

## **LINCOLN PARK METROPOLITAN DISTRICT SNOW REMOVAL SERVICES AGREEMENT**

This SNOW REMOVAL SERVICES AGREEMENT ("Agreement") is entered into effective as of September 27, 2017, by and between LINCOLN PARK METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado organized pursuant to Title 32 of the Colorado Revised Statutes (the "District"), and BRIGHTVIEW LANDSCAPE SERVICES, INC., a Colorado corporation (the "Contractor").

### **RECITALS**

**WHEREAS**, the District was organized pursuant to the laws of the State of Colorado in order to construct, operate and maintain certain public facilities and improvements in accordance with its approved service plan; and

**WHEREAS**, pursuant to Section 32-1-1001(1)(d)(I), C.R.S., the District is permitted to enter into contracts affecting its affairs; and

**WHEREAS**, the District has determined that it requires the performance of various snow removal services; and

**WHEREAS**, the District desires to engage the Contractor to render these services; and

**WHEREAS**, the Contractor desires to render said services; and

**WHEREAS**, the parties desire to enter into this Agreement to establish the terms and conditions by which the Contractor shall provide the services to the District.

**NOW THEREFORE**, in consideration of the mutual covenants and agreements hereinafter set forth, the sufficiency of which is hereby acknowledged, the Parties do hereby agree as follows:

### **TERMS AND CONDITIONS**

#### **1. SCOPE OF SERVICES.**

The Contractor shall provide the snow removal services, including snow maintenance, salting, hauling, or other general snow-related services or property enhancement services, and including any and all necessary documentation, materials and equipment, as more particularly set out in **Exhibit A** attached hereto and incorporated herein by this reference (the "Services"). The Contractor shall be responsible for providing, at its cost and expense, all management, supervision, labor, materials, administrative support, supplies and equipment necessary to perform the Services as required by this Contract. The District hereby agrees that it will not require the Contractor to use materials or equipment that were not selected by the Contractor.

## 2. COMPENSATION.

2.1 Compensation for Services. The District shall compensate the Contractor on a time and materials basis for all labor, equipment and material necessary to provide the Services according to the rate schedule attached hereto in **Exhibit A**, subject to District annual appropriations and in accordance with and subject to all of the conditions in this Agreement (the "Compensation"). The Compensation is inclusive of all reimbursable expenses. In no event shall the Compensation for the Services exceed Fifty Thousand Dollars and Zero Cents (\$50,000.00) in any given calendar year without the District's written permission. If at any time the fees for the Services performed in any given calendar year exceed Forty-Five Thousand Dollars and Zero Cents (\$45,000.00), the Contractor shall immediately provide written notice to the District of this fact, including the total amount of the fees accrued for the Services performed and an estimate of the cost for Services yet to be completed.

2.2 Additional Services. If the District provides Contractor with a written request for additional services, any additional services will be provided on a time and materials basis (the "Additional Services"). Upon receipt of such a request, the District and the Contractor shall negotiate the scope and billing rates of the relevant Additional Services, which shall be subject to the mutual written agreement of the District and the Contractor. If the Contractor performs any Additional Services prior to or without receiving such a request from the District, the Contractor shall not be entitled to any compensation for such Additional Services.

2.3 Payments. The Contractor shall submit monthly invoices to the District for Services satisfactorily performed during each month during the term of this Agreement. The District's approval of invoices shall be a condition of payment. All invoices shall be addressed to the District as follows: Lincoln Park Metropolitan District, c/o CliftonLarsonAllen LLP, 8390 East Crescent Pkwy, Suite 500, Greenwood Village, CO 80111, ATTN: Matthew Urkoski.

### 2.3.1 Requirements for Payment.

a) Invoices. The Contractor's invoices shall be in a format acceptable to the District, shall be supported by cost information in such detail as may be required by the District and shall be sufficient to substantiate all items for a proper audit and post audit thereof.

b) Invoice Documentation. With each invoice, the Contractor shall submit a progress report providing the following: (1) a detailed description of the Services performed; (2) the name of the person who performed the Services; (3) the date and time when the Services were performed; (4) the results achieved; (5) receipts which document direct costs reflected in the invoice; (6) the status of deliverables; and (7) a certification that the Contractor is current in payment of all employees and subcontractors and vendors and, if not current, a description of the non-current items and reasons for such.

2.3.2 Unsatisfactory Invoices or Services. The District may return to the Contractor for revision of unsatisfactory invoices and may withhold payment

thereof. The District may withhold payment for Services which are not completed as scheduled, or which are completed unsatisfactorily, until completed satisfactorily and may deny payment for such Services upon termination of this Agreement.

