means, methods, techniques, sequences, and procedures, employed in the capacity of a construction consultant; and

This policy must include coverage extensions to cover the indemnification obligations contained in this Agreement to the extent caused by or arising out of bodily injury or property damage.

- 3. Comprehensive Automobile Liability Insurance covering all owned, non-owned and hired automobiles used in connection with the performance of the Services, with limits of liability of not less than \$1,000,000 combined single limit bodily injury and property damage. This policy must include coverage extensions to cover the indemnification obligations contained in this Agreement to the extent caused by or arising out of bodily injury or property damage.
- 4. If applicable: Contractor shall secure and maintain a third party fidelity bond in favor of the Authority covering the Contractor and its employees and agents who may provide or be responsible for the provision of Services where such activities contemplate the responsibility for money or property of the Authority. Such bond shall protect the Authority against any fraudulent or dishonest act which may result in the loss of money, securities, or other property belonging to or in the possession of the Authority. Said bond

- shall be in an amount as determined by the Authority, from a surety acceptable to the Authority.
- 5. Any other insurance commonly used by contractors for services of the type to be performed pursuant to this Agreement.

# **EXHIBIT C-1**

# CERTIFICATE(S) OF INSURANCE

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#### EXHIBIT D

# CERTIFICATE OF GOOD STANDING WITH COLORADO SECRETARY OF STATE

# OFFICE OF THE SECRETARY OF STATE OF THE STATE OF COLORADO

### CERTIFICATE OF FACT OF GOOD STANDING

I, Jena Griswold, as the Secretary of State of the State of Colorado, hereby certify that, according to the records of this office.

BrightView Landscape Services, Inc.

15 3

#### Corporation

formed or registered on 01/03/1972 under the law of Colorado, has complied with all applicable requirements of this office, and is in good standing with this office. This entity has been assigned entity identification number 19871251562.

This certificate reflects facts established or disclosed by documents delivered to this office on paper through 11/24/2021 that have been posted, and by documents delivered to this office electronically through 11/29/2021 @ 15:24:42.

I have affixed hereto the Great Seal of the State of Colorado and duly generated, executed, and issued this official certificate at Denver, Colorado on 11/29/2021 @ 15:24:42 in accordance with applicable law. This certificate is assigned Confirmation Number 13614134



Secretary of State of the State of Colorado

Notice: A certificate issued electronically from the Colorado Secretary of State's Web site is fully and immediately valid and effective. However, as an option, the issuance and validity of a certificate obtained electronically may be established by withing the Validate a Certificate page of the Secretary of State's Web site, hapshown so state to as bisContificate Search Criteria do entering the certificate is conformation number displayed on the certificate is merely applicated and is not necessary to the valid and effective issuance of a certificate. For more information, visit our Web site, http://www.sos.state.co.us/click\*Businesses, grademarks, trade names and select "Frequently Asked Questions."



#### **Certificate Of Completion**

Envelope Id: 0704B8EB5CCB443B921D2BF84A3D6E09 Status: Completed

Subject: Please DocuSign: Tallyn's Reach Authority - Agreements for Dec. Winter Watering and Tree Pruning

Client Name: Tallyn's Reach Authority Client Number: 011-045194-OS07-2021

Source Envelope:

Document Pages: 47 Signatures: 6 **Envelope Originator:** Initials: 0 Cindy Jenkins Certificate Pages: 5 220 South 6th Street AutoNav: Enabled

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Time Zone: (UTC-06:00) Central Time (US & Canada)

Suite 300 Minneapolis, MN 55402

Cindy.Jenkins@claconnect.com IP Address: 165.225.10.178

#### **Record Tracking**

Status: Original

12/6/2021 12:23:40 PM

Holder: Cindy Jenkins

Cindy.Jenkins@claconnect.com

Location: DocuSign

#### **Signer Events**

Managing Director/VP

**David Patterson** david.patterson@falck.com

Security Level: Email, Account Authentication

(None)

#### Signature

David Patterson 7BD319407C7A455.

Signature Adoption: Pre-selected Style Using IP Address: 174.195.145.14

#### **Timestamp**

Sent: 12/6/2021 12:30:17 PM Viewed: 12/6/2021 2:58:29 PM Signed: 12/6/2021 2:59:24 PM

#### **Electronic Record and Signature Disclosure:**

Accepted: 12/6/2021 2:58:29 PM

ID: c99c1470-9fbc-45ce-a165-900a36969f82

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bjnsteve95@yahoo.com

Secretary

Security Level: Email, Account Authentication

(None)

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Signed using mobile

Sent: 12/6/2021 2:59:27 PM Viewed: 12/6/2021 3:00:00 PM Signed: 12/6/2021 3:00:19 PM

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Accepted: 12/6/2021 3:00:00 PM

ID: d992b51d-2ee7-4583-8a4a-4cb3a0ccf535

Blair M. Dickhoner bdickhoner@wbapc.com

Security Level: Email, Account Authentication

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Blair M. Dickhoner

Signature Adoption: Pre-selected Style Using IP Address: 50.209.233.181

Sent: 12/6/2021 3:00:22 PM Viewed: 12/6/2021 3:08:03 PM Signed: 12/6/2021 3:08:29 PM

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Accepted: 12/6/2021 3:08:03 PM

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#### ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, CliftonLarsonAllen LLP (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to this Electronic Record and Signature Disclosure (ERSD), please confirm your agreement by selecting the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

#### Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

#### Withdrawing your consent

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

#### Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

#### All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

### How to contact CliftonLarsonAllen LLP:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: BusinessTechnology@CLAconnect.com

### To advise CliftonLarsonAllen LLP of your new email address

To let us know of a change in your email address where we should send notices and disclosures electronically to you, you must send an email message to us at BusinessTechnology@CLAconnect.com and in the body of such request you must state: your previous email address, your new email address. We do not require any other information from you to change your email address.

If you created a DocuSign account, you may update it with your new email address through your account preferences.

### To request paper copies from CliftonLarsonAllen LLP

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an email to BusinessTechnology@CLAconnect.com and in the body of such request you must state your email address, full name, mailing address, and telephone number. We will bill you for any fees at that time, if any.

### To withdraw your consent with CliftonLarsonAllen LLP

To inform us that you no longer wish to receive future notices and disclosures in electronic format you may:

i. decline to sign a document from within your signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;

ii. send us an email to BusinessTechnology@CLAconnect.com and in the body of such request you must state your email, full name, mailing address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

### Required hardware and software

The minimum system requirements for using the DocuSign system may change over time. The current system requirements are found here: <a href="https://support.docusign.com/guides/signer-guide-signing-system-requirements">https://support.docusign.com/guides/signer-guide-signing-system-requirements</a>.

### Acknowledging your access and consent to receive and sign documents electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please confirm that you have read this ERSD, and (i) that you are able to print on paper or electronically save this ERSD for your future reference and access; or (ii) that you are able to email this ERSD to an email address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format as described herein, then select the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

By selecting the check-box next to 'I agree to use electronic records and signatures', you confirm that:

- You can access and read this Electronic Record and Signature Disclosure; and
- You can print on paper this Electronic Record and Signature Disclosure, or save or send this Electronic Record and Disclosure to a location where you can print it, for future reference and access; and
- Until or unless you notify CliftonLarsonAllen LLP as described above, you consent to
  receive exclusively through electronic means all notices, disclosures, authorizations,
  acknowledgements, and other documents that are required to be provided or made
  available to you by CliftonLarsonAllen LLP during the course of your relationship with
  CliftonLarsonAllen LLP.

# INDEPENDENT CONTRACTOR AGREEMENT DECEMBER WINTER WATERING

This INDEPENDENT CONTRACTOR AGREEMENT, including any and all exhibits attached hereto (the "Agreement"), is entered into as of the 22<sup>nd</sup> day of November, 2021, by and between TALLYN'S REACH AUTHORITY, a contractual authority and political subdivision of the State of Colorado (the "Authority"), and BrightView Landscape Services, Inc., a Colorado corporation (the "Contractor"). The Authority and the Contractor are referred to herein individually as a "Party" and collectively as the "Parties."

### RECITALS

WHEREAS, Tallyn's Reach Metropolitan District Nos. 2 and 3 (each a "District" and collectively the "Districts") were organized pursuant to and in accordance with the provisions of §§ 32-1-101, et seq., C.R.S. for the purpose of constructing, financing, operating and maintaining certain public facilities and improvements for itself, its taxpayers, residents and users; and

WHEREAS, pursuant to § 32-1-1001(1)(d)(I), C.R.S., the Districts are empowered to enter into contracts and agreements affecting the affairs of the Districts; and

WHEREAS, pursuant to § 32-1-1001(1)(i), C.R.S., the Districts are empowered to appoint, hire and retain agents, employees, engineers and attorneys; and

WHEREAS, pursuant to their consolidated service plan and §29-1-203, C.R.S., the Districts may coordinate or contract with one another to provide any function, service or facility that they may be authorized to provide individually; and

WHEREAS, on February 12, 2018, the Districts entered into the Tallyn's Reach Authority Establishment Agreement (the "Establishment Agreement") to establish the Authority, a separate legal entity that is a political subdivision and political corporation of the State of Colorado; and

WHEREAS, pursuant to § 29-1-203.5(2), C.R.S., and the Establishment Agreement, the Board of Directors of the Authority (the "Board") shall have the management control and supervision of all the business and affairs of the Authority; and

WHEREAS, the Authority desires to engage the Contractor to perform certain services as are needed by the Authority to serve the property within and without its boundaries; and

WHEREAS, the Contractor has represented that it has the professional experience, skill and resources to perform the services, as set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and stipulations set forth herein, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

### TERMS AND CONDITIONS

- perform the services described in Exhibit A, attached hereto and incorporated herein by this reference (the "Services"): (a) in a professional manner, to the satisfaction of the Authority, using the degree of skill and knowledge customarily employed by other professionals performing similar services; (b) within the time period and pursuant to the Scope of Services specified in said Exhibit A; and (c) using reasonable commercial efforts to minimize any annoyance, interference or disruption to the residents, tenants, occupants and invitees within the Authority. Exhibit A may take any form, including forms which may include price and payment terms. In the event of any conflict between terms set forth in the body of this Agreement and terms set forth in Exhibit A, the terms in the body of this Agreement shall govern. Contractor shall have no right or authority, express or implied, to take any action, expend any sum, incur any obligation, or otherwise obligate the Authority in any manner whatsoever, except to the extent specifically provided in this Agreement (including Exhibit A) or through other authorization expressly delegated to or authorized by the Authority through its Board of Directors.
- 2. <u>TERM/RENEWAL</u>. This Agreement shall be effective as of the dated date hereof and shall terminate on the earlier to occur of: (i) termination pursuant to Section 18 hereof; (ii) completion of the Services; or (iii) December 31, 2022. Notwithstanding the foregoing, unless terminated pursuant to subsection (i) or (ii) above, or unless the Authority determines not to appropriate funds for this Agreement for the next succeeding year, this Agreement shall automatically renew on January 1 of each succeeding year for an additional one (1) year term.
- 3. <u>ADDITIONAL SERVICES</u>. The Authority may, in writing, request the Contractor provide additional services not set forth in **Exhibit A**. The terms and conditions of the provision of such services shall be subject to the mutual agreement of the Contractor and the Authority pursuant to a written service/work order executed by an authorized representative of the Authority and the Contractor or an addendum to this Agreement. Authorization to proceed with additional services shall not be given unless the Authority has appropriated funds sufficient to cover the additional compensable amount. To the extent additional services are provided pursuant to this Section 3, the terms and conditions of this Agreement relating to Services shall also apply to any additional services rendered.
- 4. <u>REPAIRS/CLAIMS</u>. The Contractor shall notify the Authority immediately of any and all damage caused by the Contractor to Authority property and that of third parties. The Contractor will promptly repair or, at the Authority's option, reimburse the Authority for the repair of any damage to property caused by the Contractor or its employees, agents or equipment. In addition, the Contractor shall promptly notify the Authority of all potential claims of which it becomes aware. The Contractor further agrees to take all reasonable steps to preserve all physical evidence and information which may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and to grant to the Authority the opportunity to review and inspect such evidence, including the scene of any damage or accidents. The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Services and shall provide all reasonable protection to prevent damage or injury to persons and property, including any material and equipment related to the Services,

whether in storage on or off site, under the care, custody, or control of the Contractor or any of its subcontractors.

### 5. <u>GENERAL PERFORMANCE STANDARDS.</u>

- a. The Contractor has by careful examination ascertained: (i) the nature and location of the Services; (ii) the configuration of the ground on which the Services are to be performed; (iii) the character, quality, and quantity of the labor, materials, equipment and facilities necessary to complete the Services; (iv) the general and local conditions pertaining to the Services; and (v) all other matters which in any way may affect the performance of the Services by the Contractor. Contractor enters into this Agreement solely because of the results of such examination and not because of any representations pertaining to the Services or the provision thereof made to it by the Authority or any agent of the Authority and not contained in this Agreement. The Contractor represents that it has or shall acquire the capacity and the professional experience and skill to perform the Services and that the Services shall be performed in accordance with the standards of care, skill and diligence provided by competent professionals who perform services of a similar nature to those specified in this Agreement. If competent professionals find that the Contractor's performance of the Services does not meet this standard, the Contractor shall, at the Authority's request, re-perform the Services not meeting this standard without additional compensation.
- b. The Contractor shall use reasonable commercial efforts to perform and complete the Services in a timely manner. If performance of the Services by the Contractor is delayed due to factors beyond the Contractor's reasonable control, or if conditions of the scope or type of services are expected to change, Contractor shall give prompt notice to the Authority of such a delay or change and receive an equitable adjustment of time and/or compensation, as negotiated between the Parties.
- c. The Services provided under this Agreement shall be adequate and sufficient for the intended purposes and shall be completed in a good and workmanlike manner.
- d. The Contractor agrees that it has and will continue to comply with all Laws while providing Services under this Agreement. "Laws" means: (i) federal, state, county and local or municipal body or agency laws, statutes, ordinances and regulations; (ii) any licensing bonding, and permit requirements; (iii) any laws relating to storage, use or disposal of hazardous wastes, substances or materials; (iv) rules, regulations, ordinances and/or similar directives regarding business permits, certificates and licenses; (v) regulations and orders affecting safety and health, including but not limited to the Occupational Safety and Health Act of 1970; (vi) Wage and Hour laws, Worker Compensation laws, and immigration laws.
- e. The responsibilities and obligations of the Contractor under this Agreement shall not be relieved or affected in any respect by the presence of any agent, consultant, subconsultant or employee of the Authority. Review, acceptance or approval by the Authority of the Services performed or any documents prepared by the Contractor shall not relieve the Contractor of any responsibility for deficiencies, omissions or errors in said Services or documents, nor shall it be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

6. MONTHLY STATUS REPORT. The Contractor shall provide to the Authority, at the Authority's request, on or before the 25th of each month, a narrative progress and status report describing work in progress and results achieved during the reporting period, including a description of the Services performed during the invoice period and the Services anticipated to be performed during the ensuing invoice period ("Monthly Report").

### 7. <u>COMPENSATION AND INVOICES.</u>

- a. <u>Compensation</u>. Compensation for the Services provided under this Agreement shall be in accordance with the compensation schedule attached hereto as **Exhibit A**. The Contractor shall be responsible for all expenses it incurs in performance of this Agreement and shall not be entitled to any reimbursement or compensation except as provided in **Exhibit A** of this Agreement, unless said reimbursement or compensation is approved in writing by the Authority in advance of incurring such expenses. Any direct reimbursable costs for materials will be reimbursable at the Contractor's actual cost, provided that the Contractor shall make a reasonable attempt to notify the Authority of the estimated amount of such reimbursable costs (or any material adjustments thereto subsequently identified) prior to commencing the requested services. Concurrent with the execution of this Agreement, the Contractor shall provide the Authority with a current completed Internal Revenue Service Form W-9 (Request for Taxpayer Identification Number and Certification) ("W-9"). No payments will be made to the Contractor until the completed W-9 is provided. The W-9 shall be attached hereto and incorporated herein as **Exhibit B**.
- b. <u>Invoices</u>. Invoices for the Services shall be submitted monthly, by the 10<sup>th</sup> of each month, during the term of this Agreement and shall contain the following information:
  - i. An itemized statement of the Services performed.
- ii. Any other reasonable information required by the Authority to process payment of the invoice, including project and/or cost codes as provided in any applicable written service/work order.

The Authority shall be charged only for the actual time and direct costs incurred for the performance of the Services. Invoices received by the Authority after the 10<sup>th</sup> of each month may be processed the following month.

8. <u>TIME FOR PAYMENT</u>. Payment for the Services shall be made by the Authority within thirty (30) days of receipt of: (i) a timely, satisfactory and detailed invoice in the form required by Section 7; and (ii) if applicable, a reasonably satisfactory and detailed Monthly Report, for that portion of the Services performed and not previously billed. The Authority may determine to waive or extend the deadline for filing the Monthly Report, or may make payment for Services to the Contractor notwithstanding a delay in filing the Monthly Report, upon reasonable request of the Contractor, if it is in the interest of the Authority to do so. In the event a Board meeting is not scheduled in time to review payment of an invoice, the Board hereby authorizes payment for Services, subject to the appropriation and budget requirements under Section 27 hereof, without the need for additional Board approval, so long as any payment required to be made does not exceed the amounts appropriated for such Services as set forth in the Authority's approved budget.

Such payment shall require review and approval of each Monthly Report and invoice by two officers of the Authority.

- 9. INDEPENDENT CONTRACTOR. The Contractor is an independent contractor and nothing in this Agreement shall constitute or designate the Contractor or any of its employees or agents as employees or agents of the Authority. The Contractor shall have full power and authority to select the means, manner and method of performing its duties under this Agreement, without detailed control or direction from the Authority, and shall be responsible for supervising its own employees or subcontractors. The Authority is concerned only with the results to be obtained. The Authority shall not be obligated to secure, and shall not provide, any insurance coverage or employment benefits of any kind or type to or for the Contractor or its employees, sub-consultants, contractors, agents, or representatives, including coverage or benefits related but not limited to: local, state or federal income or other tax contributions, insurance contributions (e.g. FICA taxes), workers' compensation, disability, injury, health or life insurance, professional liability insurance, errors and omissions insurance, vacation or sick-time benefits, retirement account contributions, or any other form of taxes, benefits or insurance. The Contractor shall be responsible for its safety, and the safety of its employees, sub-contractors, agents, and representatives. All personnel furnished by the Contractor will be deemed employees or subcontractors of the Contractor and will not for any purpose be considered employees or agents of The Contractor is not entitled to worker's compensation benefits or unemployment insurance benefits, unless unemployment compensation coverage is provided by the Contractor or some other entity other than the Authority, and the Contractor is obligated to pay federal and state income taxes on moneys by it earned pursuant to this Agreement.
- 10. <u>EQUAL OPPORTUNITY / EMPLOYMENT ELIGIBILITY</u>. This Agreement is subject to all applicable laws and executive orders relating to equal opportunity and non-discrimination in employment and the Contractor represents and warrants that it will not discriminate in its employment practices in violation of any such applicable law or executive order.

The Contractor hereby states that it does not knowingly employ or contract with illegal aliens and that the Contractor has participated in or has attempted to participate in the E-Verify Program or Department Program (formerly known as the Basic Pilot Program) (as defined in §8-17.5-101, C.R.S.) in order to verify that it does not employ any illegal aliens. The Contractor affirmatively makes the follow declarations:

- a. The Contractor shall not knowingly employ or contract with an illegal alien who will perform work under the public contract for services contemplated in this Agreement and will participate in the E-Verify Program or Department Program (as defined in §8-17.5-101, C.R.S.) 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 contemplated in this Agreement.
- b. The Contractor shall not knowingly 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 the services contemplated in this Agreement.

- c. The Contractor has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under the public contract for services through participation in either the E-Verify Program or the Department Program.
- d. The Contractor is prohibited from using either the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.
- e. If the Contractor obtains actual knowledge that a subcontractor performing the services under this Agreement knowingly employs or contracts with an illegal alien, the Contractor shall be required to:
- i. Notify the subcontractor and the Authority within three (3) days that the Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien.
- ii. Terminate the subcontract with the subcontractor if within three (3) days of receiving the notice required above 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 (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.
- f. The Contractor shall comply with any reasonable request by the Department of Labor and Employment made in the course of an investigation involving matters under this Section 10 that such Department is undertaking pursuant to the authority established in § 8-17.5-102, C.R.S.
- g. If the Contractor violates a provision of this Agreement pursuant to which § 8-17.5-102, C.R.S., applies the Authority may terminate this Agreement upon three (3) days written notice to the Contractor. If this Agreement is so terminated, the Contractor shall be liable for actual and consequential damages to the Authority.

### 11. CONTRACTOR'S INSURANCE.

- a. The Contractor shall acquire and maintain, at its sole cost and expense, during the entire term of this Agreement, insurance coverage in the minimum amounts set forth in Exhibit C, attached hereto and incorporated herein by this reference. A waiver of subrogation and rights of recovery against the Authority, its directors, officers, employees and agents is required for Commercial General Liability and Workers Compensation coverage. The Commercial General Liability and Comprehensive Automobile Liability Insurance policies will be endorsed to name the Authority as an additional insured. All coverage provided pursuant to this Agreement shall be written as primary policies, not contributing with and not supplemental to any coverage that the Authority may carry, and any insurance maintained by the Authority shall be considered excess. The Authority shall have the right to verify or confirm, at any time, all coverage, information or representations contained in this Agreement.
- b. Prior to commencing any work under this Agreement, the Contractor shall provide the Authority with a certificate or certificates evidencing the policies required by this

Agreement, as well as the amounts of coverage for the respective types of coverage, which certificate(s) shall be attached hereto as **Exhibit C-1**. If the Contractor subcontracts any portion(s) of the Services, said subcontractor(s) shall be required to furnish certificates evidencing statutory workers' compensation insurance, comprehensive general liability insurance and automobile liability insurance in amounts satisfactory to the Authority and the Contractor; provided, however, that sub-contractors of the Contractor shall not be required by the Authority to provide coverage in excess of that which is required hereunder of the Contractor. If the coverage required expires during the term of this Agreement, the Contractor or subcontractor shall provide replacement certificate(s) evidencing the continuation of the required policies.

c. The Contractor's failure to purchase the required insurance shall not serve to release it from any obligations contained in this Agreement; nor shall the purchase of the required insurance serve to limit the Contractor's liability under any provision in this Agreement. The Contractor shall be responsible for the payment of any deductibles on issued policies.

### 12. <u>CONFIDENTIALITY AND CONFLICTS.</u>

- Confidentiality. Any information deemed confidential by the Authority and given to the Contractor by the Authority, or developed by the Contractor as a result of the performance of a particular task, shall remain confidential. In addition, the Contractor shall hold in strict confidence, and shall not use in competition, any information which the Contractor becomes aware of under or by virtue of this Agreement which the Authority deems confidential, or which the Authority has agreed to hold confidential, or which, if revealed to a third party, would reasonably be construed to be contrary to the interests of the Authority. Confidential information shall not include, however, any information which is: (i) generally known to the public at the time provided to the Contractor; (ii) provided to the Contractor by a person or entity not bound by confidentiality to the Authority; or (iii) independently developed by the Contractor without use of the Authority's confidential information. During the performance of this Agreement, if the Contractor is notified that certain information is to be considered confidential, the Contractor agrees to enter into a confidentiality agreement in a form reasonably acceptable to the Authority and the Contractor. The Contractor agrees that any of its employees, agents or subcontractors with access to any information designated thereunder as confidential information of the Authority shall agree to be bound by the terms of such confidentiality agreement.
- b. <u>Personal Identifying Information</u>. During the performance of this Agreement, the Authority may disclose Personal Identifying Information to the Contractor. "Personal Identifying Information" means a social security number; a personal identification number; a password; a pass code; an official state or government-issued driver's license or identification card number; a government passport number; biometric data, as defined in § 24-73-103(1)(a), C.R.S.; an employer, student, or military identification number; or a financial transaction device, as defined in § 18-5-701(3), C.R.S. In compliance with § 24-73-102, C.R.S., the Contractor agrees to implement and maintain reasonable security procedures and practices that are: (i) appropriate to the nature of the Personal Identifying Information disclosed to the Contractor; and (ii) reasonably designed to help protect the Personal Identifying Information from unauthorized access, use, modification, disclosure, or destruction.

- c. <u>Conflicts</u>. Prior to the execution of, and during the performance of this Agreement and prior to the execution of future agreements with the Authority, the Contractor agrees to notify the Authority of conflicts known to the Contractor that impact the Contractor's provision of Services to the Authority.
- OWNERSHIP OF DOCUMENTS. All documents produced by or on behalf of the Contractor prepared pursuant to this Agreement, including, but not limited to, all maps, plans, drawings, specifications, reports, electronic files and other documents, in whatever form, shall remain the property of the Authority under all circumstances, upon payment to the Contractor of the invoices representing the work by which such materials were produced. At the Authority's request the Contractor will provide the Authority with all documents produced by or on behalf of the Contractor pursuant to this Agreement. The Contractor shall maintain electronic and reproducible copies on file of any such instruments of service involved in the Services for a period of two (2) years after termination of this Agreement, shall make them available for the Authority's use and shall provide such copies to the Authority upon request at no cost.
- LIENS AND ENCUMBRANCES. The Contractor shall not have any right or 14. interest in any Authority assets, or any claim or lien with respect thereto, arising out of this Agreement or the performance of the Services contemplated in this Agreement. The Contractor, for itself, hereby waives and releases any and all statutory or common law mechanic's, materialmen's or other such lien claims, or rights to place a lien upon the Authority's property or any improvements thereon in connection with any Services performed under or in connection with this Agreement, and the Contractor shall cause all permitted subcontractors, suppliers, materialmen, and others claiming by, through or under the Contractor to execute similar waivers prior to commencing any work or providing any materials in connection with the Services. The Contractor further agrees to execute a sworn affidavit respecting the payment and lien releases of all subcontractors, suppliers and materialmen, and release of lien respecting the Services at such time or times and in such form as may be reasonably requested by the Authority. The Contractor will provide indemnification against all such liens for labor performed, materials supplied or used by the Contractor and/or any other person in connection with the Services undertaken by the Contractor, in accordance with Section 15, below.

### 15. <u>INDEMNIFICATION</u>.

a. The Contractor shall defend, indemnify and hold harmless the Authority and each of its directors, officers, contractors, employees, agents and consultants (collectively, the "Authority Indemnitees"), from and against any and all claims, demands, losses, liabilities, actions, lawsuits, damages, and expenses (the "Claims"), including reasonable legal expenses and attorneys' fees actually incurred, by the Authority Indemnitees arising directly or indirectly, in whole or in part, out of the errors or omissions, negligence, willful misconduct, or any criminal or tortious act or omission of the Contractor or any of its subcontractors, officers, agents or employees, in connection with this Agreement and/or the Contractor's performance of the Services or work pursuant to this Agreement. Notwithstanding anything else in this Agreement or otherwise to the contrary, the Contractor is not obligated to indemnify the Authority Indemnitees for the negligence of the Authority or the negligence of any other Authority Indemnitee, except the Contractor. Except as otherwise provided by applicable law, this indemnification obligation will not be limited in any way by any limitation on the amount or types of damages, compensation or

benefits payable by or for the Contractor under workers' compensation acts, disability acts or other employee benefit acts, provided that in no event shall the Contractor be liable for special/consequential or punitive damages.

- b. In the event the Contractor fails to assume the defense of any Claims under this Section 15 within fifteen (15) days after notice from the Authority of the existence of such Claim, the Authority may assume the defense of the Claim with counsel of its own selection, and the Contractor will pay all reasonable expenses of such counsel. Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the Contractor under the terms of this indemnification obligation.
- c. Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the Contractor under the terms of this indemnification obligation. The Contractor shall obtain, at its own expense, any additional insurance that it deems necessary with respect to its obligations under this Agreement, including the indemnity obligations set forth in Section 15. This defense and indemnification obligation shall survive the expiration or termination of this Agreement.
- 16. <u>ASSIGNMENT</u>. The Contractor shall not assign this Agreement or parts thereof, or its respective duties, without the express written consent of the Authority. Any attempted assignment of this Agreement in whole or in part with respect to which the Authority has not consented, in writing, shall be null and void and of no effect whatsoever.
- Authority for the performance of all Services in accordance with the terms set forth in this Agreement, whether performed by the Contractor or a subcontractor engaged by the Contractor, and neither the Authority's approval of any subcontractor, suppliers, or materialman, nor the failure of performance thereof by such persons or entities, will relieve, release, or affect in any manner the Contractor's duties, liabilities or obligations under this Agreement. The Contractor shall not subcontract any Services without prior written approval by the Authority. The Contractor agrees that each and every agreement of the Contractor with any subcontractor to perform Services under this Agreement shall contain an indemnification provision identical to the one contained in this Agreement holding the Authority harmless for the acts of the subcontractor. Prior to commencing any Services, a subcontractor shall provide evidence of insurance coverage to the Authority in accordance with the requirements of this Agreement. The Contractor further agrees that all such subcontracts shall provide that they may be terminated immediately without cost or penalty upon termination of this Agreement, other than payment for services rendered prior to the date of any such termination.
- 18. <u>TERMINATION</u>. In addition to the termination provisions contained in Section 2, above, this Agreement may be terminated for convenience by the Contractor upon delivery of thirty (30) days prior written notice to the Authority and by the Authority by giving the Contractor thirty (30) days prior written notice. Each Party may terminate this Agreement for cause at any time upon written notice to the other Party setting forth the cause for termination and the notified Party's failure to cure the cause to the reasonable satisfaction of the Party given such notice within the cure period set forth in Section 19. If this Agreement is terminated, the Contractor shall be paid for all the Services satisfactorily performed prior to the designated termination date, including

reimbursable expenses due. Said payment shall be made in the normal course of business. Should either Party to this Agreement be declared bankrupt, make a general assignment for the benefit of creditors or commit a substantial and material breach of this Agreement in the view of the other Party, said other Party shall be excused from rendering or accepting any further performance under this Agreement. In the event of termination of this Agreement, the Contractor shall cooperate with the Authority to ensure a timely and efficient transition of all work and work product to the Authority or its designees. All time, fees and costs associated with such transition shall not be billed by the Contractor to the Authority.

- 19. <u>DEFAULT</u>. If either Party fails to perform in accordance with the terms, covenants and conditions of this Agreement, or is otherwise in default of any of the terms of this Agreement, the non-defaulting party shall deliver written notice to the defaulting party of the default, at the address specified in Section 20 below, and the defaulting party will have ten (10) days from and after receipt of the notice to cure the default. If the default is not of a type which can be cured within such ten (10)-day period and the defaulting party gives written notice to the non-defaulting party within such ten (10)-day period that it is actively and diligently pursuing a cure, the defaulting party will have a reasonable period of time given the nature of the default following the end of the ten (10)-day period to cure the default, provided that the defaulting party is at all times within the additional time period actively and diligently pursuing the cure. If any default under this Agreement is not cured as described above, the non-defaulting party will, in addition to any other legal or equitable remedy, have the right to terminate this Agreement and enforce the defaulting party's obligations pursuant to this Agreement by an action for injunction or specific performance.
- NOTICES. Any notice or communication required under this Agreement must be 20. in writing, and may be given personally, sent via nationally recognized overnight carrier service, or by registered or certified mail, return receipt requested. If given by registered or certified mail, the same will be deemed to have been given and received on the first to occur of: (i) actual receipt by any of the addressees designated below as the party to whom notices are to be sent; or (ii) three days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered or sent via nationally recognized overnight carrier service, a notice will be deemed to have been given and received on the first to occur of: (i) one business day after being deposited with a nationally recognized overnight air courier service; or (ii) delivery to the party to whom it is addressed. Any party hereto may at any time, by giving written notice to the other party hereto as provided in this Section 20 of this Agreement, designate additional persons to whom notices or communications will be given, and designate any other address in substitution of the address to which such notice or communication will be given. Such notices or communications will be given to the parties at their addresses set forth below:

Authority:

Tallyn's Reach Authority c/o CliftonLarsonAllen 8390 E. Crescent Parkway #500 Greenwood Village, CO 80111 Attention: Denise Denslow

Phone: (303) 265-7923

Email: denise.denslow@claconnect.com

With a Copy to: White Bear Ankele Tanaka & Waldron

2154 E. Commons Ave., Suite 2000

Centennial, CO 80122

Attention: Blair M. Dickhoner, Esq.

Phone: (30

(303) 858-1800

E-mail: <u>bdickhoner@wbapc.com</u>

Contractor: BrightView Landscape Services, Inc.

8888 N. Motsenbocker Rd., Ste. A

Parker, CO 80134

Attention: Sara Rutman Phone: (303) 841-3003

Email: sara.rutman@brightview.com

- 21. <u>AUDITS</u>. The Authority shall have the right to audit, with reasonable notice, any of the Contractor's books and records solely as are necessary to substantiate any invoices and payments under this Agreement (including, but not limited to, receipts, time sheets, payroll and personnel records) and the Contractor agrees to maintain adequate books and records for such purposes during the term of this Agreement and for a period of two (2) years after termination of this Agreement and to make the same available to the Authority at all reasonable times and for so long thereafter as there may remain any unresolved question or dispute regarding any item pertaining thereto.
- 22. <u>ENTIRE AGREEMENT</u>. This Agreement constitutes the entire agreement between the Parties hereto relating to the Services, and sets forth the rights, duties, and obligations of each to the other as of this date, and hereby supersedes any and all prior negotiations, representations, agreements or arrangements of any kind with respect to the Services, whether written or oral. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force and effect. This Agreement may not be modified except by a writing executed by both the Contractor and the Authority.
- 23. <u>BINDING AGREEMENT</u>. This Agreement shall inure to and be binding on the heirs, executors, administrators, successors, and assigns of the Parties hereto.
- 24. <u>NO WAIVER</u>. No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other of the provisions of this Agreement, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided in this Agreement, nor shall the waiver of any default be deemed a waiver of any subsequent default.

