

AGREEMENT FOR SERVICES

THIS AGREEMENT is made and entered into this ____ day of _____, 2019 (the "Effective Date"), by and between the Town of Erie, a Colorado municipal corporation with an address of 645 Holbrook Street, P.O. Box 750, Erie, Colorado 80516 (the "Town"), and **CoCal Landscape Services Inc**, an independent contractor with a principal place of business at **333 East 76th Avenue, Denver, Colorado 80229** ("Contractor") (each a "Party" and collectively the "Parties").

WHEREAS, the Town requires services; and

WHEREAS, Contractor has held itself out to the Town as having the requisite expertise and experience to perform the required services.

NOW THEREFORE, for the consideration hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

I. SCOPE OF SERVICES

A. Contractor shall furnish all labor and materials required for the complete and prompt execution and performance of all duties, obligations, and responsibilities which are described or reasonably implied from the Scope of Services set forth in **Exhibit A**, attached hereto and incorporated herein by this reference, and known as: **2019 Open Space and Right of Way Mowing Services (PR-19-03)**.

B. A change in the Scope of Services shall not be effective unless authorized as an amendment to this Agreement. If Contractor proceeds without such written authorization, Contractor shall be deemed to have waived any claim for additional compensation, including a claim based on the theory of unjust enrichment, quantum merit or implied contract. Except as expressly provided herein, no agent, employee, or representative of the Town is authorized to modify any term of this Agreement, either directly or implied by a course of action.

II. TERM AND TERMINATION

A. This Agreement shall commence on the Effective Date, and shall continue until Contractor completes the Scope of Services to the satisfaction of the Town, or until terminated as provided herein.

B. Either Party may terminate this Agreement upon 30 days advance written notice. The Town shall pay Contractor for all work previously authorized and completed prior to the date of termination. If, however, Contractor has substantially or materially breached this Agreement, the Town shall have any remedy or right of set-off available at law and equity.

C. This Agreement may be renewed for up to 2 additional 12-month terms by written agreement of the Parties. Any such renewal shall be negotiated and finalized at least 30 days prior to the expiration of the then-current term. If renewed, Contractor agrees to honor its then-current compensation, plus not more than a 2% annual increase. Contractor shall justify any increase in compensation in writing to the Town's satisfaction.

III. COMPENSATION

In consideration for the completion of the Scope of Services by Contractor, the Town shall pay Contractor **\$36,639**. This amount shall include all fees, costs and expenses incurred by Contractor, and no additional amounts shall be paid by the Town for such fees, costs and expenses. Contractor shall not be paid until the Scope of Services is completed to the satisfaction of the Town.

IV. RESPONSIBILITY

A. Contractor hereby warrants that it is qualified to assume the responsibilities and render the services described herein and has all requisite corporate authority and licenses in good standing, required by law.

B. The work performed by Contractor shall be in accordance with generally accepted practices and the level of competency presently maintained by other practicing contractors in the same or similar type of work in the applicable community. The work and services to be performed by Contractor hereunder shall be done in compliance with applicable laws, ordinances, rules and regulations.

C. The Town's review, approval or acceptance of, or payment for any services shall not 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.

V. OWNERSHIP

Any materials, items, and work specified in the Scope of Services, and any and all related documentation and materials provided or developed by Contractor shall be exclusively owned by the Town. Contractor expressly acknowledges and agrees that all work performed under the Scope of Services constitutes a "work made for hire." To the extent, if at all, that it does not constitute a "work made for hire," Contractor hereby transfers, sells, and assigns to the Town all of its right, title, and interest in such work. The Town may, with respect to all or any portion of such work, use, publish, display, reproduce, distribute, destroy, alter, retouch, modify, adapt, translate, or change such work without providing notice to or receiving consent from Contractor.

VI. INDEPENDENT CONTRACTOR

Contractor is an independent contractor. Notwithstanding any other provision of this Agreement, all personnel assigned by Contractor to perform work under the terms of this Agreement shall be, and remain at all times, employees or agents of Contractor for all purposes. Contractor shall make no representation that it is a Town employee for any purposes.

VII. INSURANCE

A. Contractor agrees to procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands, and other obligations assumed by Contractor pursuant to this Agreement. At a minimum, Contractor shall procure and maintain, and shall cause any subcontractor to procure and maintain, the insurance coverages listed below, with forms and insurers acceptable to the Town.

1. Worker's Compensation insurance as required by law.

2. Commercial General Liability insurance with minimum combined single limits of \$1,000,000 each occurrence and \$2,000,000 general aggregate. The policy shall be applicable to all premises and operations, and shall include coverage for bodily injury, broad form property damage, personal injury (including coverage for contractual and employee acts), blanket contractual, products, and completed operations. The policy shall contain a severability of interests provision, and shall include the Town and the Town's officers, employees, and contractors as additional insureds. No additional insured endorsement shall contain any exclusion for bodily injury or property damage arising from completed operations.

B. Such insurance shall be in addition to any other insurance requirements imposed by law. The coverages afforded under the policies shall not be canceled, terminated or materially changed without at least 30 days prior written notice to the Town. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage. Any insurance carried by the Town, its officers, its employees, or its contractors shall be excess and not contributory insurance to that provided by Contractor. Contractor shall be solely responsible for any deductible losses under any policy.

C. Contractor shall provide to the Town a certificate of insurance as evidence that the required policies are in full force and effect. The certificate shall identify this Agreement.