2.4 Time of Payments. The District shall render payment to the Contractor within thirty (30) days of receipt of the invoice for all approved invoiced Services not previously invoiced and which were performed no more than forty-five (45) days prior to the District's receipt of the invoice. Payments not rendered by the District within forty-five (45) days for such Services shall bear interest at a rate of six percent (6%) per annum, compounded monthly.

2.5 In compliance with Section 24-91-103.6, Colorado Revised Statutes, the following statements are included in this Agreement:

2.5.1 The District has appropriated an amount of money equal to or in excess of the contract amount for the Services to be performed under this Agreement.

2.5.2 The District is prohibited from issuing any change order or other form of order or directive requiring additional compensable work to be performed by the Contractor, if such directive causes the aggregate amount under the Agreement to exceed the amount appropriated for the original Agreement, unless the Contractor is given written assurance by the District that lawful appropriations to cover the costs of the additional work have been made or unless such work is covered under a remedy-granting provision in the Agreement. "Remedy-granting provision" means any contract clause which permits additional compensation in the event that a specific contingency or event occurs. Such term shall include, but not be limited to change clauses, differing site conditions clauses, variation in quantities clauses, and termination clauses.

2.5.3 Any form of order or directive issued by the District requiring additional compensable work to be performed by the Contractor shall be deemed to include a clause that requires the District to reimburse the Contractor for the Contractor's costs on a periodic basis for all additional directed work performed until such time as a change order is finalized. Provided, however, that in no instance shall the periodic reimbursement be required before the Contractor has submitted an estimate of cost to the District for the additional compensable work to be performed.

### 3. TERM.

The term of this Agreement shall be from the date first set forth above and shall expire on May 31, 2020, or by the exercise of the termination provisions specified herein, whichever occurs first; provided, however, the District's payment obligations hereunder are subject to annual appropriation.

### 4. GENERAL PROVISIONS/REPRESENTATIONS.

4.1 Inspections/Services. To the extent the Contractor deems necessary, the Contractor has inspected the sites and all surrounding locations whereupon it may be called to perform its

obligations under this Agreement and is familiar with the requirements of the Services and accepts them for such performance.

4.2 Good Standing. The Contractor is validly organized and exists in good standing under the laws of the State of Colorado and has all requisite power to own its properties and assets and to carry on its business as now conducted or proposed to be conducted and it is duly qualified, registered to do business and in good standing in the State of Colorado.

4.3 Professional Standards. The Contractor will perform all Services in accordance with generally accepted standards of care, skill, diligence and professional competence applicable to contractors engaged in the Denver metropolitan area in providing similar services at the time and place that services are rendered.

4.4 Performance During Term. The Contractor will begin providing the Services on the first day of the term of this Agreement and will thereafter continually and diligently perform the Services throughout the term of this Agreement.

4.5 Compliance with the Law. The Contractor will, at its own expense, throughout the term of this Agreement, comply with all federal, state, and local laws, statutes, ordinances, codes, guidelines, court rulings and orders of all governmental authorities applicable to services performed by the Contractor under this Agreement, including but not limited to employee safety.

4.6 Personnel. The Contractor represents that all of its personnel who will perform any Services under this Agreement have received the information, instructions and training required to provide such Services, including training to prevent harm to such personnel, residence and members of the public who may be in the vicinity.

4.7 Licenses. The Contractor represents that the Contractor and its personnel have all licenses required by applicable law to perform the Services required by this Agreement and will, at Contractor's expense, maintain such licenses throughout the term of this Agreement.

4.8 Mechanics' and Materialmen's Liens. The Contractor will (i) make timely payments to Contractor's employees, subcontractors and/or suppliers, and (ii) be responsible for satisfaction of any liens and encumbrances which are filed or asserted against the District and/or its property, which liens result from the Services performed by the Contractor under this Agreement. If any lien is filed claiming by, through or under the Contractor or the Services performed by the Contractor, the Contractor will cause such lien to be discharged or bonded within ten (10) days after its filing. If the Contractor fails to cause such lien to be discharged or bonded within such ten (10) day period, the District, in addition to any other available remedy, may bond or discharge the lien and, at the District's discretion, deduct its costs incurred, including attorneys' fees and interest at the rate of twelve (12%) percent per annum from the dates incurred, from any payments due the Contractor or invoice the Contractor for the amounts paid.

4.9 Authorized Execution. The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby have been duly

authorized by all necessary action and do not and will not require any further consent or approval of the board of directors or any shareholders of the Contractor or any other person which has not been obtained.

