ADDENDUM TO INDEPENDENT CONTRACTOR AGREEMENT

TRAFFIC SIGN UPGRADES

This ADDENDUM TO THE INDEPENDENT CONTRACTOR AGREEMENT FOR TRAFFIC SIGN UPGRAGES (the "Addendum") is entered into as of the 21st day of December, 2021, by and between TALLYN'S REACH AUTHORITY, a contractual authority and political subdivision of the State of Colorado (the "Authority"), and MFISH GRAPHICS, 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 (Traffic Sign Upgrades) on November 16, 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Parties hereby agree that the Scope of Services/Compensation Schedule set forth in Exhibit A of the Agreement, shall be superseded and replaced in its entirety by the Amended Scope of Services and Compensation Schedule set forth in Exhibit 1 attached hereto and incorporated herein by this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 AUTHORITY, REACH contractual authority and political subdivision of the State of Colorado

DocuSigned by:

Officer of the Authority

ATTEST:

APPROVED AS TO FORM:

WHITE BEAR ANKELE TANAKA & WALDRON Attorneys at Law

Blair M. Dickhoner

General Counsel for the Authority

CONTRACTOR:

MFISH GRAPHICS, a Colorado limited liability company

Owner

Title

EXHIBIT 1 <u>AMENDED SCOPE OF SERVICES/COMPENSATION SCHEDULE</u>

DATE	ACTIVITY	DESCRIPTIO	N	QTY	RATE	AMOUNT
09/14/2021	Service	post closer to (within the co guidlelines).	Stain post ne solar option con. All	2	1,105.00	2,210.00T
09/14/2021	Sales item	lights,solar p hardware so	Amber LED panel and it can be existing wood	2	2,358.77	4,717.54T
Please revie	w the estimate for	the solar	SUBTOTAL	**********		6,927.54
This includes moving both posts closer to the intersection and installing the beacon with the solar panel. Once the estimate and proof are approved I will send the invoice and begin the production process.		TAX			0.00	
		TOTAL		\$	6,927.54	



	ACTIVITY	DESCRIPTION	1	QTY	RATE	AMOUNT
09/20/2021	Services	Quadrant #1 existing wood remove wood that are dama (match as clo possible) to ewood, and instronze post p	posts, d backings iged. Stain se as existing stall 8" tall	96	240.00	23,040.00
09/20/2021	Sales item	6 x 6 x 8" high post protector	Bronze	96	30.6458333	2,942.00
	w the estimate for and staining. This	r Q #1. Removal,	SUBTOTAL			25,982.00
post protecto	ors.		TAX			0.00
I have attach signs marked done.)	ed the image of t d. (I believe Kim H	he map with the Herman had that	TOTAL		\$25	5,982.00
DATE	ACTIVITY	DESCRIPTION	ON	QT	Y RATE	AMOUN
11/10/2021	Sales item	and white re	sided, green flective vinyl or E. Irish and rk Way		4 72.00	288.00
11/10/2021	Sales item		kets for street 0) previously		2 0.00	0.00
		paid ioi				
11/10/2021	Sales item	30" stop sigi	1		1 139.50	139.50
	Sales item Sales item		gh Bronze		1 139.50 1 25.00	139.50 ⁷ 25.00 ⁷
11/10/2021		30" stop sign 6 x 6 x 6" hi	gh Bronze nstalled of new post, d ladder			
11/10/2021 11/10/2021 11/10/2021 Please revie	Sales item Service w the estimate to	30" stop sign 6 x 6 x 6" his post cover in installation of staining, and install for all new post replace the post,	gh Bronze nstalled of new post, d ladder		1 25.00	25.00 ⁻ 1,870.00 ⁻
11/10/2021 11/10/2021 11/10/2021 Please revie stain and ad- brackets wer just for occas	Sales item Service	30" stop sign 6 x 6 x 6" his post cover in installation of staining, and install for all new post replace the post, post. The metal ple of years ago no cost. The	gh Bronze nstalled of new post, d ladder signage on		1 25.00	25.00

process.

DocuSign Envelope ID: 05DAABB5-14E5-4762-B364-613D43A3AA8F



DocuSign

Certificate Of Completion

Envelope Id: 05DAABB514E54762B364613D43A3AA8F

Subject: Please DocuSign: Tallyn's Reach Authority - MFish Graphics, Addendum to ICA

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

Source Envelope:

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

AutoNav: Enabled

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

220 South 6th Street

Cindy Jenkins

Envelope Originator:

Status: Completed

Suite 300

Minneapolis, MN 55402

Cindy.Jenkins@claconnect.com IP Address: 165.225.10.178

Sent: 12/29/2021 3:08:02 PM

Viewed: 12/30/2021 4:23:52 PM

Record Tracking

Status: Original

12/29/2021 3:01:28 PM

Holder: Cindy Jenkins

Signature

Cindy.Jenkins@claconnect.com

Timestamp

Location: DocuSign

Signer Events

David Patterson david.patterson@falck.com

President

Security Level: Email, Account Authentication

(None)

Varid Patterson 7BD319407C7A455.

Signature Adoption: Pre-selected Style Using IP Address: 70.57.30.86

Signed: 12/30/2021 4:24:11 PM

Electronic Record and Signature Disclosure:

Accepted: 12/30/2021 4:23:52 PM

ID: 6c7a1c9d-f3fd-42c4-86ef-0f58905e36f9

BJ Pell

bjnsteve95@yahoo.com

Secretary

Security Level: Email, Account Authentication

(None)

Signed using mobile

Sent: 12/30/2021 4:24:12 PM Viewed: 12/30/2021 4:38:48 PM

Signed: 12/30/2021 4:38:59 PM

Signature Adoption: Drawn on Device Using IP Address: 70.59.30.83

Electronic Record and Signature Disclosure:

Accepted: 12/30/2021 4:38:48 PM

ID: 06b5dd76-7e0e-4daa-a5de-7610d636af59

Blair M. Dickhoner bdickhoner@wbapc.com

Security Level: Email, Account Authentication

(None)

Blair M. Dickhoner

Sent: 12/30/2021 4:39:00 PM Viewed: 12/30/2021 7:34:14 PM Signed: 12/30/2021 7:34:26 PM

Signature Adoption: Pre-selected Style Using IP Address: 71.229.132.73

Signed using mobile

Electronic Record and Signature Disclosure:

Accepted: 12/30/2021 7:34:14 PM

ID: a47fad2d-3d90-48cb-a149-f13433eccf27

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

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	12/29/2021 3:08:02 PM
Certified Delivered	Security Checked	12/30/2021 7:34:14 PM
Signing Complete	Security Checked	12/30/2021 7:34:26 PM
Completed	Security Checked	12/30/2021 7:34:26 PM
Payment Events	Status	Timestamps
Electronic Record and Signature Dis		

Electronic Record and Signature Disclosure created on: 2/12/2019 8:04:21 AM

Parties agreed to: David Patterson, BJ Pell, Blair M. Dickhoner

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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.

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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..

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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.

TALLYN'S REACH AUTHORITY (2022 Lighting Maintenance)

Name of Contractor: Radiant Lighting Services, Inc. **Title of Agreement:** 2022 Lighting Maintenance

Agreement Date: January 1, 2022

This independent contractor agreement ("Agreement") is made by and between TALLYN'S REACH AUTHORITY, a contractual authority and political subdivision of the State of Colorado (the "Authority") and RADIANT LIGHTING SERVICES, INC., a Colorado corporation (the "Contractor").

<u>Introduction</u>. The Authority and the Contractor desire to enter into this Agreement to be effective the date above.

- 1. <u>Scope of Services</u>. The Contractor shall perform the services set forth in **Exhibit A** (the "Services"): (a) in a first-class 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 specified in the Agreement; (c) in such a manner as to minimize any annoyance, interference or disruption to the residents, tenants, occupants and invitees within the Authority; and (d) in compliance with all applicable federal, state, county and local or municipal statutes, ordinances and regulations.
- 2. <u>Compensation of Services</u>. Compensation for the Services provided under this Agreement shall be provided 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 herein, unless said reimbursement or compensation is approved in writing by the Authority in advance of incurring such expenses. Exhibit A may take any form. 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.
- 3. <u>Repairs/Claims</u>. The Contractor shall notify the Authority immediately, in writing, of any and all incidents/accidents which result in injury or property damage. The Contractor will promptly repair or, at the Authority's option, reimburse the Authority for the repair of any damage to Authority property caused by the Contractor or its employees, agents or equipment.
- 4. <u>Independent Contractor</u>. The Contractor is an independent contractor and nothing herein shall constitute or designate the Contractor or any of its employees or agents as employees or agents of the Authority. The Contractor is not entitled to workers' compensation benefits or unemployment insurance benefits and the Authority will 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. 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.
- 5. <u>Prohibitions on Public Contracts for Services.</u> The Contractor shall comply with the provisions of §§ 8-17.5-101, *et seq.*, C.R.S., and certifies that Contractor is in compliance with the provisions of this law as evidenced by Contractor's signature below. Contractor's violation of the requirements of §§ 8-17.5-101, *et seq.*, C.R.S. is grounds for termination of the Agreement and may subject the Contractor to actual and consequential damages.