### GOVERNING LAW.

a. <u>Venue</u>. Venue for all actions arising from this Agreement shall be in the District Court in and for the county in which the Authority is located. The Parties expressly and irrevocably waive any objections or rights which may affect venue of any such action, including,

but not limited to, *forum non-conveniens* or otherwise. At the Authority's request, the Contractor shall carry on its duties and obligations under this Agreement during any legal proceedings and the Authority shall continue to pay for the Services performed under this Agreement until and unless this Agreement is otherwise terminated.

- b. <u>Choice of Law</u>. Colorado law shall apply to any dispute, without regard to conflict of law principles that would result in the application of any law other than the law of the State of Colorado.
- c. <u>Litigation</u>. At the Authority's request, the Contractor will consent to being joined in litigation between the Authority and third parties, but such consent shall not be construed as an admission of fault or liability. The Contractor shall not be responsible for delays in the performance of the Services caused by factors beyond its reasonable control including delays caused by Act of God, accidents, failure of any governmental or other regulatory authority to act in a timely manner or failure of the Authority to furnish timely information or to approve or disapprove of Contractor's Services in a timely manner.
- 26. GOOD FAITH OF PARTIES. In the performance of this Agreement, or in considering any requested approval, acceptance, consent, or extension of time, the Parties agree that each will act in good faith and will not act unreasonably, arbitrarily, capriciously, or unreasonably withhold, condition, or delay any approval, acceptance, consent, or extension of time required or requested pursuant to this Agreement.
- 27. SUBJECT TO ANNUAL APPROPRIATION AND BUDGET. The Authority does not intend hereby to create a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever. The Contractor expressly understands and agrees that the Authority's obligations under this Agreement shall extend only to monies appropriated for the purposes of this Agreement by the Board and shall not constitute a mandatory charge, requirement or liability in any ensuing fiscal year beyond the then-current fiscal year. No provision of this Agreement shall be construed or interpreted as a delegation of governmental powers by the Authority, or as creating a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever of the Authority or statutory debt limitation, including, without limitation, Article X, Section 20 or Article XI, Section 6 of the Constitution of the State of Colorado. No provision of this Agreement shall be construed to pledge or to create a lien on any class or source of Authority funds. The Authority's obligations under this Agreement exist subject to annual budgeting and appropriations, and shall remain subject to the same for the entire term of this Agreement.
- 28. GOVERNMENTAL IMMUNITY. Nothing in this Agreement shall be construed to waive, limit, or otherwise modify, in whole or in part, any governmental immunity that may be available by law to the Authority, its respective officials, employees, contractors, or agents, or any other person acting on behalf of the Authority and, in particular, governmental immunity afforded or available to the Authority pursuant to the Colorado Governmental Immunity Act, §§ 24-10-101, et seq., C.R.S.
- 29. <u>NEGOTIATED PROVISIONS</u>. This Agreement shall not be construed more strictly against one Party than against the other merely by virtue of the fact that it may have been

prepared by counsel for one of the Parties, it being acknowledged that each Party has contributed to the preparation of this Agreement.

- 30. <u>SEVERABILITY</u>. If any portion of this Agreement is declared by any court of competent jurisdiction to be invalid, void or unenforceable, such decision shall not affect the validity of any other portion of this Agreement which shall remain in full force and effect, the intention being that such portions are severable. In addition, in lieu of such void or unenforceable provision, there shall automatically be added as part of this Agreement a provision similar in terms to such illegal, invalid or unenforceable provision so that the resulting reformed provision is legal, valid and enforceable.
- 31. <u>NO THIRD PARTY BENEFICIARIES</u>. 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 the Parties 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 Parties receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.
- 32. <u>OPEN RECORDS</u>. The Parties understand that all material provided or produced under this Agreement may be subject to the Colorado Open Records Act, §§ 24-72-202, *et seq.*, C.R.S.
- 33. WARRANTY. The Contractor shall and does by this Agreement guarantee and warrant that all workmanship, materials, and equipment furnished, installed, or performed for the accomplishment of the Services (collectively, the "Work") will be of good quality and new, unless otherwise required or permitted by this Agreement. The Contractor further warrants that the Work will conform to all requirements of this Agreement and all other applicable laws, ordinances, codes, rules and regulations of any governmental authorities having jurisdiction over the Work. All Services are subject to the satisfaction and acceptance of the Authority, but payments for the completed Work will not constitute final acceptance nor discharge the obligation of the Contractor to correct defects at a later date. Such warranties set forth in this Agreement are in addition to, and not in lieu of, any other warranties prescribed by Colorado law.
- 34. TAX EXEMPT STATUS. The Authority is exempt from Colorado state sales and use taxes. Accordingly, taxes from which the Authority is exempt shall not be included in any invoices submitted to the Authority. The Authority shall, upon request, furnish Contractor with a copy of its certificate of tax exemption. Contractor and subcontractors shall apply to the Colorado Department of Revenue, Sales Tax Division, for an Exemption Certificate and purchase materials tax free. The Contractor and subcontractors shall be liable for exempt taxes paid due to failure to apply for Exemption Certificates or for failure to use said certificate.
- 35. <u>COUNTERPART EXECUTION</u>. This Agreement may be executed in several counterparts, each of which may be deemed an original, but all of which together shall constitute one and the same instrument. Executed copies hereof may be delivered by facsimile or email of a PDF document, and, upon receipt, shall be deemed originals and binding upon the signatories hereto, and shall have the full force and effect of the original for all purposes, including the rules of evidence applicable to court proceedings.

[Signature pages follow].

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date first above written. By the signature of its representative below, each Party affirms that it has taken all necessary action to authorize said representative to execute this Agreement.

### **AUTHORITY:**

TALLYN'S REACH AUTHORITY, a contractual authority and political subdivision of the State of Colorado

Officer of the Authority

ATTEST:

APPROVED AS TO FORM:

WHITE BEAR ANKELE TANAKA & WALDRON

Attorneys at Law

DocuSigned by: Blair M. Dickhoner

General Counsel for the Authority

District's Signature Page to Independent Contractor Agreement for December Winter Watering Services with BrightView Landscape Services, Inc., dated November 22, 2021

	CONTRACTOR: Brightview Landscape Services, Inc., a Colorado
	corporation
	Garrett Wright Printed Name
	Branch Manager Title
STATE OF COLORADO	)
COUNTY OF Douglas	) ss. )
The foregoing instrument was acknown 2021, by Gappett Wright, as the Services, Inc.	Owledged before me this 15t day of December, Branch Monager of BrightView Landscape
Witness my hand and official seal.	
My commission expires: July 21, 2023	
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MARTHA J MICELI NOTARY PUBLIC	Notary Public

STATE OF COLORADO NOTARY ID 20034023907 NO COMMISSION EXPIRES JULY 21, 2023

### **EXHIBIT A**

# SCOPE OF SERVICES/COMPENSATION SCHEDULE



November 22, 2021 Fage 1 of 2

# Proposal for Extra Work at Tallyn's Reach Authority

Property Name

Tallyn's Reach Authority

Contact

Celeste Terrell

Property Address 24900 E Park Crescent Dr. Aurora, CO 80016

To Billing Address Tallyns Reach Authority 370 Interlocken Blvd Ste 500

Broomfield, CO 80021

Project Name

December Winter Watering

Project Description

December Winter Watering

Scope of Work

QTY	UoM/Size	Materia#Description	Unit Price	Total
8.00	DAY	December Winter Watering		******************
0.22	Later 1	December as arrest As arrestalling	\$900.00	S7 200 nn

We are bidding to do 8 days per month of watering of trees. We will focus on Maples, Ornamental trees such as Crabapples etc. and evergreens including pines and spruce. Once we are done with those we can move to other species that are needing water. 8 days is an estimate. If we need additional days to complete the watering we will need to approve additional funds.

For internal use only

SO# JOB# Service Line 7693428 400300615 130

Total Price

\$7,200.00

THIS IS NOT AN INVOICE

This proposal is valid for 60 days unless otherwise approved by BrightView Landsdape Services, Inc. 8885 Mozenbocker Road, Suite A, Parker, CO 80 (24 on. (303) 541-3003 fax (203) 941-3 (77

November 22, 2021

Page 2 of 2

### TERMS & CONDITIONS

- The Contracts shall recognize and perform in accordance with writer ferms writer specifications and crawings only contained or referred to herein Ad-mitterials shall conform to bid state/factions.
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- 1. License and Permits Controller shall mention a bandeness Controller towards if separated by State or actal law and will comply with all other scenes and permit requirements of the City State and Federal Governments as well as all other requirements of law.
- faxes. Contractor agrees to pay all applicable taxes, including sales tax where applicable on material subdied.
- Insurance Conductor agrees to provide General Liability Insurance Automatic Liability Insurance Versions Compensation Insurance, and any other fourbroke required by laws of Conductor Owner on specified in writing prior to commencement of wors. If not specified Conductor will furnish mechanics with \$1 000 000 imi of labiny
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- Access to Jobaite. Contribution shall provide all pilling to perform the contr. Chertibuting shall found across to all costs of position come. Contribution is to perform each as required by the foundation on this hundries, relating thereto, during normal business hours and other researche periods of time. Compaction with certain the work as reasonably, protons after the twee makes the site available for perdomance of the view.
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- Assignment. The CovereCent and the Contractor experiencely both themselves, that parties successors assigned and logic representative in the diver party with respect to all newments of the Agreement. Nexteen the CovereCent not the Coulosides shall assign or transfer any interest in the Agreement without the writer content of the clinic sections in bowers; that be required to assign the Agreement is now ampain, which controls is certificated to assign this Agreement is any company which controls is certificated by or is under common costic with Confection of in connection with assignment to an orbitate or pursuant so a marger, safe of all or substantially all of its assection is easily securious connectation, change of control or corporate recognization.
- Disclaimer. For private was submitted and protect before as in a six disd and lossed any process have grouped in the most of the about the time the purpose have prepared. The series means at the about the time the purpose was prepared. The series means agreement as the sound that growth even such despective must recommend and complete, set in the lastic for any architecture to the contract and the contract and the first any architecture to the series and the contract and the time and important was performed forwardly contract the first deep man as the time and important was performed forwardly contract the first deep means at the time and important was performed forwardly contract the first deep means and important architecture made and defect. Any contractive with proposed herein transition associated and contractive descriptions of proceeding architectural architecture and shall not be provided by the Contracture and shall not be provided by the Contracture described made contract and the selection and contract and the selection and contracture and the selection and contracture and the selection and accounting these flategy. Sections are to be part by the Contracture and contracture and the elections in accounting these flategy. Sections are to be part by the Contracture contracture and the elections are to be part by the Contracture contracture.

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# EXHIBIT B

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### **EXHIBIT C**

### INSURANCE REQUIREMENTS

NOTE: All insurance required and provided hereunder shall also comply with the provisions of Section 11 of this Agreement.

- 1. Standard Worker's Compensation and Employer's Liability Insurance covering all employees of Contractor involved with the performance of the Services, with policy amounts and coverage in compliance with the laws of the jurisdiction in which the Services will be performed.
- 2. Commercial General Liability Insurance with minimum limits of liability of not less than \$2,000,000 per occurrence for bodily injury and property damage liability; \$2,000,000 designated location, general aggregate; and \$1,000,000 umbrella. Such insurance will include coverage for contractual liability, personal injury and broad form property damage, and shall include all major divisions of coverage and be on a comprehensive basis including, but not limited to:
  - a. premises operations;
  - b. personal injury liability without employment exclusion;
  - c. limited contractual;
  - d. broad form property damages, including completed operations;
  - e. medical payments;
  - f. products and completed operations;
  - g. independent consultants coverage;
  - h. coverage inclusive of construction means, methods, techniques, sequences, and procedures, employed in the capacity of a construction consultant; and

This policy must include coverage extensions to cover the indemnification obligations contained in this Agreement to the extent caused by or arising out of bodily injury or property damage.

- 3. Comprehensive Automobile Liability Insurance covering all owned, non-owned and hired automobiles used in connection with the performance of the Services, with limits of liability of not less than \$1,000,000 combined single limit bodily injury and property damage. This policy must include coverage extensions to cover the indemnification obligations contained in this Agreement to the extent caused by or arising out of bodily injury or property damage.
- 4. If applicable: Contractor shall secure and maintain a third party fidelity bond in favor of the Authority covering the Contractor and its employees and agents who may provide or be responsible for the provision of Services where such activities contemplate the responsibility for money or property of the Authority. Such bond shall protect the Authority against any fraudulent or dishonest act which may result in the loss of money, securities, or other property belonging to or in the possession of the Authority. Said bond

- shall be in an amount as determined by the Authority, from a surety acceptable to the Authority.
- 5. Any other insurance commonly used by contractors for services of the type to be performed pursuant to this Agreement.

### **EXHIBIT C-1**

# CERTIFICATE(S) OF INSURANCE

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### EXHIBIT D

# CERTIFICATE OF GOOD STANDING WITH COLORADO SECRETARY OF STATE

# OFFICE OF THE SECRETARY OF STATE OF THE STATE OF COLORADO

# CERTIFICATE OF FACT OF GOOD STANDING

I, Jena Griswold, as the Secretary of State of the State of Colorado, hereby certify that, according to the records of this office.

BrightView Landscape Services, Inc.

15 8

### Corporation

formed or registered on 01/03/1972 under the law of Colorado, has complied with all applicable requirements of this office, and is in good standing with this office. This entity has been assigned entity identification number 19871251562.

This certificate reflects facts established or disclosed by documents delivered to this office on paper through 11/24/2021 that have been posted, and by documents delivered to this office electronically through 11/29/2021 @ 15:24:42.

I have affixed hereto the Great Seal of the State of Colorado and duly generated, executed, and issued this official certificate at Denver, Colorado on 11/29/2021 @ 15:24:42 in accordance with applicable law. This certificate is assigned Confirmation Number 13614134



Secretary of State of the State of Colorado

Notice: A certificate issued electronically from the Colorado Secretary of State's Web site is fully and immediately valid and effective. However, as an option, the issuance and validity of a certificate obtained electronically may be established by visiting the Validate at Certificate page of the Secretary of State's Web site, http://www.sos.state.co.un/bis/Certificate/secretariado entering the certificate's confirmation number displayed on the certificate, and following the instructions displayed. Confirming the issuance of a certificate is merely optional and is not necessary to the valid and effective issuance of a certificate. For more information, visit our Web site, http://www.sos.state.co.us/click "Businesses, trademarks, trade names" and select "Frequently Asked Questions."



### **Certificate Of Completion**

Envelope Id: 0704B8EB5CCB443B921D2BF84A3D6E09 Status: Completed

Subject: Please DocuSign: Tallyn's Reach Authority - Agreements for Dec. Winter Watering and Tree Pruning

Client Name: Tallyn's Reach Authority Client Number: 011-045194-OS07-2021

Source Envelope:

Document Pages: 47 Signatures: 6 **Envelope Originator:** Initials: 0 Cindy Jenkins Certificate Pages: 5 220 South 6th Street AutoNav: Enabled

Envelopeld Stamping: Enabled

Time Zone: (UTC-06:00) Central Time (US & Canada)

Suite 300 Minneapolis, MN 55402 Cindy.Jenkins@claconnect.com

IP Address: 165.225.10.178

Sent: 12/6/2021 12:30:17 PM

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Blair M. Dickhoner bdickhoner@wbapc.com

Security Level: Email, Account Authentication

(None)

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Blair M. Dickhoner

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# ADDENDUM TO INDEPENDENT CONTRACTOR AGREEMENT

OPEN SPACE MANAGEMENT

This ADDENDUM TO THE INDEPENDENT CONTRACTOR AGREEMENT OPEN SPACE MANAGEMENT (the "Addendum") is entered into as of the 23<sup>rd</sup> day of November, 2021, by and between TALLYN'S REACH AUTHORITY, a contractual authority and political subdivision of the State of Colorado (the "Authority"), and ARK ECOLOGICAL SERVICES, LLC, a Colorado limited liability company (the "Contractor"). The Authority and the Contractor are referred to herein individually as a "Party" and collectively as the "Parties."

### **RECITALS**

WHEREAS, the Parties entered into that certain Independent Contractor Agreement (Open Space Management) on September 7, 2021 (the "**Agreement**"); and

WHEREAS, the Parties wish to update the Scope of Services/Compensation Schedule set forth in Exhibits A of the Agreement.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties covenant and agree as follows:

- 1. <u>Modification of Scope of Services/Compensation Schedule</u>. The Parties hereby agree that the Scope of Services/Compensation Schedule set forth in Exhibit A of the Agreement, shall be superseded and replaced in their entirety by the Scope of Services and Compensation Schedule set forth in Exhibit 1 attached hereto and incorporated herein by this reference.
- 2. <u>Prior Provisions Effective</u>. Except as specifically amended hereby, all the terms and provisions of the Agreement shall remain in full force and effect.
- 3. <u>Counterpart Execution</u>. This Addendum may be executed in several counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have caused this Addendum to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

### AUTHORITY:

TALLYN'S REACH AUTHORITY, a contractual authority and political subdivision of the State of Colorado

Officer of the Authority

-DocuSigned by:

ATTEST:

APPROVED AS TO FORM:

WHITE BEAR ANKELE TANAKA & WALDRON Attorneys at Law

Blair M. Dickhoner

General Counsel for the Authority

CONTRACTOR:

ARK ECOLOGICAL SERVICES, LLC, a Colorado limited liability company

### **EXHIBIT 1**

# SCOPE OF SERVICES/COMPENSATION SCHEDULE

Open Space Management Proposal for Fall 2021

Weed and Native Plant Management Program for the The Board of the Tallyns Reach Authority

> Prepared by

Raymond H. Sperger

Ark Ecological Services, LLC

Conserving native species and landscapes for future generations 6560 Dover Street Arvada, CO 80004 303-985-4849

September 6, 2021

# Open Space Management Proposal for Fall 2021 Weed and Native Plant Management Program for the Tallyns Reach Authority

#### Introduction:

Tallyns Reach is a beautiful integration of homes surrounded with many areas of open space including prairies, riparian areas with cottonwood trees, shrublands and areas with pines. Several of these native open spaces and the surrounding lands have good quality natural areas with an abundance of plant and animal life. Recreation opportunities including trails, wildlife viewing, and aesthetic beauty can be found, especially in the larger native green spaces. These natural amenities are worth cherishing and conserving for future generations, but this can only happen through sound ecological planning, through the commitment of homeowners and community leaders, and through proper stewardship practices (See Addendum 1 for a list of reasons why we should manage and restore native open spaces). Due to the development of the community and past management practices, many of the natural treasures need a helping hand to restore much of their former beauty and diversity, and to serve the needs and desires of Tallyns Reach Residents.

The following is a compilation of weed management, ecological restoration, and land management actions that will help to ensure ecologically sound stewardship of these diverse open lands. There is purpose and statement of need that will help the property owners to establish its priorities for open space management. Please consider these items for 2021 or in the future to help you meet the communities' goals. With the support of the community and board of directors, Ark Ecological Services can help you keep and restore your native open spaces beautiful and healthy for future generations.

### Weed and Native Plant Management Program

<u>Purpose</u>: To contain, suppress, control, and eventually eliminate state and county-listed noxious weeds and other aggressive non-native plants within the Tallyns Reach Open Space. This program will focus on the noxious weeds including Diffuse Knapweed, Leafy Spurge, Canada Thistle, Musk Thistle, Redstem Filaree, Mullein, Moth Mullein, Curly Dock, Prickly Lettuce (Compass Plant), Cheatgrass, and other weeds and non-native plants such as alfalfa found within the open space areas. This proposal will help the community comply with state and county weed ordinances. And, to encourage the growth and sustain the populations of the many native plants which are currently found within the Open Space.

Statement of Need: Currently, there are several noxious weed species growing in the Tallyns Reach Open Space and several areas are severely degraded by infestations noxious weeds and other invasive exotic species. Other parts of the Open Space have few or no weeds and need to be protected from future weed invasions. Without actively managing these weeds using integrated weed management practices, (chemical treatment, mechanical treatments like mowing, cutting, pulling, and biological controls), weeds will continue to multiply in the areas where infestations exist, will spread into new areas, and will reduce native plant and animal populations. Prevention, early detection, containment, suppression, and control of noxious weeds are the most efficient and cost effective methods of any weed management strategy.

Weed and Native Plant Management Program Options and Costs for 2021

Plan	Weed and Native Plant Management Program	Cost
Standard Plan	Herbicide applications combining 1 broadcast applications where needed or 1 spot applications where diverse stands of native wildflowers and woody native plants are found and weeds are dispersed *	Time and materials not to exceed \$25,000
Open Space Tree Well	Apply herbicides in all tree and shrub wells in the open spaces only as needed to control weeds.	Included in above costs
Management Trail Side Management	Manage weeds along trails within the Tallyns Reach owned open space mapped areas.	Included in above costs

<sup>\*</sup>To the extent possible, native wildflower populations that are susceptible to broadleaf herbicides will not be sprayed.

Estimated Weed Management Costs Over Time. As weeds are controlled through time the seed bank in the soil is depleted and fewer weeds come up each year. Selective applications of herbicides give both native grasses and native wildflowers a competitive advantage, thereby increasing the beauty of the area and crowding out space for weeds. In highly infested sites or areas with extensive disturbance, ecological restoration (revegetation) is teamed with weed control to encourage the replacement of weeds with natives. With one application this fall, and 2-3 herbicide application per year in the future, the costs for future control efforts will decline as the weed seed bank in the soil is depleted.

### No weed control in 2021 has the following negative ramifications:

- Populations of weeds will continue to increase.
- The number of seeds in the soil seed bank will continue to grow making future weed control and restoration more expensive.
- Desirable native vegetation will decline and wildlife will decrease.
- The aesthetic beauty of the area is marred and the desirability to recreate in weed-infested areas is reduced.
- 5. Weeds may spread off-site to other parks and private property.
- Possible violations of county weed ordinances and state weed laws may be enforced.

It is, therefore, prudent to control weeds and prevent their spread.

### **Ecological Restoration Projects**

<u>Purpose</u>: To restore native plants as well as environmental conditions to areas that have been disturbed beyond the short-term natural recovery cycle or to enhance the natural recovery cycle.

Statement of Need: Several native common areas in Tallyns Reach are in need of restoration due to past construction of homes, utilities, trails, or other facilities, due to poor revegetation practices, improper or lack of management, or neglect. These areas will continue to be weed problem areas unless they are restored and revegetated so that there is competition between native plants and weeds. Restoration will enhance the beauty of these areas, reduce long-term management costs, and restore important ecosystem functions. Assessment of areas that need to be reseeded will be conducted and recommendations for future areas that may need to be reseeded.

Recommended Actions:	Cost
Restoration Projects	•
Small restoration areas for seeding are located throughout the site.	If needed
If funds are left in the weed management budget, they could be	In late fall
applied to these existing small bare ground areas.	
Drainage area at the Biloxi Ct. Test Site identified on the Sept. 6	To be
Site Assessment and Walk Through	determined

Proposed Schedule: (Based on the this Fall Plan and on typical weather patterns)

September and October	Complete first herbicide application on Diffuse Knapweed, various Thistle Species, Mullein, Bindweed, and other noxious weeds.
Late October or November	Restore small bare ground areas that are currently weed free. Develop a list of potential restoration sites for future budget consideration. Complete Open Space Management Proposal for 2022.

This proposal is acknowledged and accepted by:	
Date:	-
Signed:	; President, Tallyns Reach Homeowner Board
Date:	-
Signed:	-
Raymond H. Sperger; Principal Ecologist and Bus	iness Manager; Ark Ecological Services, LLC
Primary Contract Contact	
Name: Address:	
Phone: E-Mail:	

# Open Space Management Proposal for Fall 2022

# Weed and Native Plant Management Program for the The Board of the Tallyn's Reach Authority

Prepared by

# Raymond H. Sperger

# Ark Ecological Services, LLC

Conserving native species and landscapes for future generations 6560 Dover Street Arvada, CO 80004 303-985-4849

November 1, 2021

# Open Space Management Proposal for 2022 Weed and Native Plant Management Program for the Tallyn's Reach Authority

### Introduction:

Tallyn's Reach is a beautiful integration of homes surrounded with many areas of open space including prairies, riparian areas with cottonwood trees, shrublands and areas with pines. Several of these native open spaces and the surrounding lands have good quality natural areas with an abundance of plant and animal life. Recreation opportunities including trails, wildlife viewing, and aesthetic beauty can be found, especially in the larger native green spaces. These natural amenities are worth cherishing and conserving for future generations, but this can only happen through sound ecological planning, through the commitment of homeowners and community leaders, and through proper stewardship practices (See Addendum 1 for a list of reasons why we should manage and restore native open spaces). Due to the development of the community and past management practices, many of the natural treasures need a helping hand to restore much of their former beauty and diversity, and to serve the needs and desires of Tallyn's Reach Residents.

The following is a compilation of weed management, ecological restoration, and land management actions that will help to ensure ecologically sound stewardship of these diverse open lands. There is purpose and statement of need that will help the property owners to establish its priorities for open space management. Please consider these items for 2022 or in the future to help you meet the communities' goals. With the support of the community and board of directors, Ark Ecological Services can help you keep and restore your native open spaces beautiful and healthy for future generations.

# Weed and Native Plant Management Program

<u>Purpose</u>: To contain, suppress, control, and eventually eliminate state and county-listed noxious weeds and other aggressive non-native plants within the Tallyn's Reach Open Space. This program will focus on the noxious weeds including Diffuse Knapweed, Leafy Spurge, Canada Thistle, Musk Thistle, Redstem Filaree, Mullein, Moth Mullein, Curly Dock, Prickly Lettuce (Compass Plant), Cheatgrass, and other weeds and non-native plants such as alfalfa found within the open space areas. This proposal will help the community comply with state and county weed ordinances. And, to encourage the growth and sustain the populations of the many native plants which are currently found within the Open Space.

Statement of Need: Currently, there are several noxious weed species growing in the Tallyn's Reach Open Space and several areas are severely degraded by infestations noxious weeds and other invasive exotic species. Other parts of the Open Space have few or no weeds and need to be protected from future weed invasions. Without actively managing these weeds using integrated weed management practices, (chemical treatment, mechanical treatments like mowing, cutting, pulling, and biological controls), weeds will continue to multiply in the areas where infestations exist, will spread into new areas, and will reduce native plant and animal populations. Prevention, early detection, containment, suppression, and control of noxious weeds are the most efficient and cost effective methods of any weed management strategy.

# Weed and Native Plant Management Program Options and Costs for 2022

Weed and Matte	Tiant Management Program Options and Costs to	
Plan	Fred and Salar Park Sancreman Program	Cost
Standard Plan	Herbicide applications combining 1 broadcast applications where needed and 2-3 spot applications where diverse stands of native wildflowers and woody native plants are found and	Time and materials not to exceed \$100,000
	weeds are dispersed.* To the degree possible cheatgrass infestations will be managed as well with Esplanade. Additional funds may need to be allocated for this highly invasive specialty weed as was done in 2021.	
Open Space Tree Well Management	Apply herbicides in all tree and shrub wells in the open spaces only as needed to control weeds.	Included in above costs
Trail Side Management	Manage weeds along trails within the Tallyn's Reach owned open space mapped areas.	Included in above costs

<sup>\*</sup>To the extent possible, native wildflower populations that are susceptible to broadleaf herbicides will not be sprayed.

Estimated Weed Management Costs Over Time. As weeds are controlled through time the seed bank in the soil is depleted and fewer weeds come up each year. Selective applications of herbicides give both native grasses and native wildflowers a competitive advantage, thereby increasing the beauty of the area and crowding out space for weeds. In highly infested sites or areas with extensive disturbance, ecological restoration (revegetation) is teamed with weed control to encourage the replacement of weeds with natives. With one application this fall, and 2-3 herbicide application per year in the future, the costs for future control efforts will decline as the weed seed bank in the soil is depleted.

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Recommended Actions:	Cost
Restoration Projects	
Small restoration areas for seeding are located throughout the site.	If needed
If funds are left in the weed management budget, they could be	in fall
applied to these existing small bare ground areas.	
Drainage area at the Biloxi Ct. Test Site identified on the Sept. 6,	To be
2021 Site Assessment and Walk Through	determined

Proposed Schedule: (Based on the this Plan and on typical weather patterns)

March -	Complete all herbicide applications on Diffuse Knapweed, various Thistle
November	Species, Mullein, Bindweed, and other noxious weeds. Spray Cheatgrass areas as time and financial resources allow.
Late October or November	Restore small bare ground areas that are currently weed free. Develop a list of potential restoration sites for future budget consideration. Complete Open Space Management Proposal for 2023.

This proposal is acknowledged and accepted by:	
Date:	-
Signed:	; President, Tallyn's Reach Homeowner Board
Date:	-
Signed:	-
Raymond H. Sperger; Principal Ecologist and Bus	iness Manager; Ark Ecological Services, LLC
Primary Contract Contact	
Name:	
Address:	
Phone:	
E-Mail:	

# Addendum 1 Reasons to Manage and Restore Native Open Space

### Because we want to:

# Open Space -The Benefits are Endless

- Cleans and purifies our water
- · Cleans the air and produces oxygen we need to breathe
- Reduces air temperatures on hot summer days
- Provides habitat for the animals and plants that we enjoy seeing
- Provides children and adults an opportunity to learn about the environment
- Provides artistic, written, and photographic inspiration
- Provides a place for spiritual and emotional renewal
- Defines, identifies, and separates regions, communities, neighborhoods, and neighbors
- Provides a sense of history what the landscape may have looked like prior to settlement
- Provides recreational space for walking, jogging, bicycling, and other outdoor activities.

### Because we need to:

It is a part of the planning and guiding documents for most communities.

- Planned Unit Development Plan
- Design Review Philosophy and Guidelines
- Covenants

# It maintains property values.

It protects other investments made into the community (infrastructure, lot premiums, etc.).

# Because we have to:

It is a part of the laws of the land.

- Arapahoe County Weed Ordinance
- Colorado Noxious Weed Law Revised Statute 35-5.5-115

# Addendum 2 Possible Goals for Resource and Weed Management in Tallyn's Reach Open Space

# Resource Management Goal for the Open Spaces

 To conserve and restore the native biological diversity of the Tallyn's Reach Open Space through sound land management including aggressive weed control and active ecological restoration for the benefit and enjoyment of the Tallyn's Reach Homeowners.

# Weed Control Mission Statement

 Work cooperatively to prevent the invasion and manage the spread of noxious weeds in order to conserve and restore the native biological diversity of the open space properties.

# Weed Management Goals

- Prevent the introduction of noxious weeds not already present in the Open Space.
- Eradicate noxious weeds which are not well established in the Open Space.
- Contain the spread of noxious weeds which are so well established that they cannot be easily and quickly eradicated.
- Implement appropriate weed management actions within weed containment areas.
- Restore Open Space that has become infested with weeds.
- Coordinate weed management actions to maximize effectiveness and minimize economic and environmental costs of weed control.
- Inform homeowners and adjacent landowners within the Tallyn's Reach about noxious weeds and provide support for their weed management and restoration efforts.



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**David Patterson** david.patterson@falck.com President

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BJ Pell

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# Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

# Withdrawing your consent

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

# Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

# All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

# How to contact CliftonLarsonAllen LLP:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: BusinessTechnology@CLAconnect.com

# To advise CliftonLarsonAllen LLP of your new email address

To let us know of a change in your email address where we should send notices and disclosures electronically to you, you must send an email message to us at BusinessTechnology@CLAconnect.com and in the body of such request you must state: your previous email address, your new email address. We do not require any other information from you to change your email address.

If you created a DocuSign account, you may update it with your new email address through your account preferences.

# To request paper copies from CliftonLarsonAllen LLP

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an email to BusinessTechnology@CLAconnect.com and in the body of such request you must state your email address, full name, mailing address, and telephone number. We will bill you for any fees at that time, if any.

# To withdraw your consent with CliftonLarsonAllen LLP

To inform us that you no longer wish to receive future notices and disclosures in electronic format you may:

i. decline to sign a document from within your signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;

ii. send us an email to BusinessTechnology@CLAconnect.com and in the body of such request you must state your email, full name, mailing address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

# Required hardware and software

The minimum system requirements for using the DocuSign system may change over time. The current system requirements are found here: <a href="https://support.docusign.com/guides/signer-guide-signing-system-requirements">https://support.docusign.com/guides/signer-guide-signing-system-requirements</a>.

# Acknowledging your access and consent to receive and sign documents electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please confirm that you have read this ERSD, and (i) that you are able to print on paper or electronically save this ERSD for your future reference and access; or (ii) that you are able to email this ERSD to an email address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format as described herein, then select the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

By selecting the check-box next to 'I agree to use electronic records and signatures', you confirm that:

- You can access and read this Electronic Record and Signature Disclosure; and
- You can print on paper this Electronic Record and Signature Disclosure, or save or send this Electronic Record and Disclosure to a location where you can print it, for future reference and access; and
- Until or unless you notify CliftonLarsonAllen LLP as described above, you consent to receive exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by CliftonLarsonAllen LLP during the course of your relationship with CliftonLarsonAllen LLP.