## 5. ILLEGAL ALIENS.

5.1 Certification. Prior to the execution of this Agreement, the Contractor shall certify to the District, as attached hereto as **Attachment 1**, that at the time of certification, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement and that the Contractor will participate in either the E-Verify Program administered by the U.S. Department of Homeland Security and the Social Security Administration, or in the Colorado Department of Labor and Employment's Employment Verification Program (the "Department Program"), as further described in subsection 5.6 of this Section, in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

5.2 Prohibited Acts. The Contractor shall not:

5.2.1 Knowingly employ or contract with an illegal alien to perform work under this Agreement; or

5.2.2 Enter into a contract with a subcontractor that fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. The Contractor shall provide the District with all certifications received from subcontractors in which subcontractors certify that said subcontractors do not knowingly employ or contract with an illegal alien to perform work under this Agreement.

5.3 Verification.

5.3.1 The Contractor has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement through participation in either E-Verify Program or the Department Program.

5.3.2 The Contractor shall not use either the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

5.3.3 If the Contractor obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, the Contractor shall:

a) Notify the subcontractor and the District within three (3) days that the Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and



b) Terminate the subcontract with the subcontractor if, within three (3) days of receiving the notice required pursuant to subsection 5.3.3 a) of this Section, 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.

5.4 Duty to Comply with Investigations. The Contractor shall comply with any reasonable request by the Colorado Department of Labor and Employment (the "Department") made in the course of an investigation conducted pursuant to Section 8-17.5-102 (5), Colorado Revised Statutes to ensure that the Contractor is complying with this Section.

5.5 Breach. If the Contractor violates a provision of this Section, the District may terminate the Agreement for a breach of the Agreement. If the Agreement is so terminated, the Contractor shall be liable for actual and consequential damages to the District. The District shall notify the Colorado office of the Secretary of State if the Contractor violates a provision of this Section and the District terminates the Agreement.

5.6 Department Program. If the Contractor participates in the Department Program, in lieu of the E-Verify Program, the Contractor shall notify the Department and the District of such participation. The Contractor shall, within twenty (20) days after hiring an employee who is newly hired for employment to perform work under the Agreement, affirm that the Contractor has examined the legal work status of such employee, retained file copies of the documents required by 8 U.S.C. Sec. 1324a, and not altered or falsified the identification documents for such employees. The Contractor shall provide a written, notarized copy of the affirmation, similar in form as attached hereto as **Attachment 2**, to the District.

## 6. INDEMNIFICATION.

Subject to the provisions of Section 13-50.5-102(8), Colorado Revised Statutes, to the extent applicable to this Agreement, the Contractor shall indemnify, defend, and hold harmless the District and each of its directors, employees, agents, and consultants, from and against any and all claims, demands, suits, actions, proceedings, judgments, losses, damages, injuries, penalties, costs, and expenses (including reasonable attorneys' fees), and liabilities for which the District may be held liable by reason of injury to any person or damage to any property ("Any Claims") to the extent they arise from or may be alleged to arise, directly or indirectly, in whole or in part, from the intentional or negligent acts or omissions of the Contractor or any of its subcontractors, agents, representatives, or employees, or the agents, representatives, or employees of any subcontractors (collectively the "Contractor/Related Parties"), in connection with this Agreement and/or the Contractor's Services hereunder, including, without limitation, Any Claims which cause or allow to continue a condition or event which deprives the District or any of its directors or employees of its sovereign immunity under the Colorado Governmental Immunity Act, Sections 24-10-101, *et seq.*, Colorado Revised Statutes. Provided, however, that the Contractor shall not be liable for any claim, loss, damage, injury, or liability arising out of the negligence of the District, its directors, employees, agents, and consultants.

The obligations of the indemnifications extended by the Contractor to the District under this Section shall survive termination or expiration of this Agreement.

The Contractor's defense, indemnification, and insurance obligations shall be to the fullest extent permitted by law and nothing in this Agreement shall be construed as requiring the Contractor to defend in litigation, indemnify, or insure the District against liability for damage arising out of the death or bodily injury to persons or damage to property caused by the negligence or fault of the District or any third party under the control or supervision of the District.

To the extent the terms of Section 13-50.5-102(8), Colorado Revised Statutes, are applicable to this Agreement, the Contractor and the District hereby agree for the purposes of this Section that: (i) "the degree or percentage of negligence or fault attributable" to the Contractor/Related Parties as used in Section 13-50.5-102(8)(a), Colorado Revised Statutes, shall be conclusively determined by a trial court at the state or federal level and (ii) the term "adjudication" used in Section 13-50.1-102(8)(c), Colorado Revised Statutes, shall mean a trial court order at the state or a federal level.