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 the 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 herein.
- 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 the 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 the Agreement is being performed.
- e. If the Contractor obtains actual knowledge that a subcontractor performing the services under the 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 that such Department is undertaking pursuant to the authority established in §8-17.5-102, C.R.S.
- 6. Contractor's Insurance. The Contractor shall acquire and maintain, at its sole cost and expense, during the entire term of the Agreement, the following insurance coverage: (i) 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 law; (ii) 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 general aggregate (iii) 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, and (iv) any other insurance commonly used by contractors for services of the type to be performed pursuant to this Agreement. 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 Commercial General Liability and Comprehensive Automobile Liability Insurance policies will be endorsed to name the Authority as an additional insured. The Contractor's failure to purchase the required insurance shall not

serve to release it from any obligations; nor shall the purchase of the required insurance serve to limit the Contractor's liability. The Contractor shall be responsible for the payment of any deductibles on issued policies.

- 7. <u>Indemnification</u>. The Contractor shall defend, indemnify and hold harmless the Authority and each of its directors, officers, contractors, employees, agents and consultants, from and against any and all claims, demands, losses, liabilities, actions, lawsuits, damages, and expenses, including legal expenses and attorneys' fees, arising directly or indirectly 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. The Contractor is not obligated to indemnify the Authority for the Authority's own negligence. 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 worker's compensation acts, disability acts or other employee benefit acts. Such indemnity shall survive the expiration or termination of this Agreement. To the extent the Authority is or may be obligated to indemnify, defend, or hold Contractor harmless under the terms of the Agreement, any such indemnification obligation shall arise only to the extent permitted by applicable law and shall be limited solely to sums lawfully appropriated for such purpose in accordance with this Agreement.
- 8. <u>Termination</u>. This Agreement may be terminated by either party for cause or for convenience upon ten (10) days prior written notice to the other party. If the Agreement is terminated, the Contractor shall be paid for all Services satisfactorily performed prior to the designated termination date, including reimbursable expenses due. Said payment shall be made in the normal course of business.
- 9. 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 Stated 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 notice to the other party hereto as provided in this Section 9 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

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

Attention: Denise Denslow

Email: <u>Denise.Denslow@claconnect.com</u>

With a Copy to: WHITE BEAR ANKELE TANAKA &WALDRON

2154 E. Commons Ave., Suite 2000

Centennial, CO 80122

Attention: Blair M. Dickhoner, Esq. E-mail: bdickhoner@wbapc.com

Contractor: Radiant Lighting Services, Inc.

9168 Marshall Place, Suite 100. Westminister, CO 80031 Phone: (303) 429-3326

E-mail: jill@radiantlightingservices.com

10. <u>Governing Law / Disputes</u>. This Agreement and all claims or controversies arising out of or relating to this Agreement shall be governed and construed in accordance with the law of the State of Colorado, 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. Venue for all actions shall be in the District Court in and for the county in which the Authority is located.

- 11. 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 obligations of the Authority under this Agreement is subject to annual budgeting and appropriations, and the Contractor expressly understands and agrees that the decision whether or not to budget and appropriate funds is within the discretion of Authority's governing body, and the obligations of the Authority shall extend only to monies appropriated for the purposes of this Agreement and shall not constitute a mandatory charge, requirement or liability in any ensuing fiscal year beyond the then-current fiscal year. The Authority and Contractor understand and intend that the Authority's obligation to make payments and pay other amounts due under the Agreement shall constitute a current expense and shall not in any way be construed to be a debt in contravention of any applicable constitutional or statutory limitations or requirements.
- 12. <u>Governmental Immunity</u>. 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 §§ 24-10-101, *et seq.*, C.R.S.
- 13. <u>Remedies</u>. To the extent the Contractor's remedies for a Authority default under the Agreement include any right to accelerate amounts to become due under the Agreement, such acceleration shall be limited solely to sums lawfully appropriated for such purpose and shall further be limited to amounts to become due during the Authority's then current fiscal period.
- 14. <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 substantially and materially to the preparation of this Agreement.
- 15. <u>Severability</u>. If any portion of this Agreement is declared by any court of competent jurisdiction to be void or unenforceable, such decision shall not affect the validity of any remaining portion, which shall remain in full force and effect. 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.
- 16. <u>Miscellaneous</u>. This Agreement constitutes the entire agreement between the parties with respect to the matters addressed herein, and shall supersede all prior oral or written negotiations, understandings and commitments.

17. Counterpart Execution. 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.

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:	Docusigned by: Pavid Patterson		Contractor:
	vid Patterson		Name: Crais McBride
Title:	President		Title: President
	g instrument was acknowle as <u>Presiding</u> Radian nand and official seal.	j	ss. efore me this 3rd day of January 2022 by ing Services, Inc. JULIE KING NOTARY PUBLIC STATE OF COLORADO NOTARY ID 20194039496 MY COMMISSION EXPIRES 10/16/2023
		No	otary Public

Exhibit A (Scope of Services/Compensation Schedule)



Electrical & Lighting Contractors

2022 Maintenance Contract

Tallyn's Reach Metro District C/O Clifton Larson Allen 8390 E Crescent Pkwy #300 Greenwood Village, CO 80111 (303) 779-5710

This document, when properly executed, shall constitute a Contract between Tallyn's Reach Metro District (hereinafter referred to as "Customer") and Radiant Lighting Services, Inc. (hereinafter referred to as "Contractor") covering the services described herein.

Scope and Specifications

Contractor agrees to perform the following services:

- 1. Provide monthly inspection of all common area light fixtures. At this time Contractor will change any standard lamp not requiring the use of special tools or the use of a ladder taller than 6'. Any fixtures that do not fit these criteria and/or fixtures that have electrical problems, will be serviced during normal business hours pending approval by a Customer representative. Contractor may increase the inspection frequency, if necessary, to provide adequate maintenance. Increase of inspection frequency must first be approved by a Customer representative.
- When lamps are changed the fixture will be cleaned/wiped out.
- Any electrical work other than normal lamp replacement (installing replacement plastics, ballasts, repairing or replacing fixtures, repairing broken lines, installing photo cells, replacing time clocks, etc.) will be scheduled during normal business hours and will be billed at \$80.00 per hour.
- All lighting products consumed in conjunction with performing this service shall be provided by and purchased from the Contractor.

Property Specifics

The following lights will be checked on normal lighting inspection(s):

Monuments, Clubhouse Interior & Exterior Lights, Landscape Spotlights, Gazebo Lights, Pool Building & Pool Perimeter Lights, Underwater Pool Lights

Compensation

Customer shall pay Contractor at the following rate and terms:

Number of inspections per month:	1
Number of hours included per inspection:	2
Flat rate cost per month:	\$ 150.00
Extra time per inspection - hourly rate:	\$ 75.00
Electrical rate as specified above:	\$ 80.00
Bucket Truck rate per hour:	\$ 75.00



Certificate Of Completion

Envelope Id: 356C88FF8BCB45B68429A96528008727

Subject: Please DocuSign: Tallyn's Reach Authority - Radiant Lighting Services, Inc. Agreement

Client Name: Tallyn's Reach Authority Client Number: 011-045194-OS07-2022

Source Envelope:

Document Pages: 6 Signatures: 1
Certificate Pages: 4 Initials: 0

AutoNav: Enabled

Envelopeld Stamping: Enabled

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

Envelope Originator:

Status: Completed

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

1/17/2022 10:29:19 AM

Holder: Cindy Jenkins

Cindy.Jenkins@claconnect.com

Location: DocuSign

Signer Events

Notary Events

David Patterson

david.patterson@falck.com

President

Security Level: Email, Account Authentication

(None)

Signature

David Patterson

Signature Adoption: Pre-selected Style

Using IP Address: 8.46.80.1

Timestamp

Timestamp

AM

Sent: 1/17/2022 10:34:37 AM Viewed: 1/18/2022 10:44:15 AM Signed: 1/18/2022 10:44:27 AM

Electronic Record and Signature Disclosure:

Accepted: 1/18/2022 10:44:15 AM

ID: a9a48d59-7675-413b-b46b-d5d01b5955d9

In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp

Carbon Copy Events	Status	Timestamp

Witness Events	Signature	Timestamp

Signature

Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	1/17/2022 10:34:37

Certified Delivered	Security Checked	1/18/2022 10:44:15 AM
Signing Complete	Security Checked	1/18/2022 10:44:27 AM
Completed	Security Checked	1/18/2022 10:44:27 AM

Payment Events	Status	Timestamps

Electronic Record and Signature Disclosure

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: https://support.docusign.com/guides/signer-guide-signing-system-requirements.

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 (DEEP ROOT FERTILIZATION)

This INDEPENDENT CONTRACTOR AGREEMENT, including any and all exhibits attached hereto (the "Agreement"), is entered into as of the 3rd day of March, 2022, 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. 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. <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 10th of each month, during the term of this Agreement and shall contain the following information:
 - 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 10th 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 workers without authorization 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 workers without authorization. The Contractor affirmatively makes the follow declarations:

- a. The Contractor shall not knowingly employ or contract with a worker without authorization 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 a worker without authorization 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 a worker without authorization, 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 a worker without authorization.
- days of receiving the notice required above the subcontractor does not stop employing or contracting with the worker without authorization; 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 a worker without authorization.
- 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. <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.
- 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. 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 #300 Greenwood Village, CO 80111 Attention: Celeste Terrell

Phone: (303) 265-7875

Email: celeste.terrell@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 Ruttman Phone: (303) 229-5589

Email: <u>sara.rutman@brightview.com</u>

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. <u>GOVERNING LAW</u>.