# INDEPENDENT CONTRACTOR AGREEMENT

2022 PLANT HEALTH CARE

This INDEPENDENT CONTRACTOR AGREEMENT, including any and all exhibits attached hereto (the "Agreement"), is entered into as of the 22<sup>nd</sup> day of November, 2021, by and between TALLYN'S REACH AUTHORITY, a contractual authority and political subdivision of the State of Colorado (the "Authority"), and BrightView Landscape Services, Inc., a Colorado corporation (the "Contractor"). The Authority and the Contractor are referred to herein individually as a "Party" and collectively as the "Parties."

### RECITALS

WHEREAS, Tallyn's Reach Metropolitan District Nos. 2 and 3 (each a "**District**" and collectively the "**Districts**") were organized pursuant to and in accordance with the provisions of §§ 32-1-101, *et seq.*, C.R.S. for the purpose of constructing, financing, operating and maintaining certain public facilities and improvements for itself, its taxpayers, residents and users; and

WHEREAS, pursuant to § 32-1-1001(1)(d)(I), C.R.S., the Districts are empowered to enter into contracts and agreements affecting the affairs of the Districts; and

WHEREAS, pursuant to § 32-1-1001(1)(i), C.R.S., the Districts are empowered to appoint, hire and retain agents, employees, engineers and attorneys; and

WHEREAS, pursuant to their consolidated service plan and §29-1-203, C.R.S., the Districts may coordinate or contract with one another to provide any function, service or facility that they may be authorized to provide individually; and

WHEREAS, on February 12, 2018, the Districts entered into the Tallyn's Reach Authority Establishment Agreement (the "Establishment Agreement") to establish the Authority, a separate legal entity that is a political subdivision and political corporation of the State of Colorado; and

WHEREAS, pursuant to § 29-1-203.5(2), C.R.S., and the Establishment Agreement, the Board of Directors of the Authority (the "**Board**") shall have the management control and supervision of all the business and affairs of the Authority; and

WHEREAS, the Authority desires to engage the Contractor to perform certain services as are needed by the Authority to serve the property within and without its boundaries; and

WHEREAS, the Contractor has represented that it has the professional experience, skill and resources to perform the services, as set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and stipulations set forth herein, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

### TERMS AND CONDITIONS

- 1. SCOPE OF SERVICES; PERFORMANCE STANDARDS. The Contractor shall perform the services described in **Exhibit A**, attached hereto and incorporated herein by this reference (the "**Services**"): (a) in a professional manner, to the satisfaction of the Authority, using the degree of skill and knowledge customarily employed by other professionals performing similar services; (b) within the time period and pursuant to the Scope of Services specified in said **Exhibit A**; and (c) using reasonable commercial efforts to minimize any annoyance, interference or disruption to the residents, tenants, occupants and invitees within the Authority. **Exhibit A** may take any form, including forms which may include price and payment terms. In the event of any conflict between terms set forth in the body of this Agreement and terms set forth in **Exhibit A**, the terms in the body of this Agreement shall govern. Contractor shall have no right or authority, express or implied, to take any action, expend any sum, incur any obligation, or otherwise obligate the Authority in any manner whatsoever, except to the extent specifically provided in this Agreement (including **Exhibit A**) or through other authorization expressly delegated to or authorized by the Authority through its Board of Directors.
- 2. <u>TERM/RENEWAL</u>. This Agreement shall be effective as of the dated date hereof and shall terminate on the earlier to occur of: (i) termination pursuant to Section 18 hereof; (ii) completion of the Services; or (iii) December 31, 2022. Notwithstanding the foregoing, unless terminated pursuant to subsection (i) or (ii) above, or unless the Authority determines not to appropriate funds for this Agreement for the next succeeding year, this Agreement shall automatically renew on January 1 of each succeeding year for an additional one (1) year term.
- 3. <u>ADDITIONAL SERVICES</u>. The Authority may, in writing, request the Contractor provide additional services not set forth in **Exhibit A**. The terms and conditions of the provision of such services shall be subject to the mutual agreement of the Contractor and the Authority pursuant to a written service/work order executed by an authorized representative of the Authority and the Contractor or an addendum to this Agreement. Authorization to proceed with additional services shall not be given unless the Authority has appropriated funds sufficient to cover the additional compensable amount. To the extent additional services are provided pursuant to this Section 3, the terms and conditions of this Agreement relating to Services shall also apply to any additional services rendered.
- 4. <u>REPAIRS/CLAIMS</u>. The Contractor shall notify the Authority immediately of any and all damage caused by the Contractor to Authority property and that of third parties. The Contractor will promptly repair or, at the Authority's option, reimburse the Authority for the repair of any damage to property caused by the Contractor or its employees, agents or equipment. In addition, the Contractor shall promptly notify the Authority of all potential claims of which it becomes aware. The Contractor further agrees to take all reasonable steps to preserve all physical evidence and information which may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and to grant to the Authority the opportunity to review and inspect such evidence, including the scene of any damage or accidents. The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Services and shall provide all reasonable protection to prevent damage or injury to persons and property, including any material and equipment related to the Services,

whether in storage on or off site, under the care, custody, or control of the Contractor or any of its subcontractors.

# 5. GENERAL PERFORMANCE STANDARDS.

- a. The Contractor has by careful examination ascertained: (i) the nature and location of the Services; (ii) the configuration of the ground on which the Services are to be performed; (iii) the character, quality, and quantity of the labor, materials, equipment and facilities necessary to complete the Services; (iv) the general and local conditions pertaining to the Services; and (v) all other matters which in any way may affect the performance of the Services by the Contractor. Contractor enters into this Agreement solely because of the results of such examination and not because of any representations pertaining to the Services or the provision thereof made to it by the Authority or any agent of the Authority and not contained in this Agreement. The Contractor represents that it has or shall acquire the capacity and the professional experience and skill to perform the Services and that the Services shall be performed in accordance with the standards of care, skill and diligence provided by competent professionals who perform services of a similar nature to those specified in this Agreement. If competent professionals find that the Contractor's performance of the Services does not meet this standard, the Contractor shall, at the Authority's request, re-perform the Services not meeting this standard without additional compensation.
- b. The Contractor shall use reasonable commercial efforts to perform and complete the Services in a timely manner. If performance of the Services by the Contractor is delayed due to factors beyond the Contractor's reasonable control, or if conditions of the scope or type of services are expected to change, Contractor shall give prompt notice to the Authority of such a delay or change and receive an equitable adjustment of time and/or compensation, as negotiated between the Parties.
- c. The Services provided under this Agreement shall be adequate and sufficient for the intended purposes and shall be completed in a good and workmanlike manner.
- d. The Contractor agrees that it has and will continue to comply with all Laws while providing Services under this Agreement. "Laws" means: (i) federal, state, county and local or municipal body or agency laws, statutes, ordinances and regulations; (ii) any licensing bonding, and permit requirements; (iii) any laws relating to storage, use or disposal of hazardous wastes, substances or materials; (iv) rules, regulations, ordinances and/or similar directives regarding business permits, certificates and licenses; (v) regulations and orders affecting safety and health, including but not limited to the Occupational Safety and Health Act of 1970; (vi) Wage and Hour laws, Worker Compensation laws, and immigration laws.
- e. The responsibilities and obligations of the Contractor under this Agreement shall not be relieved or affected in any respect by the presence of any agent, consultant, subconsultant or employee of the Authority. Review, acceptance or approval by the Authority of the Services performed or any documents prepared by the Contractor shall not relieve the Contractor of any responsibility for deficiencies, omissions or errors in said Services or documents, nor shall it be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

6. MONTHLY STATUS REPORT. The Contractor shall provide to the Authority, at the Authority's request, on or before the 25th of each month, a narrative progress and status report describing work in progress and results achieved during the reporting period, including a description of the Services performed during the invoice period and the Services anticipated to be performed during the ensuing invoice period ("Monthly Report").

# 7. COMPENSATION AND INVOICES.

- a. <u>Compensation</u>. Compensation for the Services provided under this Agreement shall be in accordance with the compensation schedule attached hereto as **Exhibit A**. The Contractor shall be responsible for all expenses it incurs in performance of this Agreement and shall not be entitled to any reimbursement or compensation except as provided in **Exhibit A** of this Agreement, unless said reimbursement or compensation is approved in writing by the Authority in advance of incurring such expenses. Any direct reimbursable costs for materials will be reimbursable at the Contractor's actual cost, provided that the Contractor shall make a reasonable attempt to notify the Authority of the estimated amount of such reimbursable costs (or any material adjustments thereto subsequently identified) prior to commencing the requested services. Concurrent with the execution of this Agreement, the Contractor shall provide the Authority with a current completed Internal Revenue Service Form W-9 (Request for Taxpayer Identification Number and Certification) ("W-9"). No payments will be made to the Contractor until the completed W-9 is provided. The W-9 shall be attached hereto and incorporated herein as **Exhibit B**.
- b. <u>Invoices</u>. Invoices for the Services shall be submitted monthly, by the 10<sup>th</sup> of each month, during the term of this Agreement and shall contain the following information:
  - i. An itemized statement of the Services performed.
- ii. Any other reasonable information required by the Authority to process payment of the invoice, including project and/or cost codes as provided in any applicable written service/work order.

The Authority shall be charged only for the actual time and direct costs incurred for the performance of the Services. Invoices received by the Authority after the 10<sup>th</sup> of each month may be processed the following month.

8. <u>TIME FOR PAYMENT</u>. Payment for the Services shall be made by the Authority within thirty (30) days of receipt of: (i) a timely, satisfactory and detailed invoice in the form required by Section 7; and (ii) if applicable, a reasonably satisfactory and detailed Monthly Report, for that portion of the Services performed and not previously billed. The Authority may determine to waive or extend the deadline for filing the Monthly Report, or may make payment for Services to the Contractor notwithstanding a delay in filing the Monthly Report, upon reasonable request of the Contractor, if it is in the interest of the Authority to do so. In the event a Board meeting is not scheduled in time to review payment of an invoice, the Board hereby authorizes payment for Services, subject to the appropriation and budget requirements under Section 27 hereof, without the need for additional Board approval, so long as any payment required to be made does not exceed the amounts appropriated for such Services as set forth in the Authority's approved budget.

Such payment shall require review and approval of each Monthly Report and invoice by two officers of the Authority.

- 9. INDEPENDENT CONTRACTOR. The Contractor is an independent contractor and nothing in this Agreement shall constitute or designate the Contractor or any of its employees or agents as employees or agents of the Authority. The Contractor shall have full power and authority to select the means, manner and method of performing its duties under this Agreement, without detailed control or direction from the Authority, and shall be responsible for supervising its own employees or subcontractors. The Authority is concerned only with the results to be obtained. The Authority shall not be obligated to secure, and shall not provide, any insurance coverage or employment benefits of any kind or type to or for the Contractor or its employees, sub-consultants, contractors, agents, or representatives, including coverage or benefits related but not limited to: local, state or federal income or other tax contributions, insurance contributions (e.g. FICA taxes), workers' compensation, disability, injury, health or life insurance, professional liability insurance, errors and omissions insurance, vacation or sick-time benefits, retirement account contributions, or any other form of taxes, benefits or insurance. The Contractor shall be responsible for its safety, and the safety of its employees, sub-contractors, agents, and representatives. All personnel furnished by the Contractor will be deemed employees or subcontractors of the Contractor and will not for any purpose be considered employees or agents of The Contractor is not entitled to worker's compensation benefits or the Authority. unemployment insurance benefits, unless unemployment compensation coverage is provided by the Contractor or some other entity other than the Authority, and the Contractor is obligated to pay federal and state income taxes on moneys by it earned pursuant to this Agreement.
- 10. <u>EQUAL OPPORTUNITY / EMPLOYMENT ELIGIBILITY</u>. This Agreement is subject to all applicable laws and executive orders relating to equal opportunity and non-discrimination in employment and the Contractor represents and warrants that it will not discriminate in its employment practices in violation of any such applicable law or executive order.

The Contractor hereby states that it does not knowingly employ or contract with illegal aliens and that the Contractor has participated in or has attempted to participate in the E-Verify Program or Department Program (formerly known as the Basic Pilot Program) (as defined in §8-17.5-101, C.R.S.) in order to verify that it does not employ any illegal aliens. The Contractor affirmatively makes the follow declarations:

- a. The Contractor shall not knowingly employ or contract with an illegal alien who will perform work under the public contract for services contemplated in this Agreement and will participate in the E-Verify Program or Department Program (as defined in §8-17.5-101, C.R.S.) 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 contemplated in this Agreement.
- b. The Contractor shall not knowingly 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 the services contemplated in this Agreement.

- c. The Contractor has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under the public contract for services through participation in either the E-Verify Program or the Department Program.
- d. The Contractor is prohibited from using either the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.
- e. If the Contractor obtains actual knowledge that a subcontractor performing the services under this Agreement knowingly employs or contracts with an illegal alien, the Contractor shall be required to:
- i. Notify the subcontractor and the Authority within three (3) days that the Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien.
- ii. Terminate the subcontract with the subcontractor if within three (3) days of receiving the notice required above 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 (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.
- f. The Contractor shall comply with any reasonable request by the Department of Labor and Employment made in the course of an investigation involving matters under this Section 10 that such Department is undertaking pursuant to the authority established in § 8-17.5-102, C.R.S.
- g. If the Contractor violates a provision of this Agreement pursuant to which § 8-17.5-102, C.R.S., applies the Authority may terminate this Agreement upon three (3) days written notice to the Contractor. If this Agreement is so terminated, the Contractor shall be liable for actual and consequential damages to the Authority.

# 11. CONTRACTOR'S INSURANCE.

- a. The Contractor shall acquire and maintain, at its sole cost and expense, during the entire term of this Agreement, insurance coverage in the minimum amounts set forth in **Exhibit C**, attached hereto and incorporated herein by this reference. A waiver of subrogation and rights of recovery against the Authority, its directors, officers, employees and agents is required for Commercial General Liability and Workers Compensation coverage. The Commercial General Liability and Comprehensive Automobile Liability Insurance policies will be endorsed to name the Authority as an additional insured. All coverage provided pursuant to this Agreement shall be written as primary policies, not contributing with and not supplemental to any coverage that the Authority may carry, and any insurance maintained by the Authority shall be considered excess. The Authority shall have the right to verify or confirm, at any time, all coverage, information or representations contained in this Agreement.
- b. Prior to commencing any work under this Agreement, the Contractor shall provide the Authority with a certificate or certificates evidencing the policies required by this

Agreement, as well as the amounts of coverage for the respective types of coverage, which certificate(s) shall be attached hereto as **Exhibit C-1**. If the Contractor subcontracts any portion(s) of the Services, said subcontractor(s) shall be required to furnish certificates evidencing statutory workers' compensation insurance, comprehensive general liability insurance and automobile liability insurance in amounts satisfactory to the Authority and the Contractor; provided, however, that sub-contractors of the Contractor shall not be required by the Authority to provide coverage in excess of that which is required hereunder of the Contractor. If the coverage required expires during the term of this Agreement, the Contractor or subcontractor shall provide replacement certificate(s) evidencing the continuation of the required policies.

c. The Contractor's failure to purchase the required insurance shall not serve to release it from any obligations contained in this Agreement; nor shall the purchase of the required insurance serve to limit the Contractor's liability under any provision in this Agreement. The Contractor shall be responsible for the payment of any deductibles on issued policies.

# 12. CONFIDENTIALITY AND CONFLICTS.

- Confidentiality. Any information deemed confidential by the Authority and given to the Contractor by the Authority, or developed by the Contractor as a result of the performance of a particular task, shall remain confidential. In addition, the Contractor shall hold in strict confidence, and shall not use in competition, any information which the Contractor becomes aware of under or by virtue of this Agreement which the Authority deems confidential, or which the Authority has agreed to hold confidential, or which, if revealed to a third party, would reasonably be construed to be contrary to the interests of the Authority. Confidential information shall not include, however, any information which is: (i) generally known to the public at the time provided to the Contractor; (ii) provided to the Contractor by a person or entity not bound by confidentiality to the Authority; or (iii) independently developed by the Contractor without use of the Authority's confidential information. During the performance of this Agreement, if the Contractor is notified that certain information is to be considered confidential, the Contractor agrees to enter into a confidentiality agreement in a form reasonably acceptable to the Authority and the Contractor. The Contractor agrees that any of its employees, agents or subcontractors with access to any information designated thereunder as confidential information of the Authority shall agree to be bound by the terms of such confidentiality agreement.
- b. <u>Personal Identifying Information</u>. During the performance of this Agreement, the Authority may disclose Personal Identifying Information to the Contractor. "**Personal Identifying Information**" means a social security number; a personal identification number; a password; a pass code; an official state or government-issued driver's license or identification card number; a government passport number; biometric data, as defined in § 24-73-103(1)(a), C.R.S.; an employer, student, or military identification number; or a financial transaction device, as defined in § 18-5-701(3), C.R.S. In compliance with § 24-73-102, C.R.S., the Contractor agrees to implement and maintain reasonable security procedures and practices that are: (i) appropriate to the nature of the Personal Identifying Information disclosed to the Contractor; and (ii) reasonably designed to help protect the Personal Identifying Information from unauthorized access, use, modification, disclosure, or destruction.

- c. <u>Conflicts</u>. Prior to the execution of, and during the performance of this Agreement and prior to the execution of future agreements with the Authority, the Contractor agrees to notify the Authority of conflicts known to the Contractor that impact the Contractor's provision of Services to the Authority.
- OWNERSHIP OF DOCUMENTS. All documents produced by or on behalf of the Contractor prepared pursuant to this Agreement, including, but not limited to, all maps, plans, drawings, specifications, reports, electronic files and other documents, in whatever form, shall remain the property of the Authority under all circumstances, upon payment to the Contractor of the invoices representing the work by which such materials were produced. At the Authority's request the Contractor will provide the Authority with all documents produced by or on behalf of the Contractor pursuant to this Agreement. The Contractor shall maintain electronic and reproducible copies on file of any such instruments of service involved in the Services for a period of two (2) years after termination of this Agreement, shall make them available for the Authority's use and shall provide such copies to the Authority upon request at no cost.
- 14. LIENS AND ENCUMBRANCES. The Contractor shall not have any right or interest in any Authority assets, or any claim or lien with respect thereto, arising out of this Agreement or the performance of the Services contemplated in this Agreement. The Contractor, for itself, hereby waives and releases any and all statutory or common law mechanic's, materialmen's or other such lien claims, or rights to place a lien upon the Authority's property or any improvements thereon in connection with any Services performed under or in connection with this Agreement, and the Contractor shall cause all permitted subcontractors, suppliers, materialmen, and others claiming by, through or under the Contractor to execute similar waivers prior to commencing any work or providing any materials in connection with the Services. The Contractor further agrees to execute a sworn affidavit respecting the payment and lien releases of all subcontractors, suppliers and materialmen, and release of lien respecting the Services at such time or times and in such form as may be reasonably requested by the Authority. The Contractor will provide indemnification against all such liens for labor performed, materials supplied or used by the Contractor and/or any other person in connection with the Services undertaken by the Contractor, in accordance with Section 15, below.

# 15. <u>INDEMNIFICATION</u>.

a. The Contractor shall defend, indemnify and hold harmless the Authority and each of its directors, officers, contractors, employees, agents and consultants (collectively, the "Authority Indemnitees"), from and against any and all claims, demands, losses, liabilities, actions, lawsuits, damages, and expenses (the "Claims"), including reasonable legal expenses and attorneys' fees actually incurred, by the Authority Indemnitees arising directly or indirectly, in whole or in part, out of the errors or omissions, negligence, willful misconduct, or any criminal or tortious act or omission of the Contractor or any of its subcontractors, officers, agents or employees, in connection with this Agreement and/or the Contractor's performance of the Services or work pursuant to this Agreement. Notwithstanding anything else in this Agreement or otherwise to the contrary, the Contractor is not obligated to indemnify the Authority Indemnitees for the negligence of the Authority or the negligence of any other Authority Indemnitee, except the Contractor. Except as otherwise provided by applicable law, this indemnification obligation will not be limited in any way by any limitation on the amount or types of damages, compensation or

benefits payable by or for the Contractor under workers' compensation acts, disability acts or other employee benefit acts, provided that in no event shall the Contractor be liable for special/consequential or punitive damages.

- b. In the event the Contractor fails to assume the defense of any Claims under this Section 15 within fifteen (15) days after notice from the Authority of the existence of such Claim, the Authority may assume the defense of the Claim with counsel of its own selection, and the Contractor will pay all reasonable expenses of such counsel. Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the Contractor under the terms of this indemnification obligation.
- c. Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the Contractor under the terms of this indemnification obligation. The Contractor shall obtain, at its own expense, any additional insurance that it deems necessary with respect to its obligations under this Agreement, including the indemnity obligations set forth in Section 15. This defense and indemnification obligation shall survive the expiration or termination of this Agreement.
- 16. <u>ASSIGNMENT</u>. The Contractor shall not assign this Agreement or parts thereof, or its respective duties, without the express written consent of the Authority. Any attempted assignment of this Agreement in whole or in part with respect to which the Authority has not consented, in writing, shall be null and void and of no effect whatsoever.
- SUB-CONTRACTORS. The Contractor is solely and fully responsible to the 17. Authority for the performance of all Services in accordance with the terms set forth in this Agreement, whether performed by the Contractor or a subcontractor engaged by the Contractor, and neither the Authority's approval of any subcontractor, suppliers, or materialman, nor the failure of performance thereof by such persons or entities, will relieve, release, or affect in any manner the Contractor's duties, liabilities or obligations under this Agreement. The Contractor shall not subcontract any Services without prior written approval by the Authority. The Contractor agrees that each and every agreement of the Contractor with any subcontractor to perform Services under this Agreement shall contain an indemnification provision identical to the one contained in this Agreement holding the Authority harmless for the acts of the subcontractor. Prior to commencing any Services, a subcontractor shall provide evidence of insurance coverage to the Authority in accordance with the requirements of this Agreement. The Contractor further agrees that all such subcontracts shall provide that they may be terminated immediately without cost or penalty upon termination of this Agreement, other than payment for services rendered prior to the date of any such termination.
- 18. <u>TERMINATION</u>. In addition to the termination provisions contained in Section 2, above, this Agreement may be terminated for convenience by the Contractor upon delivery of thirty (30) days prior written notice to the Authority and by the Authority by giving the Contractor thirty (30) days prior written notice. Each Party may terminate this Agreement for cause at any time upon written notice to the other Party setting forth the cause for termination and the notified Party's failure to cure the cause to the reasonable satisfaction of the Party given such notice within the cure period set forth in Section 19. If this Agreement is terminated, the Contractor shall be paid for all the Services satisfactorily performed prior to the designated termination date, including

reimbursable expenses due. Said payment shall be made in the normal course of business. Should either Party to this Agreement be declared bankrupt, make a general assignment for the benefit of creditors or commit a substantial and material breach of this Agreement in the view of the other Party, said other Party shall be excused from rendering or accepting any further performance under this Agreement. In the event of termination of this Agreement, the Contractor shall cooperate with the Authority to ensure a timely and efficient transition of all work and work product to the Authority or its designees. All time, fees and costs associated with such transition shall not be billed by the Contractor to the Authority.

- 19. <u>DEFAULT</u>. If either Party fails to perform in accordance with the terms, covenants and conditions of this Agreement, or is otherwise in default of any of the terms of this Agreement, the non-defaulting party shall deliver written notice to the defaulting party of the default, at the address specified in Section 20 below, and the defaulting party will have ten (10) days from and after receipt of the notice to cure the default. If the default is not of a type which can be cured within such ten (10)-day period and the defaulting party gives written notice to the non-defaulting party within such ten (10)-day period that it is actively and diligently pursuing a cure, the defaulting party will have a reasonable period of time given the nature of the default following the end of the ten (10)-day period to cure the default, provided that the defaulting party is at all times within the additional time period actively and diligently pursuing the cure. If any default under this Agreement is not cured as described above, the non-defaulting party will, in addition to any other legal or equitable remedy, have the right to terminate this Agreement and enforce the defaulting party's obligations pursuant to this Agreement by an action for injunction or specific performance.
- NOTICES. Any notice or communication required under this Agreement must be 20. in writing, and may be given personally, sent via nationally recognized overnight carrier service, or by registered or certified mail, return receipt requested. If given by registered or certified mail, the same will be deemed to have been given and received on the first to occur of: (i) actual receipt by any of the addressees designated below as the party to whom notices are to be sent; or (ii) three days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered or sent via nationally recognized overnight carrier service, a notice will be deemed to have been given and received on the first to occur of: (i) one business day after being deposited with a nationally recognized overnight air courier service; or (ii) delivery to the party to whom it is addressed. Any party hereto may at any time, by giving written notice to the other party hereto as provided in this Section 20 of this Agreement, designate additional persons to whom notices or communications will be given, and designate any other address in substitution of the address to which such notice or communication will be given. Such notices or communications will be given to the parties at their addresses set forth below:

Authority: Tallyn's Reach Authority

c/o CliftonLarsonAllen

8390 E. Crescent Parkway #500 Greenwood Village, CO 80111

Attention: Denise Denslow Phone: (303) 265-7923

Email: denise.denslow@claconnect.com

With a Copy to: WHITE BEAR ANKELE TANAKA & WALDRON

2154 E. Commons Ave., Suite 2000

Centennial, CO 80122

Attention: Blair M. Dickhoner, Esq.

Phone: (303) 858-1800

E-mail: bdickhoner@wbapc.com

Contractor: BrightView Landscape Services, Inc.

8888 N. Motsenbocker Rd., Ste. A

Parker, CO 80134

Attention: Sara Rutman Phone: (303) 841-3003

Email: sara.rutman@brightview.com

- 21. <u>AUDITS</u>. The Authority shall have the right to audit, with reasonable notice, any of the Contractor's books and records solely as are necessary to substantiate any invoices and payments under this Agreement (including, but not limited to, receipts, time sheets, payroll and personnel records) and the Contractor agrees to maintain adequate books and records for such purposes during the term of this Agreement and for a period of two (2) years after termination of this Agreement and to make the same available to the Authority at all reasonable times and for so long thereafter as there may remain any unresolved question or dispute regarding any item pertaining thereto.
- 22. <u>ENTIRE AGREEMENT</u>. This Agreement constitutes the entire agreement between the Parties hereto relating to the Services, and sets forth the rights, duties, and obligations of each to the other as of this date, and hereby supersedes any and all prior negotiations, representations, agreements or arrangements of any kind with respect to the Services, whether written or oral. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force and effect. This Agreement may not be modified except by a writing executed by both the Contractor and the Authority.
- 23. <u>BINDING AGREEMENT</u>. This Agreement shall inure to and be binding on the heirs, executors, administrators, successors, and assigns of the Parties hereto.
- 24. <u>NO WAIVER</u>. No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other of the provisions of this Agreement, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided in this Agreement, nor shall the waiver of any default be deemed a waiver of any subsequent default.

# 25. GOVERNING LAW.

a. <u>Venue</u>. Venue for all actions arising from this Agreement shall be in the District Court in and for the county in which the Authority is located. The Parties expressly and irrevocably waive any objections or rights which may affect venue of any such action, including,

but not limited to, *forum non-conveniens* or otherwise. At the Authority's request, the Contractor shall carry on its duties and obligations under this Agreement during any legal proceedings and the Authority shall continue to pay for the Services performed under this Agreement until and unless this Agreement is otherwise terminated.

- b. <u>Choice of Law</u>. Colorado law shall apply to any dispute, without regard to conflict of law principles that would result in the application of any law other than the law of the State of Colorado.
- c. <u>Litigation</u>. At the Authority's request, the Contractor will consent to being joined in litigation between the Authority and third parties, but such consent shall not be construed as an admission of fault or liability. The Contractor shall not be responsible for delays in the performance of the Services caused by factors beyond its reasonable control including delays caused by Act of God, accidents, failure of any governmental or other regulatory authority to act in a timely manner or failure of the Authority to furnish timely information or to approve or disapprove of Contractor's Services in a timely manner.
- 26. GOOD FAITH OF PARTIES. In the performance of this Agreement, or in considering any requested approval, acceptance, consent, or extension of time, the Parties agree that each will act in good faith and will not act unreasonably, arbitrarily, capriciously, or unreasonably withhold, condition, or delay any approval, acceptance, consent, or extension of time required or requested pursuant to this Agreement.
- 27. SUBJECT TO ANNUAL APPROPRIATION AND BUDGET. The Authority does not intend hereby to create a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever. The Contractor expressly understands and agrees that the Authority's obligations under this Agreement shall extend only to monies appropriated for the purposes of this Agreement by the Board and shall not constitute a mandatory charge, requirement or liability in any ensuing fiscal year beyond the then-current fiscal year. No provision of this Agreement shall be construed or interpreted as a delegation of governmental powers by the Authority, or as creating a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever of the Authority or statutory debt limitation, including, without limitation, Article X, Section 20 or Article XI, Section 6 of the Constitution of the State of Colorado. No provision of this Agreement shall be construed to pledge or to create a lien on any class or source of Authority funds. The Authority's obligations under this Agreement exist subject to annual budgeting and appropriations, and shall remain subject to the same for the entire term of this Agreement.
- 28. GOVERNMENTAL IMMUNITY. Nothing in this Agreement shall be construed to waive, limit, or otherwise modify, in whole or in part, any governmental immunity that may be available by law to the Authority, its respective officials, employees, contractors, or agents, or any other person acting on behalf of the Authority and, in particular, governmental immunity afforded or available to the Authority pursuant to the Colorado Governmental Immunity Act, §§ 24-10-101, et seq., C.R.S.
- 29. <u>NEGOTIATED PROVISIONS</u>. This Agreement shall not be construed more strictly against one Party than against the other merely by virtue of the fact that it may have been

prepared by counsel for one of the Parties, it being acknowledged that each Party has contributed to the preparation of this Agreement.

- 30. <u>SEVERABILITY</u>. If any portion of this Agreement is declared by any court of competent jurisdiction to be invalid, void or unenforceable, such decision shall not affect the validity of any other portion of this Agreement which shall remain in full force and effect, the intention being that such portions are severable. In addition, in lieu of such void or unenforceable provision, there shall automatically be added as part of this Agreement a provision similar in terms to such illegal, invalid or unenforceable provision so that the resulting reformed provision is legal, valid and enforceable.
- 31. <u>NO THIRD PARTY BENEFICIARIES</u>. 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 the Parties 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 Parties receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.
- 32. <u>OPEN RECORDS</u>. The Parties understand that all material provided or produced under this Agreement may be subject to the Colorado Open Records Act, §§ 24-72-202, *et seq.*, C.R.S.
- 33. <u>WARRANTY</u>. The Contractor shall and does by this Agreement guarantee and warrant that all workmanship, materials, and equipment furnished, installed, or performed for the accomplishment of the Services (collectively, the "Work") will be of good quality and new, unless otherwise required or permitted by this Agreement. The Contractor further warrants that the Work will conform to all requirements of this Agreement and all other applicable laws, ordinances, codes, rules and regulations of any governmental authorities having jurisdiction over the Work. All Services are subject to the satisfaction and acceptance of the Authority, but payments for the completed Work will not constitute final acceptance nor discharge the obligation of the Contractor to correct defects at a later date. Such warranties set forth in this Agreement are in addition to, and not in lieu of, any other warranties prescribed by Colorado law.
- 34. <u>TAX EXEMPT STATUS</u>. The Authority is exempt from Colorado state sales and use taxes. Accordingly, taxes from which the Authority is exempt shall not be included in any invoices submitted to the Authority. The Authority shall, upon request, furnish Contractor with a copy of its certificate of tax exemption. Contractor and subcontractors shall apply to the Colorado Department of Revenue, Sales Tax Division, for an Exemption Certificate and purchase materials tax free. The Contractor and subcontractors shall be liable for exempt taxes paid due to failure to apply for Exemption Certificates or for failure to use said certificate.
- 35. <u>COUNTERPART EXECUTION</u>. This Agreement may be executed in several counterparts, each of which may be deemed an original, but all of which together shall constitute one and the same instrument. Executed copies hereof may be delivered by facsimile or email of a PDF document, and, upon receipt, shall be deemed originals and binding upon the signatories hereto, and shall have the full force and effect of the original for all purposes, including the rules of evidence applicable to court proceedings.

[Signature pages follow].

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date first above written. By the signature of its representative below, each Party affirms that it has taken all necessary action to authorize said representative to execute this Agreement.