Insurance coverage requirements specified in this Agreement in no way lessen or limit the obligations of the Contractor under the terms of this Section. The Contractor shall obtain, at the Contractor's own expense, additional insurance, if any, required to satisfy the terms of this Section.

## **7. INSURANCE.**

7.1 General Requirements. The Contractor shall acquire and maintain in full force and effect, during the entire term of the Agreement, including any extensions thereof, and at any time thereafter necessary to protect the District, its directors, employees, agents, consultants and the Contractor from claims that arise out of or result from the operations under this Agreement by the Contractor or by a subcontractor or a vendor or anyone acting on their behalf or for which they may be liable, the coverages set forth in subsection 7.2. All insurance is to be placed with insurance carriers licensed in the State of Colorado with an A.M. Best and Company rating of no less than A-(X) or as otherwise accepted by the District. The District and its respective directors, officers, employees and agents shall be named as an additional insured as provided in subsection 7.3. The Contractor shall request its insurer to amend or endorse its insurance policy to provide that the insurer will give the District sixty (60) days written notice prior to the cancellation, non-renewal or material modification of any policy of insurance obtained to comply with this Section. In addition, Contractor shall immediately upon receipt provide the District a copy of any notice of cancellation, non-renewal or material modification of any policy of insurance obtained to comply with this Section.

### **7.2 Minimum Insurance Coverages.**

7.2.1 Workers' compensation insurance in accordance with applicable law, including employers' liability with minimum limits of One Hundred Thousand Dollars (\$100,000.00) each accident, Five Hundred Thousand Dollars (\$500,000.00) Disease-Policy Limit, One Hundred Thousand Dollars (\$100,000.00) Disease each employee.

7.2.2 Commercial general liability insurance in the amount of One Million Dollars (\$1,000,000.00) combined single limit bodily injury and property damage, each occurrence; Two Million Dollars (\$2,000,000.00) general aggregate, and One Million Dollars (\$1,000,000.00) products and completed operations aggregate. Coverage shall be on an ISO 1996 Form (CG 0001 or equivalent), include all major divisions of coverage and be on a comprehensive basis, including:

- a) Premises and operations;
- b) Personal injury liability;
- c) Contractual liability;
- d) Property damage;
- e) Products and completed operations;
- f) Independent contractors coverage;
- g) Explosion, collapse and underground (for contractors only);
- h) Contractors' limited pollution coverage (for contractors only); and
- i) Endorsement CG 2-503 or equivalent; general aggregate applies on a per project basis (for contractors only).

7.2.3 Commercial automobile liability insurance in the amount of One Million Dollars (\$1,000,000.00) combined single limit bodily injury and property damage, each accident covering owned, leased, hired, non-owned and employee non-owned vehicles used at the project site.

7.2.4 Professional liability coverage in the amount of One Million Dollars (\$1,000,000.00) each claim and in the aggregate covering the negligent acts or omissions of the Contractor and/or its subcontractors in the performance of the Services.

7.2.5 Excess liability coverage, beyond that of the general liability, automobile liability and employers liability coverages required herein, in the amount of at least Two Million Dollars (\$2,000,000.00) combined single limit bodily injury and property damage, each occurrence, and Two Million Dollars (\$2,000,000.00) in the aggregate. Separate aggregates need to be structured as found in the underlying coverages.

7.2.6 All coverages specified herein shall waive any right of subrogation against the District and its directors, officers and employees.

7.3 Additional Insured Parties. The District and its respective directors, officers, employees and agents shall be named as an additional insured on all policies (with the exception of workers' compensation insurance and professional liability coverage). Professional liability coverage shall be endorsed to include contractual liability coverage, insured contract coverage or similar coverage for the professional services performed under this Agreement.

7.4. Certificates of Insurance. Prior to commencing any Services under the Agreement, the Contractor shall provide the District with a certificate or certificates evidencing the coverages identified on the face of the certificate with the name of this Agreement and a copy of the additional insured endorsement. If the Contractor subcontracts any portion(s) of the Services, such



subcontractor(s) shall be required to furnish certificates evidencing workers' compensation and employers' liability insurance, commercial general liability insurance coverage and automobile liability insurance in amounts satisfactory to the District and the Contractor and containing the "additional insured," "waiver of subrogation" and "cancellation" conditions found in this Section. If the coverage required expires during the term of this Agreement, the Contractor and its subcontractor(s) shall provide replacement certificate(s) evidencing the continuation of the required policies at least fifteen (15) days prior to expiration.