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.
- 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. <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

> DocuSigned by: David Patterson

Officer of the Authority

ATTEST:

APPROVED AS TO FORM:

WHITE BEAR ANKELE TANAKA & WALDRON

Attorneys at Law

Blair M. Dickhoner

DocuSigned by:

General Counsel for the Authority

CONTR	ACTOD.
CUNIK	ACTUR:

BRIGHTVIEW LANDSCAPE SERVICES,

INC., a Colorado corporation

Printed Name

STATE OF COLORADO

The foregoing instrument was acknowledged before me this 7 day of March, 2022, by Michael Konfinski; as the Planck Marage of Bright View Landscape Services, Inc.

Witness my hand and official seal.

My commission expires: Ily 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



February 25, 2022 Page 1 cf2

Proposal for Extra Work at Tallyn's Reach Authority

Property Name Property Address

Tallyn's Reach Authority 24900 E Park Crescent Dr.

Aurora, CO 80016

Contact

Celeste Terrell

To Billing Address Tallyns Reach Authority 370 Interlocken Blvd Ste 500

Broomfield, CO 80021

Project Name Project Description Deep Root fertilize all trees around Pool, Clubhouse and Playground Deep Root fertilize all trees around Pool, Clubhouse and Playground

Scope of Work

QTY	UoM/Size	Material/Description
*.00	LUMP SUM	Deep Root fertilize all trees around Pool, Clubhouse and Playground (slow release fertilizer with oftelated micronutrients and mycombizae. 240 trees.

Images

IMG_0721



For Internal use only

SO# 7745383 JOB# 400300615 Service Line 130

Total Price

\$6,333.34

Page 2 of 2

TERMS & CONDITIONS

- The Contractor said recognize and perturn in accordance with written terms, vertices operationables and drawings only contained or referred to herein All malenals shall conform to bid executations.
- Work Force: Contractor shall designate a cualified representative with experience in Brascape maintenance(construction upgrades in when suphrable in the management The workprise shall be competent and qualified, and shall be chigally authorized to work in the U.S.
- License and Permits: Contractor and martian a Landscape Contractor's icense. I required by State or local law, and will comity with all other absence and permit requirements of the City State and Pederal Governments, as well as all other requirements of law.
- Taxes. Contractor egrees to pay all applicable taxes including sales for where applicable on material supplied.
- Insurance Contractor agrees to provide General Lebrity Insurance, Automotive Labitity Insurance. Worker's Compensation Insurance and any other insurance required by fax of Claret Covers, as appealing in writing prior to commencement of work if not specified. Coveractor art furnish insurance with \$1.000.000 time of technity.
- Liability Contactor stell indentify the DiechDoner and its agents and employees from and against any timed party liabilities that arise out of Confector's mask to this eater, each against are adjutabled to have been caused by Combattors in engigence or walls inscended. Confector's light operations are adjutabled to the liability of the any demand that occurs from Acts of Sod are defined as those caused by combattors. In the Book readilities in morne and freezing etc. Didds these commissions. Confector shall have the pall to response the emission and compare receiving from work requested that is not on property owned by CleroCowner in eat ander CheroCowner interagement, and combat that the fire size responsibility of the CheroCowner interagement, and combat that the fire size responsibility of the CheroCowner.
- Subcontractors. Contractor reserves the right to here quarted subcontractors to perform executived fundament a province to perform executive fundament or province to perform executive.
- Additional Services Any additional wars not shown in the alone epechatics involving extra costs rail be exceeded only upon algred whiten orders, and self-become an eater there over any above the estimate.
- Access to Johnsto. Clern/Nover shall provide all utilities to perform the work Directifemes shall forcide remove to all posts of johale which Contractor as to perform work as regarded by the Doddingt or plan strations relation tractor, change some beauties to Doddington upon Strational relations and other reasonable periods of time. Contractions are performing to make as reasonably practical offer the recognization of the contractors are performed to the contractors and the performance of the contractors.
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- 15. Tree & Stump Removal. Trees removed will be cut as doze to the ground as possible based on condoons to or need to the bottom of the tree trans. Additional charges will be leaved for unseen inspaces such as, but not limited for controlled prior their detrans, etc. If neglected mechanical granding of value free stump will be done to a defined with and depth below ground level at an additional charge to the GenetiOwner. Define backful and tendescrip meteral may be specified. Clera/Covret shall be responsible for contacting under grund. Senter Rent to locate underground using times that he do wind Contractor is not responsible canage dothe for underground utilities such as but not immediate, caties, write, pipe, and impation pairs. Confractor will repair disnaggled impation pairs.
- Water of Lability: Regiosis for crown stiming in excess of benty 4 we percent (25%) or work not in accordance with ISA (international Scorety of Arbonounce) standards will require a signed water of liability.

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NOTICE FAILURE TO MAKE PAYMENT WHEN DUE FOR COMPLETED WORK ON CONSTRUCTION LIGHS, MAY RESULT IN A MECHANICS LIEN ON THE TITLE TO YOUR PROPERTY

Properly Manager

STYPE

Celeste Terrell February 25, 2022

BrightView Lundscape Services. Inc. "BrightView"

Account Manager

Sara Rutman February 25, 2022

P. mor time

Jub 0 400300615 Proposed Price: \$8,333.34

SO# 7745383

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

CORD CERT	IFICA	TE OF L	IABIL	ITY IN	ISURA	ANCE	DATE:MWDD/YYYY
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Tallyn's Reach Authority c/c Clifton Allen Earson 8390 E. Crescent Parkway, Suits Greenwood Village CO 80111 USA	e 300	A	AUTHORIZED RE			ices Northeast	a.

ACORD 25 (2016/03)

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EXHIBIT D

CERTIFICATE OF GOOD STANDING WITH COLORADO SECRETARY OF STATE

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 03/02/2022 that have been posted, and by documents delivered to this office electronically through 03/03/2022 @ 13:26:29.

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 03/03/2022 @ 13:26:29 in accordance with applicable law. This certificate is assigned Confirmation Number 13839490



Secretary of State of the State of Colorada

Notice: A certificate issued electronically from the Colorado Secretary of State's Web site is fully and immediately volid 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.socs.tate.co.us/bit/spifcate/secretar/cite/sace/secretary to the certificate, and following the instructions displayed. Confirming the issuance of a certificate is merely applicated in 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.socs.tate.co.us/click "Butineszer, trademarks, trade names" and solect "Frequently Asked Questions."



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BJ Pell bjnsteve95@yahoo.com

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Secretary

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Blair M. Dickhoner bdickhoner@wbapc.com

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Blair M. Dickhoner

Signature Adoption: Pre-selected Style Using IP Address: 174.198.131.17

Signature Adoption: Drawn on Device

Signature Adoption: Pre-selected Style

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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 (RETENTION POND CLEANOUT)

This INDEPENDENT CONTRACTOR AGREEMENT, including any and all exhibits attached hereto (the "Agreement"), is entered into as of the 3rd day of March, 2022, 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. 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. <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 10th 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 10th 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 workers without authorization 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 workers without authorization. The Contractor affirmatively makes the follow declarations:

- a. The Contractor shall not knowingly employ or contract with a worker without authorization 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 a worker without authorization 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 a worker without authorization, 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 a worker without authorization.
- 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 worker without authorization; 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 a worker without authorization.
- 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.
- 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 #300 Greenwood Village, CO 80111 Attention: Celeste Terrell

Phone: (30

(303) 265-7875

Email:

celeste.terrell@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 Ruttman Phone: (303) 229-5589

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.
- 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:

Gall

APPROVED AS TO FORM:

WHITE BEAR ANKELE TANAKA & WALDRON

Attorneys at Law

Blair M. Dickhoner

General Counsel for the Authority

District's Signature Page to Independent Contractor Agreement for Retention Pond Cleaning Services with BrightView Landscape Services, Inc., dated March 3, 2022

CONTRACTOR:

BRIGHTVIEW LANDSCAPE SERVICES, INC., a Colorado corporation

Printed Name

tle

Title

SS.

STATE OF COLORADO

COUNTY OF Douglas

The foregoing instrument was acknowledged before me this 2022, by Michael Kempinsk, as the Branch Manager 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

Notary Public

EXHIBIT A

SCOPE OF SERVICES/COMPENSATION SCHEDULE



February 22, 2022 Face 1 st 2

Proposal for Extra Work at Tallyn's Reach Authority

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

Contact

Celeste Terrell

Aurora, CO 80016

Billing Address

Tallyns Reach Authority 370 Interlooken Blvd Ste 500

Broomfield, CO 80021

Project Name Retention Pond Clean Out
Project Description Retention Pond Clean Out

Scope of Work

QTY UoM/Size Material/Description

Clear inlets and outlets of 7 retention points. Includes removing minor debris that is near the inlets and outlets.

This doesn't include completely removing cattales or clearing drainage pans in points. Only includes inlets, outlet 8 minor debis.

Clear inlets and outlets of 7 retention ponds. Includes removing minor debris that is near the inlets and outlets. This doesn't include completely removing cattales or clearing drainage pans in ponds. Only includes inlets, outlet & minor debis.

-25549 E. Indore - Debris and Trash as well as minor debris as well as minor debris debris.