	AUTHORITY: TALLYN'S REACH AUTHORITY, a contractual authority and political subdivision of the State of Colorado
	Officer of the Authority
ATTEST:	
	_
APPROVED AS TO FORM:	
WHITE BEAR ANKELE TANAKA & WALDR Attorneys at Law	ON
General Counsel for the Authority	_

1627.4200; 1172254

	CONTRACTOR: Brightview Landscape Services, Inc., a Colorado corporation
	Printed Name Title
STATE OF COLORADO	) ) ss.
COUNTY OF	) owledged before me this day of, of BrightView Landscape
Witness my hand and official seal.	
My commission expires:	
	Notary Public

Contractor's Signature Page to Independent Contractor Agreement for 2022 Plant Health Care Services with Tallyn's Reach Authority, dated November 22, 2021

# **EXHIBIT A**

# SCOPE OF SERVICES/COMPENSATION SCHEDULE



November 22, 2021

# Proposal for Extra Work at Tallyn's Reach Authority

Property Name Property Address Tallyn's Reach Authority 24900 E Park Crescent Dr. Contact

Celeste Terrell

Aurora, CO 80016

To Billing Address

Tallyns Reach Authority 370 Interlocken Blvd Ste 500 Broomfield, CO 80021

Project Name 2022 Plant Health Care
Project Description 2022 Plant Health Care

Scope of Work

QT	/ UoM/Size	Material/Description	Unit Price	Total
1.0	0 LUMP SUM	IPS Beetle spray to all Pines and Spruce Trees (1st application)	\$23,870.01	\$23,870.01
1.0	0 LUMP SUM	IPS Beetle spray to all Pines and Spruce Trees (2nd application)	\$23,870.01	\$23,870.01
1.0	0 LUMP SUM	Lilac Ash Borer to all Ash Trees	\$9,000.00	\$9,000.00
1.0	0 LUMP SUM	Aphid, Mite and Japanese Beetle Spray for all infested transplant trees and shrubs (1st application)	\$7,850.00	\$7,850.00
1.0	0 LUMP SUM	Aphid, Mite and Japanese Beetle Spray for all infested transplant trees and shrubs (2nd application)	\$7,850.00	\$7,850.00
1.0	0 LUMP SUM	Aphid, Mite and Japanese Beetle Spray for all infested transplant trees and shrubs (3rd application)	\$7,850.00	\$7,850.00
1.0	0 LUMP SUM	Mealy Bug Application	\$2,100.00	\$2,100.00

or internal use only

\$O# 7854923 JOB# 400300615 \$ervice Line 130

**Total Price** 

\$82,390.02

THIS IS NOT AN INVOICE

A-1

This proposal is valid for 60 days unless otherwise approved by BrightView Landscape Services, Inc. 8888 Motsenbocker Road, Suite A, Parker, CO 80134 ph. (303) 941-3003 fax (303) 841-3177

November 22, 2021

Page 2 of 2

### TERMS & CONDITIONS

- The Contractor small repognize and perform in accordance with: written specifications and drawings only, portrained or referred to herein. All materials shall conform to tid specifications.
- Work Force: Contractor small designate a quarted representative with impartunce in randscape maintenance/bosstuction acquides or when applicable in two management. The vacabilities after the becompetent and quartified and after the become of the contract of the U.S.
- License and Permittal Contractor small maintain a Landscripe Contractor's feature, if response by State or local law, and will comply with all other spanse and germal requirements of the City, State and Federal Governments, as well as all other requirements of law,
- Taxes: Contractor agrees to pay all applicable taxes, including sales law Where applicable on maintal supplied.
- Insurance: Contractor agrees to provide General Liability Insurance, Nuteriodays Liability Insurance, Vibrice's Compensation Insurance, and any other insurance required by law or Clero! Owner, as specified in writing prior to commencement of work. If not specified, Contractor will furnish insurance with \$1,000,000 and of liability.
- Liability: Contractor shall indemnify the Client/Dwnell and its agents and Liabsing. Portracts shall indumnity the clientifulness and its organis and implayers than and against any first party bettines that exist out of Continuous a work to the which such abbition are adjudicabled for trace them existed by Continuous's magazined or writter insecond, of Continuous's magazined or writter insecond, of Continuous and the white the subject of the property of the course from Acid of God are delimed as those severed by windstorm, held, fire flood, earthquiese, humicians and treating, etc. United bytes or summationes. Contractor small have the that to correspond to terms and prices of this agreement within solo (00) days. Any flegal frespass trains and/or comages resulting from work requested first is not on properly where by Clertifornia on our under Clertifornia management and control shall be the sole responsibility of the Clientifolionia.
- Subcontractors: Contractor inserves the right in time glidded subcontractors to perform operiorzed functions or work requiring specialized. Subcontractors
- Additional Services Any additional work not shown in the above specifications unolving entire costs will be associated pily upon argued written Additional derivation of the second difference and above the entire property and above the entire property and above the entire property and above the entire property.
- Access to Jobsile Chart/Owner shall provide all olidies to pe receives to Joseph Controllment state provide at attack to perform the mark Controllment state from the controllment of performance of the performance of the performance of the controllment of the controll
- invoicing: ClimbOwner shall make payment to Contractor within litteen (45) mays upon recept or invoice. In the event the schedule for the completion of the Work shall require male than triffy (36) days, a progress bill will be presented by month and and shall be paid within lifteen (15) days upon receipt
- 11. Termination: This Work Order may be terminated by the either party with or wheat creat upon seven (7) work days advance writter natics. Clientiforms of be required to pay for all materials parchased and work comparied to the time of termination and reasonable charges incurring in demobilizing
- 12. Assignment. The Owner/Client and the Contractor respectively, bnotherestics, their partners successors, assigness and legal representative to the other party with respect to all ownerships of this Agreement. Neither the Owner/Client nor the Contractor shall assign or brands any inferest in the Agreement extract the written consent of the other provided however, that tonered shall not be required to assign this Agreement to any commany which controls, is controlled by, or is under comman control with Contractor or in connection with assignment to an efficiency or pursuant to a merger sale of all or substantially at of its season or early securities, consolidation, change of control or corporate reorganization.
- Disobalimer: This propose was estimated and proof beard upon a site that and visual inspection from ground level cating reducing means, at a short the from the propose was proposed. The price quoted in this proposed for the work described, a the result of this ground what would respection and precion or company all not be liable for any additional work not described herein, or labelle for any incidental/accidents resulting from positions. The seven of acceptantate by seed ground level must inspection by ordinary means at the time said inspection was performed. Contractor carried be held responsible for unknown or otherwise indian relations. Any controller work proposed herein carried guarantee exact results. Professions on presiming, accidentalized above landscape design services (Posing Sindress) are not included in this Agricence design services (Posing Sindress) are not included in this Agricence shall not be weetled by the Contractor. Any design defects in the Contract Documents are leastness argument architect and/or landscape design professional any casts occurring these Design Sentices are to be paid by the Clim/Charin made design in the Celegrac modified. 15. Disclaimer This propose was estimated and proof beard upon a stell well is the designer involved

Cancellation: Notice of Cancellation of work must be received in writing telomities grow is dispationed to their location or Client/Owner withe liable for a minimum havel charge of \$150.00 and brief to Client/Owner.

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- 15. Their & Stump Removal. These removed will be out so down to the private appointmentage of a control to the bottom of the true turns. Admironal courges will be lived for small memorial such as that on limited to control truck fixed bursts, most index, etc. If requested mechanical gradual of section reasonable will be done to a coffeed width and depth below ground level, an additional charge to the Chemi-Owner Defined backful and landscape resented. msy be specified. Client/Dwger shall be responsible for contacting Underground may us speciment interestivation and be responsible for conditioning Undergooting. Service Alex to locate undergooting Bathy kness prior to start of work. Contractor is not responsible damage does to underground attities such as but not limited to, bathles, were place, and impation parts. Contractor MR region damaged impation kness at the Chent/Owner's expense.
- Waiver of Liability: Requests for crown thinning in excess of twenty-five percent (25%) or work not in accordance with SA international Society of Arcentutural scandards will require a signed waiver of Tebrity.

Accordance of The Contract Combined to be income the work stated on the face of the Contract Peyment will be 190% due at time of string if paydward has not been received by Singht/New within filters 1955 days after billing. Dight/New shall be entired to all costs of cofferion, including reasonable attempts free and if shall be entered of any obligation to continue performance under the or any other Contract with Dient/Owner, Interest at a per annum rate of 1.5% per month (19% per year), or be highest rate permitted by low, may be charged an impaid belience 30 days after billing.

NOTICE FAILURE TO MAKE PAYMENT WHEN DUE FOR COMPLETED WORK ON CONSTRUCTION JOBS. MAY RESULT IN A MECHANIC'S LIEN ON THE TITLE TO YOUR PROPERTY

	Property Manager
Spikie.	Titles
Celeste Terreii	November 22, 2021
Propriettery .	Date
Pausing BrightViaw Landscape Serv	ices, hu: "BrightView"
	ices Inc "BrightView"  Account Manager
BrightViaw Landscape Strv	Account Manager

SO# 7654923

# **EXHIBIT B**

# CONTRACTOR'S COMPLETED W-9

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### **EXHIBIT C**

# INSURANCE REQUIREMENTS

NOTE: All insurance required and provided hereunder shall also comply with the provisions of Section 11 of this Agreement.

- 1. Standard Worker's Compensation and Employer's Liability Insurance covering all employees of Contractor involved with the performance of the Services, with policy amounts and coverage in compliance with the laws of the jurisdiction in which the Services will be performed.
- 2. Commercial General Liability Insurance with minimum limits of liability of not less than \$2,000,000 per occurrence for bodily injury and property damage liability; \$2,000,000 designated location, general aggregate; and \$1,000,000 umbrella. Such insurance will include coverage for contractual liability, personal injury and broad form property damage, and shall include all major divisions of coverage and be on a comprehensive basis including, but not limited to:
  - a. premises operations;
  - b. personal injury liability without employment exclusion;
  - c. limited contractual;
  - d. broad form property damages, including completed operations;
  - e. medical payments;
  - f. products and completed operations;
  - g. independent consultants coverage;
  - h. coverage inclusive of construction means, methods, techniques, sequences, and procedures, employed in the capacity of a construction consultant; and

This policy must include coverage extensions to cover the indemnification obligations contained in this Agreement to the extent caused by or arising out of bodily injury or property damage.

- 3. Comprehensive Automobile Liability Insurance covering all owned, non-owned and hired automobiles used in connection with the performance of the Services, with limits of liability of not less than \$1,000,000 combined single limit bodily injury and property damage. This policy must include coverage extensions to cover the indemnification obligations contained in this Agreement to the extent caused by or arising out of bodily injury or property damage.
- 4. If applicable: Contractor shall secure and maintain a third party fidelity bond in favor of the Authority covering the Contractor and its employees and agents who may provide or be responsible for the provision of Services where such activities contemplate the responsibility for money or property of the Authority. Such bond shall protect the Authority against any fraudulent or dishonest act which may result in the loss of money, securities, or other property belonging to or in the possession of the Authority. Said bond

1627.4200; 1172254 C-1

shall be in an amount as determined by the Authority, from a surety acceptable to the Authority.

5. Any other insurance commonly used by contractors for services of the type to be performed pursuant to this Agreement.

1627.4200; 1172254 C-2

# **EXHIBIT C-1**

# CERTIFICATE(S) OF INSURANCE

THIS CERTIFICATE IS ISSUED AS A CERTIFICATE DOES NOT AFFIRMA BELOW. THIS CERTIFICATE OF IN: REPRESENTATIVE OR PRODUCER. A		ATE OF L	IABIL	TY IN	SURA	NCE	DATE(MW/DD/YYYY) 10/07/2021
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# **EXHIBIT D**

# CERTIFICATE OF GOOD STANDING WITH COLORADO SECRETARY OF STATE

# OFFICE OF THE SECRETARY OF STATE OF THE STATE OF COLORADO

# CERTIFICATE OF FACT OF GOOD STANDING

I, Jena Griswold, as the Secretary of State of the State of Colorado, hereby certify that, according to the records of this office.

BrightView Landscape Services, Inc.

10 3

### Corporation

formed or registered on 01/03/1972 under the law of Colorado, has complied with all applicable requirements of this office, and is in good standing with this office. This entity has been assigned entity identification number 19871251562.

This certificate reflects facts established or disclosed by documents delivered to this office on paper through 11/24/2021 that have been posted, and by documents delivered to this office electronically through 11/29/2021 @ 15:24:42.

I have affixed hereto the Great Seal of the State of Colorado and duly generated, executed, and issued this official certificate at Denver, Colorado on 11/29/2021 @ 15:24:42 in accordance with applicable law. This certificate is assigned Confirmation Number 13614134



Secretary of State of the State of Colorado

Notice: A certificate issued electronically from the Colorado Secretary of State's Web site is fully and immediately valid and effective. However, as an option, the issuance and validity of a certificate obtained electronically may be established by visiting the Validate a Certificate page of the Secretary of State's Web site, http://www.sos.stale.co.us/biz/CertificateSearchCriteria.do entering the certificate's confirmation number displayed on the certificate, and following the instructions displayed. Confirming the issuance of a certificate is merely optional and is not necessary to the valid and effective issuance of a certificate. For more information, visit our Web site, http://www.sos.state.co.us/click "Businesses, trademarks, trade names" and select "Frequently Asked Questions."

1627.4200; 1172254 D-1

# INDEPENDENT CONTRACTOR AGREEMENT TURF TO NATIVE CONVERSION

This INDEPENDENT CONTRACTOR AGREEMENT, including any and all exhibits attached hereto (the "Agreement"), is entered into as of the 8<sup>th</sup> day of November, 2021, by and between TALLYN'S REACH AUTHORITY, a contractual authority and political subdivision of the State of Colorado (the "Authority"), and BrightView Landscape Services, Inc., a Colorado corporation (the "Contractor"). The Authority and the Contractor are referred to herein individually as a "Party" and collectively as the "Parties."

### RECITALS

WHEREAS, Tallyn's Reach Metropolitan District Nos. 2 and 3 (each a "District" and collectively the "Districts") were organized pursuant to and in accordance with the provisions of §§ 32-1-101, et seq., C.R.S. for the purpose of constructing, financing, operating and maintaining certain public facilities and improvements for itself, its taxpayers, residents and users; and

WHEREAS, pursuant to § 32-1-1001(1)(d)(I), C.R.S., the Districts are empowered to enter into contracts and agreements affecting the affairs of the Districts; and

WHEREAS, pursuant to § 32-1-1001(1)(i), C.R.S., the Districts are empowered to appoint, hire and retain agents, employees, engineers and attorneys; and

WHEREAS, pursuant to their consolidated service plan and §29-1-203, C.R.S., the Districts may coordinate or contract with one another to provide any function, service or facility that they may be authorized to provide individually; and

WHEREAS, on February 12, 2018, the Districts entered into the Tallyn's Reach Authority Establishment Agreement (the "Establishment Agreement") to establish the Authority, a separate legal entity that is a political subdivision and political corporation of the State of Colorado; and

WHEREAS, pursuant to § 29-1-203.5(2), C.R.S., and the Establishment Agreement, the Board of Directors of the Authority (the "Board") shall have the management control and supervision of all the business and affairs of the Authority; and

WHEREAS, the Authority desires to engage the Contractor to perform certain services as are needed by the Authority to serve the property within and without its boundaries; and

WHEREAS, the Contractor has represented that it has the professional experience, skill and resources to perform the services, as set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and stipulations set forth herein, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

# TERMS AND CONDITIONS

- perform the services described in **Exhibit A**, attached hereto and incorporated herein by this reference (the "**Services**"): (a) in a professional manner, to the satisfaction of the Authority, using the degree of skill and knowledge customarily employed by other professionals performing similar services; (b) within the time period and pursuant to the Scope of Services specified in said **Exhibit A**; and (c) using reasonable commercial efforts to minimize any annoyance, interference or disruption to the residents, tenants, occupants and invitees within the Authority. **Exhibit A** may take any form, including forms which may include price and payment terms. In the event of any conflict between terms set forth in the body of this Agreement and terms set forth in **Exhibit A**, the terms in the body of this Agreement shall govern. Contractor shall have no right or authority, express or implied, to take any action, expend any sum, incur any obligation, or otherwise obligate the Authority in any manner whatsoever, except to the extent specifically provided in this Agreement (including **Exhibit A**) or through other authorization expressly delegated to or authorized by the Authority through its Board of Directors.
- 2. <u>TERM/RENEWAL</u>. This Agreement shall be effective as of the dated date hereof and shall terminate on the earlier to occur of: (i) termination pursuant to Section 18 hereof; (ii) completion of the Services; or (iii) December 31, 2022. Notwithstanding the foregoing, unless terminated pursuant to subsection (i) or (ii) above, or unless the Authority determines not to appropriate funds for this Agreement for the next succeeding year, this Agreement shall automatically renew on January 1 of each succeeding year for an additional one (1) year term.
- 3. <u>ADDITIONAL SERVICES</u>. The Authority may, in writing, request the Contractor provide additional services not set forth in **Exhibit A**. The terms and conditions of the provision of such services shall be subject to the mutual agreement of the Contractor and the Authority pursuant to a written service/work order executed by an authorized representative of the Authority and the Contractor or an addendum to this Agreement. Authorization to proceed with additional services shall not be given unless the Authority has appropriated funds sufficient to cover the additional compensable amount. To the extent additional services are provided pursuant to this Section 3, the terms and conditions of this Agreement relating to Services shall also apply to any additional services rendered.
- 4. REPAIRS/CLAIMS. The Contractor shall notify the Authority immediately of any and all damage caused by the Contractor to Authority property and that of third parties. The Contractor will promptly repair or, at the Authority's option, reimburse the Authority for the repair of any damage to property caused by the Contractor or its employees, agents or equipment. In addition, the Contractor shall promptly notify the Authority of all potential claims of which it becomes aware. The Contractor further agrees to take all reasonable steps to preserve all physical evidence and information which may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and to grant to the Authority the opportunity to review and inspect such evidence, including the scene of any damage or accidents. The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Services and shall provide all reasonable protection to prevent damage or injury to persons and property, including any material and equipment related to the Services,

whether in storage on or off site, under the care, custody, or control of the Contractor or any of its subcontractors.

## 5. GENERAL PERFORMANCE STANDARDS.

- a. The Contractor has by careful examination ascertained: (i) the nature and location of the Services; (ii) the configuration of the ground on which the Services are to be performed; (iii) the character, quality, and quantity of the labor, materials, equipment and facilities necessary to complete the Services; (iv) the general and local conditions pertaining to the Services; and (v) all other matters which in any way may affect the performance of the Services by the Contractor. Contractor enters into this Agreement solely because of the results of such examination and not because of any representations pertaining to the Services or the provision thereof made to it by the Authority or any agent of the Authority and not contained in this Agreement. The Contractor represents that it has or shall acquire the capacity and the professional experience and skill to perform the Services and that the Services shall be performed in accordance with the standards of care, skill and diligence provided by competent professionals who perform services of a similar nature to those specified in this Agreement. If competent professionals find that the Contractor's performance of the Services does not meet this standard, the Contractor shall, at the Authority's request, re-perform the Services not meeting this standard without additional compensation.
- b. The Contractor shall use reasonable commercial efforts to perform and complete the Services in a timely manner. If performance of the Services by the Contractor is delayed due to factors beyond the Contractor's reasonable control, or if conditions of the scope or type of services are expected to change, Contractor shall give prompt notice to the Authority of such a delay or change and receive an equitable adjustment of time and/or compensation, as negotiated between the Parties.
- c. The Services provided under this Agreement shall be adequate and sufficient for the intended purposes and shall be completed in a good and workmanlike manner.
- d. The Contractor agrees that it has and will continue to comply with all Laws while providing Services under this Agreement. "Laws" means: (i) federal, state, county and local or municipal body or agency laws, statutes, ordinances and regulations; (ii) any licensing bonding, and permit requirements; (iii) any laws relating to storage, use or disposal of hazardous wastes, substances or materials; (iv) rules, regulations, ordinances and/or similar directives regarding business permits, certificates and licenses; (v) regulations and orders affecting safety and health, including but not limited to the Occupational Safety and Health Act of 1970; (vi) Wage and Hour laws, Worker Compensation laws, and immigration laws.
- e. The responsibilities and obligations of the Contractor under this Agreement shall not be relieved or affected in any respect by the presence of any agent, consultant, subconsultant or employee of the Authority. Review, acceptance or approval by the Authority of the Services performed or any documents prepared by the Contractor shall not relieve the Contractor of any responsibility for deficiencies, omissions or errors in said Services or documents, nor shall it be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

6. MONTHLY STATUS REPORT. The Contractor shall provide to the Authority, at the Authority's request, on or before the 25th of each month, a narrative progress and status report describing work in progress and results achieved during the reporting period, including a description of the Services performed during the invoice period and the Services anticipated to be performed during the ensuing invoice period ("Monthly Report").

## 7. COMPENSATION AND INVOICES.

- a. <u>Compensation</u>. Compensation for the Services provided under this Agreement shall be in accordance with the compensation schedule attached hereto as **Exhibit A**. The Contractor shall be responsible for all expenses it incurs in performance of this Agreement and shall not be entitled to any reimbursement or compensation except as provided in **Exhibit A** of this Agreement, unless said reimbursement or compensation is approved in writing by the Authority in advance of incurring such expenses. Any direct reimbursable costs for materials will be reimbursable at the Contractor's actual cost, provided that the Contractor shall make a reasonable attempt to notify the Authority of the estimated amount of such reimbursable costs (or any material adjustments thereto subsequently identified) prior to commencing the requested services. Concurrent with the execution of this Agreement, the Contractor shall provide the Authority with a current completed Internal Revenue Service Form W-9 (Request for Taxpayer Identification Number and Certification) ("W-9"). No payments will be made to the Contractor until the completed W-9 is provided. The W-9 shall be attached hereto and incorporated herein as **Exhibit B**.
- b. <u>Invoices</u>. Invoices for the Services shall be submitted monthly, by the 10<sup>th</sup> of each month, during the term of this Agreement and shall contain the following information:
  - i. An itemized statement of the Services performed.
- ii. Any other reasonable information required by the Authority to process payment of the invoice, including project and/or cost codes as provided in any applicable written service/work order.

The Authority shall be charged only for the actual time and direct costs incurred for the performance of the Services. Invoices received by the Authority after the  $10^{th}$  of each month may be processed the following month.

8. <u>TIME FOR PAYMENT</u>. Payment for the Services shall be made by the Authority within thirty (30) days of receipt of: (i) a timely, satisfactory and detailed invoice in the form required by Section 7; and (ii) if applicable, a reasonably satisfactory and detailed Monthly Report, for that portion of the Services performed and not previously billed. The Authority may determine to waive or extend the deadline for filing the Monthly Report, or may make payment for Services to the Contractor notwithstanding a delay in filing the Monthly Report, upon reasonable request of the Contractor, if it is in the interest of the Authority to do so. In the event a Board meeting is not scheduled in time to review payment of an invoice, the Board hereby authorizes payment for Services, subject to the appropriation and budget requirements under Section 27 hereof, without the need for additional Board approval, so long as any payment required to be made does not exceed the amounts appropriated for such Services as set forth in the Authority's approved budget.

Such payment shall require review and approval of each Monthly Report and invoice by two officers of the Authority.

- INDEPENDENT CONTRACTOR. The Contractor is an independent contractor 9. and nothing in this Agreement shall constitute or designate the Contractor or any of its employees or agents as employees or agents of the Authority. The Contractor shall have full power and authority to select the means, manner and method of performing its duties under this Agreement, without detailed control or direction from the Authority, and shall be responsible for supervising its own employees or subcontractors. The Authority is concerned only with the results to be obtained. The Authority shall not be obligated to secure, and shall not provide, any insurance coverage or employment benefits of any kind or type to or for the Contractor or its employees, sub-consultants, contractors, agents, or representatives, including coverage or benefits related but not limited to: local, state or federal income or other tax contributions, insurance contributions (e.g. FICA taxes), workers' compensation, disability, injury, health or life insurance, professional liability insurance, errors and omissions insurance, vacation or sick-time benefits, retirement account contributions, or any other form of taxes, benefits or insurance. The Contractor shall be responsible for its safety, and the safety of its employees, sub-contractors, agents, and representatives. All personnel furnished by the Contractor will be deemed employees or subcontractors of the Contractor and will not for any purpose be considered employees or agents of The Contractor is not entitled to worker's compensation benefits or the Authority. unemployment insurance benefits, unless unemployment compensation coverage is provided by the Contractor or some other entity other than the Authority, and the Contractor is obligated to pay federal and state income taxes on moneys by it earned pursuant to this Agreement.
- 10. <u>EQUAL OPPORTUNITY / EMPLOYMENT ELIGIBILITY</u>. This Agreement is subject to all applicable laws and executive orders relating to equal opportunity and non-discrimination in employment and the Contractor represents and warrants that it will not discriminate in its employment practices in violation of any such applicable law or executive order.

The Contractor hereby states that it does not knowingly employ or contract with illegal aliens and that the Contractor has participated in or has attempted to participate in the E-Verify Program or Department Program (formerly known as the Basic Pilot Program) (as defined in §8-17.5-101, C.R.S.) in order to verify that it does not employ any illegal aliens. The Contractor affirmatively makes the follow declarations:

- a. The Contractor shall not knowingly employ or contract with an illegal alien who will perform work under the public contract for services contemplated in this Agreement and will participate in the E-Verify Program or Department Program (as defined in §8-17.5-101, C.R.S.) 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 contemplated in this Agreement.
- b. The Contractor shall not knowingly 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 the services contemplated in this Agreement.

- c. The Contractor has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under the public contract for services through participation in either the E-Verify Program or the Department Program.
- d. The Contractor is prohibited from using either the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.
- e. If the Contractor obtains actual knowledge that a subcontractor performing the services under this Agreement knowingly employs or contracts with an illegal alien, the Contractor shall be required to:
- i. Notify the subcontractor and the Authority within three (3) days that the Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien.
- ii. Terminate the subcontract with the subcontractor if within three (3) days of receiving the notice required above 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 (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.
- f. The Contractor shall comply with any reasonable request by the Department of Labor and Employment made in the course of an investigation involving matters under this Section 10 that such Department is undertaking pursuant to the authority established in § 8-17.5-102, C.R.S.
- g. If the Contractor violates a provision of this Agreement pursuant to which § 8-17.5-102, C.R.S., applies the Authority may terminate this Agreement upon three (3) days written notice to the Contractor. If this Agreement is so terminated, the Contractor shall be liable for actual and consequential damages to the Authority.

## 11. <u>CONTRACTOR'S INSURANCE</u>.

- a. The Contractor shall acquire and maintain, at its sole cost and expense, during the entire term of this Agreement, insurance coverage in the minimum amounts set forth in **Exhibit C**, attached hereto and incorporated herein by this reference. A waiver of subrogation and rights of recovery against the Authority, its directors, officers, employees and agents is required for Commercial General Liability and Workers Compensation coverage. The Commercial General Liability and Comprehensive Automobile Liability Insurance policies will be endorsed to name the Authority as an additional insured. All coverage provided pursuant to this Agreement shall be written as primary policies, not contributing with and not supplemental to any coverage that the Authority may carry, and any insurance maintained by the Authority shall be considered excess. The Authority shall have the right to verify or confirm, at any time, all coverage, information or representations contained in this Agreement.
- b. Prior to commencing any work under this Agreement, the Contractor shall provide the Authority with a certificate or certificates evidencing the policies required by this

Agreement, as well as the amounts of coverage for the respective types of coverage, which certificate(s) shall be attached hereto as Exhibit C-1. If the Contractor subcontracts any portion(s) of the Services, said subcontractor(s) shall be required to furnish certificates evidencing statutory workers' compensation insurance, comprehensive general liability insurance and automobile liability insurance in amounts satisfactory to the Authority and the Contractor; provided, however, that sub-contractors of the Contractor shall not be required by the Authority to provide coverage in excess of that which is required hereunder of the Contractor. If the coverage required expires during the term of this Agreement, the Contractor or subcontractor shall provide replacement certificate(s) evidencing the continuation of the required policies.

c. The Contractor's failure to purchase the required insurance shall not serve to release it from any obligations contained in this Agreement; nor shall the purchase of the required insurance serve to limit the Contractor's liability under any provision in this Agreement. The Contractor shall be responsible for the payment of any deductibles on issued policies.

## 12. CONFIDENTIALITY AND CONFLICTS.

- Confidentiality. Any information deemed confidential by the Authority and given to the Contractor by the Authority, or developed by the Contractor as a result of the performance of a particular task, shall remain confidential. In addition, the Contractor shall hold in strict confidence, and shall not use in competition, any information which the Contractor becomes aware of under or by virtue of this Agreement which the Authority deems confidential, or which the Authority has agreed to hold confidential, or which, if revealed to a third party, would reasonably be construed to be contrary to the interests of the Authority. Confidential information shall not include, however, any information which is: (i) generally known to the public at the time provided to the Contractor; (ii) provided to the Contractor by a person or entity not bound by confidentiality to the Authority; or (iii) independently developed by the Contractor without use of the Authority's confidential information. During the performance of this Agreement, if the Contractor is notified that certain information is to be considered confidential, the Contractor agrees to enter into a confidentiality agreement in a form reasonably acceptable to the Authority and the Contractor. The Contractor agrees that any of its employees, agents or subcontractors with access to any information designated thereunder as confidential information of the Authority shall agree to be bound by the terms of such confidentiality agreement.
- b. <u>Personal Identifying Information</u>. During the performance of this Agreement, the Authority may disclose Personal Identifying Information to the Contractor. "**Personal Identifying Information**" means a social security number; a personal identification number; a password; a pass code; an official state or government-issued driver's license or identification card number; a government passport number; biometric data, as defined in § 24-73-103(1)(a), C.R.S.; an employer, student, or military identification number; or a financial transaction device, as defined in § 18-5-701(3), C.R.S. In compliance with § 24-73-102, C.R.S., the Contractor agrees to implement and maintain reasonable security procedures and practices that are: (i) appropriate to the nature of the Personal Identifying Information disclosed to the Contractor; and (ii) reasonably designed to help protect the Personal Identifying Information from unauthorized access, use, modification, disclosure, or destruction.

- c. <u>Conflicts</u>. Prior to the execution of, and during the performance of this Agreement and prior to the execution of future agreements with the Authority, the Contractor agrees to notify the Authority of conflicts known to the Contractor that impact the Contractor's provision of Services to the Authority.
- OWNERSHIP OF DOCUMENTS. All documents produced by or on behalf of the Contractor prepared pursuant to this Agreement, including, but not limited to, all maps, plans, drawings, specifications, reports, electronic files and other documents, in whatever form, shall remain the property of the Authority under all circumstances, upon payment to the Contractor of the invoices representing the work by which such materials were produced. At the Authority's request the Contractor will provide the Authority with all documents produced by or on behalf of the Contractor pursuant to this Agreement. The Contractor shall maintain electronic and reproducible copies on file of any such instruments of service involved in the Services for a period of two (2) years after termination of this Agreement, shall make them available for the Authority's use and shall provide such copies to the Authority upon request at no cost.
- 14. LIENS AND ENCUMBRANCES. The Contractor shall not have any right or interest in any Authority assets, or any claim or lien with respect thereto, arising out of this Agreement or the performance of the Services contemplated in this Agreement. The Contractor, for itself, hereby waives and releases any and all statutory or common law mechanic's, materialmen's or other such lien claims, or rights to place a lien upon the Authority's property or any improvements thereon in connection with any Services performed under or in connection with this Agreement, and the Contractor shall cause all permitted subcontractors, suppliers, materialmen, and others claiming by, through or under the Contractor to execute similar waivers prior to commencing any work or providing any materials in connection with the Services. The Contractor further agrees to execute a sworn affidavit respecting the payment and lien releases of all subcontractors, suppliers and materialmen, and release of lien respecting the Services at such time or times and in such form as may be reasonably requested by the Authority. The Contractor will provide indemnification against all such liens for labor performed, materials supplied or used by the Contractor and/or any other person in connection with the Services undertaken by the Contractor, in accordance with Section 15, below.

## 15. <u>INDEMNIFICATION</u>.

a. The Contractor shall defend, indemnify and hold harmless the Authority and each of its directors, officers, contractors, employees, agents and consultants (collectively, the "Authority Indemnitees"), from and against any and all claims, demands, losses, liabilities, actions, lawsuits, damages, and expenses (the "Claims"), including reasonable legal expenses and attorneys' fees actually incurred, by the Authority Indemnitees arising directly or indirectly, in whole or in part, out of the errors or omissions, negligence, willful misconduct, or any criminal or tortious act or omission of the Contractor or any of its subcontractors, officers, agents or employees, in connection with this Agreement and/or the Contractor's performance of the Services or work pursuant to this Agreement. Notwithstanding anything else in this Agreement or otherwise to the contrary, the Contractor is not obligated to indemnify the Authority Indemnitees for the negligence of the Authority or the negligence of any other Authority Indemnitee, except the Contractor. Except as otherwise provided by applicable law, this indemnification obligation will not be limited in any way by any limitation on the amount or types of damages, compensation or

benefits payable by or for the Contractor under workers' compensation acts, disability acts or other employee benefit acts, provided that in no event shall the Contractor be liable for special/consequential or punitive damages.

- b. In the event the Contractor fails to assume the defense of any Claims under this Section 15 within fifteen (15) days after notice from the Authority of the existence of such Claim, the Authority may assume the defense of the Claim with counsel of its own selection, and the Contractor will pay all reasonable expenses of such counsel. Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the Contractor under the terms of this indemnification obligation.
- c. Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the Contractor under the terms of this indemnification obligation. The Contractor shall obtain, at its own expense, any additional insurance that it deems necessary with respect to its obligations under this Agreement, including the indemnity obligations set forth in Section 15. This defense and indemnification obligation shall survive the expiration or termination of this Agreement.
- 16. <u>ASSIGNMENT</u>. The Contractor shall not assign this Agreement or parts thereof, or its respective duties, without the express written consent of the Authority. Any attempted assignment of this Agreement in whole or in part with respect to which the Authority has not consented, in writing, shall be null and void and of no effect whatsoever.
- 17. SUB-CONTRACTORS. The Contractor is solely and fully responsible to the Authority for the performance of all Services in accordance with the terms set forth in this Agreement, whether performed by the Contractor or a subcontractor engaged by the Contractor, and neither the Authority's approval of any subcontractor, suppliers, or materialman, nor the failure of performance thereof by such persons or entities, will relieve, release, or affect in any manner the Contractor's duties, liabilities or obligations under this Agreement . The Contractor shall not subcontract any Services without prior written approval by the Authority. The Contractor agrees that each and every agreement of the Contractor with any subcontractor to perform Services under this Agreement shall contain an indemnification provision identical to the one contained in this Agreement holding the Authority harmless for the acts of the subcontractor. Prior to commencing any Services, a subcontractor shall provide evidence of insurance coverage to the Authority in accordance with the requirements of this Agreement. The Contractor further agrees that all such subcontracts shall provide that they may be terminated immediately without cost or penalty upon termination of this Agreement, other than payment for services rendered prior to the date of any such termination.
- 18. <u>TERMINATION</u>. In addition to the termination provisions contained in Section 2, above, this Agreement may be terminated for convenience by the Contractor upon delivery of thirty (30) days prior written notice to the Authority and by the Authority by giving the Contractor thirty (30) days prior written notice. Each Party may terminate this Agreement for cause at any time upon written notice to the other Party setting forth the cause for termination and the notified Party's failure to cure the cause to the reasonable satisfaction of the Party given such notice within the cure period set forth in Section 19. If this Agreement is terminated, the Contractor shall be paid for all the Services satisfactorily performed prior to the designated termination date, including

reimbursable expenses due. Said payment shall be made in the normal course of business. Should either Party to this Agreement be declared bankrupt, make a general assignment for the benefit of creditors or commit a substantial and material breach of this Agreement in the view of the other Party, said other Party shall be excused from rendering or accepting any further performance under this Agreement. In the event of termination of this Agreement, the Contractor shall cooperate with the Authority to ensure a timely and efficient transition of all work and work product to the Authority or its designees. All time, fees and costs associated with such transition shall not be billed by the Contractor to the Authority.