7.5 Additional Provisions. Each liability policy including, where required, umbrella/excess liability policy is to contain, or be endorsed to contain, the following:

7.5.1 The Contractor's insurance coverage shall be primary insurance with respect to the District and its directors, officers and employees. Any insurance maintained by the District or its directors, officers and employees shall be in excess of the Contractor's insurance and shall not contribute to it.

7.5.2 The Contractor's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to limits of liability.

7.6 Failure to Comply with Reporting Provisions. Any failure on the part of the Contractor to comply with reporting provisions or other conditions of the policies shall not affect the obligation of the Contractor to provide the required coverage to the District (and its directors, officers and employees).

7.7 Claims-Made Policies. If any policy is a claims-made policy, the policy shall provide the Contractor the right to purchase, upon cancellation or termination by refusal to renew the policy, an extended reporting period of not less than two (2) years. The Contractor agrees to purchase such an extended reporting period if needed to ensure continuity of coverage. The Contractor's failure to purchase such an extended reporting period as required by this Section shall not relieve it of any liability under this Agreement. If the policy is a claims-made policy, the retroactive date of any such policy shall be not later than the date this Agreement is executed by the parties hereto. If the Contractor purchases a subsequent claims-made policy in place of any prior claims-made policy, the retroactive date of such subsequent policy shall be no later than the date this Agreement is executed by the parties hereto.

7.8. No Limitation on Other Obligations. The procuring of required policies of insurance shall not be construed to limit the Contractor's liability hereunder or to fulfill the indemnification provisions and requirements of this Agreement. The Contractor shall be solely responsible for any deductible losses under the policy.

7.9. Additional Risks and Hazards. If the District requests in writing that insurance for risks other than those described herein or for other special hazards be included in property insurance policies, the Contractor shall obtain such insurance, if available, in a form and for a cost approved by the District, and the cost thereof shall be charged to the District.

7.10 Subcontractors. If the Contractor subcontracts any portion(s) of the Services, the

Contractor shall require that each subcontractor retained by the Contractor acquire and maintain insurance coverage as set forth in this Section 7. The Contractor shall require each subcontractor to provide to the Contractor insurance certificates and endorsements, including necessary updates to the same, demonstrating compliance with this Section 7. The Contractor shall retain all subcontractor insurance certificates and endorsements for the duration of the Agreement. The Contractor shall, upon District request, submit them to the District for review or audit. Failure to acquire and maintain subcontractor insurance certificates is a material breach of this Agreement.

## 8. TERMINATION.

### 8.1 Types of Termination.

8.1.1 Events of Default and Termination For Cause. The Contractor shall be immediately in default hereunder (an "Event of Default") upon the occurrence of any of the events described below:

- a) Any breach of the terms and conditions of this Agreement.
- b) Failure to perform the Services under this Agreement, or significant delay or discontinuance of performance of the Services.
- c) Lack of financial responsibility (including failure to obtain and maintain insurance) for loss or damage to the District or its property.
- d) Dishonesty, embezzlement or false reporting of any material financial information, including but not limited to invoices.
- e) Insolvency, bankruptcy or commission of any act of bankruptcy or insolvency or assignment for the benefit of creditors.
- f) Any attempt by the Contractor to assign its performance of this Agreement without the consent required by this Agreement.
- g) Termination of any subcontract for any substantial Services without the prior written consent of the District.

In addition to any other rights provided herein, upon an Event of Default, the District shall have the right in its sole discretion to immediately terminate this Agreement and further performance of the Services, in whole or in part, by delivery to the Contractor of written notice of termination specifying the extent of termination and the effective date of termination.

8.2 Any Other Remedies Allowed by Law. The District shall be entitled to any other remedies allowed by law in addition to the remedies provided in this Section.

### 8.3 Payment and Liabilities Upon Termination.

8.3.1 Termination for Cause. If an Event of Default has occurred, the Contractor shall be liable to the District for any actual damages for losses, including, but not limited to, any and all costs and expenses reasonably incurred by the District or any party acting on the District's behalf in completing the Services or having the Services completed (excluding changes in the Services by the District following such Event of Default). The District shall

determine the total cost of the Services satisfactorily performed by the Contractor prior to the effective date of termination for cause. All reasonable damages, losses, costs and charges incurred by the District, including attorney's fees and costs, relating to obtaining and mobilizing another contractor, of completing the Services and of retaining another contractor's acceptance of full responsibility for all obligations of the Contractor under this Agreement shall be deducted from any monies due or which may become due to the Contractor. The District shall determine the total amount due and shall notify the Contractor in writing of the amount the Contractor owes the District or the amount the District owes the Contractor.