-25749 East Dry Creek Drive - Iniet and Outlet of Concrete Pond -24926 East Geddes Cirole - (3) ponds behind address. Inlet and outlet clearing -Golden Eagle Park - Inlet and Outlet and minor

and Outlet and Minor Debris

-East Side of Tallyn's Reach Parkway, north of Arapahoe - Inlet

For internal uce only

\$0# 7742210 JOB# 400300615 Service Line 130

Total Price

\$20,000.00

THIS IS NOT AN INVOICE

This proposal is valid for 6E days unless otherwise approved by SrightView Landscape Dervices, Inc. 5888 Meterbooker Road, Suite A, Parker, CO 83134 ph. (5CE) 841-3003 tax (3CE) 841-3177

February 22, 2022

Page 2 of 3

TERMS & CONDITIONS

- The Contractor shall recognize and perform in accordance with written terms without specifications and crewings only, contained or reteried to horizon & materials shall conform to bid specifications.
- Work Feren. Company erall designate a qualities representative with imperative in landscape mentionsocionativeship upgrades or when understant new management. The workfines shall be compared and qualified, and shall be reguly authorized to sork in the U.S.
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- Taxes: Contractor agrees to pay at applicable taxes, including sales tax where applicable on material supplied.
- Insurance: Contractor agrees to provide General Liabitay Insurance, Rutemonie Liabita, incurance Warker's Compensation Insurance, and any other insurance required by law or Client Dwher, as specified in whiting prior to accommensations of wors if not specified. Contractor will furnish insurance with as any one way of Liabita. commencement of wors II \$1,000,000 smil of liability
- 6. Liability: Contractor shall informely the ClientiOwner and its agents and enterlyies. Your unit against any third party is distance that is seen out of Continuous contributes to the electric such additions the information of the telest such additions the information of the telest such as a set of Scot are defined to shall not be table to any namego that occurs from Acts of Scot are defined as three caused by vanishment of the local such displayed muricase and theoring etc. Under these commandances. Curticator shall have the right to renegative the terms and prices of this agreement within soly (Bill) days. Any slength frequess, darms and/or comanger resulting from vior requested that is not on property owned by ClientiOwner or cut under ClientiOwner management and control shall be the sole responsibility of the ClientiOwner.
- Subnantizations: Contractor inserves the ogist to him qualified subcontractors to perform spaceauzed functions or work requiring appealized
- Additional Services. Any additional work not shown in the above specializations involving while conductal better interesting in the conductation of the orders, and will become an estim crisings meet and above the estimate.
- Access to Jabsita Ciertifizant dest provide at attries to perform the such. Ciertifizante shell finaled scrises to at each of justic where Conjectin is to perform work as required by the Cartistan or other functions delated thereto, during rooms business from and other resistance elabel thereto, during rooms business from and other resistance periods of three Corrocctor will perform the work as reactionably periods after the owner makes the site available for performance of the work.
- Involving CreftOwner shall make payment to Contractor within Infeen (15) days upon recept of invoice. In the exemt the schoolier for it completion of the work shall require more than Invity (30), days, a progress bit will be presented by month and and shall people within these (19) days upon recept
- Termination. This Work Order may be taken cated by the arther party with or extreat oness, upon several 17 and stops obtained worker before. Chemickening it is respected to say for all instantials, nucleosed and was compared to the first of instantial processes insured in termination and execution content in termination and execution content in termination in termination.
- Assignment. The DomenCreek sets the Contactor respectively, body themselves, their partners is accessors, assigness and legal representation in the other party with respect to discussions of this Agreement. Notice the Contector for the Contractor shall season of travelse any inferience in this Agreement without the writer consent of the other provided nowever, their accessed and not be required to easy in this Agreement to any company which compose, is certified by, or is under common sonition with Contractor of in connection with assignment to an arithme or puts and so a merger, sale of all or substantially all of its associal or easyly securious consolidation, change of committee conpectate reorganization.
- Dischairm of enjoyates reorganization.

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Property Manager

Smith

Celeste Terreif February 22, 2022

BrightView Landscape Services Ins. *BrightView*

Account Manages

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Spra Holman February 22, 2022

Die of ties

Job fr. 400300615 Proposed Pros. \$20,000,00

SO# 7742210

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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ACORD 25 (2016/03)

The ACORD name and logo are registered marks of ACORD

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.

15.2

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 03/02/2022 that have been posted, and by documents delivered to this office electronically through 03/03/2022 @ 13:26:29.

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 03/03/2022 @ 13:26:29 in accordance with applicable law. This certificate is assigned Confirmation Number 13839490



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.soc.state.co.us/bis/Certificate/SearchCriteriade ontering the certificate a confirmation number displayed on the certificate, and following the instructions displayed. Confirming the issuance of a certificate is marely optional and is not necessary to the valid and effective issuance of a certificate. For more information, visit our Web site, http://www.soc.state.co.us/click "Butinesses, trademarks, trade names" and select "Frequently Asked Questions."



Certificate Of Completion

Envelope Id: B99E52369D94450894AE032F9C374EE8

Subject: Please DocuSign: Tallyn's Reach Authority - ICA w Brightview - Retention pond clean out

Client Name: Tallyn's Reach Authority Client Number: 011-045194-OS07-2022

Source Envelope:

Document Pages: 22 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: 165.225.10.184

Record Tracking

Status: Original

3/7/2022 6:43:31 PM

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: 209.92.66.180

Timestamp

Sent: 3/7/2022 6:46:20 PM Viewed: 3/7/2022 6:59:47 PM Signed: 3/7/2022 7:00:55 PM

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Viewed: 3/8/2022 12:48:11 AM

Signed: 3/8/2022 12:48:51 AM

Electronic Record and Signature Disclosure:

Accepted: 3/7/2022 6:59:47 PM

ID: 417247d3-0ac4-4ea0-a5c6-3788df5c55ba

BJ Pell

bjnsteve95@yahoo.com

Secretary

Security Level: Email, Account Authentication

(None)

Electronic Record and Signature Disclosure:

Accepted: 3/8/2022 12:48:11 AM

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Blair M. Dickhoner bdickhoner@wbapc.com

Security Level: Email, Account Authentication

(None)

Blair M. Dickhoner

Signature Adoption: Pre-selected Style Using IP Address: 174.198.131.17

Signature Adoption: Drawn on Device

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Sent: 3/8/2022 12:48:53 AM Viewed: 3/8/2022 7:39:47 AM Signed: 3/8/2022 7:39:57 AM

Electronic Record and Signature Disclosure:

Accepted: 3/8/2022 7:39:47 AM

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

Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp
Witness Events	Signature	Timestamp
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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: https://support.docusign.com/guides/signer-guide-signing-system-requirements.

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 (BATHROOM REMODEL)

This INDEPENDENT CONTRACTOR AGREEMENT, including any and all exhibits attached hereto (the "Agreement"), is entered into as of the 14th day of February, 2022, by and between TALLYNS REACH AUTHORITY, a contractual authority and political subdivision of the State of Colorado (the "Authority"), and NORTON BUILDING AND REMODEL, 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.
- 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.
- 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.

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.
- 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.

- 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 10th of each month, during the term of this Agreement and shall contain the following information:
 - 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 10th of each month may be processed the following month.

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 workers without authorization 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 workers without authorization. The Contractor affirmatively makes the follow declarations:

- a. The Contractor shall not knowingly employ or contract with a worker without authorization 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 a worker without authorization 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 a worker without authorization, 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 a worker without authorization.
- days of receiving the notice required above the subcontractor does not stop employing or contracting with the worker without authorization; 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 a worker without authorization.
- 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.
- 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. INDEMNIFICATION.

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.
- 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.

- 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 #300 Greenwood Village, CO 80111 Attention: Celeste Terrell

Phone: (303) 265-7875

Email: celeste.terrell@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: Norton Building and Remodel, Inc.

5462 S. Eaton Park Way

Aurora, CO 80016

Attention: Will Norton Phone: (303) 519-1256

Email: will@builtbynorton.com

21. AUDITS. 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.

- 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. Venue. 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.
- 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. OPEN RECORDS. 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.

[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;

Docusigned by:

DOCUSIGNED BELL

SDOF27FA0668456

APPROVED AS TO FORM:

WHITE BEAR ANKELE TANAKA & WALDRON
Attorneys at Law

Docusigned by:
Blair M. Dickloner

DBCBCE3D5CA84CA

General Counsel for the Authority

	CONTRACTOR: NORTON BUILDING AND REMODEL, INC., a Colorado corporation
	Printed Name Ces ident Title
STATE OF COLORADO COUNTY OF AVOIDANCE)) ss.)
The foregoing instrument was ack	nowledged before me this Home day of March, are President of Norton Building and
Witness my hand and official seal.	
My commission expires: Augustis,	2024
	Constangelacos)
	Notary Public CASSANDRA PLATT NOTARY PUBLIC STATE OF COLORADO NOTARY ID 20164030499 MY COMMISSION EXPIRES AUG. 15, 2024

EXHIBIT A

SCOPE OF SERVICES/COMPENSATION SCHEDULE

Norton Building and Remodel Inc 5462 S Eaton Park Way Aurora, CO 80016 303-519-1256 will@builtbynorton.com www.builtbyNorton.com



Estimate

ADDRESS

Tallyn's Reach Authority 24900 E Park Crescent Dr Aurora, CO ESTIMATE # 1345 DATE 02/07/2022

ACTIVITY.

Boys and Girls baths

Demo sink at boys bath.
Demo sink at girls bath.
Cleats and backing for new stone counter top at boys bath sink.
Cleats and backing for new stone counter top at girls bath sink.
Fabricate and install stone countertop at boys bath sink.
Fabricate and install stone countertop at girls bath sink.
Install sink at boys bath.
Install sink at girls bath.
Install faucet at boys bath.
Install faucet at girls bath.
Repair and patch hole at water fountain.
Paint outside entry walls and ceiling at girls and boys bath.
Epoxy Paint stall partitions at girls and boys baths.