- 19. <u>DEFAULT</u>. If either Party fails to perform in accordance with the terms, covenants and conditions of this Agreement, or is otherwise in default of any of the terms of this Agreement, the non-defaulting party shall deliver written notice to the defaulting party of the default, at the address specified in Section 20 below, and the defaulting party will have ten (10) days from and after receipt of the notice to cure the default. If the default is not of a type which can be cured within such ten (10)-day period and the defaulting party gives written notice to the non-defaulting party within such ten (10)-day period that it is actively and diligently pursuing a cure, the defaulting party will have a reasonable period of time given the nature of the default following the end of the ten (10)-day period to cure the default, provided that the defaulting party is at all times within the additional time period actively and diligently pursuing the cure. If any default under this Agreement is not cured as described above, the non-defaulting party will, in addition to any other legal or equitable remedy, have the right to terminate this Agreement and enforce the defaulting party's obligations pursuant to this Agreement by an action for injunction or specific performance.
- 20. NOTICES. Any notice or communication required under this Agreement must be in writing, and may be given personally, sent via nationally recognized overnight carrier service, or by registered or certified mail, return receipt requested. If given by registered or certified mail, the same will be deemed to have been given and received on the first to occur of: (i) actual receipt by any of the addressees designated below as the party to whom notices are to be sent; or (ii) three days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered or sent via nationally recognized overnight carrier service, a notice will be deemed to have been given and received on the first to occur of: (i) one business day after being deposited with a nationally recognized overnight air courier service; or (ii) delivery to the party to whom it is addressed. Any party hereto may at any time, by giving written notice to the other party hereto as provided in this Section 20 of this Agreement, designate additional persons to whom notices or communications will be given, and designate any other address in substitution of the address to which such notice or communication will be given. Such notices or communications will be given to the parties at their addresses set forth below:

Authority:

Tallyn's Reach Authority c/o CliftonLarsonAllen 8390 E. Crescent Parkway #500 Greenwood Village, CO 80111 Attention: Denise Denslow

Phone: (303) 265-7923

Email: denise.denslow@claconnect.com

With a Copy to: WHITE BEAR ANKELE TANAKA & WALDRON

2154 E. Commons Ave., Suite 2000

Centennial, CO 80122

Attention: Blair M. Dickhoner, Esq.

Phone: (303) 858-1800

E-mail: <u>bdickhoner@wbapc.com</u>

Contractor: BrightView Landscape Services, Inc.

8888 N. Motsenbocker Rd., Ste. A

Parker, CO 80134

Attention: Sara Rutman Phone: (303) 841-3003

Email: sara.rutman@brightview.com

- 21. <u>AUDITS</u>. The Authority shall have the right to audit, with reasonable notice, any of the Contractor's books and records solely as are necessary to substantiate any invoices and payments under this Agreement (including, but not limited to, receipts, time sheets, payroll and personnel records) and the Contractor agrees to maintain adequate books and records for such purposes during the term of this Agreement and for a period of two (2) years after termination of this Agreement and to make the same available to the Authority at all reasonable times and for so long thereafter as there may remain any unresolved question or dispute regarding any item pertaining thereto.
- 22. <u>ENTIRE AGREEMENT</u>. This Agreement constitutes the entire agreement between the Parties hereto relating to the Services, and sets forth the rights, duties, and obligations of each to the other as of this date, and hereby supersedes any and all prior negotiations, representations, agreements or arrangements of any kind with respect to the Services, whether written or oral. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force and effect. This Agreement may not be modified except by a writing executed by both the Contractor and the Authority.
- 23. <u>BINDING AGREEMENT</u>. This Agreement shall inure to and be binding on the heirs, executors, administrators, successors, and assigns of the Parties hereto.
- 24. <u>NO WAIVER</u>. No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other of the provisions of this Agreement, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided in this Agreement, nor shall the waiver of any default be deemed a waiver of any subsequent default.

## 25. GOVERNING LAW.

a. <u>Venue</u>. Venue for all actions arising from this Agreement shall be in the District Court in and for the county in which the Authority is located. The Parties expressly and irrevocably waive any objections or rights which may affect venue of any such action, including,

but not limited to, forum non-conveniens or otherwise. At the Authority's request, the Contractor shall carry on its duties and obligations under this Agreement during any legal proceedings and the Authority shall continue to pay for the Services performed under this Agreement until and unless this Agreement is otherwise terminated.

- b. <u>Choice of Law</u>. Colorado law shall apply to any dispute, without regard to conflict of law principles that would result in the application of any law other than the law of the State of Colorado.
- c. <u>Litigation</u>. At the Authority's request, the Contractor will consent to being joined in litigation between the Authority and third parties, but such consent shall not be construed as an admission of fault or liability. The Contractor shall not be responsible for delays in the performance of the Services caused by factors beyond its reasonable control including delays caused by Act of God, accidents, failure of any governmental or other regulatory authority to act in a timely manner or failure of the Authority to furnish timely information or to approve or disapprove of Contractor's Services in a timely manner.
- 26. GOOD FAITH OF PARTIES. In the performance of this Agreement, or in considering any requested approval, acceptance, consent, or extension of time, the Parties agree that each will act in good faith and will not act unreasonably, arbitrarily, capriciously, or unreasonably withhold, condition, or delay any approval, acceptance, consent, or extension of time required or requested pursuant to this Agreement.
- 27. SUBJECT TO ANNUAL APPROPRIATION AND BUDGET. The Authority does not intend hereby to create a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever. The Contractor expressly understands and agrees that the Authority's obligations under this Agreement shall extend only to monies appropriated for the purposes of this Agreement by the Board and shall not constitute a mandatory charge, requirement or liability in any ensuing fiscal year beyond the then-current fiscal year. No provision of this Agreement shall be construed or interpreted as a delegation of governmental powers by the Authority, or as creating a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever of the Authority or statutory debt limitation, including, without limitation, Article X, Section 20 or Article XI, Section 6 of the Constitution of the State of Colorado. No provision of this Agreement shall be construed to pledge or to create a lien on any class or source of Authority funds. The Authority's obligations under this Agreement exist subject to annual budgeting and appropriations, and shall remain subject to the same for the entire term of this Agreement.
- 28. GOVERNMENTAL IMMUNITY. Nothing in this Agreement shall be construed to waive, limit, or otherwise modify, in whole or in part, any governmental immunity that may be available by law to the Authority, its respective officials, employees, contractors, or agents, or any other person acting on behalf of the Authority and, in particular, governmental immunity afforded or available to the Authority pursuant to the Colorado Governmental Immunity Act, §§ 24-10-101, et seq., C.R.S.
- 29. <u>NEGOTIATED PROVISIONS</u>. This Agreement shall not be construed more strictly against one Party than against the other merely by virtue of the fact that it may have been

prepared by counsel for one of the Parties, it being acknowledged that each Party has contributed to the preparation of this Agreement.

- 30. <u>SEVERABILITY</u>. If any portion of this Agreement is declared by any court of competent jurisdiction to be invalid, void or unenforceable, such decision shall not affect the validity of any other portion of this Agreement which shall remain in full force and effect, the intention being that such portions are severable. In addition, in lieu of such void or unenforceable provision, there shall automatically be added as part of this Agreement a provision similar in terms to such illegal, invalid or unenforceable provision so that the resulting reformed provision is legal, valid and enforceable.
- 31. 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 the Parties 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 Parties receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.
- 32. <u>OPEN RECORDS</u>. The Parties understand that all material provided or produced under this Agreement may be subject to the Colorado Open Records Act, §§ 24-72-202, *et seq.*, C.R.S.
- 33. WARRANTY AND PERMITS. The Contractor shall and does by this Agreement guarantee and warrant that all workmanship, materials, and equipment furnished, installed, or performed for the accomplishment of the Services (collectively, the "Work") will be of good quality and new, unless otherwise required or permitted by this Agreement. The Contractor further warrants that the Work will conform to all requirements of this Agreement and the applicable building code and all other applicable laws, ordinances, codes, rules and regulations of any governmental authorities having jurisdiction over the Work. All materials are subject to the satisfaction and acceptance of the District, but payments for the completed Work will not constitute final acceptance nor discharge the obligation of the Contractor to correct defects at a later date. Such warranties set forth in this Agreement are in addition to, and not in lieu of, any other warranties prescribed by Colorado law.
- a. The Contractor hereby warrants the Work for a period of one (1) year from the date of completion and initial acceptance of the Work. The Contractor will immediately correct or replace any Work that is defective or not conforming to this Agreement at its sole expense to the reasonable satisfaction of the District. The Contractor's guarantees and warranties shall in all cases survive termination of this Agreement. This warranty shall be enforceable by the District, its successors and assigns.
- b. Prior to final payment for any Services involving Work, and at any time thereafter but before the final inspection, as set forth below, the Contractor and the District shall, at the request of the District, conduct an inspection of the Work for the purpose of determining whether any Work is defective or otherwise not in conformance with this Agreement. The Contractor's fees and costs associated with the inspection shall be included in the compensation schedule set forth in **Exhibit A** and shall not be billed separately to the District. In the event the

Contractor neglects to include the fees and costs associated with the inspection in the compensation schedule set forth in **Exhibit A**, the Contractor is deemed to have waived these fees and costs. After completion of the inspection, the District will provide the Contractor with written notice of any Work requiring corrective action. The Contractor agrees to correct or replace the defective Work within a reasonable time, as agreed to by the Parties, but in no event later than thirty (30) calendar days from the date of notice from the District, unless otherwise agreed to by the District.

- c. The Contractor agrees that if warranty issues appear before payment has been made under this Agreement, the District may withhold payment until such warranty issues are resolved to the District's satisfaction. If repair or replacement of any warranty or defective Work is not made by the Contractor promptly upon request by the District as set forth in this Agreement, in addition to any other remedy, the District may withhold any payment the District may owe to the Contractor, including payments under other contracts or agreements related or unrelated to the Work and Services.
- d. The Contractor shall promptly notify the District of any Work, whether by the Contractor, its subcontractors or any third parties, which the Contractor believes to be defective or not conforming with this Agreement.
- e. The Contractor shall, at its expense, obtain all permits, licenses and other consents required from all governmental authorities, utility companies and appropriate parties under any restrictive covenants in connection with the Work. The Contractor shall comply with all of the terms and conditions of all permits, licenses and consents.
- f. At or around eleven (11) months, but no more than one (1) year, after the completion and acceptance of the Work, the Contractor and the District shall, at the request of the District, conduct a final inspection of the Work for the purpose of determining whether any Work is defective or otherwise not in conformance with this Agreement. The Contractor's fees and costs associated with the inspection shall be included in the compensation schedule set forth in Exhibit A and shall not be billed separately to the District. In the event the Contractor neglects to include the fees and costs associated with the inspection in the compensation schedule set forth in Exhibit A, the Contractor is deemed to have waived these fees and costs. After completion of the final inspection, the District will provide the Contractor with written notice of any Work requiring corrective action. In the event the Contractor does not correct or replace the defective Work within thirty (30) calendar days from the date of notice from the District, or within such other reasonable time as agreed to by the Parties, the District may correct or replace the defective Work and the Contractor shall reimburse the District for the related costs and fees.
- 34. TAX EXEMPT STATUS. The Authority is exempt from Colorado state sales and use taxes. Accordingly, taxes from which the Authority is exempt shall not be included in any invoices submitted to the Authority. The Authority shall, upon request, furnish Contractor with a copy of its certificate of tax exemption. Contractor and subcontractors shall apply to the Colorado Department of Revenue, Sales Tax Division, for an Exemption Certificate and purchase materials tax free. The Contractor and subcontractors shall be liable for exempt taxes paid due to failure to apply for Exemption Certificates or for failure to use said certificate.

35. <u>COUNTERPART EXECUTION</u>. This Agreement may be executed in several counterparts, each of which may be deemed an original, but all of which together shall constitute one and the same instrument. Executed copies hereof may be delivered by facsimile or email of a PDF document, and, upon receipt, shall be deemed originals and binding upon the signatories hereto, and shall have the full force and effect of the original for all purposes, including the rules of evidence applicable to court proceedings.

[Signature pages follow].

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date first above written. By the signature of its representative below, each Party affirms that it has taken all necessary action to authorize said representative to execute this Agreement.

### **AUTHORITY:**

TALLYN'S REACH AUTHORITY, a contractual authority and political subdivision of the State of Colorado

David Patterson

Officer of the Authority

ATTEST:

5D0F27EA0008456...

APPROVED AS TO FORM:

WHITE BEAR ANKELE TANAKA & WALDRON Attorneys at Law

—Docusigned by: Blair M. Dickhoner

General Counsel for the Authority

Brightview Landscape Ser corporation	vices, Inc., a (	Colorado
20		

CONTRACTOR:

James Gillen
Printed Name
Senior Vice President
Title

COUNTY OF Dougles ) ss

2022 The foregoing instrument was acknowledged before me this The day of January, 2021, by James 6: Hen, as the Senior Vice Hedident of Bright View Landscape Services, Inc.

Witness my hand and official seal.

My commission expires: July 21, 2023

MARTHA J MICELI
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20034023907
MY COMMISSION EXPIRES JULY 21, 2023

Notary Public

## **EXHIBIT A**

## SCOPE OF SERVICES/COMPENSATION SCHEDULE



November 08, 2021 Page 1 of 4

## Proposal for Extra Work at Tallyn's Reach Authority

Property Name Property Address Tallyn's Reach Authority 24900 E Park Crescent Dr.

Contact

Authorized Agent

Aurora, CO 80016

To Billing Address Tallyns Reach Authority 370 Interlocken Blvd Ste 500

Broomfield, CO 80021

Project Name Tu Project Description Tu

Turf to Native Conversion

Turf to Native Conversion

Scope of Work

QTY	UoM/Size	Material/Description
Misc.		
1.00	LUMPSUM	Drive Time Labor
1.00	LUMPSUM	Freight/Delivery
Area #1		
2.00	EACH	SPRAY ROUND UP IN TWO SEPERATE APPLICATIONS 10-14 DAYS APART. (30Z/100DSF)
1.00	LUMP SUM	MOW AREA TO A MAX OF 2" HEIGHT. (AS SHORT AS POSSIBLE)
1.00	LUMPSUM	FLAG ALL HEADS AND VALVE BOXES IN PREPARATION FOR AERATION.
1.00	LUMPSUM	TRIPLE AERATE AREA
1.00	LUMPSUM	BROADCAST SEED SHORTGRASS PRAIRIE MIX
1.00	LUMP SUM	FERTILIZE AREA USING 8-2-0 SLOW RELEASE GRANULAR ORGANIC FERTILIZER AT A RATE OF .75LBS/100DSF
Aтеа #2		
2.00	EACH	SPRAY ROUND UP IN TWO SEPERATE APPLICATIONS 10-14 DAYS APART. (30Z/1000SF)
1.00	LUMPSUM	MOW AREA TO A MAX OF 2" HEIGHT. (AS SHORT AS POSSIBLE)
1.00	LUMPSUM	FLAG ALL HEADS AND VALVE BOXES IN PREPARATION FOR AERATION.
1.00	LUMP SUM	TRIPLE AERATE AREA
1.00	LUMPSUM	BROADCAST SEED MIDGRASS PRAIRIE MIX
1.00	LUMPSUM	FERTILIZE AREA USING 8-2-0 SLOW RELEASE GRANULAR ORGANIC FERTILIZER AT A RATE OF .75LBS/1000SF
1.00	LUMPSUM	Scrape area in preparation for shrub bed and rock install
200.00	LINEAR FEET	Green Pro - Edging installed
2,100.00	SQUARE FEET	Fliter Fabric - Fabric and Netting installed

THIS IS NOT AN INVOICE

This proposal is valid for 60 days unless otherwise approved by Brighty'ew Landscape Services, Inc. 9888 Mobenbooker Road, Suite A. Parker, CO 60124 pb. (309) 841-3003 fbx (302) 841-3177



November 08, 2021 Page 2 of 4

## Proposal for Extra Work at Tallyn's Reach Authority

6.00	EACH	CATMINT, WALKERS LOW - 1 gai. Shrub/Perennial Installed
8.00	EACH	COREOPSIS, MOON BEAM - 1 gal. Shrub/Perennial Installed
6.00	EACH	SANDCHERRY, PURPLELEAF - 5 gal. Shrub/Perennial Installed
6.00	EACH	SUMAC, GRO-LOW - 5 gal. Shrub/Perennial installed
40.00	TON	Horizon Cobblestone 2-4 - TON Rock/Gravel Installed
0.75	TON	Granite Boulders - TON Boulders Installed ((3) 1/4 ton boulders)
1.00	LUMPSUM	Drip Zone installation (includes valve, drip pipe, spaghetti pipe and emitters)
Area #3		
2.00	EACH	SPRAY ROUND UP IN TWO SEPERATE APPLICATIONS 10-14 DAYS APART. (30Z/1000SF)
1.00	LUMPSUM	MOW AREA TO A MAX OF 2" HEIGHT. (AS SHORT AS POSSIBLE)
1.00	LUMP SUM	FLAG ALL HEADS AND VALVE BOXES IN PREPARATION FOR AERATION.
1.00	LUMPSUM	TRIPLE AERATE AREA
1.00	LUMPSUM	BROADCAST SEED TALLGRASS PRAIRIE MIX
1.00	LUMP SUM	FERTILIZE AREA USING 8-2-0 SLOW RELEASE GRANULAR ORGANIC FERTILIZER AT A RATE OF 75LBS/1000SF

For irrigation, price is dependent on having irrigation mainline available for valve install in bed that we are planting shrubs.

Areas may be too tight to fit tractor to do multiple passes in different directions during drill seeding. Care will be taken to ensure that areas are drill seeded the correct amount of times per the specs and industry standard where possible, keeping in mind the tight areas and safety.

#### THIS IS NOT AN INVOICE

This proposal is valid for E0 days unless otherwise approved by BrightView Landscape Services, Inc. 8885 Michenbocker Road, Suite A. Farker, CO 60134 ph. (303) 841-3003 fox (303) 841-3177

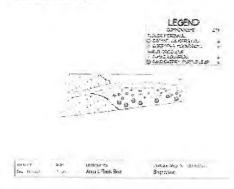


November 08, 2021 Page 3 of 4

# Proposal for Extra Work at Tallyn's Reach Authority

Images

shrub area design



For Internal use only

\$0# 7650822 JOB# 400300615 Service Line 130

**Total Price** 

\$38,628.39

THIS IS NOT AN INVOICE

This proposal is valid for 60 days unless otherwise approved by BrightV.ew Landscape Cervices, inc. 8888 Mctterbocker Road, Sulle A. Parker, CO 80134 ph. (903) 841-3003 fax (303) 841-3177

November 08, 2021

Page 4 of 4

#### TERMS & CONDITIONS

- The Contractor shall recugn the and partern in accordance with written states willden appeal cations and drawings only contained on referred to nettern All materials shall conform to bid specifications.
- Work Force: Contractor and designate a guidine representative with expendence or landscape maintenance/confluction upgraces or when approache in the management. The workforce shall be competent and quarted and shall be legally authorized to work in the U.S.
- License and Permits: Contractor shall maintain a Landscapa Contractors license, if legitied by Sode or local law, and will comply with all other license and permit requirements of the City State and Federal Sovernments, so well as all other requirements of law.
- Taxes: Contractor agrees to pay all applicable taxes, including sales fav where applicable on material supplied.
- Insurance Contractor agrees to provide General Lebility Insurance Automotive Lebility Insurance Monkers Compensation required, and any other resource required by law or Crent Source, as specified in virting pricite commonderm of work. If not specified, Contractor will runner, insurance with \$1,000,000 time of leading.
- Liability. Confector shall indepent the CremtOwner and its aports and amproved from and against any trust party liabilities that also out it. Contrastor shock to the extent auch liabilities are adjusted to the expect of contrastors registering or with interest of Contrastor shall not reason by Contrastors registering or with interest. Contrastor shall not be table for any paralleg that necurs from who of Scot are gardens as these shall be in the shall not be sufficient to the shall not be sufficient as the shall have the light to renegotiate the turns and propose of this agreement, within saturifier days Any Asign the shall have a shall not control to the co
- Subcontractors: Contractor reserves the right to here qualified subcontractors to perform specialized functions or work requiring specialized
- Additional Services Any adoptions won) not shown in the above specifications meeting extre-tools will be executed any upon aggred welfer orders, and will become an exite thatge ever and above the estimate.
- Access to Jobsite Chert/Chaner shall provide all children to perform the work. Chert/Chaner shall found access to all parts of possible where Contracted is to perform work as required by the Contract or other functions required interior, during nature business teals after other responsible periods of the Contractor will perform the Walk as reasonably practice after the extern makes the size available for performance of the work.
- 16. Invoicing, Clerbülwer shall make payment to Contactor within theen (15) days upon secapt of made. In the event the schedule for the composition of the work shall require more then they (20) days a purgiese for livel be preparated by morth and and shall be para within Atlanta (15) days upon recept of insciso.
- 11. Termination this Work Order may be remnated by the entire party with granting trained upon seven (T) work, days advance written once. ThereChange will be received to day for all individuals purchased and work competed to the date of termination and reasonable charges incurred in democratics.
- Assignment. The Described and the Contractor respectively bett themselves their partners successors assignees and logal representative to the other party with respect to all covenants of this Agraement. Native this Covenation in our the Commission shape of themselves are interest in this Agraement, without the antien concert of the other provides however, that agraement, without the antien concert of the other provides however, that commiss is controlled by or a under covenium control with Contractor or the respective of the confinction with controlled by or a under covenium control with Controlled as of the controlled of a magnetic size of all insulatingly aft of its assets on exputy sequences. cordro of acceptable reorganization
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14. Cancellation. Notice of Concellation of work must be received in writing between the crew is dispetched to their boston or CheroCourse and Sellaplic for a minimum basel charge of \$150,00 and bitled to Client/Owner.

The following sections shall apply where Contractor provides Customer with tree care services:

- 15. Tree & Stump, Removal. These reflected wit be suit as dose to the ground as possible based on conditions to or need to the bottom of the tree trunk. Additional charges will be fewed for unseen hazards such as it an oct tended to consider their stilled tunks, make rough, let it requested intertibution if piscing of which the stump will be done to a defined width and depth below ground read of an additional charge to the ClaimDowns. Defined baself and landacoe material may be specified. Chertificeus shall be respeciable for materially Judge gound Service Shall be landaced in the condition of the condition
- Walver of Liability: Requests for coun thinning in excess of wenty-five patient (25%) or work not in accordance with ISA (international Society of Arboniumural) standards will recurre a signed warver of Tability.

Assumption of the Contract

Contractor is authorized to perform the work stand on the table of this Contract

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Payment within these 150 days after ching. Depthies will be entered by

Brighties within these 150 days after ching. Depthies shall be fereigned on a cost

of collection, including reasonable advantage from and in shall be fereigned of any

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Interest of a per arrown rate of 1.5% per month (10% per year) or the highest rate

permitted by law, may be charged on unpaid bidance 30 days after billing.

NOTICE FAILURE TO MAKE PAYMENT WHEN DUE FOR COMPLETED WARK ON CONSTRUCTION JOBS MAY RESULT IN A MECHANICS DEN ON THE TITLE TO

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## EXHIBIT B

## CONTRACTOR'S COMPLETED W-9

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## **EXHIBIT C**

## INSURANCE REQUIREMENTS

NOTE: All insurance required and provided hereunder shall also comply with the provisions of Section 11 of this Agreement.

- 1. Standard Worker's Compensation and Employer's Liability Insurance covering all employees of Contractor involved with the performance of the Services, with policy amounts and coverage in compliance with the laws of the jurisdiction in which the Services will be performed.
- 2. Commercial General Liability Insurance with minimum limits of liability of not less than \$2,000,000 per occurrence for bodily injury and property damage liability; \$2,000,000 designated location, general aggregate; and \$1,000,000 umbrella. Such insurance will include coverage for contractual liability, personal injury and broad form property damage, and shall include all major divisions of coverage and be on a comprehensive basis including, but not limited to:
  - a. premises operations;
  - b. personal injury liability without employment exclusion;
  - c. limited contractual;
  - d. broad form property damages, including completed operations;
  - e. medical payments;
  - f. products and completed operations;
  - g. independent consultants coverage;
  - h. coverage inclusive of construction means, methods, techniques, sequences, and procedures, employed in the capacity of a construction consultant; and

This policy must include coverage extensions to cover the indemnification obligations contained in this Agreement to the extent caused by or arising out of bodily injury or property damage.

- 3. Comprehensive Automobile Liability Insurance covering all owned, non-owned and hired automobiles used in connection with the performance of the Services, with limits of liability of not less than \$1,000,000 combined single limit bodily injury and property damage. This policy must include coverage extensions to cover the indemnification obligations contained in this Agreement to the extent caused by or arising out of bodily injury or property damage.
- 4. If applicable: Contractor shall secure and maintain a third party fidelity bond in favor of the Authority covering the Contractor and its employees and agents who may provide or be responsible for the provision of Services where such activities contemplate the responsibility for money or property of the Authority. Such bond shall protect the Authority against any fraudulent or dishonest act which may result in the loss of money, securities, or other property belonging to or in the possession of the Authority. Said bond

- shall be in an amount as determined by the Authority, from a surety acceptable to the Authority.
- 5. Any other insurance commonly used by contractors for services of the type to be performed pursuant to this Agreement.

## **EXHIBIT C-1**

## CERTIFICATE(S) OF INSURANCE

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#### EXHIBIT D

## CERTIFICATE OF GOOD STANDING WITH COLORADO SECRETARY OF STATE

## OFFICE OF THE SECRETARY OF STATE OF THE STATE OF COLORADO

## CERTIFICATE OF FACT OF GOOD STANDING

I, Jena Griswold, as the Secretary of State of the State of Colorado, hereby certify that, according to the records of this office,

BrightView Landscape Services, Inc.

#### isa

#### Corporation

formed or registered on 01/03/1972 under the law of Colorado, has complied with all applicable requirements of this office, and is in good standing with this office. This entity has been assigned entity identification number 19871251562.

This certificate reflects facts established or disclosed by documents delivered to this office on paper through 11/24/2021 that have been posted, and by documents delivered to this office electronically through 11/29/2021 @ 15:24:42.

I have affixed hereto the Great Seal of the State of Colorado and duly generated, executed, and issued this official certificate at Denver, Colorado on 11/29/2021 @ 15:24:42 in accordance with applicable law. This certificate is assigned Confirmation Number 13614134



Secretary of State of the State of Colorado

Notice: A certificate issued electronically from the Colorado Secretary of State's Web site is fully and immediately valid and effective. However, as an option, the issuance and validity of a certificate obsuined electronically may be established by visiting the Validate a Certificate page of the Secretary of State's Web site, hypotherm to state the Validate in Certificate secretary of state's Web site, hypotherm to state the Validate in confirmation number displayed on the certificate, and following the instructions displayed. Confirming the insurance of a certificate is merely epidemal and is not necessary to the valid and effective insurance of a tertificate. For more information, visit our Web site, http://www.socs.state.co.us/click "Businesses, trademarks, trade names" and select "Frequently Asked Questions."



#### **Certificate Of Completion**

Envelope Id: 4E1E14D9C3474E6CA2524E74B16E83A8

Subject: Please DocuSign: Tallyn's Reach Authority - ICA w Brightview - Turf to Native Conversion

Client Name: Tallyns Reach Authority Client Number: 011-045194-OS07-2022

Source Envelope:

Document Pages: 26 Signatures: 3 Initials: 0 Certificate Pages: 5

AutoNav: Enabled

Envelopeld Stamping: Enabled

Time Zone: (UTC-06:00) Central Time (US & Canada)

Status: Completed

**Envelope Originator:** 

Cindy Jenkins

220 South 6th Street

Suite 300

Minneapolis, MN 55402

Cindy.Jenkins@claconnect.com IP Address: 165.225.10.178

#### **Record Tracking**

Status: Original

1/13/2022 8:23:15 AM

Holder: Cindy Jenkins

Cindy.Jenkins@claconnect.com

Location: DocuSign

#### **Signer Events**

**David Patterson** 

david.patterson@falck.com

President

Security Level: Email, Account Authentication

(None)

#### Signature

David Patterson 7BD319407C7A455

Signature Adoption: Pre-selected Style

Using IP Address: 4.53.176.17

## **Timestamp**

Sent: 1/13/2022 8:28:48 AM Viewed: 1/13/2022 11:01:57 AM Signed: 1/13/2022 11:02:12 AM

## **Electronic Record and Signature Disclosure:**

Accepted: 1/13/2022 11:01:57 AM

ID: aba70db8-8533-4d05-b222-1ee3fb3d7d51

BJ Pell

bjnsteve95@yahoo.com

Secretary

Security Level: Email, Account Authentication

(None)

Signature Adoption: Drawn on Device Using IP Address: 66.178.26.107

Signed using mobile

Viewed: 1/13/2022 1:03:10 PM Signed: 1/13/2022 1:03:23 PM

Sent: 1/13/2022 11:02:14 AM

#### **Electronic Record and Signature Disclosure:**

Accepted: 1/13/2022 1:03:10 PM

ID: 4f476267-0063-4ac9-a545-45094fa4fbfe

Blair M. Dickhoner bdickhoner@wbapc.com

Security Level: Email, Account Authentication

(None)

Blair M. Dickhoner

Signature Adoption: Pre-selected Style

Sent: 1/13/2022 1:03:24 PM Viewed: 1/13/2022 1:25:04 PM Signed: 1/13/2022 1:25:15 PM

#### **Electronic Record and Signature Disclosure:**

Accepted: 1/13/2022 1:25:04 PM

ID: 3185ca47-0281-4b6f-9ca4-f2a92cbf32e5

Using IP Address: 50.209.233.181

#### In Person Signer Events **Signature Timestamp Editor Delivery Events Status Timestamp Agent Delivery Events Status Timestamp**

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Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	1/13/2022 8:28:48 AM
Certified Delivered	Security Checked	1/13/2022 1:25:04 PM
Signing Complete	Security Checked	1/13/2022 1:25:15 PM
Completed	Security Checked	1/13/2022 1:25:15 PM
Payment Events	Status	Timestamps

#### ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, CliftonLarsonAllen LLP (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to this Electronic Record and Signature Disclosure (ERSD), please confirm your agreement by selecting the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

## Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

## Withdrawing your consent

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

## Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

#### All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

#### How to contact CliftonLarsonAllen LLP:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: BusinessTechnology@CLAconnect.com

## To advise CliftonLarsonAllen LLP of your new email address

To let us know of a change in your email address where we should send notices and disclosures electronically to you, you must send an email message to us at BusinessTechnology@CLAconnect.com and in the body of such request you must state: your previous email address, your new email address. We do not require any other information from you to change your email address.

If you created a DocuSign account, you may update it with your new email address through your account preferences.

## To request paper copies from CliftonLarsonAllen LLP

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an email to BusinessTechnology@CLAconnect.com and in the body of such request you must state your email address, full name, mailing address, and telephone number. We will bill you for any fees at that time, if any.

## To withdraw your consent with CliftonLarsonAllen LLP

To inform us that you no longer wish to receive future notices and disclosures in electronic format you may:

i. decline to sign a document from within your signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;

ii. send us an email to BusinessTechnology@CLAconnect.com and in the body of such request you must state your email, full name, mailing address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

## Required hardware and software

The minimum system requirements for using the DocuSign system may change over time. The current system requirements are found here: <a href="https://support.docusign.com/guides/signer-guide-signing-system-requirements">https://support.docusign.com/guides/signer-guide-signing-system-requirements</a>.

## Acknowledging your access and consent to receive and sign documents electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please confirm that you have read this ERSD, and (i) that you are able to print on paper or electronically save this ERSD for your future reference and access; or (ii) that you are able to email this ERSD to an email address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format as described herein, then select the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

By selecting the check-box next to 'I agree to use electronic records and signatures', you confirm that:

- You can access and read this Electronic Record and Signature Disclosure; and
- You can print on paper this Electronic Record and Signature Disclosure, or save or send this Electronic Record and Disclosure to a location where you can print it, for future reference and access; and
- Until or unless you notify CliftonLarsonAllen LLP as described above, you consent to
  receive exclusively through electronic means all notices, disclosures, authorizations,
  acknowledgements, and other documents that are required to be provided or made
  available to you by CliftonLarsonAllen LLP during the course of your relationship with
  CliftonLarsonAllen LLP.