8.4 Contractor's Obligations Upon Termination. After receipt of notice of termination, and unless otherwise directed by the District, the Contractor shall immediately proceed as follows:

8.4.1 Stop work on the Services as specified in the notice of termination; and

8.4.2 Take any action that may be necessary, or that the District may direct, for the protection and preservation of the Services and property related to this Agreement that is in the possession of the Contractor and in which the District has or may acquire an interest.

9. OWNERSHIP OF MATERIALS AND RISK OF LOSS.

All work product 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 be, upon preparation, and remain the property of the District under all circumstances, whether or not the Services are completed. All work product shall be provided to the District at the time of completion of any of the discrete tasks specified herein or at the time of termination of this Agreement, whichever event first occurs, and shall be provided to any subsequent owners only with the District's express permission. The Contractor shall maintain reproducible copies on file of any such work product involved in the Services for a period of five (5) years and shall make them available for the District's use and provide such copies to the District, upon request, at commercial printing rates. At any time, the District may obtain reproducible copies of the Contractor's work product by paying printing costs as set forth above.

10. INDEPENDENT CONTRACTOR.

It is the express intention of the parties that the Contractor is not employed by the District but is an independent contractor. An agent or employee of Contractor shall never be or deemed to be an employee or agent of the District. The manner and means of providing the Services are under the sole control of the Contractor. The payment or withholding of any federal, state and local taxes for the Contractor, its employees or agents shall be the responsibility of the Contractor. As an independent contractor, the Contractor shall be responsible for complying with all applicable workers' compensation laws concerning itself, its agents, employees and subcontractors.

11. ASSIGNMENT.

Neither the District nor the Contractor may assign this Agreement or parts hereof or its rights hereunder without the express written consent of the other party.

12. SUBCONTRACTORS.

To the extent that the Contractor engages subcontractors to perform, or otherwise provide support to assist the Contractor to perform, any portion of the Services performed under this Agreement (each a "Permitted Subcontractor"), then: (a) the Contractor shall remain responsible for the services, tasks, functions and responsibilities performed by Permitted Subcontractors to the same extent as if such services, tasks, functions and responsibilities were performed directly by the Contractor and, for purposes of this Agreement, such Services shall be deemed Services performed by the Contractor; (b) the Contractor shall cause such Permitted Subcontractors to comply with the obligations and restrictions associated with the services, tasks, functions and responsibilities performed by such Permitted Subcontractors that are applicable to the Contractor under this Agreement; and (c) the Contractor shall acquit its responsibilities as provided in subsection 7.10 of this Agreement.

13. MISCELLANEOUS

13.1 Time is of the Essence. The performance of the Services of the Contractor shall be undertaken and completed in accordance with this Agreement and in such sequence as to assure its expeditious completion in light of the purposes of this Agreement. It is agreed that time is of the essence in the performance of this Agreement.

13.2 Notice. All notices must be in writing and (a) delivered personally, (b) sent by United States certified mail, postage prepaid, return receipt requested ("US Mail"), or (c) placed in the custody of a nationally recognized overnight carrier for next day delivery ("Carrier"), and will be deemed given (i) when received, if delivered personally, (ii) 4 days after deposit, if sent by US Mail, or (iii) the next business day after deposited with a Carrier during business hours on a business day. All notices shall be delivered to the following addresses, or such other address as is provided by one party to the other in accordance with this section:

**Notices to District:**

Lincoln Park Metropolitan District  
c/o CliftonLarsonAllen LLP  
8390 E. Crescent Pkwy, Suite 500  
Greenwood Village, CO 80111  
Attn: Matthew Urkoski

**With a copy to:**

Icenogle Seaver Pogue, P.C.  
4725 S. Monaco Street, Suite 360

Denver, CO 80237  
Attn.: Tamara K. Seaver

**Notices to Contractor:**

BrightView Landscape Services, Inc.  
2333 W. Oxford Avenue  
Sheridan, CO 80110

**With a copy to:**

BrightView Landscape Services, Inc.  
12570 E. 39<sup>th</sup> Avenue  
Denver, CO 80239

13.3 Governmental Immunity. Nothing in this Agreement shall be construed to be a waiver, in whole or in part, of any right, privilege or protection afforded the District or its Board of Directors, officers, employees, servants, agents or authorized volunteers pursuant to the Colorado Governmental Immunity Act, Sections 24-10-101, *et seq.*, C.R.S.