11.505.00

Locking forward to bringing your ideas to life!

TOTAL

\$11,505.00

Accepted By

Accepted Date

Note: Estimates are our educated quote of a total price to complete the work stated above, based upon our initial inspection, but may be subject to change. If prices change or additional parts and labor are required, we will inform you prior to proceeding with the work. Invoices will accrue a 1.5% daily interest if not paid on time.

EXHIBIT B

CONTRACTOR'S COMPLETED W-9

Form W=9
(Rev. October 2018)
Department of the Treasury

Request for Taxpayer Identification Number and Certification

Give Form to the requester. Do not send to the IRS.

Form W-9 (Rev. 10-2019)

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5 0	Individual/sole pr single-member L	LC	Partnership Trust/estate Exempt payee code (if any)					any)						
Specific Instructions on page	Note: Check the LLC if the LLC is	appropriate b classified as	S corporation, P=Partr of the single-member on the owner unless the reposes. Otherwise, a s or classification of its o	e owner of t	not ch the LL ser LL	5 that	code (i	-						
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B-1

Cat. No. 10231X

EXHIBIT C

INSURANCE REQUIREMENTS

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

- 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;
 - 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.
- 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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The ACORD name and logo are registered marks of ACORD

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,

Norton Building and Remodel, Inc.

15 8

Corporation

formed or registered on 07/07/2016 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 20161465217 .

This certificate reflects facts established or disclosed by documents delivered to this office on paper through 02/11/2022 that have been posted, and by documents delivered to this office electronically through 02/14/2022 @ 17:35:10

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 02/14/2022 @ 17:35:10 in accordance with applicable law. This certificate is assigned Confirmation Number 13794467



Secretary of State of the State of Colorado

*******End of Certificate******

Notice: A certificate usued electronically from the Colorado Secretary of State's Web site is fluir 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.state.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, and names" and select "Frequently Asked Questions."



Certificate Of Completion

Envelope Id: B1778BF3A98C46CB97B18582A2BB7789 Status: Completed

Subject: Please DocuSign: Tallyn's Reach Authority - ICA w Norton Building & Remodel - Bathroom Remodel

Client Name: Tallyn's Reach Authority Client Number: 011-045658-OS09-2022

Source Envelope:

Document Pages: 21 Signatures: 3 **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)

Minneapolis, MN 55402 Cindy.Jenkins@claconnect.com IP Address: 165.225.10.184

Sent: 3/7/2022 11:23:01 AM

Viewed: 3/7/2022 1:11:45 PM

Signed: 3/7/2022 1:12:17 PM

Sent: 3/7/2022 1:12:18 PM

Resent: 3/8/2022 1:41:17 PM

Viewed: 3/10/2022 6:27:00 AM

Signed: 3/10/2022 6:27:11 AM

Record Tracking

Status: Original

3/7/2022 11:07:19 AM

Holder: Cindy Jenkins

Cindy.Jenkins@claconnect.com

Location: DocuSign

Timestamp

Suite 300

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: 67.133.97.98

Electronic Record and Signature Disclosure:

Accepted: 3/7/2022 1:11:45 PM

ID: 84c84629-afcf-4d88-98c7-d875899a4a95

BJ Pell

bjnsteve95@yahoo.com

Secretary

Security Level: Email, Account Authentication

(None)

Electronic Record and Signature Disclosure:

Accepted: 3/10/2022 6:27:00 AM

ID: c77ef0c9-17a4-4128-821b-767b9637939d

Blair M. Dickhoner bdickhoner@wbapc.com

Security Level: Email, Account Authentication

(None)

Blair M. Dickhoner

Signature Adoption: Pre-selected Style Using IP Address: 71.229.132.73

Signature Adoption: Drawn on Device

Using IP Address: 216.160.162.250

Signed using mobile

Signed using mobile

Electronic Record and Signature Disclosure: Accepted: 3/10/2022 7:45:34 AM

ID: 52602824-11c2-4673-b544-d3d2a18777ac

Sent: 3/10/2022 6:27:13 AM Viewed: 3/10/2022 7:45:34 AM Signed: 3/10/2022 7:45:50 AM

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

Intermediary Delivery Events	Status	Timestamp 97
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	3/7/2022 11:23:01 AM
Certified Delivered	Security Checked	3/10/2022 7:45:34 AM
Signing Complete	Security Checked	3/10/2022 7:45:50 AM
Completed	Security Checked	3/10/2022 7:45:50 AM
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: https://support.docusign.com/guides/signer-guide-signing-system-requirements.

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

(MEDIAN LANDCAPE PLANTING)

This INDEPENDENT CONTRACTOR AGREEMENT, including any and all exhibits attached hereto (the "Agreement"), is entered into as of the 3rd day of March, 2022, by and between TALLYNS REACH AUTHORITY, a contractual authority and political subdivision of the State of Colorado (the "Authority") and BRIGHTVIEW LANDSCAPE DEVELOPMENT, INC., DBA BRIGHTVIEW DESIGN GROUP, 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.
- 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.

- 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 enters into this Agreement solely because of the results of such Contractor. 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. <u>MONTHLY STATUS REPORT</u>. 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. Invoices for the Services shall be submitted monthly, by the 10^{th} 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 10th 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.

- <u>INDEPENDENT CONTRACTOR</u>. 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 Authority. 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 workers without authorization 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 workers without authorization. The Contractor affirmatively makes the follow declarations:

- a. The Contractor shall not knowingly employ or contract with a worker without authorization 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 a worker without authorization 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 a worker without authorization, 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 a worker without authorization.
- 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 worker without authorization; 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 a worker without authorization.
- 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.
- <u>SUB-CONTRACTORS</u>. 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.
- 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 #300 Greenwood Village, CO 80111

Attention: Celeste Terrell Phone: (303) 265-7875

Email: celeste.terrell@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 Development, Inc.

1645 Grant Street
Denver, CO 80203
Attention: Eliot Hoyt
Phone: (303) 825-2010

Email: eliot.hoyt@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. <u>GOVERNMENTAL IMMUNITY</u>. 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 AND PERMITS</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 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. <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 & WATTOM Attorneys at Law	VALDRON
General Counsel for the Authority	

District's Signature Page to Independent Contractor Agreement for Median Landscape Planting Services with BrightView Landscape Development, Inc., DBA BrightView Design Group, dated March 3, 2022

1627.4200: 1203216

	CONTRACTOR: BRIGHTVIEW LANDSCAPE DEVELOPMENT, INC., DBA BRIGHTVIEW DESIGN GROUP, a Colorado corporation
	-
	Printed Name
	Title
STATE OF COLORADO)
COUNTY OF) ss. _)
The foregoing instrument was ack	nowledged before me this day of
Development, Inc., DBA BrightView Designation	e of BrightView Landscape gn Group, Inc.
Witness my hand and official seal.	
My commission expires:	
	Notary Public

Contractor's Signature Page to Independent Contractor Agreement for Median Landscape Planting Services with Tallyn's Reach Authority, dated March 3, 2022

1627.4200; 1203216

EXHIBIT A

SCOPE OF SERVICES/COMPENSATION SCHEDULE

PROJECT UNDERSTANDING

BrightView Design Group (BVDG) (Consultant) is pleased to submit the following proposal for landscape architecture design services to BrightView Landscape Services (Client) for Tallyn's Reach located along South Aurora Parkway between E. Arapahoe Dr. and E. Irish Dr. in Aurora, Colorado. The Consultant has based this proposal on your email correspondence on 2/2/2022, and the preliminary concept map (attached as an exhibit).

I. SCOPE OF SERVICES

The scope of design is understood to include landscape design. The Consultant's efforts will include the preparation of Schematic Design and Construction Documentation services for the project.

The scope of design is understood to include the following elements associated with the outdoor space:

Base Scope of Services:

Exterior landscape planting within existing medians along South Aurora Parkway

The following specific tasks will be completed within the scope of services:

TASK 1: SCHEMATIC DESIGN Estimated Duration: 2 weeks

This phase will begin with a kick-off meeting with the Client, and other appropriate members of the project team to review program criteria and current design direction, schedule, and the construction budget for the landscape improvements. The Consultant will then develop a preliminary concept design presented in a Schematic Design Package that will illustrate the character, scale and relationships of the landscape design solution.

Key Tasks:

- Project Kickoff The Consultant will participate in project kickoff with the project team in order to familiarize ourselves with the project and fully understand the goals and vision for the project. Prior to the meeting the team will review existing documentation and plans.
- 2. The Consultant will coordinate and submit a Schematic Design Package to the Client. The following deliverables will be included:
 - Site Base The Consultant will produce an approximate site base referenced from aerial imagery, communicating horizontal control of existing medians, curbs, roads and sidewalks. Enough context will be included to communicate site improvement locations in the community scale.
 - Concept Landscape Plan The Consultant will produce a concept design for the landscape areas relevant to the submittal the Client is making to the Municipality. This plan will illustrate the layout of all plant massing and softscape materials.
 - Design Character Imagery The Consultant will provide plant Imagery to assist the design team in visualizing the design intent for the landscape program.

Deliverables:

The Consultant will provide the following design deliverables:

- Concept Landscape Plan (Color Rendered Format / AutoCAD format)
- 2. Planting Palette Imagery (PDF Format)

The Consultant will participate in the following meetings:

- One (1) Project Kickoff
- One (1) Site Visit
- 3. Two (2) Design Review Coordination Meetings

A-1

Submittals:

 One (1) submittal is included in this phase, with drafts of each component of the package issued for review during coordination meetings.