## INDEPENDENT CONTRACTOR AGREEMENT 2022 ANNUAL FLOWERS

This INDEPENDENT CONTRACTOR AGREEMENT, including any and all exhibits attached hereto (the "Agreement"), is entered into as of the 16<sup>th</sup> day of November, 2021, by and between TALLYNS REACH AUTHORITY, a contractual authority and political subdivision of the State of Colorado (the "Authority"), and BRIGHTVIEW LANDSCAPE SERVICES, INC., a Colorado corporation (the "Contractor"). The Authority and the Contractor are referred to herein individually as a "Party" and collectively as the "Parties."

#### RECITALS

WHEREAS, Tallyn's Reach Metropolitan District Nos. 2 and 3 (each a "District" and collectively the "Districts") were organized pursuant to and in accordance with the provisions of §§ 32-1-101, et seq., C.R.S. for the purpose of constructing, financing, operating and maintaining certain public facilities and improvements for itself, its taxpayers, residents and users; and

WHEREAS, pursuant to § 32-1-1001(1)(d)(I), C.R.S., the Districts are empowered to enter into contracts and agreements affecting the affairs of the Districts; and

WHEREAS, pursuant to § 32-1-1001(1)(i), C.R.S., the Districts are empowered to appoint, hire and retain agents, employees, engineers and attorneys; and

WHEREAS, pursuant to their consolidated service plan and §29-1-203, C.R.S., the Districts may coordinate or contract with one another to provide any function, service or facility that they may be authorized to provide individually; and

WHEREAS, on February 12, 2018, the Districts entered into the Tallyn's Reach Authority Establishment Agreement (the "Establishment Agreement") to establish the Authority, a separate legal entity that is a political subdivision and political corporation of the State of Colorado; and

WHEREAS, pursuant to § 29-1-203.5(2), C.R.S., and the Establishment Agreement, the Board of Directors of the Authority (the "Board") shall have the management control and supervision of all the business and affairs of the Authority; and

WHEREAS, the Authority desires to engage the Contractor to perform certain services as are needed by the Authority to serve the property within and without its boundaries; and

WHEREAS, the Contractor has represented that it has the professional experience, skill and resources to perform the services, as set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and stipulations set forth herein, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

## TERMS AND CONDITIONS

- perform the services described in Exhibit A, attached hereto and incorporated herein by this reference (the "Services"): (a) in a professional manner, to the satisfaction of the Authority, using the degree of skill and knowledge customarily employed by other professionals performing similar services; (b) within the time period and pursuant to the Scope of Services specified in said Exhibit A; and (c) using reasonable commercial efforts to minimize any annoyance, interference or disruption to the residents, tenants, occupants and invitees within the Authority. Exhibit A may take any form, including forms which may include price and payment terms. In the event of any conflict between terms set forth in the body of this Agreement and terms set forth in Exhibit A, the terms in the body of this Agreement shall govern. Contractor shall have no right or authority, express or implied, to take any action, expend any sum, incur any obligation, or otherwise obligate the Authority in any manner whatsoever, except to the extent specifically provided in this Agreement (including Exhibit A) or through other authorization expressly delegated to or authorized by the Authority through its Board of Directors.
- 2. <u>TERM/RENEWAL</u>. This Agreement shall be effective as of the dated date hereof and shall terminate on the earlier to occur of: (i) termination pursuant to Section 18 hereof; (ii) completion of the Services; or (iii) December 31, 2022. Notwithstanding the foregoing, unless terminated pursuant to subsection (i) or (ii) above, or unless the Authority determines not to appropriate funds for this Agreement for the next succeeding year, this Agreement shall automatically renew on January 1 of each succeeding year for an additional one (1) year term.
- 3. <u>ADDITIONAL SERVICES</u>. The Authority may, in writing, request the Contractor provide additional services not set forth in **Exhibit A**. The terms and conditions of the provision of such services shall be subject to the mutual agreement of the Contractor and the Authority pursuant to a written service/work order executed by an authorized representative of the Authority and the Contractor or an addendum to this Agreement. Authorization to proceed with additional services shall not be given unless the Authority has appropriated funds sufficient to cover the additional compensable amount. To the extent additional services are provided pursuant to this Section 3, the terms and conditions of this Agreement relating to Services shall also apply to any additional services rendered.
- 4. <u>REPAIRS/CLAIMS</u>. The Contractor shall notify the Authority immediately of any and all damage caused by the Contractor to Authority property and that of third parties. The Contractor will promptly repair or, at the Authority's option, reimburse the Authority for the repair of any damage to property caused by the Contractor or its employees, agents or equipment. In addition, the Contractor shall promptly notify the Authority of all potential claims of which it becomes aware. The Contractor further agrees to take all reasonable steps to preserve all physical evidence and information which may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and to grant to the Authority the opportunity to review and inspect such evidence, including the scene of any damage or accidents. The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Services and shall provide all reasonable protection to prevent damage or injury to persons and property, including any material and equipment related to the Services,

whether in storage on or off site, under the care, custody, or control of the Contractor or any of its subcontractors.

## 5. <u>GENERAL PERFORMANCE STANDARDS</u>.

- a. The Contractor has by careful examination ascertained: (i) the nature and location of the Services; (ii) the configuration of the ground on which the Services are to be performed; (iii) the character, quality, and quantity of the labor, materials, equipment and facilities necessary to complete the Services; (iv) the general and local conditions pertaining to the Services; and (v) all other matters which in any way may affect the performance of the Services by the Contractor. Contractor enters into this Agreement solely because of the results of such examination and not because of any representations pertaining to the Services or the provision thereof made to it by the Authority or any agent of the Authority and not contained in this Agreement. The Contractor represents that it has or shall acquire the capacity and the professional experience and skill to perform the Services and that the Services shall be performed in accordance with the standards of care, skill and diligence provided by competent professionals who perform services of a similar nature to those specified in this Agreement. If competent professionals find that the Contractor's performance of the Services does not meet this standard, the Contractor shall, at the Authority's request, re-perform the Services not meeting this standard without additional compensation.
- b. The Contractor shall use reasonable commercial efforts to perform and complete the Services in a timely manner. If performance of the Services by the Contractor is delayed due to factors beyond the Contractor's reasonable control, or if conditions of the scope or type of services are expected to change, Contractor shall give prompt notice to the Authority of such a delay or change and receive an equitable adjustment of time and/or compensation, as negotiated between the Parties.
- c. The Services provided under this Agreement shall be adequate and sufficient for the intended purposes and shall be completed in a good and workmanlike manner.
- d. The Contractor agrees that it has and will continue to comply with all Laws while providing Services under this Agreement. "Laws" means: (i) federal, state, county and local or municipal body or agency laws, statutes, ordinances and regulations; (ii) any licensing bonding, and permit requirements; (iii) any laws relating to storage, use or disposal of hazardous wastes, substances or materials; (iv) rules, regulations, ordinances and/or similar directives regarding business permits, certificates and licenses; (v) regulations and orders affecting safety and health, including but not limited to the Occupational Safety and Health Act of 1970; (vi) Wage and Hour laws, Worker Compensation laws, and immigration laws.
- e. The responsibilities and obligations of the Contractor under this Agreement shall not be relieved or affected in any respect by the presence of any agent, consultant, subconsultant or employee of the Authority. Review, acceptance or approval by the Authority of the Services performed or any documents prepared by the Contractor shall not relieve the Contractor of any responsibility for deficiencies, omissions or errors in said Services or documents, nor shall it be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

6. MONTHLY STATUS REPORT. The Contractor shall provide to the Authority, at the Authority's request, on or before the 25th of each month, a narrative progress and status report describing work in progress and results achieved during the reporting period, including a description of the Services performed during the invoice period and the Services anticipated to be performed during the ensuing invoice period ("Monthly Report").

## COMPENSATION AND INVOICES.

- a. <u>Compensation</u>. Compensation for the Services provided under this Agreement shall be in accordance with the compensation schedule attached hereto as **Exhibit A**. The Contractor shall be responsible for all expenses it incurs in performance of this Agreement and shall not be entitled to any reimbursement or compensation except as provided in **Exhibit A** of this Agreement, unless said reimbursement or compensation is approved in writing by the Authority in advance of incurring such expenses. Any direct reimbursable costs for materials will be reimbursable at the Contractor's actual cost, provided that the Contractor shall make a reasonable attempt to notify the Authority of the estimated amount of such reimbursable costs (or any material adjustments thereto subsequently identified) prior to commencing the requested services. Concurrent with the execution of this Agreement, the Contractor shall provide the Authority with a current completed Internal Revenue Service Form W-9 (Request for Taxpayer Identification Number and Certification) ("W-9"). No payments will be made to the Contractor until the completed W-9 is provided. The W-9 shall be attached hereto and incorporated herein as **Exhibit B**.
- b. <u>Invoices</u>. Invoices for the Services shall be submitted monthly, by the 10<sup>th</sup> of each month, during the term of this Agreement and shall contain the following information:
  - i. An itemized statement of the Services performed.
- ii. Any other reasonable information required by the Authority to process payment of the invoice, including project and/or cost codes as provided in any applicable written service/work order.

The Authority shall be charged only for the actual time and direct costs incurred for the performance of the Services. Invoices received by the Authority after the  $10^{th}$  of each month may be processed the following month.

8. <u>TIME FOR PAYMENT</u>. Payment for the Services shall be made by the Authority within thirty (30) days of receipt of: (i) a timely, satisfactory and detailed invoice in the form required by Section 7; and (ii) if applicable, a reasonably satisfactory and detailed Monthly Report, for that portion of the Services performed and not previously billed. The Authority may determine to waive or extend the deadline for filing the Monthly Report, or may make payment for Services to the Contractor notwithstanding a delay in filing the Monthly Report, upon reasonable request of the Contractor, if it is in the interest of the Authority to do so. In the event a Board meeting is not scheduled in time to review payment of an invoice, the Board hereby authorizes payment for Services, subject to the appropriation and budget requirements under Section 27 hereof, without the need for additional Board approval, so long as any payment required to be made does not exceed the amounts appropriated for such Services as set forth in the Authority's approved budget.

Such payment shall require review and approval of each Monthly Report and invoice by two officers of the Authority.

- 9. INDEPENDENT CONTRACTOR. The Contractor is an independent contractor and nothing in this Agreement shall constitute or designate the Contractor or any of its employees or agents as employees or agents of the Authority. The Contractor shall have full power and authority to select the means, manner and method of performing its duties under this Agreement, without detailed control or direction from the Authority, and shall be responsible for supervising its own employees or subcontractors. The Authority is concerned only with the results to be obtained. The Authority shall not be obligated to secure, and shall not provide, any insurance coverage or employment benefits of any kind or type to or for the Contractor or its employees, sub-consultants, contractors, agents, or representatives, including coverage or benefits related but not limited to: local, state or federal income or other tax contributions, insurance contributions (e.g. FICA taxes), workers' compensation, disability, injury, health or life insurance, professional liability insurance, errors and omissions insurance, vacation or sick-time benefits, retirement account contributions, or any other form of taxes, benefits or insurance. The Contractor shall be responsible for its safety, and the safety of its employees, sub-contractors, agents, and representatives. All personnel furnished by the Contractor will be deemed employees or subcontractors of the Contractor and will not for any purpose be considered employees or agents of The Contractor is not entitled to worker's compensation benefits or the Authority. unemployment insurance benefits, unless unemployment compensation coverage is provided by the Contractor or some other entity other than the Authority, and the Contractor is obligated to pay federal and state income taxes on moneys by it earned pursuant to this Agreement.
- 10. <u>EQUAL OPPORTUNITY / EMPLOYMENT ELIGIBILITY</u>. This Agreement is subject to all applicable laws and executive orders relating to equal opportunity and non-discrimination in employment and the Contractor represents and warrants that it will not discriminate in its employment practices in violation of any such applicable law or executive order.

The Contractor hereby states that it does not knowingly employ or contract with illegal aliens and that the Contractor has participated in or has attempted to participate in the E-Verify Program or Department Program (formerly known as the Basic Pilot Program) (as defined in §8-17.5-101, C.R.S.) in order to verify that it does not employ any illegal aliens. The Contractor affirmatively makes the follow declarations:

- a. The Contractor shall not knowingly employ or contract with an illegal alien who will perform work under the public contract for services contemplated in this Agreement and will participate in the E-Verify Program or Department Program (as defined in §8-17.5-101, C.R.S.) 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 contemplated in this Agreement.
- b. The Contractor shall not knowingly 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 the services contemplated in this Agreement.

- c. The Contractor has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under the public contract for services through participation in either the E-Verify Program or the Department Program.
- d. The Contractor is prohibited from using either the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.
- e. If the Contractor obtains actual knowledge that a subcontractor performing the services under this Agreement knowingly employs or contracts with an illegal alien, the Contractor shall be required to:
- i. Notify the subcontractor and the Authority within three (3) days that the Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien.
- ii. Terminate the subcontract with the subcontractor if within three (3) days of receiving the notice required above 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 (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.
- f. The Contractor shall comply with any reasonable request by the Department of Labor and Employment made in the course of an investigation involving matters under this Section 10 that such Department is undertaking pursuant to the authority established in § 8-17.5-102, C.R.S.
- g. If the Contractor violates a provision of this Agreement pursuant to which § 8-17.5-102, C.R.S., applies the Authority may terminate this Agreement upon three (3) days written notice to the Contractor. If this Agreement is so terminated, the Contractor shall be liable for actual and consequential damages to the Authority.

## 11. <u>CONTRACTOR'S INSURANCE</u>.

- a. The Contractor shall acquire and maintain, at its sole cost and expense, during the entire term of this Agreement, insurance coverage in the minimum amounts set forth in **Exhibit C**, attached hereto and incorporated herein by this reference. A waiver of subrogation and rights of recovery against the Authority, its directors, officers, employees and agents is required for Commercial General Liability and Workers Compensation coverage. The Commercial General Liability and Comprehensive Automobile Liability Insurance policies will be endorsed to name the Authority as an additional insured. All coverage provided pursuant to this Agreement shall be written as primary policies, not contributing with and not supplemental to any coverage that the Authority may carry, and any insurance maintained by the Authority shall be considered excess. The Authority shall have the right to verify or confirm, at any time, all coverage, information or representations contained in this Agreement.
- b. Prior to commencing any work under this Agreement, the Contractor shall provide the Authority with a certificate or certificates evidencing the policies required by this

Agreement, as well as the amounts of coverage for the respective types of coverage, which certificate(s) shall be attached hereto as Exhibit C-1. If the Contractor subcontracts any portion(s) of the Services, said subcontractor(s) shall be required to furnish certificates evidencing statutory workers' compensation insurance, comprehensive general liability insurance and automobile liability insurance in amounts satisfactory to the Authority and the Contractor; provided, however, that sub-contractors of the Contractor shall not be required by the Authority to provide coverage in excess of that which is required hereunder of the Contractor. If the coverage required expires during the term of this Agreement, the Contractor or subcontractor shall provide replacement certificate(s) evidencing the continuation of the required policies.

c. The Contractor's failure to purchase the required insurance shall not serve to release it from any obligations contained in this Agreement; nor shall the purchase of the required insurance serve to limit the Contractor's liability under any provision in this Agreement. The Contractor shall be responsible for the payment of any deductibles on issued policies.

## 12. CONFIDENTIALITY AND CONFLICTS.

- Confidentiality. Any information deemed confidential by the Authority and given to the Contractor by the Authority, or developed by the Contractor as a result of the performance of a particular task, shall remain confidential. In addition, the Contractor shall hold in strict confidence, and shall not use in competition, any information which the Contractor becomes aware of under or by virtue of this Agreement which the Authority deems confidential, or which the Authority has agreed to hold confidential, or which, if revealed to a third party, would reasonably be construed to be contrary to the interests of the Authority. Confidential information shall not include, however, any information which is: (i) generally known to the public at the time provided to the Contractor; (ii) provided to the Contractor by a person or entity not bound by confidentiality to the Authority; or (iii) independently developed by the Contractor without use of the Authority's confidential information. During the performance of this Agreement, if the Contractor is notified that certain information is to be considered confidential, the Contractor agrees to enter into a confidentiality agreement in a form reasonably acceptable to the Authority and the Contractor. The Contractor agrees that any of its employees, agents or subcontractors with access to any information designated thereunder as confidential information of the Authority shall agree to be bound by the terms of such confidentiality agreement.
- b. <u>Personal Identifying Information</u>. During the performance of this Agreement, the Authority may disclose Personal Identifying Information to the Contractor. "**Personal Identifying Information**" means a social security number; a personal identification number; a password; a pass code; an official state or government-issued driver's license or identification card number; a government passport number; biometric data, as defined in § 24-73-103(1)(a), C.R.S.; an employer, student, or military identification number; or a financial transaction device, as defined in § 18-5-701(3), C.R.S. In compliance with § 24-73-102, C.R.S., the Contractor agrees to implement and maintain reasonable security procedures and practices that are: (i) appropriate to the nature of the Personal Identifying Information disclosed to the Contractor; and (ii) reasonably designed to help protect the Personal Identifying Information from unauthorized access, use, modification, disclosure, or destruction.

- c. <u>Conflicts</u>. Prior to the execution of, and during the performance of this Agreement and prior to the execution of future agreements with the Authority, the Contractor agrees to notify the Authority of conflicts known to the Contractor that impact the Contractor's provision of Services to the Authority.
- OWNERSHIP OF DOCUMENTS. All documents produced by or on behalf of the Contractor prepared pursuant to this Agreement, including, but not limited to, all maps, plans, drawings, specifications, reports, electronic files and other documents, in whatever form, shall remain the property of the Authority under all circumstances, upon payment to the Contractor of the invoices representing the work by which such materials were produced. At the Authority's request the Contractor will provide the Authority with all documents produced by or on behalf of the Contractor pursuant to this Agreement. The Contractor shall maintain electronic and reproducible copies on file of any such instruments of service involved in the Services for a period of two (2) years after termination of this Agreement, shall make them available for the Authority's use and shall provide such copies to the Authority upon request at no cost.
- LIENS AND ENCUMBRANCES. The Contractor shall not have any right or 14. interest in any Authority assets, or any claim or lien with respect thereto, arising out of this Agreement or the performance of the Services contemplated in this Agreement. The Contractor, for itself, hereby waives and releases any and all statutory or common law mechanic's, materialmen's or other such lien claims, or rights to place a lien upon the Authority's property or any improvements thereon in connection with any Services performed under or in connection with this Agreement, and the Contractor shall cause all permitted subcontractors, suppliers, materialmen, and others claiming by, through or under the Contractor to execute similar waivers prior to commencing any work or providing any materials in connection with the Services. The Contractor further agrees to execute a sworn affidavit respecting the payment and lien releases of all subcontractors, suppliers and materialmen, and release of lien respecting the Services at such time or times and in such form as may be reasonably requested by the Authority. The Contractor will provide indemnification against all such liens for labor performed, materials supplied or used by the Contractor and/or any other person in connection with the Services undertaken by the Contractor, in accordance with Section 15, below.

## 15. <u>INDEMNIFICATION</u>.

a. The Contractor shall defend, indemnify and hold harmless the Authority and each of its directors, officers, contractors, employees, agents and consultants (collectively, the "Authority Indemnitees"), from and against any and all claims, demands, losses, liabilities, actions, lawsuits, damages, and expenses (the "Claims"), including reasonable legal expenses and attorneys' fees actually incurred, by the Authority Indemnitees arising directly or indirectly, in whole or in part, out of the errors or omissions, negligence, willful misconduct, or any criminal or tortious act or omission of the Contractor or any of its subcontractors, officers, agents or employees, in connection with this Agreement and/or the Contractor's performance of the Services or work pursuant to this Agreement. Notwithstanding anything else in this Agreement or otherwise to the contrary, the Contractor is not obligated to indemnify the Authority Indemnitees for the negligence of the Authority or the negligence of any other Authority Indemnitee, except the Contractor. Except as otherwise provided by applicable law, this indemnification obligation will not be limited in any way by any limitation on the amount or types of damages, compensation or

benefits payable by or for the Contractor under workers' compensation acts, disability acts or other employee benefit acts, provided that in no event shall the Contractor be liable for special/consequential or punitive damages.

- b. In the event the Contractor fails to assume the defense of any Claims under this Section 15 within fifteen (15) days after notice from the Authority of the existence of such Claim, the Authority may assume the defense of the Claim with counsel of its own selection, and the Contractor will pay all reasonable expenses of such counsel. Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the Contractor under the terms of this indemnification obligation.
- c. Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the Contractor under the terms of this indemnification obligation. The Contractor shall obtain, at its own expense, any additional insurance that it deems necessary with respect to its obligations under this Agreement, including the indemnity obligations set forth in Section 15. This defense and indemnification obligation shall survive the expiration or termination of this Agreement.
- 16. <u>ASSIGNMENT</u>. The Contractor shall not assign this Agreement or parts thereof, or its respective duties, without the express written consent of the Authority. Any attempted assignment of this Agreement in whole or in part with respect to which the Authority has not consented, in writing, shall be null and void and of no effect whatsoever.
- SUB-CONTRACTORS. The Contractor is solely and fully responsible to the 17. Authority for the performance of all Services in accordance with the terms set forth in this Agreement, whether performed by the Contractor or a subcontractor engaged by the Contractor, and neither the Authority's approval of any subcontractor, suppliers, or materialman, nor the failure of performance thereof by such persons or entities, will relieve, release, or affect in any manner the Contractor's duties, liabilities or obligations under this Agreement. The Contractor shall not subcontract any Services without prior written approval by the Authority. The Contractor agrees that each and every agreement of the Contractor with any subcontractor to perform Services under this Agreement shall contain an indemnification provision identical to the one contained in this Agreement holding the Authority harmless for the acts of the subcontractor. Prior to commencing any Services, a subcontractor shall provide evidence of insurance coverage to the Authority in accordance with the requirements of this Agreement. The Contractor further agrees that all such subcontracts shall provide that they may be terminated immediately without cost or penalty upon termination of this Agreement, other than payment for services rendered prior to the date of any such termination.
- 18. <u>TERMINATION</u>. In addition to the termination provisions contained in Section 2, above, this Agreement may be terminated for convenience by the Contractor upon delivery of thirty (30) days prior written notice to the Authority and by the Authority by giving the Contractor thirty (30) days prior written notice. Each Party may terminate this Agreement for cause at any time upon written notice to the other Party setting forth the cause for termination and the notified Party's failure to cure the cause to the reasonable satisfaction of the Party given such notice within the cure period set forth in Section 19. If this Agreement is terminated, the Contractor shall be paid for all the Services satisfactorily performed prior to the designated termination date, including

reimbursable expenses due. Said payment shall be made in the normal course of business. Should either Party to this Agreement be declared bankrupt, make a general assignment for the benefit of creditors or commit a substantial and material breach of this Agreement in the view of the other Party, said other Party shall be excused from rendering or accepting any further performance under this Agreement. In the event of termination of this Agreement, the Contractor shall cooperate with the Authority to ensure a timely and efficient transition of all work and work product to the Authority or its designees. All time, fees and costs associated with such transition shall not be billed by the Contractor to the Authority.

- 19. <u>DEFAULT</u>. If either Party fails to perform in accordance with the terms, covenants and conditions of this Agreement, or is otherwise in default of any of the terms of this Agreement, the non-defaulting party shall deliver written notice to the defaulting party of the default, at the address specified in Section 20 below, and the defaulting party will have ten (10) days from and after receipt of the notice to cure the default. If the default is not of a type which can be cured within such ten (10)-day period and the defaulting party gives written notice to the non-defaulting party within such ten (10)-day period that it is actively and diligently pursuing a cure, the defaulting party will have a reasonable period of time given the nature of the default following the end of the ten (10)-day period to cure the default, provided that the defaulting party is at all times within the additional time period actively and diligently pursuing the cure. If any default under this Agreement is not cured as described above, the non-defaulting party will, in addition to any other legal or equitable remedy, have the right to terminate this Agreement and enforce the defaulting party's obligations pursuant to this Agreement by an action for injunction or specific performance.
- NOTICES. Any notice or communication required under this Agreement must be 20. in writing, and may be given personally, sent via nationally recognized overnight carrier service, or by registered or certified mail, return receipt requested. If given by registered or certified mail, the same will be deemed to have been given and received on the first to occur of: (i) actual receipt by any of the addressees designated below as the party to whom notices are to be sent; or (ii) three days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered or sent via nationally recognized overnight carrier service, a notice will be deemed to have been given and received on the first to occur of: (i) one business day after being deposited with a nationally recognized overnight air courier service; or (ii) delivery to the party to whom it is addressed. Any party hereto may at any time, by giving written notice to the other party hereto as provided in this Section 20 of this Agreement, designate additional persons to whom notices or communications will be given, and designate any other address in substitution of the address to which such notice or communication will be given. Such notices or communications will be given to the parties at their addresses set forth below:

Authority:

Tallyn's Reach Authority c/o CliftonLarsonAllen 8390 E. Crescent Parkway #500 Greenwood Village, CO 80111 Attention: Denise Denslow

Phone: (303) 265-7923

Email: denise.denslow@claconnect.com

With a Copy to: White Bear Ankele Tanaka & Waldron

2154 E. Commons Ave., Suite 2000

Centennial, CO 80122

Attention: Blair M. Dickhoner, Esq.

Phone: (303) 858-1800

E-mail: <u>bdickhoner@wbapc.com</u>

Contractor: BrightView Landscape Services, Inc.

8888 N. Motsenbocker Rd., Ste. A

Parker, CO 80134

Attention: Sara Rutman Phone: (303) 841-3003

Email: sara.rutman@brightview.com

- 21. <u>AUDITS</u>. The Authority shall have the right to audit, with reasonable notice, any of the Contractor's books and records solely as are necessary to substantiate any invoices and payments under this Agreement (including, but not limited to, receipts, time sheets, payroll and personnel records) and the Contractor agrees to maintain adequate books and records for such purposes during the term of this Agreement and for a period of two (2) years after termination of this Agreement and to make the same available to the Authority at all reasonable times and for so long thereafter as there may remain any unresolved question or dispute regarding any item pertaining thereto.
- 22. <u>ENTIRE AGREEMENT</u>. This Agreement constitutes the entire agreement between the Parties hereto relating to the Services, and sets forth the rights, duties, and obligations of each to the other as of this date, and hereby supersedes any and all prior negotiations, representations, agreements or arrangements of any kind with respect to the Services, whether written or oral. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force and effect. This Agreement may not be modified except by a writing executed by both the Contractor and the Authority.
- 23. <u>BINDING AGREEMENT</u>. This Agreement shall inure to and be binding on the heirs, executors, administrators, successors, and assigns of the Parties hereto.
- 24. <u>NO WAIVER</u>. No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other of the provisions of this Agreement, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided in this Agreement, nor shall the waiver of any default be deemed a waiver of any subsequent default.

#### 25. GOVERNING LAW.

a. <u>Venue</u>. Venue for all actions arising from this Agreement shall be in the District Court in and for the county in which the Authority is located. The Parties expressly and irrevocably waive any objections or rights which may affect venue of any such action, including,

but not limited to, forum non-conveniens or otherwise. At the Authority's request, the Contractor shall carry on its duties and obligations under this Agreement during any legal proceedings and the Authority shall continue to pay for the Services performed under this Agreement until and unless this Agreement is otherwise terminated.

- b. <u>Choice of Law</u>. Colorado law shall apply to any dispute, without regard to conflict of law principles that would result in the application of any law other than the law of the State of Colorado.
- c. <u>Litigation</u>. At the Authority's request, the Contractor will consent to being joined in litigation between the Authority and third parties, but such consent shall not be construed as an admission of fault or liability. The Contractor shall not be responsible for delays in the performance of the Services caused by factors beyond its reasonable control including delays caused by Act of God, accidents, failure of any governmental or other regulatory authority to act in a timely manner or failure of the Authority to furnish timely information or to approve or disapprove of Contractor's Services in a timely manner.
- 26. GOOD FAITH OF PARTIES. In the performance of this Agreement, or in considering any requested approval, acceptance, consent, or extension of time, the Parties agree that each will act in good faith and will not act unreasonably, arbitrarily, capriciously, or unreasonably withhold, condition, or delay any approval, acceptance, consent, or extension of time required or requested pursuant to this Agreement.
- 27. SUBJECT TO ANNUAL APPROPRIATION AND BUDGET. The Authority does not intend hereby to create a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever. The Contractor expressly understands and agrees that the Authority's obligations under this Agreement shall extend only to monies appropriated for the purposes of this Agreement by the Board and shall not constitute a mandatory charge, requirement or liability in any ensuing fiscal year beyond the then-current fiscal year. No provision of this Agreement shall be construed or interpreted as a delegation of governmental powers by the Authority, or as creating a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever of the Authority or statutory debt limitation, including, without limitation, Article X, Section 20 or Article XI, Section 6 of the Constitution of the State of Colorado. No provision of this Agreement shall be construed to pledge or to create a lien on any class or source of Authority funds. The Authority's obligations under this Agreement exist subject to annual budgeting and appropriations, and shall remain subject to the same for the entire term of this Agreement.
- 28. GOVERNMENTAL IMMUNITY. Nothing in this Agreement shall be construed to waive, limit, or otherwise modify, in whole or in part, any governmental immunity that may be available by law to the Authority, its respective officials, employees, contractors, or agents, or any other person acting on behalf of the Authority and, in particular, governmental immunity afforded or available to the Authority pursuant to the Colorado Governmental Immunity Act, §§ 24-10-101, et seq., C.R.S.
- 29. <u>NEGOTIATED PROVISIONS</u>. This Agreement shall not be construed more strictly against one Party than against the other merely by virtue of the fact that it may have been

prepared by counsel for one of the Parties, it being acknowledged that each Party has contributed to the preparation of this Agreement.

- 30. <u>SEVERABILITY</u>. If any portion of this Agreement is declared by any court of competent jurisdiction to be invalid, void or unenforceable, such decision shall not affect the validity of any other portion of this Agreement which shall remain in full force and effect, the intention being that such portions are severable. In addition, in lieu of such void or unenforceable provision, there shall automatically be added as part of this Agreement a provision similar in terms to such illegal, invalid or unenforceable provision so that the resulting reformed provision is legal, valid and enforceable.
- 31. <u>NO THIRD PARTY BENEFICIARIES</u>. 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 the Parties 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 Parties receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.
- 32. <u>OPEN RECORDS</u>. The Parties understand that all material provided or produced under this Agreement may be subject to the Colorado Open Records Act, §§ 24-72-202, *et seq.*, C.R.S.
- warrant that all workmanship, materials, and equipment furnished, installed, or performed for the accomplishment of the Services (collectively, the "Work") will be of good quality and new, unless otherwise required or permitted by this Agreement. The Contractor further warrants that the Work will conform to all requirements of this Agreement and all other applicable laws, ordinances, codes, rules and regulations of any governmental authorities having jurisdiction over the Work. All Services are subject to the satisfaction and acceptance of the District, but payments for the completed Work will not constitute final acceptance nor discharge the obligation of the Contractor to correct defects at a later date. Such warranties set forth in this Agreement are in addition to, and not in lieu of, any other warranties prescribed by Colorado law.
- 34. TAX EXEMPT STATUS. The Authority is exempt from Colorado state sales and use taxes. Accordingly, taxes from which the Authority is exempt shall not be included in any invoices submitted to the Authority. The Authority shall, upon request, furnish Contractor with a copy of its certificate of tax exemption. Contractor and subcontractors shall apply to the Colorado Department of Revenue, Sales Tax Division, for an Exemption Certificate and purchase materials tax free. The Contractor and subcontractors shall be liable for exempt taxes paid due to failure to apply for Exemption Certificates or for failure to use said certificate.
- 35. <u>COUNTERPART EXECUTION</u>. This Agreement may be executed in several counterparts, each of which may be deemed an original, but all of which together shall constitute one and the same instrument. Executed copies hereof may be delivered by facsimile or email of a PDF document, and, upon receipt, shall be deemed originals and binding upon the signatories hereto, and shall have the full force and effect of the original for all purposes, including the rules of evidence applicable to court proceedings.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date first above written. By the signature of its representative below, each Party affirms that it has taken all necessary action to authorize said representative to execute this Agreement.

#### **AUTHORITY:**

TALLYN'S REACH AUTHORITY, a contractual authority and political subdivision of the State of Colorado

> DocuSigned by: David Patterson

Officer of the Authority

ATTEST:

APPROVED AS TO FORM:

WHITE BEAR ANKELE TANAKA & WALDRON Attorneys at Law

DocuSigned by:

Blair M. Dickhoner

General Counsel for the Authority

	CONTRACTOR:
	BRIGHTVIEW LANDSCAPES, INC., a
	Colorado corporation
	Tolling.
	Garrett Wright
	Printed Name
	Branch Manager Title
	THIC
STATE OF COLORADO	)
COUNTY OF Douglas	) ss. )
The foregoing instrument was ac	cknowledged before me this 8th day of Necember
2021, by Carrett Wright, as the	ne Kranh Andrew I and comes
Inc.	manager of Bright view Landscapes,
Witness my hand and official sea	1.
My commission expires: July 21,	2023
	Marke Jorge eli
ANA DELLA CALLA	Notary Public June &
MARTHA J MICELI NOTARY PUBLIC	Notary Public Notary Public
NOTARY PUBLIC STATE OF COLORADO	Notary Public Notary Public
NOTARY PUBLIC	Notary Public Notary Public

## **EXHIBIT A**

# SCOPE OF SERVICES/COMPENSATION SCHEDULE



November 09, 2021

## Proposal for Extra Work at Tallyn's Reach Authority

Property Name Property Address Tallyn's Reach Authority 24900 E Park Crescent Dr.