13.4 Annual Appropriations. The District does not intend hereby to create a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever. The District's payment obligations hereunder are subject to annual appropriation. The District has appropriated sufficient funds for this Agreement for the current fiscal year.

13.5 Entire Contract. This Agreement constitutes the entire agreement between the parties and sets forth the rights, duties and obligations of each to the other as of this date. Any prior agreements, promises, negotiations or representations not expressly set forth in this Agreement are of no force and effect.

13.6 Agreement Modification. The Agreement may not be amended, altered or otherwise changed except by a written agreement signed by the parties.

13.7 No Waiver. 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 herein, nor shall the waiver of any default hereunder be deemed a waiver of any subsequent default hereunder.

13.8 Controlling Law and Venue. The parties hereto agree that exclusive jurisdiction and venue for the resolution of any dispute relating to this Agreement or any Services to be provided hereunder shall lie in the state courts of the State of Colorado.

13.9 Binding Contract. This Agreement shall inure to and be binding on the heirs, executors, administrators, successors and assigns of the parties hereto.



13.10 No Third Party Beneficiaries. This Agreement is entered into for the sole benefit of the District and Contractor, and no other parties are intended to be direct or incidental beneficiaries of this Agreement, and no third party shall have any right in, under or to this Agreement.

13.11 Severability. The invalidity or unenforceability of any portion or previous version of this Agreement shall not affect the validity or enforceability of any other portion or provision. Any invalid or unenforceable portion or provision shall be deemed severed from this Agreement and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain such invalid or unenforceable portion or provisions.

13.12 Headings. The headings and captions in this Agreement are intended solely for the convenience of reference and shall be given no effect in the construction or interpretation of this Agreement.

13.13 Counterpart Execution. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

13.14 Force Majeure. The Contractor's performance will be excused to the extent the Contractor is unable to perform as a result of strikes, acts of God, fire, earthquake and rules, regulations or restrictions imposed by any government or governmental agency.

13.15 By signing this Agreement, the District acknowledges and agrees that (a) snow or ice may accumulate while Services are being performed, (b) even when there is no precipitation present, snow may blow or drift onto a Site Area or be brushed onto cars, parking and driving areas or walkways, and (c) properly plowed snow may melt and refreeze after Services are fully performed. Accordingly, the District understands and agrees that (i) the Contractor cannot guarantee that the performance of the Services will remove all snow and ice from any Site Area, and (ii) some snow or ice may still be present at a Site Area during or after the performance of the Services.

**[Remainder of page intentionally left blank.]**

DISTRICT:

LINCOLN PARK METROPOLITAN DISTRICT

By: Manoel, Murtat

Title: Vice President

ATTEST:

By: 2/a/4

Title: Secretary

## ATTACHMENT 1

### Certification Regarding Illegal Aliens

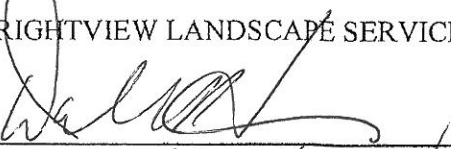
To: LINCOLN PARK METROPOLITAN DISTRICT

I, David Hanson, as Senior Vice President of BrightView Landscape Services, Inc., the prospective "Contractor" for that certain contract for snow management and removal services to be entered into with the Lincoln Park Metropolitan District, do hereby certify on behalf of said Contractor that, as of the date of this Certification, Contractor does not knowingly employ or contract with an illegal alien who will perform work under this Agreement and that Contractor will participate in either the E-Verify Program administered by the U.S. Department of Homeland Security and the Social Security Administration, or in the Colorado Department of Labor and Employment's Employment Verification Program pursuant to Section 8-17.5-102(5)(c), Colorado Revised Statutes in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Contract.

Executed on the 23rd of October, 2017.

#### CONTRACTOR:

BRIGHTVIEW LANDSCAPE SERVICES, INC.

  
By: DAVID L. HANSON  
Its: Senior Vice President

ATTACHMENT 2

Affirmation of Legal Work Status

Employee Name: \_\_\_\_\_  
Last First Middle

Date of Birth: \_\_\_\_\_ Date of Hire: \_\_\_\_\_

In accordance with Colorado Revised Statute § 8-17.5-102(5)(c)(II), I have:

- \_\_\_\_\_ examined the legal work status of the above named employee.  
\_\_\_\_\_ retained file copies of the documents required by 8 U.S.C. sec. 1324a.  
\_\_\_\_\_ not altered or falsified the identification documents for the above named employee.

Employer Name / Designated Representative: \_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

Official Title \_\_\_\_\_

Employer Phone Number \_\_\_\_\_

STATE OF COLORADO )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_.