TASK 2: CONSTRUCTION DOCUMENTATION Estimated Duration: 2 Weeks

Within one week of Client's notice to proceed with Construction Documents, the Consultant will begin to prepare construction documents for the proposed site and landscape improvements. The construction documents will serve as permit/construction documents at the end of this phase. The 75% documents are intended to be used for municipal review submittal. Two Municipal revisions will be addressed as part of the Final Construction Documents.

Deliverables:

 Planting Plans and Details - The Consultant will prepare site location plan, planting plans and typical Installation details that indicate plant species, sizes, quantities and locations for turf and native grasses, ornamental grasses, shrubs, perennials, and trees. (AutoCAD format)

Meetings:

- Client/Design Team Coordination Meetings The Consultant will attend up to two (2) remote presentations and/or coordination meetings with the Client and other team members.
- Municipal Review Meetings The Consultant will attend up to two (2) meetings that are anticipated with the municipality to coordinate plan review.

Submittals:

- 1. Construction Document Submittal up to two (2) submittals (75% for review and Final)
- Municipal Review Submittals Up to two (2) submittals will be provided for municipal review. The 75% and Final Construction Documents submittals will be formatted to serve as the municipal review and permit submittals.
- Remaining comments generated from the Client, team coordination, and municipal review will be addressed in the Final set.

TASK 3: CONSTRUCTION OBSERVATION

Duration: Commensurate with the construction schedule

The Consultant will provide construction observation services to support Contractor's understanding of the landscape design intent during the project's implementation.

Key Tasks:

These services will include the following key tasks:

 Construction Meetings and Field Observation Visits - The Consultant will attend project meetings and field observation visits to support the Contractor during the project's implementation. Consultant will provide periodic site visits to observe completed work quality and general compliance with the design intent and requirements.

Deliverables:

 Field Reports or Punch Lists – prepare typed Field Reports or "Punch Lists" that comments on the status of construction for each site visit (PDF Format)

Meetings:

1. One (1) On-Site Visit

2. One (1) On-Site Final Punch

PROFESSIONAL FEES

Based on the Scope of Services detailed above, the following is an estimate of professional and Consultant fees, based on a lump sum agreement.

Base Scope of Services:

Tool & Cabonata Bassas	f2.500
Task 1: Schematic Design Task 2: Construction Documentation	\$2,500 \$3,500
Task 3: Construction Observation	\$1,000
Total (Labor only)	\$7,000

ADDITIONAL SERVICES

Professional services requested by the Client which are in addition to those listed in this scope of work will be performed only when approved by the Client in writing. Additional services will be billed at the following hourly rates.

BRIGHTVIEW DESIGN GROUP HOURLY RATE SCHEDULE:

Subject to annual revision

Hourly Rate
\$225
\$220
\$215
\$210
\$185
\$170
\$160
\$145
\$135
\$120
\$105
\$85

Reimbursable Expenses

The above fees do not include reimbursable expenses as defined in the attached General Terms and Conditions. Reimbursable items such as airfare, car rental, mileage, hotels, meals (and any other travel related costs), printing, copying, plotting, and shipping are in addition to fees for basic services and will be billed to the client at cost.

A. PROJECT ASSUMPTIONS

- Limit Of Work The Consultant will provide planning and landscape architectural design services of areas
 defined by this scope of services based upon the information provided by the Client. Variations or
 alterations beyond those stated within this proposal shall be brought to the attention of Consultant prior to
 proceeding on work in these areas not listed within this proposal.
- Owner Approvals Written or Verbal requests by the Client to commence the next phase of work shall constitute approval of the previous phase of work.
- 3. Client Furnished Information The Client shall provide the following information for use by the Consultant:
 - Topographic Site and boundary Survey in AutoCAD 2014 or equivalent format. This Survey shall clearly
 indicate property lines, building footprints, curbs, existing and proposed utilities, existing and proposed
 improvements and other pertinent information deemed necessary by Consultant to prepare all
 documents.
 - b. Development Program including unit/structure type, total sq. footages, amenities, etc.
 - Planning Entitlement Supporting documents The Client shall provide any County and/or Municipal planning limitations including but not limited to:
 - I. Covenants, encumbrances, easements and development restrictions
 - II. Environmental Impact statements/reports
 - III. Archaeological investigations and reports
 - iv. Any other related data related to site limitations as pertinent to the design process.
- 4. Base Information / Sheets The Client shall provide electronic base sheets that are suitable for Consultant's use in the preparation of planning design documents. These base sheets shall clearly indicate existing property lines, building footprints, roadways, existing and proposed utilities, existing and proposed improvements and other pertinent information deemed necessary by Consultant to prepare documents.
- Meetings All meetings as described in this Scope of Work are assumed to be held in office of Client or Consultant's office.
- Structural Engineering a Structural Engineer, directly contracted by others, shall be responsible for providing structural design and Construction Documents and Calculations.
- Geotechnical / Soils Engineering a Soils Engineer, directly contracted by others, shall be responsible for
 reviewing and providing details and recommendations pertaining to paving sections, reinforcing, sub-base
 preparation, and doweling. No engineering services will be provided under the Consultant's scope of
 services for any phase of work.
- Architectural Design Services an Architect, directly contractor by others, shall be responsible for
 providing any required building architectural design services. The Consultant will review these documents
 for general conformance with the planning / landscape intent. No building architectural design services shall
 be provided under the Consultant's scope of services for any phase of work.
- Civil Engineering a Civil Engineer, directly contracted by others, shall be responsible for providing design
 and civil construction documents for the project. The Consultant will review these documents for general
 conformance with the planning/ landscape design intent. No civil engineering shall be provided under the
 Consultant's scope of services for any phase of work.
- 10. Project Schedule Based on our current understanding of the project and our experience with similar efforts, we have outlined an estimated duration for the proposed work. The project schedule will be refined and confirmed at the time that Consultant receives official notice to proceed from the Client in order to ensure that the proposed work tasks are coordinated with the efforts of other consultant team members retained by the Client.
- Additional Services The following items, if requested, will be considered as Additional Services to be paid
 in addition to the fees indicated herein for amounts as mutually agreed.
 - a. Services or products requested beyond the scope of work and products as described.
 - b. All costs for staff associated with meetings other than those outlined in the above scope of services.
 - c. Proposal exclusions that the Client deems to be Consultant's responsibility.
 - Modifications to the project Scope of Work and/or Limit of Work as outlined in the aforementioned assumptions and this proposal.
- 12. Client-Initiated Program and Budget Revisions The Consultant will endeavor to design the Client's development program to the Client's established landscape improvement budget at the project's inception. Preparation of Client initiated revisions to the approved design documents representing a ten percent (10%) or greater modification to the Client's established landscape budget and/or design program will be

considered an additional service and will be subject to additional fees per the attached billing rates. These Client initiated revisions will be subject to an extension to the proposed design duration/schedule.

- 13. Water Features The Consultant will not provide design services for any proposed water features.
- 14. The Consultant assumes that the outlined base scope of services submittals will be used for all City and County Entitlement Submittal(s), if necessary. Submittals beyond the amount listed in this phase will be billed as Additional Services as described in this agreement.
- Post-bid revisions to the design and/or construction document package are not included in this scope, and will be billed as Additional Services as described in this agreement.

SERVICES PROVIDED BY OTHERS

The Client shall provide the following information, services and products as required for performance of the work. BVDG assumes no responsibility for the accuracy of such information or services and shall not be liable for errors or omissions therein. Should BVDG be required to provide services in obtaining or coordinating compilation of this information, such services shall be billed as Additional Services.

- 1. Digital site survey and/or other drawings of record for existing conditions.
- 2. Digital architectural and/or engineering plans for all proposed improvements.
- 3. Geotechnical Investigation and reports.
- 4. Engineering (structural, civil, mechanical, environmental, and electrical).
- 5. Architecture (buildings, structures, etc.)
- 6. Graphic Design (signage, wayfinding, project branding, etc.)
- 7. Stormwater management system design.
- 8. Grading, Stormwater Management Plan, Erosion and Sedimentation plan.
- 9. All environmental evaluation services including reports, permitting documents and impact statements.
- Permitting submittals and/or payment of any/all fees associated with submittals.

EXCLUSIONS

Services not included in this scope of services include the following:

- 1. Topography, utility, and boundary surveys
- 2. Existing tree and plant material survey and evaluation
- 3. Materials testing services
- 4. Payment for governmental permits, application fees, processing fees, and plan check fees
- 5. Utility potholing and location services
- Geotechnical Investigations and analysis
- Environmental Investigations and analysis
- Agricultural/horticultural soil testing
 Wind load or wind tupped applying
- Wind load or wind tunnel analysis
- 10. Identification or delineation of existing or proposed easements/ monumented land surveys
- 11. LEED certification, commissioning, and life cycle analysis monitoring
- 12. Maintenance manuals and development of project maintenance programs
- 13. Physical project models, computer fly through digital animations
- 14. Project branding, marketing and corresponding press releases
- 15. Identification, delineation, moving, or vacating existing or proposed easements
- 16. Graphic design services for signage
- 17. Threatened and endangered species evaluation; wildlife habitat/ecosystem analysis
- 18. Environmental Impact Statement or Analysis
- 19. Traffic/vehicular counts and/or baseline traffic data collection
- 20. Traffic control plans
- 21. GIS mapping and/or analysis
- 22. Design, engineering, and procurement of Furniture, Fixtures and Equipment (FF&E.)