Contact

Celeste Terrell

Aurora, CO 80016

Billing Address

Tallyns Reach Authority 370 Interlocken Blvd Ste 500

Broomfield, CO 80021

Project Name

2022 Annual Flowers

Project Description 2022 Annual Flowers

Scope of Work

QTY	UoM/Size	Material/Description	Total
Annual to Co	obble (9, 10, 21)		\$2,179.08
500.00	SQUARE FEET	Filter Fabric - Fabric and Netting Installed	
12.00	TON	Gray Rose Cobblestone 2-4 - TDN Rock/Gravel installed	
Annual Flow	er Beds (excludes 9,	. 10, 21)	\$32,971.36
1.50	LUMP SUM	Removal of Shrubs at end of island in Bed #8 for annual bed extension	
1.00	LUMP SUM	Disposal of Removed Shrubs	
6.00	CUBIC YARD	BioComp Compost - Amendment Installed	
3,200.00	SQUARE FEET	Prep/Til/Grade Labor	
45.00	EACH	PETUNIA purple wave 10-4 pack flat Seasonal (Annual) Color installed	
33.00	EACH	SALVIA Evolution Violet10-4 pack flat Seasonal (Annual) Color Installed	
33.00	EACH	Cosmos Sonata Red Shades 18-4 pack flat Seasonal (Annual) Color Installed	
33.00	EACH	Snaporagon Snaptastic Yellow10-4 pack flat Seasonal (Annual) Color Installed	
33.00	EACH	Zinnia Zahara Double White 10-4 pack flat Seasonal (Annual) Color Installed	
1.00	LUMP SUM	Bi-Weekly Maintenance	

For Internal use only

SO# JOB# Service Line 7672298 400300615 130

Total Price

\$35,150.44

THIS IS NOT AN INVOICE

This proposal is valid for 65 days unless otherwise approved by BrightView Landscape Services, Inc. 6868 Motsenbooker Road, Suite A. Parter, CO 60134 ph. 1303/1941-3003 fax (303) 541-5177

November 09, 2021

Fage 2 cf 2

#### **TERMS & CONDITIONS**

- The Contractor shall recognize and perform in accordance with written terms writer specifications and discords only contained or related to hardly all metals shall conform to bid specifications.
- Work Force: Contractor shall designate a quarted representative with expensive in terrocrape maintenance construction upgrades or when applicable in the management. The worldone shall be competent and qualities and shall be legally aumorated to work in the U.S.
- License and Permits: Contractor shall maintain a Landscape Contractor's ficeise. If required by State of local law and will comply sort all other hopes-and permit requirements of the City, State and Federal Coventments, as well as all other requirements of law.
- Taxes. Contactor agrees to pay all applicable taxes, not ong sales tax where applicable on material supplied.
- Insurance Contractor agrees to provide General diability Insurance. Automotive Diability Insurance, Worker's Compensation Insurance and any other insurance required by law or Dient/Dwiret, as specified in wrang prior to commencement divolk if and specified Contractor will furnish insurance with \$1,000,000 time of liability.
- 6. Liability. Contactor shall occurrily the Client/Counce and its occurs and employees from and easient any inner distributions that arise out of Contractic's were to the extent auch insulates are adjustabled in rever been council by Contractor's negociarse or within manufact. Contractor shall not be lable for any damage flat occurs from each of Good are defined as truck. to have for any contage size observed in the contage of look are centred as most-consists by windown the file, focus, earthquake the new to tensorbate and the exempt of Linder these microsistances. Contractor shall have the right to tensorbate the terms and prince of this agreement within early (Bill days Any Regal trappass, dams and/or damages rectifing from work requested that is not on properly cannot by Clern/Owner or not under Clern/Owner management and control shall be the size responsibility of the Clern/Owner.
- **Subcontractors** Contractor leadings the light to him counted subcontractors to perform specialized functions or work requiring specialized
- Additional Services. Any additional ways not above in the above specifications replained extra crosts will be executed only upon signed withen croses and will become an extra charge over and above the estimate.
- Assess to Jobsite: Clerb'Owner shall provide all utilizes to perform the Address to Johanne the Investo ecoes to a plants of pastern the week Cland Darme shall be made access to a plants of pastern the contract is to perform with as required by the Contract or other functions related therefor diving neural braceses come and other responsible desirable of time-commentar or perform the ways as measurably process after the come makes the afterweekable to performentar of the work.
- Invariding, Clerif States and make payment to Contrador within lifeon (15) case upon recept of invarious for the event the schedule for the completion of the work shall require more than their (20) days, a progress but will be presented by mooth and shall be paid within freen (16) days upon recept.
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- Assignment The Contexticent and the Contextor respectively, bind themselves their patients successors, assignees and legal representance to the other party with respect to all operants of this agreement. Neither the OwnerCtern not the Contractor shall assign or particle any mercal in the Agreement wereaut the witton consent of the other provided, however that consents is also find the required to assign this Agreement the any company during context, is considered by or is under common contact with Contractor or to or mediate with estimation of the assignment to an other or provided the industry safe of its assignmentally all of its assignmentally all of its assignmentally according to contract or country according to contract or control or corporate reorganization
- Displatment: The proposal was estimated and price based upon a site visit and visual respection from ground level using ordinary means at or about the time this proposal was prepared. The price guided in this proposal for the work described is the result of that ground level usual respection and therefore our company will not be table for any additional cases or damages for additional work not described factors in labor for any institutivelections resulting from Condence, that were not associated above and ground level was all proposals by ordinary means in the time seal respection was performed. Condender associate the medit respection was performed. Condender associate the medit respectively according to the condense of enhancement of enhancements. Professional engineering alcoholicitural, control landscape design services (Design Services) are not included in this Agreement are shall not be provided by the Contractor. Any design directs in the Control Documents are the sole responsibility at the Control. If the Client/Owner must engage a tension of the control of the

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Property Manager

Celeste Terrell November 09, 2021

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BightView Landscape Services Inc "Bi ghtView"

Account Manager

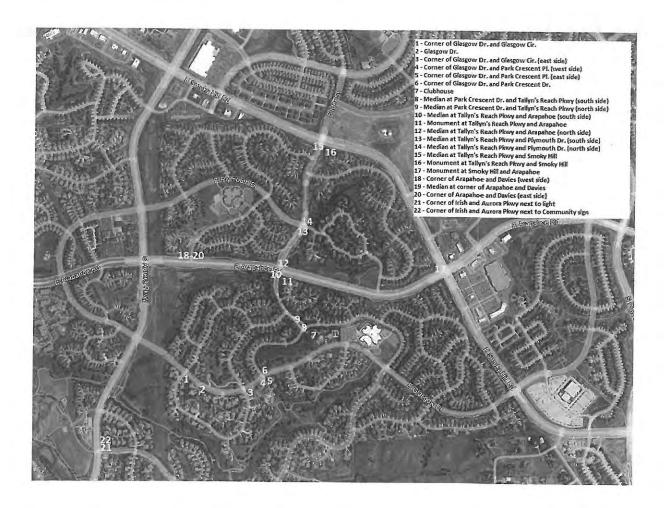
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Sasa Rulman November 09, 2021

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Job# 400300615 Proposed Frice \$35,150.44

SO # 7672298



## **EXHIBIT B**

# CONTRACTOR'S COMPLETED W-9

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## **EXHIBIT C**

## INSURANCE REQUIREMENTS

NOTE: All insurance required and provided hereunder shall also comply with the provisions of Section 11 of this Agreement.

- 1. Standard Worker's Compensation and Employer's Liability Insurance covering all employees of Contractor involved with the performance of the Services, with policy amounts and coverage in compliance with the laws of the jurisdiction in which the Services will be performed.
- 2. Commercial General Liability Insurance with minimum limits of liability of not less than \$2,000,000 per occurrence for bodily injury and property damage liability; \$2,000,000 designated location, general aggregate; and \$1,000,000 umbrella. Such insurance will include coverage for contractual liability, personal injury and broad form property damage, and shall include all major divisions of coverage and be on a comprehensive basis including, but not limited to:
  - a. premises operations;
  - b. personal injury liability without employment exclusion;
  - c. limited contractual;
  - d. broad form property damages, including completed operations;
  - e. medical payments;
  - f. products and completed operations;
  - g. independent consultants coverage;
  - h. coverage inclusive of construction means, methods, techniques, sequences, and procedures, employed in the capacity of a construction consultant; and

This policy must include coverage extensions to cover the indemnification obligations contained in this Agreement to the extent caused by or arising out of bodily injury or property damage.

- 3. Comprehensive Automobile Liability Insurance covering all owned, non-owned and hired automobiles used in connection with the performance of the Services, with limits of liability of not less than \$1,000,000 combined single limit bodily injury and property damage. This policy must include coverage extensions to cover the indemnification obligations contained in this Agreement to the extent caused by or arising out of bodily injury or property damage.
- 4. If applicable: Contractor shall secure and maintain a third party fidelity bond in favor of the Authority covering the Contractor and its employees and agents who may provide or be responsible for the provision of Services where such activities contemplate the responsibility for money or property of the Authority. Such bond shall protect the Authority against any fraudulent or dishonest act which may result in the loss of money, securities, or other property belonging to or in the possession of the Authority. Said bond

- shall be in an amount as determined by the Authority, from a surety acceptable to the Authority.
- 5. Any other insurance commonly used by contractors for services of the type to be performed pursuant to this Agreement.

## **EXHIBIT C-1**

# CERTIFICATE(S) OF INSURANCE

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#### EXHIBIT D

# CERTIFICATE OF GOOD STANDING WITH COLORADO SECRETARY OF STATE

## OFFICE OF THE SECRETARY OF STATE OF THE STATE OF COLORADO

# CERTIFICATE OF FACT OF GOOD STANDING

L Jena Griswold, as the Secretary of State of the State of Colorado, hereby certify that, according to the records of this office.

BrightView Landscape Services, Inc.

15 à

#### Corporation

formed or registered on 01/03/1972—taider the law of Colorado, has complied with all applicable requirements of this office, and is in good standing with this office. This entity has been assigned entity identification number 19871251563

This certificate reflects facts established or disclosed by documents delivered to this office on paper through 09/28/2021, that have been posted, and by documents delivered to this office electronically through 09/29/2021 in 11:25:27

I have affixed hereto the Great Seal of the State of Colorado and duly generated, executed, and issued this official certificate at Denver, Colorado on 09:39 20:21 @ 11:25:27 in accordance with applicable law This certificate is assigned Confirmation Number 13474048



Secretary of State of the State of Colorado

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#### **Signer Events**

**David Patterson** 

david.patterson@falck.com

President

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#### Signature

David Patterson 7BD319407C7A455

Signature Adoption: Pre-selected Style

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BJ Pell

bjnsteve95@yahoo.com

Secretary

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Blair M. Dickhoner bdickhoner@wbapc.com

Security Level: Email, Account Authentication

(None)

Blair M. Dickhoner

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Location: DocuSign

**Signer Events** 

**David Patterson** david.patterson@falck.com

President

Security Level: Email, Account Authentication

(None)

Signature

David Patterson 7BD319407C7A455

Signature Adoption: Pre-selected Style

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Envelope Sent	Hashed/Encrypted	12/9/2021 11:11:10 AM
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To contact us by email send messages to: BusinessTechnology@CLAconnect.com

## To advise CliftonLarsonAllen LLP of your new email address

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## **TALLYNS REACH AUTHORITY**

Schedule of Cash Position Updated as of March 8, 2022

	G	eneral Fund	C	apital Fund	 Total
1st Bank Checking					
Balance as of 12/31/21	\$	158,374.35	\$	-	\$ 158,374.35
Subsequent activities:					
01/10/21 - Bill.com Void		200.00		-	200.00
01/21/22 - Reimbursement from Fieldstone		30,639.86		-	30,639.86
01/25/22 - Bill.com Payables		(200.00)		(6,927.54)	(7,127.54)
01/25/22 - Interfund transfer		(6,927.54)		6,927.54	-
01/27/22 - Bill.com Void		360.33		-	360.33
01/31/22 - January assessment payments		290,993.04		-	290,993.04
02/01/22 - Bill.com Payables		(84,091.45)		-	(84,091.45)
02/02/22 - City of Aurora auto pay		(1,093.22)		-	(1,093.22)
02/28/22 - February assessment payments		142,397.55		-	142,397.55
03/02/22 - City of Aurora auto pay		(1,119.63)			(1,119.63)
03/04/22 - Bill.com Payables		(93,093.18)		-	(93,093.18)
03/08/22 - Transfer to ColoTrust		(250,000.00)		-	(250,000.00)
March assessment payments to date		79,591.46			79,591.46
Anticipated Bill.Com Payables		(84,520.95)		-	(84,520.95)
Anticipated Balance	\$	181,510.62	\$	<u>-</u>	\$ 181,510.62
ColoTrust					
Balance as of 12/31/21	\$	162,647.17	\$	856,946.48	\$ 1,019,593.65
Subsequent activities: None					
01/25/22 - Interfund transfer		6,927.54		(6,927.54)	-
01/31/22 - Interest income		63.66		-	63.66
02/28/22 - Interest income		76.70		-	76.70
03/08/22 - Transfer from 1st Bank		250,000.00		-	250,000.00
Anticipated Balance	\$	419,715.07	\$	850,018.94	\$ 1,269,734.01
Total Anticipated Balances	\$	601,225.69	\$	850,018.94	\$ 1,451,244.63

# Yield Information @ 02/28/22:

Colotrust Plus - 0.10%

TALLYN'S REACH AUTHORITY Arapahoe County, Colorado

FINANCIAL STATEMENTS AND SUPPLEMENTARY INFORMATION

YEAR ENDED DECEMBER 31, 2021

## TALLYN'S REACH AUTHORITY TABLE OF CONTENTS YEAR ENDED DECEMBER 31, 2021

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# **INSERT INDEPENDENT AUDITORS' REPORT**

The management of Tallyn's Reach Authority (the Authority) offers the readers of the Authority's financial statements this narrative overview and analysis of the financial activities of the Authority for the fiscal year ended December 31, 2021.

The Management Discussion and Analysis (MD&A) focuses on the presentation of the financial statements and the related activities in two distinct ways: 1) the review of government-wide financials that reflect the overall assets and activity of the government including the Authority's capital assets, and 2) the more traditional view of the governmental funds that have been established to account for specific activities of the Authority.

This MD&A will provide a quick look at the highlights of each of these presentations, a more definitive view of what comprises each of these presentations, and a more detailed analysis of each of the presentations, key components and the changes that occurred during 2021.

## **Financial Highlights**

Government-wide financial statement highlights include:

- The assets of the Authority exceeded its liabilities and deferred inflows of resources at the close of the most recent fiscal year by \$7,004,193 (net position).
- Of the net position:
  - \$5,799,743 is the net investment in the Authority's capital assets, related to the acquisition of the assets.
  - The Authority has restricted a portion of the remaining net position in the amount of \$850,018 for the Capital Projects fund.
  - After considering the above restrictions, the Authority has unrestricted net position in the amount of \$354,432.
- The government's total net position decreased from 2020 to 2021 by \$100,251 under the full accrual method:
  - Program revenues decreased from the prior year by \$222,768 primarily as a result of receiving a one-time reimbursement from the City of Aurora in 2020 for irrigation updates. Expenses decreased \$277,563 from the prior year primarily due to lower public works expenses.

Fund financial statement highlights include:

- As of the close of the current fiscal year, the Authority's governmental funds reported a combined ending fund balance of \$1,204,450.
- The assigned and unassigned amounts of \$1,089,918 and \$89,962, respectively, are available for spending at the Authority's discretion. They are comprised of:
  - During 2021, the General Fund received \$1,930,947 in revenues, offset with \$1,834,090 in expenditures and a transfer of \$250,000 to the Capital Project Fund; thereby, the net decrease in fund balance for the year was \$153,143, resulting in an ending fund balance of \$354,432. \$24,570 is nonspendable and represents prepaid expenses at year end, \$239,900 assigned for the subsequent year's expenditures, and \$89,962 is unassigned.
  - The Capital Projects Fund received \$368 in revenues and \$250,000 of transfers from the General Fund. Revenues and other financing sources were offset with \$112,894 of expenditures leaving an ending fund balance of \$850,018 assigned for future capital projects.

#### **Overview of the Financial Statements**

Management's discussion and analysis is intended to serve as an introduction to the Authority's basic financial statements. The Authority's basic financial statements comprise three components: 1) government-wide financial statements, 2) fund financial statements, and 3) notes to financial statements. This report also contains other supplemental information in addition to the basic financial statements.

**Government-wide financial statements.** The government-wide financial statements are designed to provide readers with a broad overview of the Authority's finances, in a manner similar to a private-sector business.

The statement of net position presents information on all of the Authority's assets and liabilities, with the difference between the two reported as net assets. Over time, increases or decreases in the net position may serve as a useful indicator of whether the financial position of the Authority is improving or deteriorating.

The statement of activities presents information showing how the Authority's net assets changed during the current year. All changes in the net position are reported as soon as the underlying event giving rise to the change occurs, regardless of the timing of the related cash flows. Thus, revenue and expenses are reported in this statement for some items that will only result in cash flows in future fiscal years.

Both of the government-wide financial statements identify functions of the Authority that are principally to be supported by taxes and intergovernmental revenues (i.e. governmental activities).

The government-wide financial statements can be found on pages 1-2 of this report.

**Fund financial statements.** A fund is a grouping of related accounts that is used to maintain control over resources that have been segregated for specific activities or objectives. The Authority, like other state and local governments, uses fund accounting to ensure and demonstrate compliance with finance-related legal requirements. Both of the funds of the Authority are governmental funds.

Governmental funds are used to account for essentially the same functions reported as governmental activities in the government-wide financial statements. However, unlike the government-wide financial statements, governmental fund financial statements focus on near-term inflows and outflows of spendable resources, as well as on balances of spendable resources available at the end of the fiscal year. Such information may be useful in evaluating a government's near-term financing requirements.

Because the focus of governmental funds is narrower than that of the government-wide financial statements, it is useful to compare the information presented for governmental funds with similar information presented for governmental activities in the government-wide financial statements. By doing so, readers may better understand the long-term impact of the government's near-term financing decisions.

Both the governmental fund balance sheet and the governmental fund statement of revenues, expenditures, and changes in fund balances provide a reconciliation to facilitate this comparison between governmental funds and governmental activities.

The Authority maintains two individual governmental funds. Information is presented separately in the governmental fund balance sheet and in the governmental fund statement of revenues, expenditures, and changes in fund balances for each of the funds – general and capital projects – both of which are considered to be major funds.

The Authority adopts an annual appropriated budget for each fund. Budgetary comparison statements have been provided for the general fund in the basic financial statements to demonstrate compliance with the budget.

The basic governmental fund financial statements and reconciliation to the government-wide financial statements can be found on pages 3–6 of this report.

**Notes to financial statements.** The notes provide additional information that is essential to a full understanding of the data provided in the government-wide and fund financial statements. The notes to financial statements can be found on pages 7-16 of this report.

**Supplementary information.** The supplementary information provided in this report after the basic financial statements includes a schedule of revenues, expenditures, and changes in fund balances, budget and actual comparison, for the capital projects fund, and a statement of expenditures, budget and actual comparison, for the general fund. These schedules can be found on pages 18-20 of this report.

#### **Governmental Activities Financial Analysis**

Net position may serve over time as a useful indicator of a government's financial position. In the case of the Authority, assets exceeded liabilities and deferred inflows of resources by \$7,004,193 at the close of the most recent fiscal year.

#### **Net Position**

	Government	Increase		
	2021	2021 2020		
Assets				
Current and Other Assets	\$ 1,785,543	\$ 1,398,088	\$ 387,455	
Capital Assets	5,799,743	5,884,325	(84,582)	
Total Assets	7,585,286	7,282,413	302,873	
Liabilities				
Current and Other Liabilities	103,433	160,066	(56,633)	
Total Liabilities	103,433	160,066	(56,633)	
Deferred Inflows of Resources				
Prepaid Assessments	9,820	17,903	(8,083)	
Deferred Revenue	467,840		467,840	
Total Deferred Inflows of Resources	477,660	17,903	459,757	
Net Position				
Net Investment in Capital Assets	5,799,743	5,884,325	(84,582)	
Restricted	850,018	712,544	137,474	
Unrestricted	354,432	507,575	(153,143)	
Total Net Position	\$ 7,004,193	\$ 7,104,444	\$ (100,251)	

The most significant portion of the Authority's net position (83%) represents the Authority's investment in capital assets (e.g. land, buildings, infrastructure, machinery, and equipment). The Authority acquired these capital assets in order to provide recreational activities to citizens. Consequently, these assets are not available for future spending.

The Authority has an unrestricted net position in the amount of \$354,432. This amount can be used by the Authority to meet its ongoing obligations to constituents and creditors.

#### **Change in Net Position**

	Government	Increase		
	2021	2021 2020		
Revenues				
Program Revenues:				
Charges for Services	\$ 1,647,464	\$ 1,595,232	\$ 52,232	
Operating Grants and Contributions	250,000	250,000	-	
Capital Grants and Contributions	-	275,000	(275,000)	
General Revenues:				
Investment Income	630	7,218	(6,588)	
Other	33,221	25,292	7,929	
Total Revenues	1,931,315	2,152,742	(221,427)	
Expenses				
General Government	433,795	376,977	56,818	
Public Works	102,307	479,862	(377,555)	
Parks	1,269,243	1,248,389	20,854	
Recreation	226,221	203,901	22,320	
Total Expenses	2,031,566	2,309,129	(277,563)	
CHANGE IN NET POSITION	(100,251)	(156,387)	56,136	
Net Position - Beginning of Year	7,104,444	7,260,831	(156,387)	
NET POSITION - END OF YEAR	\$ 7,004,193	\$ 7,104,444	\$ (100,251)	

The Authority's net position decreased by \$100,251 during the current fiscal year. General operation fees and Sanctuary assessments, which consist of quarterly fees collected from single family residences and apartment residences, are accounted for as charges for services. Intergovernmental revenues, which consists of property taxes transferred from Tallyn's Reach Metropolitan District No. 2, are accounted for as operating grants and contributions.

#### **Governmental Funds Financial Analysis**

As noted earlier, the Authority used fund accounting to ensure and demonstrate compliance with finance-related legal requirements.

The focus of the Authority's governmental funds is to provide information on near-term inflows, outflows, and balances of spendable resources. Such information is useful in assessing the Authority's financing requirements. In particular, unreserved fund balance may serve as a useful measure of a government's net resources available for spending at the end of the fiscal year.

As of the end of the current fiscal year, the Authority's governmental funds reported a combined ending fund balance of \$1,204,450, all of which constitutes an assigned, unassigned, or nonspendable fund balance, which is available for spending at the government's discretion within the parameters established for each fund.

The General Fund is the chief operating fund of the Authority. At the end of the current fiscal year, an unassigned fund balance of \$89,962, assigned fund balance of \$239,900, and nonspendable fund balance of \$24,570 was held in the General Fund.

The Capital Projects Fund is used for future construction of infrastructure and other capital-related activities. At year-end, the total fund balance is \$850,018, all of which are assigned.

## **General Fund Budgetary Highlights**

The Authority prepares its budget on the modified accrual basis of accounting to recognize the fiscal impact of debt issuance, sales of assets and debt repayments, as well as capital outlay, in addition to operations and non-operating revenue and contributions. Depreciation is not reflected on the budget since it does not affect funds available. This budgetary accounting is required by State statutes.

#### **Capital Assets**

The Authority had \$5,799,743 invested in net capital assets for its governmental activities for the year ended December 31, 2021. This investment in capital assets, which is net of accumulated depreciation, includes land improvement for parks, recreation centers, and recreational equipment.

Additional information on the Authority's capital assets can be found within Note 4 of this report.

#### **Next Year's Budget and Rates**

The Authority has appropriated \$2,118,020 in the General Fund and \$645,000 in the Capital Projects Fund for spending in the 2022 fiscal year.

#### **Request for Information**

Management's discussion and analysis is designed to provide a general overview of the Authority's finances. Questions concerning any of the information provided within this report or requests for additional information should be addressed to:

Accountant of Tallyn's Reach Authority 8390 East Crescent Parkway, Suite 300 Greenwood Village, CO 80111

# **BASIC FINANCIAL STATEMENTS**

## **TALLYN'S REACH AUTHORITY** STATEMENT OF NET POSITION **DECEMBER 31, 2021**

	Governmental Activities	
ASSETS	<b>A 204 204</b>	
Cash and Investments	\$ 321,021	
Cash and Investments - Restricted	856,946	
Prepaid Expense	24,570	
Accounts Receivable	583,006	
Capital Assets, Net of Accumulated Depreciation	5,799,743	
Total Assets	7,585,286	
LIABILITIES		
Accounts Payable	74,857	
Accrued Liabilities	28,576	
Total Liabilities	103,433	
DEFERRED INFLOWS OF RESOURCES		
Prepaid Assessments	9,820	
Deferred Revenue	467,840	
Total Deferred Inflows of Resources	477,660	
NET POSITION		
Net Investment in Capital Assets	5,799,743	
Restricted for:	5,. 55,7 10	
Capital Projects	850,018	
Unrestricted	354,432	
O III O O IIII O O III		
Total Net Position	\$ 7,004,193	

Net Revenues

## **TALLYN'S REACH AUTHORITY STATEMENT OF ACTIVITIES** YEAR ENDED DECEMBER 31, 2021

			Program Revenues		(Expenses) and Changes in Net Position
	Expenses	Charges for Services	Operating Grants and Contributions	Capital Grants and Contributions	Governmental Activities
FUNCTIONS/PROGRAMS Primary Government: Government Activities:					
General Government Public Works Parks Recreation	\$ 433,795 102,307 1,269,243 226,221	\$ 368,251 - 1,085,704 193,508	\$ 250,000	\$ - - -	\$ 184,456 (102,307) (183,539) (32,713)
Total Governmental Activities	\$ 2,031,566	\$ 1,647,464	\$ 250,000	\$ -	(134,102)
GENERAL REVENUES Investment income Other Income Total General Revenues  CHANGES IN NET POSITION					630 33,221 33,851
					(100,251)
Net Position - Beginning of Year				7,104,444	
	NET POSITION -	END OF YEAR			\$ 7,004,193

## **TALLYN'S REACH AUTHORITY BALANCE SHEET - GOVERNMENTAL FUNDS** YEAR ENDED DECEMBER 31, 2021

ASSETS		General	Capital Projects	Go	Total vernmental Funds
Cash and Investments	\$	321,021	\$ -	\$	321,021
Cash and Investments - Restricted Accounts Receivable		- 583,006	856,946		856,946 583,006
Prepaid Expense		24,570	-		24,570
Total Assets	\$	928,597	\$ 856,946	\$	1,785,543
LIABILITIES, DEFERRED INFLOWS OF RESOURCES, AND FUND BALANCES					
LIABILITIES					
Accounts Payable Accrued Liabilities	\$	67,929 28,576	\$ 6,928 -	\$	74,857 28,576
Total Liabilities		96,505	6,928		103,433
DEFERRED INFLOWS OF RESOURCES					
Prepaid Assessments		9,820	_		9,820
Deferred Revenue		467,840	-		467,840
Total Deferred Inflows of Resources		477,660	-		477,660
FUND BALANCES					
Nonspendable		24,570	-		24,570
Assigned to:					
Subsequent Year's Expenditures		239,900	<b>-</b>		239,900
Capital Projects		-	850,018		850,018
Unassigned Total Fund Balances		89,962	 950 019		89,962
Total Fund Balances	_	354,432	 850,018		1,204,450
Total Liabilities, Deferred Inflows of Resources,					
and Fund Balances	\$	928,597	\$ 856,946		
Amounts reported for governmental activities in the statement of net position are different because:  Capital assets used in governmental activities are not financial resources and, therefore, are not reported as assets in the funds.					
Capital Assets, Net of Accumulated Depreciation					5,799,743
Net Position of Governmental Activities				¢	7 004 103
NECT OSITION OF GOVERNMENTAL ACTIVITIES				φ	7,004,193

## TALLYN'S REACH AUTHORITY STATEMENT OF REVENUES, EXPENDITURES, AND CHANGES IN FUND BALANCES **GOVERNMENTAL FUNDS** YEAR ENDED DECEMBER 31, 2021

	General Fund	Capital Projects	Total Governmental Funds
REVENUES	<b>.</b>	•	<b>.</b>
General Operations Fees	\$ 1,443,149	\$ -	\$ 1,443,149
Transfer from TRMD No. 2	250,000	-	250,000
Sanctuary Assessments	204,000	-	204,000
Clubhouse Rental	315	-	315
Interest Income	262	368	630
Legal, Late, and Collection Income	6,417	-	6,417
Penalties	25,557	-	25,557
Other Revenue	1,247		1,247
Total Revenues	1,930,947	368	1,931,315
EXPENDITURES Current:			
General and Administration	210,292	-	210,292
Operations Expenses	128,334	-	128,334
Grounds Expenses	994,572	-	994,572
Recreation Expenses	226,221	-	226,221
Utilities Expenses	274,671	-	274,671
Signage	-	10,587	10,587
Irrigation Updates	-	67,397	67,397
Retaining Walls	-	19,110	19,110
Hammerhead		15,800	15,800
Total Expenditures	1,834,090	112,894	1,946,984
EXCESS OF REVENUES OVER (UNDER) EXPENDITURES	96,857	(112,526)	(15,669)
OTHER FINANCING SOURCES (USES)			
Transfers to Other Fund	(250,000)	_	(250,000)
Transfers from Other Fund	-	250,000	250,000
Total Other Financing Sources (Uses)	(250,000)	250,000	
NET CHANGE IN FUND BALANCES	(153,143)	137,474	(15,669)
Fund Balances - Beginning of Year	507,575	712,544	1,220,119
FUND BALANCES - END OF YEAR	\$ 354,432	\$ 850,018	\$ 1,204,450

## **TALLYN'S REACH AUTHORITY** RECONCILIATION OF THE STATEMENT OF REVENUES. EXPENDITURES, AND CHANGES IN FUND BALANCES OF GOVERNMENTAL FUNDS TO THE STATEMENT OF ACTIVITIES YEAR ENDED DECEMBER 31, 2021

Net Change in Fund Balances - Total Governmental Funds

\$ (15,669)

Amounts reported for governmental activities in the statement of activities are different because:

Governmental funds report capital outlays as expenditures. In the statement of activities, capital outlay is not reported as an expenditure. However, the statement of activities will report as depreciation expense the allocation of the cost of any depreciable asset over the estimated useful life of the asset.

Capital Outlay

6,928

Depreciation Expense

(91,510)

Changes in Net Position of Governmental Activities

(100,251)

## TALLYN'S REACH AUTHORITY **GENERAL FUND** STATEMENT OF REVENUES, EXPENDITURES, AND CHANGES IN **FUND BALANCE – BUDGET AND ACTUAL** YEAR ENDED DECEMBER 31, 2021

		riginal and nal Budget	Actual Amouts	Fin F	iance with al Budget Positive legative)
REVENUES					
General Operations Fees	\$	1,443,200	\$ 1,443,149	\$	(51)
Transfer from TRMD No. 2	Ψ	250,000	250,000	Ψ	-
Sanctuary Assessments		204,000	204,000		-
Clubhouse Rental		10,000	315		(9,685)
Interest Income		1,000	262		(738)
Legal, Late, and Collection Income		-	6,417		6,417
Penalties		-	25,557		25,557
Other Revenue		1,000	1,247		247
Pool Keys		500			(500)
Total Revenues		1,909,700	1,930,947		21,247
EXPENDITURES					
General and Administration		184,500	210,292		(25,792)
Operations Expenses		126,000	128,334		(2,334)
Grounds Expenses		1,015,600	994,572		21,028
Recreation Expenses		234,243	226,221		8,022
Utilities Expenses		375,000	274,671		100,329
Total Expenditures		1,935,343	1,834,090		101,253
EXCESS OF REVENUES OVER (UNDER) EXPENDITURES		(25,643)	96,857		122,500
OTHER FINANCING SOURCES (USES)					
Transfers Out		(250,000)	(250,000)		_
Total Other Financing Uses		(250,000)	(250,000)		-
NET CHANGE IN FUND BALANCE		(275,643)	(153,143)		122,500
Fund Balance - Beginning of Year		470,103	507,575		37,472
FUND BALANCE - END OF YEAR	\$	194,460	\$ 354,432	\$	159,972

#### NOTE 1 **DEFINITION OF REPORTING ENTITY**

The Tallyn's Reach Authority (Authority) was established on February 12, 2018, pursuant to the Tallyn's Reach Authority Establishment Agreement whereby the Tallyn's Reach Metropolitan District No. 2 (District No. 2) and Tallyn's Reach Metropolitan District No. 3 (District No. 3) agreed to establish the Authority. The Authority was organized for the purpose of planning, financing, designing, constructing, installing, operating, maintaining, repairing and replacing public improvements and facilities and providing services to the residents of the Tallyn's Reach districts. Tallyn's Reach Metropolitan District No. 1 (District No. 1), District No. 2 and District No. 3 were originally organized on November 6, 1998, as quasi-municipal organizations established under the state of Colorado Special District Act. All three districts are governed by the same Service Plan, which provides that District No. 1 is the "Operating District" and District No. 2 and District No. 3 are the "Taxing Districts". District No. 1 was established to provide water, street, traffic and safety control, television relay and translator, transportation, parks and recreation and sanitation improvements that benefit the citizens of the District. The Taxing Districts are to provide funding to the Operating District for the construction, operation and maintenance of various public improvements and the Operating District is expected to manage such construction, operation and maintenance. As of May 9, 2018, District No. 1 assigned all of its assets, liabilities, rights and obligations to the Authority after which District No. 1 was dissolved. The Authority's primary revenues are homeowner assessments and other fees. The Taxing Districts' primary revenues are property taxes. The Authority is governed by an elected Board of Directors.