(SEAL)

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

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

**EXHIBIT A**

**SCOPE OF SERVICES**  
**AND RATE SCHEDULE**



# Multi-season Snow Service Order

BrightView

BrightView Landscape Services, Inc. (BrightView)

8/22/2017 13:27

400307650

## • SERVICE LOCATION (Location)

Loc ID      Location Name      Estimate  
16593824      LINCOLN PARK      400307650  
Location Address  
LINCOLN AVE. AND STONEGATE PRK, PARKER, CO 80134

## • CLIENT INFORMATION (Client)

Client ID      Company Name  
      CLIFTON LARSON ALLEN LLP  
Billing Address  
8390 E CRESCENT PARKWAY, #500, , GREENWOOD VILLAGE, CO 80111

## • SCOPE OF SERVICES      Service Start: 09/01/2017      Service End: 05/31/2020      Start Season: 2017

Vehicle Site Area(s) (VEH)	Service Start Trigger	Pedestrian Sites Areas (PED)	Service Start Trigger
Parking/Driving Areas	2"	Private Walks	2"
Parking Structure	N/A	Public Walks	2"
	N/A		N/A
	N/A		N/A
Ice Watch (Vehicle Areas)	Required	Ice Watch (Pedestrian)	Required
Anti-Ice/Pretreatment (Vehicle Areas)	Declined	Anti-Ice/Pretreatment (Pedestrian Area)	Declined

BrightView is only responsible for performing Services in the selected Site Areas after the indicated Service Trigger is reached. Services requested before the Trigger is met shall begin upon a reasonable period after notification from the Client and may result in additional fees. Services provided under this agreement shall be directed and managed by BrightView in order to maintain safe conditions in the Site Areas indicated.

- Client Declines to have BrightView stake the Location.
- BrightView will not be responsible for damages caused to roads, curbs, road-edges, turf-edges or other objects not properly identified and obstructed from view.
- Bulk de-icing material will be purchased (Supplied) by BrightView and applied by BrightView.
- Bagged de-icing material will be purchased (Supplied) by BrightView and applied by BrightView.
- BrightView is only responsible for performing Services in the selected Site Areas after the indicated service trigger is reached.
- Services requested before the trigger is met shall commence upon a reasonable period after notification from the Client.
- Services provided under this agreement shall be directed and managed by BrightView in order to maintain safe conditions.
- All Prices EXCLUDE any applicable sales tax.

**• PRICE SCHEDULE** BrightView will be compensated for work performed at the Service Location according to the agreed to prices shown below. All listed equipment items includes the respective equipment and required operator.

Category	Area	Service/Unit Description	Unit	Min. Chg.	Price	Price	2017 Price	2018 Price	2019 Price
TM	ALL AREAS	Truck with Plow	HR	HR			\$102.00	\$102.00	\$102.00
TM	ALL AREAS	Truck with Spreader/Sprayer	HR	HR			\$110.00	\$110.00	\$110.00
TM	ALL AREAS	Skid Steer	HR	HR			\$111.00	\$111.00	\$111.00
TM	ALL AREAS	Back Hoe /Loader less than 3CY	HR	HR			\$200.00	\$200.00	\$200.00
TM	ALL AREAS	Loader 3CY+ Bucket	HR	HR			\$250.00	\$250.00	\$250.00
TM	ALL AREAS	Hauling/Relocating Snow (note)	HR	HR			\$125.00	\$125.00	\$125.00
TM	ALL AREAS	Utility Vehicles (ATV, Kubota, etc.)	HR	HR			\$95.00	\$95.00	\$95.00
TM	ALL AREAS	Two Stage Snow Blower / Walk Broo	HR	HR			\$65.00	\$65.00	\$65.00
TM	ALL AREAS	Crew Member	HR	HR			\$50.00	\$50.00	\$50.00
TM	ALL AREAS	Bag Ice Melt	50 lbs	50 lbs			\$45.00	\$45.00	\$45.00
TM	ALL AREAS	Ice Slicer	TN	TN			\$260.00	\$260.00	\$260.00
TM	ALL AREAS	UTV w/ Plow	HR	HR			\$105.00	\$105.00	\$105.00

IN WITNESS WHEREOF, the parties have hereunto entered this Agreement effective as of the date first written above.

CONTRACTOR:

BRIGHTVIEW LANDSCAPE SERVICES, INC.

By:

DAVID L HANSON

Title:

Senior Vice President

10/23/2017

ATTEST:

By:

Martha Meier

Title:

Branch Administrator