GENERAL TERMS AND CONDITIONS

Article 1. Payment: Consultant will invoice Client on a monthly basis, in proportion to the percentage of completion against the schedule of fees. All invoices are due and payable within thirty (30) days of the date of the invoice. Client shall notify Consultant in writing, of any and all objections, if any, to an invoice within ten (10) days of the date of the invoice.

A service charge will be applied at a rate of 1.5 percent per month (or the maximum rate allowable by law) to delinquent amounts.

If a delinquency by Client occurs, Consultant may choose to suspend the Work. If such decision is made, Consultant shall notify Client in writing. Consultant may choose to recommence Work, once the delinquency is cured, and any and all attendant collection costs, fees, increases in costs or fees, or other amounts required to be paid by Client under this Agreement are paid in full. If a delinquency by Client occurs and Consultant chooses not to suspend Work, no waiver or estoppel shall be implied or inferred. Client agrees and understands that if Consultant decides to suspend the Work, Consultant shall not be liable for any costs or damages, including, but not limited to delay and consequential damages, to the Owner, Client, or any other third party, that may arise from or be related to such suspension of Work. Client agrees to hold Consultant harmless from and completely indemnify Consultant from and against any and all damages, costs, attorney's fees, and/or other expenses which Consultant may incur as a result of any claim by any person or entity arising out of the suspension of the Work.

Article 2. Executed Contract: Prior to commencement of any services, Client shall return a fully executed contract.

Article 3. Additional Charges: Certain portions of this Agreement may be performed by sub-consultants to Consultant, however, Consultant shall remain responsible for the full performance of such subconsultants.

Services of sub-consultants shall be invoiced at cost. Reimbursable items shall be invoiced at cost, e.g., blueprinting, Xeroxing, graphic reproduction, plotting service costs, telephone and travel costs, such as airfare, car rental, meals, hotels and other related travel costs.

Article 4. Extra Work Services: Extra Work services shall be performed only when requested and approved by Client in writing. These services shall be quoted either on a lump sum amount or performed based on hourly rates. Extra Work services may include, but not be limited to: (i) making planning surveys and special analysis of the Project's needs to clarify the requirements of the project when requested by Client, (ii) making measurements or drawings of existing construction, (iii) revising previously approved drawings to accomplish changes ordered by Client, (iv) providing any field observation on the project beyond what is listed, (v) attending any meetings or presentations beyond what is listed, (vi) assistance to Client in a reasonable, appropriate and professional manner in investigating and addressing claims of project constructions deficiencies, (vii) preparation of a Landscape Maintenance Manual, (viii) any work requested by Client or his representative that is not heretofore mentioned.

Article 5. Owner's Responsibility: Unless otherwise stated, Client shall be responsible for: (i) a certified land survey of the site delineating existing grades as required, (ii) complete information concerning available services and utilities for all contract areas and structural soils tests, (iii) horticultural soils reports, which define all soil types and their necessary soils amendments for the use of Consultant, (iv) engineered street sections including curb, gutter, sidewalk, utilities, streetlights and other related improvements, (v) accurate architectural drawings of any proposed building(s) showing building elevations, floor plans, etc., (vi) accurate engineering drawings of the proposed project (vii) accurate engineering services required for the project work per the scope of services provided by Consultant, (viii) all electrical engineering services required of the project work, (ix) all civil engineering services required of the project work, (xi) all graphic design services required of the project work, (xii) all architectural services required of the project work, (xii) all graphic design services required of the project work, (xiii) all American Disability Act Consulting Services required of the project services, (xiv) performing water testing of all key assemblies.

Article 6. Excluded Services: Consultant will not verify or otherwise be responsible for the accuracy or completeness of data, specifications and/or design work provided to Consultant by Client's other design professionals.

Article 7. Ownership of Instruments of Service: Client acknowledges that Consultants' reports, plans, specifications, field data, field notes, laboratory test data, calculations, estimates and other similar documents are instruments of professional service, not products. Client recognizes that no such documents should be subject to unauthorized reuse, that is, use without the written authorization of Consultant, to do so. Such authorization is essential because it requires Consultant to evaluate the documents' applicability to new circumstances, not the least of which is passage of time. In return for Consultant's relinquishment of ownership, Client agrees to walve any claim against Consultant, its parent, subsidiaries, employees and officers (Indemnitees) and defend, indemnify and hold Indemnitees harmless from any claim or liability from injury or loss allegedly arising from unauthorized reuse of Consultant's instruments of service. Client further agrees to compensate Consultant for any time spent, or expenses incurred by Consultant in defense of any such claim, in accordance with Consultant's prevailing fee schedule and expense reimbursement policy. Consultant only agrees to relinquish ownership if all services are paid for. Until Consultant's services are paid for in their entirety, the Consultant retains ownership of all reports, plans, specifications, field data, field notes, laboratory test data, calculations, estimates and other similar documents. Unauthorized use of these documents by Client or its representatives is strictly forbidden.

Article 8. Opinions of Probable Construction Costs: Consultant has no control over the cost of labor, materials, or equipment, or over a Contractor's method of determining prices, or over competitive bidding, or market conditions. Consultant's Opinions of Probable Construction Costs provided for herein are to be made on the basis of Consultants experience and qualifications. These opinions represent Consultants best judgment due to Consultants familiarity with the construction industry. However, Consultant cannot and does not guarantee that the proposals, bids, or the construction cost will not vary from Opinions of Probable Construction Cost prepared by Consultant.

Article 9. Assignment: Neither party to this agreement shall assign its duties and obligations without the prior written consent of the other party.

Article 10. Date of Completion: Due to the fact that Consultant's services are predicated on other consultants' plans, Client approvals, agency approvals and circumstances beyond Consultants control, Consultant cannot specify a completion date for the services to be performed under this agreement. Consultant and Client each waive any right to claim or to recover any consequential damages from the other concerning any breach or alleged breach of any duties or obligation pursuant or related to this agreement, including without limitation, the termination of this agreement.

Article 11. Limitation of Liability: Client agrees to limit Consultant's liability to Client and all construction contractors and subcontractors on the project, due to Consultant's negligent acts, errors or omissions, so that the total aggregate liability of Consultant shall not exceed the limits set forth under Consultant's Professional Liability policy.

Consultant shall not be held responsible for the means, methods or appropriateness of the installation procedures undertaken by any contractor, nor for the job site safety. Consultant shall not be held responsible for determining and marking the location of underground pipes, wires, conduits, cables or structures such as gas lines, fiber optics, irrigation or septic systems, or any other items which may exist below the surface of the ground. Consultant shall not be held responsible for identifying, locating, discovering, removal and/or treatment of any hazardous waste, known or unknown at the site, nor for the consequences of any hazardous waste materials of any kind at the site, including, but not limited to asbestos and PCB's, as well as materials not yet known as hazardous.

Article 12. Limitation Regarding Parties: Notwithstanding anything to the contrary contained herein, it is agreed, acknowledged and understood that the Client's sole and exclusive claim, demand, suit, judgment or remedy shall be directed and or asserted only against Consultant, as a Corporation, and not against any of Consultants shareholders, landscape architects, directors, officers or employees.

Article 13. Termination of Agreement: This agreement may be terminated by either party effective thirty (30) days after receipt from the other party of a written notice via registered mail, of such termination. In the event of termination, Consultant shall be entitled to receive full compensation for fees and expenses outstanding as of the effective date of the termination.

Article 14. Attorney Fees: This Agreement shall be governed by the laws of the state of Colorado. To the extent permitted by law, Client and Consultant hereby waive all rights to a trial by jury. If a dispute arises under

this agreement and litigation is instituted, the attorney fees.	prevailing party shall be entitled to recover its reasonable
Client Approval:	
Signature	Date
Printed Name	
BrightView Design Group (Consultant):	
£ 7 7 2	
Signature	<u>2/7/2022</u> Date
Eliot Hoyt, Managing Principal Printed Name	

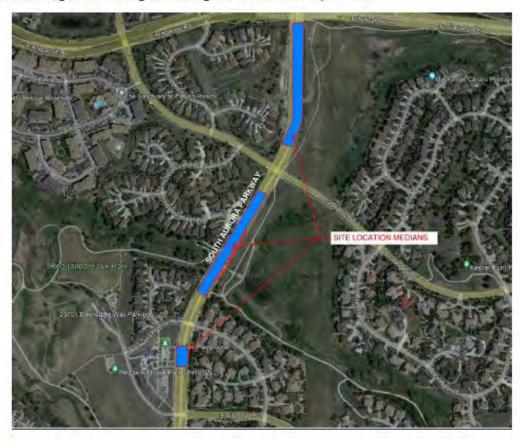


Exhibit A Three Existing Medians: Design of Planting and Ground Cover replacement

EXHIBIT B

CONTRACTOR'S COMPLETED W-9

W-9 (Rev. October 2018)

Request for Taxpayer Identification Number and Certification

Give Form to the requester. Do not send to the IRS.