The Authority follows the Governmental Accounting Standards Board (GASB) accounting pronouncements which provide guidance for determining which governmental activities, organizations and functions should be included within the financial reporting entity. GASB pronouncements set forth the financial accountability of a governmental organization's elected governing body as the basic criterion for including a possible component governmental organization in a primary government's legal entity. Financial accountability includes, but is not limited to, appointment of a voting majority of the organization's governing body, ability to impose its will on the organization, a potential for the organization to provide specific financial benefits or burdens and fiscal dependency.

The Authority has no employees and all operations and administrative functions are contracted.

The Authority is not financially accountable for any other organization, nor is the Authority a component unit of any other primary governmental entity

#### NOTE 2 SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

The more significant accounting policies of the Authority are described as follows:

#### **Government-Wide and Fund Financial Statements**

The government-wide financial statements include the statement of net position and the statement of activities. These financial statements include all of the activities of the Authority. The effect of interfund activity has been removed from these statements. Governmental activities are normally supported by taxes and intergovernmental revenues.

The statement of net position reports all financial and capital resources of the Authority. The difference between the sum of assets and deferred outflows and the sum of liabilities and deferred inflows is reported as net position.

The statement of activities demonstrates the degree to which the direct and indirect expenses of a given function or segment are offset by program revenues. Direct expenses are those that are clearly identifiable with a specific function or segment. Program revenues include 1) charges to customers or applicants who purchase, use, or directly benefit from goods, services, or privileges provided by a given function or segment, and 2) grants and contributions that are restricted to meeting the operational or capital requirements of a particular function or segment. Taxes and other items not properly included among program revenues are reported instead as general revenues.

Separate financial statements are provided for the governmental funds. Major individual governmental funds are reported as separate columns in the fund financial statements.

#### Measurement Focus, Basis of Accounting, and Financial Statement Presentation

The government-wide financial statements are reported using the economic resources measurement focus and the accrual basis of accounting. Revenues are recorded when earned and expenses are recorded when a liability is incurred, regardless of the timing of related cash flows.

Governmental fund financial statements are reported using the current financial resources measurement focus and the modified accrual basis of accounting. Revenues are recognized as soon as they are both measurable and available. Revenues are considered to be available when they are collectible within the current period or soon enough thereafter to pay liabilities of the current period. For this purpose, the government considers revenues to be available if they are collected within 60 days of the end of the current fiscal period. The major sources of revenue susceptible to accrual are property taxes and specific ownership taxes. All other revenue items are considered to be measurable and available only when cash is received by the Authority. Expenditures, other than interest on long-term obligations, are recorded when the liability is incurred or the long-term obligation is due.

#### NOTE 2 SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

The Authority reports the following major governmental funds:

The General Fund is the Authority's primary operating fund. It accounts for all financial resources of the general government, except those required to be accounted for in another fund.

The Capital Projects Fund is used to account for financial resources to be used for the acquisition and construction of capital improvements.

#### **Budgets**

In accordance with the State Budget Law, the Authority's Board of Directors holds public hearings in the fall each year to approve the budget and appropriate the funds for the ensuing year. The appropriation is at the total fund expenditures level and lapses at year-end. The Authority's Board of Directors can modify the budget by line item within the total appropriation without notification. The appropriation can only be modified upon completion of notification and publication requirements. The budget includes each fund on its basis of accounting, unless otherwise indicated.

### **Pooled Cash and Investments**

The Authority's cash and cash equivalents are considered to be cash on hand and shortterm investments with maturities of three months or less from the date of acquisition. Investments for the government are reported at fair value.

The Authority follows the practice of pooling cash and investments of all funds to maximize investment earnings. Except when required by trust or other agreements, all cash is deposited to and disbursed from a minimum number of bank accounts. Cash in excess of immediate operating requirements is pooled for deposit and investment flexibility. Investment earnings are allocated periodically to the participating funds based upon each fund's average equity balance in the total cash.

#### **Fair Value of Financial Instruments**

The Authority's financial instruments include cash and cash equivalents, accounts receivable and accounts payable. The Authority estimates that the fair value of all financial instruments at December 31, 2021, does not differ materially from the aggregate carrying values of its financial instruments recorded in the accompanying balance sheet. The carrying amount of these financial instruments approximates fair value because of the short maturity of these instruments.

#### NOTE 2 SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

#### **Estimates**

The preparation of these financial statements in conformity with accounting principles generally accepted in the United States of America requires Authority management to make estimates and assumptions that affect certain reported amounts and disclosures. Accordingly, actual results could differ from those estimates.

#### Capital Assets

Capital assets, which include property, plant, equipment, and infrastructure assets (e.g. roads, bridges, sidewalks, and similar items), are reported in the government-wide financial statements. Capital assets are defined by the Authority as assets with an initial, individual cost of more than \$5,000 and an estimated useful life in excess of two years. Such assets are recorded as historical cost or estimated historical cost if purchased or constructed. Donated capital assets are recorded at acquisition value at the date of donation.

The costs of normal maintenance and repairs that do not add to the value of the assets or materially extend the life of the asset are not capitalized. Improvements are capitalized and depreciated over the remaining useful lives of the related fixed assets, as applicable using the straight-line method. Depreciation on property that will remain assets of the Authority is reported on the statement of activities as a current charge. Improvements that will be conveyed to other governmental entities are classified as construction in progress and are not depreciated. Land and certain landscaping improvements are not depreciated.

Property, plant and equipment are depreciated using the straight-line method over the following estimated useful lives:

Parks and Recreation 25 years Recreation Equipment 5 years

#### **Deferred Inflows of Resources**

In addition to liabilities, the statement of net position reports a separate section for deferred inflows of resources. This separate financial statement element, *deferred inflows of resources*, represents an acquisition of net position that applies to a future period and so will not be recognized as an inflow of resources (revenue) until that time. The Authority has two items that qualify for reporting in this category. Accordingly, the items, *prepaid assessments and deferred revenue*, are deferred and recognized as an inflow of resources in the period that the amount becomes available.

#### Equity

#### Net Position

For government-wide presentation purposes when both restricted and unrestricted resources are available for use, it is the Authority's practice to use restricted resources first, then unrestricted resources as they are needed.

## NOTE 2 SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

### **Equity (Continued)**

### Fund Balance

Fund balance for governmental funds should be reported in classifications that comprise a hierarchy based on the extent to which the government is bound to honor constraints on the specific purposes for which spending can occur. Governmental funds report up to five classifications of fund balance: nonspendable, restricted, committed, assigned, and unassigned. Because circumstances differ among governments, not every government or every governmental fund will present all of these components. The following classifications describe the relative strength of the spending constraints:

Nonspendable Fund Balance – The portion of fund balance that cannot be spent because it is either not in spendable form (such as prepaid amounts or inventory) or legally or contractually required to be maintained intact.

Restricted Fund Balance – The portion of fund balance that is constrained to being used for a specific purpose by external parties (such as bondholders), constitutional provisions, or enabling legislation.

Committed Fund Balance – The portion of fund balance that can only be used for specific purposes pursuant to constraints imposed by formal action of the government's highest level of decision-making authority, the Board of Directors. The constraint may be removed or changed only through formal action of the Board of Directors.

Assigned Fund Balance – The portion of fund balance that is constrained by the government's intent to be used for specific purposes, but is neither restricted nor committed. Intent is expressed by the Board of Directors to be used for a specific purpose. Constraints imposed on the use of assigned amounts are more easily removed.

*Unassigned Fund Balance* – The residual portion of fund balance that does not meet any of the criteria described above.

If more than one classification of fund balance is available for use when an expenditure is incurred, it is the Authority's practice to use the most restrictive classification first.

#### NOTE 3 CASH AND INVESTMENTS

Cash and investments as of December 31, 2021, are classified in the accompanying financial statements as follows:

Statement of Net Position:

Cash and Investments	\$ 321,021
Cash and Investments - Restricted	 856,946
Total Cash and Investments	\$ 1,177,967

Cash and investments as of December 31, 2021, consist of the following:

Deposits with Financial Institutions	\$ 158,374
Investments	1,019,593
Total Cash and Investments	\$ 1,177,967

#### **Deposits with Financial Institutions**

The Colorado Public Deposit Protection Act (PDPA) requires that all units of local government deposit cash in eligible public depositories. Eligibility is determined by state regulators. Amounts on deposit in excess of federal insurance levels must be collateralized. The eligible collateral is determined by the PDPA. PDPA allows the institution to create a single collateral pool for all public funds. The pool for all the uninsured public deposits as a group is to be maintained by another institution or held in trust. The market value of the collateral must be at least 102% of the aggregate uninsured deposits.

The State Commissioners for banks and financial services are required by statute to monitor the naming of eligible depositories and reporting of the uninsured deposits and assets maintained in the collateral pools.

At December 31, 2021, the Authority's cash deposits had a bank and carrying balance of \$158,374.

#### **Investments**

The Authority has not adopted a formal investment policy; however, the Authority follows state statutes regarding investments.

The Authority generally limits its concentration of investments to those noted with an asterisk (\*) below, which are believed to have minimal credit risk, minimal interest rate risk, and no foreign currency risk. Additionally, the Authority is not subject to concentration risk or investment custodial risk disclosure requirements for investments that are in the possession of another party.

### NOTE 3 CASH AND INVESTMENTS (CONTINUED)

Colorado revised statues limit investment maturities to five years or less unless formally approved by the Board of Directors. Such actions are generally associated with a debt service reserve or sinking fund requirements.

Colorado statues specify investment instruments meeting defined rating and risk criteria in which local governments may invest, which include:

- . Obligations of the United States, certain U.S. government agency securities and securities of the World Bank
- . General obligation and revenue bonds of U.S. local government entities
- . Certain certificates of participation
- . Certain securities lending agreements
- . Bankers' acceptances of certain banks
- . Commercial paper
- . Written repurchase agreements and certain reverse repurchase agreements collateralized by certain authorized securities
- . Certain money market funds
- . Guaranteed investment contracts
- \* Local government investment pools

As of December 31, 2021, the Authority had the following investments:

<u>Investment</u>	Maturity	Amount
Colorado Liquid Asset Trust (COLOTRUST)	Weighted Average	
	Under 60 Days	\$1,019,593
Total Investments		\$1,019,593

#### COLOTRUST

The Authority invested in the Colorado Local Government Liquid Asset Trust (COLOTRUST) (the Trust), an investment vehicle established for local government entities in Colorado to pool surplus funds. The State Securities Commissioner administers and enforces all State statutes governing the Trust. The Trust operates similarly to a money market fund and each share is equal in value to \$1.00. The Trust offers shares in two portfolios, COLOTRUST PRIME and COLOTRUST PLUS+. Both portfolios may invest in U.S. Treasury securities and repurchase agreements collateralized by U.S. Treasury securities. COLOTRUST PLUS+ may also invest in certain obligations of U.S. government agencies, highest rated commercial paper and any security allowed under CRS 24-75-601. A designated custodial bank serves as custodian for the Trust's portfolios pursuant to a custodian agreement. The custodian acts as safekeeping agent for the Trust's investment portfolios and provides services as the depository in connection with direct investments and withdrawals. The custodian's internal records segregate investments owned by the Trust. COLOTRUST is rated AAAm by Standard & Poor's. COLOTRUST records its investments at fair value and the Authority records its investment in COLOTRUST at net asset value as determined by fair value. There are no unfunded commitments, the redemption frequency is daily, and there is no redemption notice period.

#### NOTE 4 CAPITAL ASSETS

An analysis of the changes in capital assets for the year ended December 31, 2021, follows:

	Jan	Balance uary 01, 2021	А	dditions	Dele	tions	Balance mber 31, 2021
Capital Assets, Not Depreciated:  Landscaping Costs	\$	5,095,698	\$	_	\$	_	\$ 5,095,698
Capital Assets, Being Depreciated:		, , , , , , , , , , , , , , , , , , ,	<u></u>				 , , , , , , , , , , , , , , , , , , ,
Recreation Center and Pool		1,929,510		-			1,929,510
Recreation Equipment		33,980		6,928		-	40,908
Total Capital Assets, Being Depreciated		1,963,490		6,928	-		 1,970,418
Total Accumulated Depreciation		(1,174,863)		(91,510)			 (1,266,373)
Total Capital Assets,							
Being Depreciated, Net		788,627		(84,582)			 704,045
Total Assets	\$	5,884,325	\$	(84,582)	\$		\$ 5,799,743

#### NOTE 5 NET POSITION

The Authority has net position consisting of three components - net investment in capital assets, restricted, and unrestricted.

Net investments in capital assets consists of capital assets, net of accumulated depreciation and reduced by the outstanding balances of bonds, mortgages, notes, or other borrowings that are attributable to the acquisition, construction, or improvement of those assets. As of December 31, 2021, the Authority had net investment in capital assets of \$5,799,743.

The restricted component of net position includes net assets that are restricted for use either externally imposed by creditors, grantors, contributors, or laws and regulations of other governments or imposed by law through constitutional provisions or enabling legislation. The Authority had a restricted net position as of December 31, 2021 as follows:

Restricted Net Position: Capital Projects

850,018 Total Restricted Net Position 850,018

#### NOTE 6 DEVELOPMENT AND OPERATIONS FEES

## Amended and Restated Joint Resolution Concerning the Imposition of District Development Fees

On August 24, 1999, and as amended and/or restated in 2000, 2001, 2002, 2003, 2005, 2007, 2010, and 2012, District Nos. 1, 2 and 3 entered into a Joint Resolution Concerning the Imposition of District Development Fees which authorized District No. 1 to impose a development fee due not later than thirty days after the date upon which a building permit is issued to a buyer by the City of Aurora. The fee was initially set in 2001 at \$3,000 per detached single-family residence. Various multi-family rates also apply. The fee can increase by 5% per year. During 2017, the fee for 2018 and 2019 was set at \$6,850 and this rate did not change in 2020 or 2021. Pursuant to the Tallyn's Reach Authority Establishment Agreement, the Authority is now authorized to impose development fees. During the period ended December 31, 2021, the Authority earned no development fees. The resolution also established a General Operations Fee which is to be used to cover the costs associated with the operation and maintenance of Tallyn's Reach facilities. On December 3, 2013, District Nos. 1, 2 and 3 approved an Amended and Restated Joint Resolution Regarding the Imposition of District Fees which further clarified the fees and established a schedule of fees for 2015 which is adjusted on an annual basis. For 2021, the operations fee was \$200 per quarter for single family residences and \$100 per quarter for apartment residences. Pursuant to the Tallyn's Reach Authority Establishment Agreement, the Authority is now authorized to impose General Operations fees. During the period ended December 31, 2021, the Authority collected \$1,443,149 of these fees.

#### NOTE 7 INTERFUND AND OPERATING TRANSFERS

The transfer of \$250,000 from the General Fund to the Capital Projects Fund was transferred for the purpose of funding future capital improvement costs.

#### NOTE 8 RISK MANAGEMENT

The Authority is exposed to various risks of loss related to torts, thefts of, damage to, or destruction of assets; errors or omissions; injuries to employees, or acts of God.

The Authority is a member of the Colorado Special Districts Property and Liability Pool (Pool). The Pool is an organization created by intergovernmental agreement to provide property, liability, public officials' liability, boiler and machinery and workers' compensation coverage to its members. Settled claims have not exceeded this coverage in any of the past three fiscal years.

The Authority pays annual premiums to the Pool for liability, workers' compensation, property, and public officials' liability coverage. In the event aggregated losses incurred by the Pool exceed amounts recoverable from reinsurance contracts and funds accumulated by the Pool, the Pool may require additional contributions from the Pool members. Any excess funds which the Pool determines are not needed for purposes of the Pool may be returned to the members pursuant to a distribution formula.

#### NOTE 9 TAX, SPENDING AND DEBT LIMITATIONS

Article X, Section 20 of the Colorado Constitution, referred to as the Taxpayer's Bill of Rights (TABOR), contains tax, spending, revenue and debt limitations which apply to the state of Colorado and all local governments.

Spending and revenue limits are determined based on the prior year's Fiscal Year Spending adjusted for allowable increases based upon inflation and local growth. Fiscal Year Spending is generally defined as expenditures plus reserve increases with certain exceptions. Revenue in excess of the Fiscal Year Spending limits must be refunded unless the voters approve retention of such revenue.

On November 3, 1998 and November 7, 2000, the District voters passed an election question to increase property taxes \$100,000,000 annually as adjusted for inflation, without limitation of rate, to pay the Authority's operations, maintenance, and other expenses. Additionally, the District's electors authorized the Authority to collect, retain, and spend all revenue without regard to any limitations under TABOR.

TABOR requires local governments to establish Emergency Reserves. These reserves must be at least 3% of Fiscal Year Spending (excluding bonded debt service). Local governments are not allowed to use the Emergency Reserves to compensate for economic conditions, revenue shortfalls, or salary or benefit increases.

The Authority's management believes it is in compliance with the provisions of TABOR. However, TABOR is complex and subject to interpretation. Many of the provisions, including the interpretation of how to calculate Fiscal Year Spending limits will require judicial interpretation.

## **SUPPLEMENTARY INFORMATION**

## TALLYN'S REACH AUTHORITY **CAPITAL PROJECTS FUND** SCHEDULE OF REVENUES, EXPENDITURES, AND CHANGES IN **FUND BALANCE – BUDGET AND ACTUAL** YEAR ENDED DECEMBER 31, 2021

	aı	Original nd Final Budget		Actual Amounts	Fin F	iance with al Budget Positive legative)
REVENUES	Φ.	4 000	Φ.	000	•	(000)
Interest Income	\$	1,000	\$	368	\$	(632)
Total Revenues		1,000		368		(632)
EXPENDITURES						
Signage		80,000		10,587		69,413
Irrigation Updates		-		67,397		(67,397)
Retaining Walls		40,000		19,110		20,890
Native Grass Maintenance and Upgrades		40,000		-		40,000
Hammerhead		15,000		15,800		(800)
Total Expenditures		175,000		112,894		62,106
EXCESS OF REVENUES OVER (UNDER) EXPENDITURES		(174,000)		(112,526)		61,474
OTHER FINANCING SOURCES (USES)						
Transfers from Other Funds		250,000		250,000		-
Total Other Financing Sources		250,000		250,000		
NET CHANGE IN FUND BALANCE		76,000		137,474		61,474
Fund Balance - Beginning of Year		772,582		712,544		(60,038)
FUND BALANCE - END OF YEAR	\$	848,582	\$	850,018	\$	1,436

## **TALLYN'S REACH AUTHORITY GENERAL FUND** STATEMENT OF EXPENDITURES – BUDGET AND ACTUAL YEAR ENDED DECEMBER 31, 2021

	ar	Original nd Final Budget	Actual mounts	Variance with Final Budget Positive (Negative)
EXPENDITURES				
General and Administration				
Administrative Legal Services	\$	35,000	\$ 54,688	\$ (19,688)
Accounting		35,000	43,832	(8,832)
Insurance and Bonds		31,000	23,870	7,130
Billing		24,000	24,000	-
Authority Management		24,000	28,584	(4,584)
Authority Mapping Services		12,500	16,032	(3,532)
Miscellaneous		4,000	6,567	(2,567)
Auditing		10,000	9,750	250
Bad Debt Expense		4,000	-	4,000
Banking Fees		500	312	188
Dues and Licenses		2,000	2,057	(57)
Website/Newsletter		2,500	600	1,900
Total General and Administration		184,500	 210,292	(25,792)
		, , , , , , ,	-, -	( -, - ,
Operations Expenses				
Property Management		40,000	52,814	(12,814)
Operations Legal Services		35,000	33,617	1,383
Legal Collections		24,000	25,073	(1,073)
Direct Costs		17,000	10,762	6,238
Engineering		10,000	6,068	 3,932
Total Operations Expenses		126,000	128,334	(2,334)
Grounds Expenses				
Landscape Contract		278,400	278,400	_
Tree and Shrub Maintenance		190,000	282,530	(92,530)
Landscape Improvements		125,000	83,996	41,004
Irrigation Management		112,000	120,926	(8,926)
Irrigation Repairs		70,000	84,716	(14,716)
Native Grass Mowing		50,000	-	50,000
Snow Removal		45,000	53,823	(8,823)
Painting and Foundation Beds		38,000	28,184	9,816
Annual Flowers		30,000	20,514	9,486
Winter Watering		20,000	13,400	6,600
Seasonal Décor		18,000	15,168	2,832
Pest Control		10,000	3,580	6,420
		•	3,360	
Retaining Walls		10,000	-	10,000
Signage		10,000	4 404	10,000
Lighting and Electrical Repairs		6,000	4,404	1,596
Fountain Maintenance		2,000	-	2,000
Flag Maintenance		1,200	2,281	(1,081)
Common Area Maintenance		1 015 055	 2,650	 (2,650)
Total Grounds Expenses		1,015,600	994,572	21,028

## TALLYN'S REACH AUTHORITY **GENERAL FUND** STATEMENT OF EXPENDITURES – BUDGET AND ACTUAL (CONTINUED) YEAR ENDED DECEMBER 31, 2021

	а	Original nd Final Budget	Actual Amounts	Fi	ariance with nal Budget Positive Negative)
EXPENDITURES		_			
Recreation Expenses					
Pool Contract	\$	101,295	\$ 135,060	\$	(33,765)
Pool Repairs		20,000	799		19,201
Pool Chemicals		8,000	23,335		(15,335)
Pool Furniture		15,000	-		15,000
Pool Equipment		5,000	-		5,000
Kiddie Pool		5,000	-		5,000
Storage Building and Pool House		2,000	-		2,000
Security System		6,000	16,933		(10,933)
Clubhouse Maintenance Supplies		3,000	299		2,701
Indoor Building Maintenance		12,000	3,141		8,859
Outside Building Maintenance		10,000	8,858		1,142
Janitorial and Housekeeping		7,000	2,607		4,393
Tennis Court Maintenance		1,500	-		1,500
Playground Equipment		800	425		375
Telephone and Access Control		5,000	5,134		(134)
Clubhouse Management		23,448	21,493		1,955
Trash Removal		4,200	8,004		(3,804)
Supplies Other		5,000	 133		4,867
Total Recreation Expenses		234,243	226,221		8,022
Utilities Expenses					
Water and Sewer		360,000	259,807		100,193
Gas and Electric		15,000	14,864		136
Total Utilities Expenses		375,000	274,671		100,329
Total Expenditures	\$	1,935,343	\$ 1,834,090	\$	101,253

## Jenkins, Cindy

From: The Mailchimp Team < notifications@mailchimp.com >

Sent: Monday, January 10, 2022 9:51 AM

To: McHale, Amy < Amy. McHale@claconnect.com >

Subject: [External] An important update to our pricing plans

You don't often get email from notifications@mailchimp.com. Learn why this is important

Think Security – This email originated from an external source. Be cautious with any links or attachments.



We updated the monthly prices for our Marketing platform plans. We want to make sure you know what to expect, so here's what this change means for you. The base price of your monthly Marketing plan will increase from \$30.99 to \$34 for your account, Tallyn's Reach Metro District, beginning with your billing cycle that starts on or after February 1, 2022. This new price is based on your currently selected plan and does not reflect any add-ons, promotions, discounts, or taxes. Additionally, the cost for add-on contact blocks for your currently selected plan will increase from \$9.99 to \$11 per block. Please note that you may have multiple add-on contact blocks associated with your plan, and this increase will apply to each block. Your billing estimate on the billing plan page in your account will show if any add-on contact blocks will be added to your bill.

As always, we're focused on creating a platform that lets users like you reach your marketing goals and connect with your customers. Some of this work is behind the scenes—like building a smarter, faster system so you can get your marketing materials in front of your customers at the right moments. And over the past year, we've invested in features such as enhanced design tools, robust automation solutions, deep analytics insights, additional integrations, and more. To learn more about the new features we've released, we welcome you to check out our <a href="What's New page">What's New page</a>.

Beginning with your billing cycle that starts on or after February 1, 2022, you'll be able to see your new monthly cost in your preferred currency reflected on the <u>billing plan</u> page in your account. You can also find the new pricing for all of our plans on our <u>pricing page</u>. If you want to <u>make any changes</u> to your plan, you can do so in your account. Keep in mind, if you make any changes before your billing cycle that begins on or after February 1, the new plan cost will take effect immediately.

Your continued support means so much to all of us at Mailchimp. If you have any questions, our <u>pricing plan resource</u> answers many common questions about our plans and billing, or you can reply to this email and one of our support team members will be happy to help.

- The Mailchimp Team

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#### Our mailing address is:

Mailchimp 675 Ponce de Leon Ave. NE Suite 5000 Atlanta, GA 30308

You're receiving this email because you have a Mailchimp account and we are required to notify you about these changes.



## **Proposal for Extra Work at Tallyn's Reach Authority**

**Property Name** Tallyn's Reach Authority **Property Address** 

Contact Celeste Terrell 24900 E Park Crescent Dr. То

Tallyns Reach Authority Aurora, CO 80016 Billing Address

370 Interlocken Blvd Ste 500 Broomfield, CO 80021

**Project Name** Additional cost to empty dog stations a second time each week

**Project Description** Additional cost to empty dog stations a second time each week (based on 52

**Scope of Work** 

QTY	UoM/Size	Material/Description
52.00	WEEK	Additional cost to empty dog stations a second time each week (this cost is for one additional dog station empty per week)

For internal use only

SO# 7723980 JOB# 400300615 Service Line 130

### **TERMS & CONDITIONS**

- The Contractor shall recognize and perform in accordance with written terms, written specifications and drawings only, contained or referred to herein. All materials shall conform to bid specifications.
- Work Force: Contractor shall designate a qualified representative with experience in landscape maintenance/construction upgrades or when applicable in tree management. The workforce shall be competent and qualified, and shall be legally authorized to work in the U.S.
- License and Permits: Contractor shall maintain a Landscape Contractor's license, if required by State or local law, and will comply with all other license and permit requirements of the City, State and Federal Governments, as well as all other requirements of law.
- Taxes: Contractor agrees to pay all applicable taxes, including sales tax where applicable on material supplied.
- Insurance: Contractor agrees to provide General Liability Insurance, Automotive Liability Insurance, Worker's Compensation Insurance, and any other insurance required by law or Client/ Owner, as specified in writing prior to commencement of work. If not specified, Contractor will furnish insurance with \$1,000,000 limit of liability.
- 6. Liability: Contractor shall indemnify the Client/Owner and its agents and employees from and against any third party liabilities that arise out of Contractor's work to the extent such liabilities are adjudicated to have been caused by Contractor's negligence or willful misconduct. Contractor shall not be liable for any damage that occurs from Acts of God are defined as those caused by windstorm, hail, fire, flood, earthquake: hurricane and freezing, etc. Under these circumstances. Contractor shall have the right to renegotiate the terms and prices of this agreement within sixty (60) days. Any illegal trespass, claims and/or damages resulting from work requested that is not on property owned by Client/Owner or not under Client/Owner management and control shall be the sole responsibility of the Client/Owner.
- Subcontractors: Contractor reserves the right to hire qualified subcontractors to perform specialized functions or work requiring specialized equipment.
- Additional Services: Any additional work not shown in the above specifications involving extra costs will be executed only upon signed written orders, and will become an extra charge over and above the estimate.
- 9. Access to Jobsite: Client/Owner shall provide all utilities to perform the work. Client/Owner shall furnish access to all parts of jobsite where Contractor is to perform work as required by the Contract or other functions related thereto, during normal business hours and other reasonable periods of time. Contractor will perform the work as reasonably practical after the owner makes the site available for performance of the work.
- 10. Invoicing: Client/Owner shall make payment to Contractor within fitteen (15) days upon receipt of invoice. In the event the schedule for the completion of the work shall require more than thirty (30) days, a progress bill will be presented by month end and shall be paid within fifteen (15) days upon receipt of invoice.
- 11. Termination: This Work Order may be terminated by the either party with or without cause, upon seven (7) work days advance written notice. Client/Owner will be required to pay for all materials purchased and work completed to the date of termination and reasonable charges incurred in demobilizing.
- 12. Assignment: The Owner/Client and the Contractor respectively, bind themselves, their partners, successors, assignees and legal representative to the other party with respect to all covenants of this Agreement. Neither the Owner/Client nor the Contractor shall assign or transfer any interest in this Agreement without the written consent of the other provided, however, that consent shall not be required to assign this Agreement to any company which controls, is controlled by, or is under common control with Contractor or in connection with assignment to an affiliate or pursuant to a merger, sale of all or substantially all of its assets or equity securities, consolidation, change of control or corporate reorganization.
- 13. Disclaimer: This proposal was estimated and priced based upon a site visit and visual inspection from ground level using ordinary means, at or about the time this proposal was prepared. The price quoted in this proposal for the work described, is the result of that ground level visual inspection and therefore our company will not be liable for any additional costs or damages for additional work not described herein, or liable for any incidents/accidents resulting from conditions, that were not ascertainable by said ground level visual inspection by ordinary means at the time said inspection was performed. Contractor cannot be held responsible for unknown or otherwise hidden defects. Any corrective work proposed herein cannot guarantee exact results. Professional engineering, architectural, and/or landscape design services ("Design Services") are not included in this Agreement and shall not be provided by the Contractor. Any design defects in the Contract Documents are the sole responsibility of the Owner. If the Client/Owner must engage a licensed engineer, architect and/or landscape design professional, any costs concerning these Design Services are to be paid by the Client/Owner directly to the designer involved.

 Cancellation. Notice of Cancellation of work must be received in writing before the crew is dispatched to their location or Client/Owner will be liable for a minimum travel charge of \$150.00 and billed to Client/Owner.

The following sections shall apply where Contractor provides Customer with tree care services:

- 15. Tree & Stump Removal: Trees removed will be cut as close to the ground as possible based on conditions to or next to the bottom of the tree trunk. Additional charges will be levied for unseen hazards such as, but not limited to concrete brick filled trunks, metal rods, etc. If requested mechanical grinding of visible tree stump will be done to a defined width and depth below ground level at an additional charge to the Client/Owner. Defined backfill and landscape material may be specified. Client/Owner shall be responsible for contacting Underground Service Alert to locate underground utility lines prior to start of work. Contractor is not responsible darriage done to underground utilities such as but not limited to, cables, wires, pipes, and irrigation parts. Contractor will repair damaged irrigation lines at the Client/Owner's expense.
- Waiver of Liability: Requests for crown thinning in excess of twenty-five percent (25%) or work not in accordance with ISA (international Society of Arboricultural) standards will require a signed waiver of liability.

#### Acceptance of this Contract

Contractor is authorized to perform the work stated on the face of this Contract Payment will be 100% due at time of billing. If payment has not been received by BrightView within fifteen (15) days after billing. BrightView shall be entitled to all costs of collection, including reasonable attorneys' fees and it shall be relieved of any obligation to continue performance under this or any other Contract with Client/Owner Interest at a per annum rate of 1.5% per month (18% per year), or the highest rate permitted by law, may be charged on unpaid balance 30 days after billing.

NOTICE FAILURE TO MAKE PAYMENT WHEN DUE FOR COMPLETED WORK ON CONSTRUCTION JOBS, MAY RESULT IN A MECHANIC'S LIEN ON THE TITLE TO YOUR PROPERTY

#### Customer

	Property Manager
Signature	Title
Celeste Terrell	January 31, 2022
Yinted Name	Date
TO A TO A STATE OF THE STATE OF	A STATE OF THE PARTY OF THE PAR
BrightView Landscape S	ervices, Inc. "BrightView"
BrightView Landscape S	
	ervices, Inc. "BrightView"  Account Manager
BrightView Landscape S	Account Manager

Job #: 400300615 Proposed Price: \$28,476.53

SO# 7723980

## **Landscape Committee Monument comments**

I think they (Fieldstone's) look good. I'm not a big fan of the flags at any of the wooden monuments. I could support a couple Colo & US flags but you really have to pay attention and keep those in good shape.... Not an easy task in windy, super sunny Colorado.

Just as an FYI to all about the planned new monuments. Briarwood corner will be very similar and installed (City blessings required) at the south side of that entrance off Aurora Parkway. Monument at NW corner of Plymouth & Aurora Pkwy will be a bit larger and will hopefully have red stone surrounding to match the current atone monuments (but will not have stucco finishes) Replacement at wooden monument will be larger still, hopefully incorporating large mountain type rocks and red stone to make an eye catching "entrance" to TR on the west.

#### BJ

The monuments look great, but think the flag poles can be omitted. Monuments are pretty much no maintenance, where the flags become ongoing care and replace.

#### **Bill Barcus**

I do like the stone monuments, will drive by when they're not covered in snow to get more of a sense of how big they are. I think the lights will also add a lot, since it might be easy to "lose" them in the background (which maybe actually is a bit of a good thing). Honestly, I think I do like stone quite a bit more than the wood signs/monuments myself. Not sure how much more they cost or if we're already down the road with the other design. I do think all options would look great under-lit by solar accent lights in the evenings. I would also agree to pass on the flags. I don't know that they add much and easily can look ragged - also neighbors do notice when we have ragged flags, as we see complaints every year or two.

As for spare flag poles, we can talk to the social committee to see if they want to hold some sort of summer medieval jousting or pole vault competition maybe??:)

#### **Brian Crandall**

I can't say I disagree with any of the comments so far. Flags get tattered and then we get complaints. I think having US/State flags would get more complaints and would require active management because there is more etiquette involved (i.e. flying half staff, tattered US flag, night lighting, etc.). I like the idea of a windmill or maybe colorful backdrop of trees in lieu of the flags.

I like the look of the stone monument. Looking forward to seeing it without this white stuff and with the new landscaping.

#### **Jeff Beaird**

Thank you for all your comments, Celeste will forward to the full Board who should discuss this at the March meeting and give further directions to the Committee.

My thoughts are the same, flagpoles don't add much value and it is costly to maintain flags. We might be able to recycle the existing poles to interested owners or others.

#### **Harry Yosten**