Department of the Treasu Internal Revenue Service ► Go to www.irs.gov/FormW9 for instructions and the latest information. BrightView Landscape Development, Inc. 2 Business risms/disregarded entity runne, if different from above dba BrightView Design Group page 3. Check appropriate box for federal tax classification of the person whose name is entered an line 1. Check pay one of the following seven boxes. 4 Exemptions (codes apply unity to certain entities, not individuals, see □ Individual/solve proprietor or ☑ C Corporation □ 6 Corporation □ Partnership single-member LLC instructions on page 3): 5 Specific Instructions Exempt payee code (if any) Limited leability company. Enter the tax classification (C–C corporation, S–S corporation, P–Partnership) ▶ Note: Check the appropriate box in the line above for the tax obsertication of the single member towns. Do not check LLC the LLC is classified as a single-member LLC that is disrepanded from the owner unless the owner of the LLC is shorter LLC that is not disregarded from the owner for U.S. faderal tax purposes. Otherwise, a single-member LLC that is disrepanded from the owner should check the appropriate box for the tax obsertication of its owner. Exemption from FATCA reporting code (if any) Other (see Instructions) 5 Address (number, street, and apt, or suite no) See instructions. Requester's name and adgress (optional) Sag 1645 Grant St. 6 City, state, and ZIP code Denver, CO 80203 List account number(s) here (optional) Taxpayer Identification Number (TIN) Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For Individuals, this is generally your social security number (SSN). However, for a resident allen, sale proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see How to get a TIN, later. Note: If the account is in more than one name, see the instructions for line 1. Also see What Name and Number To Give the Requester for guidelines on whose number to enter. Employer identification nur 9 0 9 5 1 5 1 H

Certification

Under penalties of penury, I certify that:

- 1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
- 3.1 am a.U.S. citizen or other U.S. person (defined below); and
- 4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct:

Certification instructions. You must gross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have falled to report all interest and dividends on your law return. For real estate transactions, them 2 does not apply. For murtakee interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the contification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign

Signature of U.S. person >

Date 1.4.22

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/FurmW9.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your consot taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), edoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return, Examples of information returns include, but are not limited to, the following.

· Form 1099-INT (interest earned or paid)

- Form 1099-DIV (dividends, including those from stocks or mutual
- · Form 1099-MISC (vanous types of income, prizes, awards, or gross proceeds)
- · Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- . Form 1099-S (propends from real estate transactions)
- . Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loar) interest). 1098-T (tuitlon)
- · Ferm 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property). Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding,

Cal. No. 10231X

Form W-9 (Rev. 10-2018)

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; 1203216 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; 1203216 C-2

EXHIBIT C-1

CERTIFICATE(S) OF INSURANCE

1627.4200; 1203216 C-1-1

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 Development, Inc.

is an entity formed or registered under the law of California , 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 20221011685.

This certificate reflects facts established or disclosed by documents delivered to this office on paper through 03/07/2022 that have been posted, and by documents delivered to this office electronically through 03/08/2022 @ 13:46:29.

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 03/08/2022 @ 13:46:29 in accordance with applicable law. This certificate is assigned Confirmation Number 13850784



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.state.co.us/bis/Certificate/SearchCriteria.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; 1203216 D-1

INDEPENDENT CONTRACTOR AGREEMENT

(COPING STONE REPLACEMENT)

This INDEPENDENT CONTRACTOR AGREEMENT, including any and all exhibits attached hereto (the "Agreement"), is entered into as of the 21st day of September, 2021, by and between TALLYNS REACH AUTHORITY, a contractual authority and political subdivision of the State of Colorado (the "Authority"), and AQUATIC CHEMICAL SOLUTIONS, 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, 2021. 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.

- 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 enters into this Agreement solely because of the results of such Contractor. 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. <u>MONTHLY STATUS REPORT</u>. 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.

- Compensation. Compensation for the Services provided under this a. 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 10th 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 10th 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.
- 14. <u>LIENS AND ENCUMBRANCES</u>. 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. INDEMNIFICATION.

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. 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.

- DEFAULT. 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

(303) 265-7923 Phone:

denise.denslow@claconnect.com Email:

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: Aquatic Chemical Solutions, Inc.

PO Box 17865 Denver, CO 80217

Attention: Matt Willson
Phone: (303) 263-2222
Email: matt@acsrm.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. <u>GOVERNMENTAL IMMUNITY</u>. 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 AND PERMITS</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 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 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.
- 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 Authority. The Contractor's guarantees and warranties shall in all cases survive termination of this Agreement. This warranty shall be enforceable by the Authority, 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 Authority shall, at the request of the Authority, 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 Authority. 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 Authority 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 Authority, unless otherwise agreed to by the Authority.

- c. The Contractor agrees that if warranty issues appear before payment has been made under this Agreement, the Authority may withhold payment until such warranty issues are resolved to the Authority's satisfaction. If repair or replacement of any warranty or defective Work is not made by the Contractor promptly upon request by the Authority as set forth in this Agreement, in addition to any other remedy, the Authority may withhold any payment the Authority 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 Authority 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 Authority shall, at the request of the Authority, 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 Authority. 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 Authority 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 Authority, or within such other reasonable time as agreed to by the Parties, the Authority may correct or replace the defective Work and the Contractor shall reimburse the Authority for the related costs and fees.
- 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].

1627.4200; 1165054

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:

APPROVED AS TO FORM:

WHITE BEAR ANKELE TANAKA & WALDRON

Blair M. Dickhoner

Attorneys at Law

DocuSigned by:

General Counsel for the Authority

District's Signature Page to Independent Contractor Agreement for Coping Stone Replacement Services with Aquatic Chemical Solutions, Inc., dated September 21, 2021

	Aquatic Chemical Solutions, Inc., a Colorado corporation Mattheway 1500 Printed Name
	Title Mesident
STATE OF COLORADO)) ss.
The foregoing instrument was acknowledged by Maria Wilson, as the Solutions, Inc.	owledged before me this $\frac{7}{100}$ day of $\frac{\text{MWCh}}{\text{MWCh}}$, he $\frac{\text{MWCh}}{\text{MWCh}}$ of Aquatic Chemical
Witness my hand and official seal.	
My commission expires: 10/1/202	4
SAVANNAH L TRUJILLO Notary Public State of Colorado Notary ID # 20204034172 My Commission Expires 30-01-2024	Notary Public

CONTRACTOR:

EXHIBIT A

SCOPE OF SERVICES/COMPENSATION SCHEDULE



Email: matt@acsrm.com

August 20, 2021

Deb Guth Tallyn's Reach

Re: Coping Stone

Dear Kim,

Aquatic Chemical Solutions, Inc. proposes to replace the most damaged (20) coping stones on the swimming pool. This includes repairs to waterline tiles that may be damaged when the coping stones are removed as well as repair of the waterline tiles that fell off after Memorial Day this year.

Total Price: \$4,250.00

Re-caulk the joint between the deck and the coping stones to prevent water from getting underneath the coping stone and behind the tile. The water that leaks through this joint degrades the adhesive (thinset and mesh) behind the tile and causes them to fall off the wall.

Price: \$3,550.00

EXHIBIT B

CONTRACTOR'S COMPLETED W-9

Department of the Financial Population	ally unity duals; se duals; se vi 5
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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

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; 1165054 C-2

EXHIBIT C-1

CERTIFICATE(S) OF INSURANCE

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CE CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFO BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING IN REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER. IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURE If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an ethis certificate does not confer rights to the certificate holder in lieu of such endorsement(s). ROQUER THE ARROW AND ADDITIONAL INSURED TO SUCH ENDORSES INSURED Aqualic Chemical Solutions Inc. PO Box 17865 Denver CO 80217 INSURER 0: INS	RDED BY THE POLISURER(S), AUTHO ED provisions or bindorsement. A stall FAX (AAC, No) HETS.COMI COVERAGE ISION NUMBER:	JCIES ORIZED e endorsed. tement on
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COMMERCIAL GENERAL LIABILITY	H OCCURRENCE AGE TO RENTED	\$ 1,000,000
CLAIMSHANDE X CCCUR	MISES (Ea occurrence)	\$ 300,000
	EXP (Any one person)	\$ 10,000
Y M249000097 04/15/2021 04/15/2022 PERS	BONAL & ADV INJURY	\$ 1,000,000
	ERAL AGGREGATE	\$ 2,000,000
PROUCY X PRO- Loc PRO	DUCTS - COMPIOP AGG	\$ 2,000,000
OTHER:		\$
(Eas	BINED SINGLE LIMIT scident)	5
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AND EMPLOYERS' LABILITY Y/N	PER STATUTE ER	
ANY PROFRIETOR PARTNERIEXECUTIVE N N/A V 4152524 05/01/2021 05/01/2022 ELE	EACH ACCIDIENT	\$ 1,000,000
If yes, describe under	DISEASE - EA EMPLOYEE	\$ 1,000,000
DÉSCRIPTION OF OPERATIONS below E.L. C	DISEASE - POLICY LIMIT	\$ 1,000,000
Leased/ Rented Equipment M249000097 04/15/2021 04/15/2022		\$10,000 \$50,000

ACORD 25 (2016/03)

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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.

Aquatic Chemical Solutions, Inc.

is a

Corporation

formed or registered on 08/12/2004 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 20041277692.

This certificate reflects facts established or disclosed by documents delivered to this office on paper through 11/01/2021 that have been posted, and by documents delivered to this office electronically through 11/03/2021 @ 09:17:04

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 11/03/2021 @ 09:17:04 in accordance with applicable law. This certificate is assigned Confirmation Number 13557752



Secretary of State of the State of Colorado

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Client Name: Tallyn's Reach Authority Client Number: 011-045194-OS07-2022

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President

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bjnsteve95@yahoo.com

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Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	3/8/2022 8:12:45 AM
Certified Delivered	Security Checked	3/8/2022 1:15:23 PM
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