VIII. INDEMNIFICATION

Contractor agrees to indemnify and hold harmless the Town and its officers, insurers, volunteers, representative, agents, employees, heirs and assigns from and against all claims, liability, damages, losses, expenses and demands, including attorney fees, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with this Agreement if such injury, loss, or damage is caused in whole or in part by, the act, omission, error, professional error, mistake, negligence, or other fault of Contractor, any subcontractor of Contractor, or any officer, employee, representative, or agent of Contractor, or which arise out of a worker's compensation claim of any employee of Contractor or of any employee of any subcontractor of Contractor.

IX. ILLEGAL ALIENS

A. Certification. By entering into this Agreement, Contractor hereby certifies that, at the time of this certification, it 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 Social Security Administration or the Department Program administered by the Colorado Department of Labor and Employment to confirm the employment eligibility of all employees who are newly hired to perform work under this Agreement.

B. Prohibited Acts. Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement, or enter into a contract with a subcontractor that fails

to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.

C. Verification.

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

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

3. If Contractor obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien who is performing work under this Agreement, Contractor shall: notify the subcontractor and the Town within 3 days that Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien who is performing work under this Agreement; and terminate the subcontract with the subcontractor if within 3 days of receiving the notice required pursuant to subsection 1 hereof, the subcontractor does not stop employing or contracting with the illegal alien who is performing work under this Agreement; except that Contractor shall not terminate the subcontract if during such 3 days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien who is performing work under this Agreement.

D. Duty to Comply with Investigations. Contractor shall comply with any reasonable request by the Colorado Department of Labor and Employment made in the course of an investigation conducted pursuant to C.R.S. § 8-17.5-102(5)(a) to ensure that Contractor is complying with the terms of this Agreement.

E. Affidavits. If Contractor does not have employees, Contractor shall sign the “No Employee Affidavit” attached hereto. If Contractor wishes to verify the lawful presence of newly hired employees who perform work under the Agreement via the Department Program, Contractor shall sign the “Department Program Affidavit” attached hereto.

X. MISCELLANEOUS

A. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in Boulder County, Colorado.

B. No Waiver. Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by the Town shall not constitute a waiver of any of the other terms or obligation of this Agreement.

C. Integration. This Agreement constitutes the entire agreement between the Parties, superseding all prior oral or written communications.

D. Third Parties. There are no intended third-party beneficiaries to this Agreement.

E. Notice. Any notice under this Agreement shall be in writing, and shall be deemed sufficient when directly presented or sent pre-paid, first class U.S. Mail to the Party at the address set forth on the first page of this Agreement.

F. Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.

G. Modification. This Agreement may only be modified upon written agreement of the Parties.

H. Assignment. Neither this Agreement nor any of the rights or obligations of the Parties shall be assigned by either Party without the written consent of the other.

I. Governmental Immunity. The Town and its officers, attorneys and employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq., as amended, or otherwise available to the Town and its officers, attorneys or employees.

J. Rights and Remedies. The rights and remedies of the Town under this Agreement are in addition to any other rights and remedies provided by law. The expiration of this Agreement shall in no way limit the Town's legal or equitable remedies, or the period in which such remedies may be asserted, for work negligently or defectively performed.

K. Subject to Annual Appropriation. Consistent with Article X, § 20 of the Colorado Constitution, any financial obligation of the Town not performed during the current fiscal year is subject to annual appropriation, shall extend only to monies currently appropriated, and shall not constitute a mandatory charge, requirement, debt or liability beyond the current fiscal year.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

TOWN OF ERIE, COLORADO

Jennifer Carroll, Mayor

ATTEST:

Jessica Koenig, Town Clerk

CONTRACTOR

By: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was subscribed, sworn to and acknowledged before me this ____ day of _____, 2019, by _____ as _____ of _____.

My commission expires:

(S E A L)

Notary Public

EXHIBIT A SCOPE OF SERVICES

Contractor's Duties

During the term of this Agreement, Contractor shall perform the following duties, as directed by the Town:

- Perform mowing services at the locations in the tables below
- Perform string trimming services following mowing operations at all locations
- Remove and dispose of any trash and debris from mowing areas

Open Space Locations:

Site #	Grouping for Billing	Location	Acres	Frequency	Approximate Timeframe	Total Acres
1	Public Works Facilities	South Water Reclamation Plant	7.9	3x	1. Mid to late May 2. Mid July to early August 3. Early to Mid-October	10.95
2		Water Treatment Plant	3.05			
3	Cemetery	Cemetery	11.05	3x	1. 3 to 11 days prior to Memorial Day 2. 3 to 11 days prior to July 4 th 3. Early to Mid-October	11.05
4	Open Space Properties	Erie Lake	4.0	3x	1. Mid to late May 2. Mid July to early August 3. Early to mid-October	32.6
5		Northridge Detention	0.55	2x	1. Late May to early June 2. Late September to early October	
6A		Coal Creek Levee - both sides	17.35	1x	3. Early June – Late June	
6B		Coal Creek Levee - east side only	10.7	1x	1. Late July – Mid-August	
7		Highway 7 Parcels	1.6	3x	1. Mid to late May 2. Mid July to early August 3. Early to mid-October	1.6
8		Bonanza Drive Parcel	1.1	3x	1. Mid to late May 2. Mid July to early August 3. Early to mid-October	1.1
Total Acreage						57.3

Rights-of-Way Locations:

Streets	Mileage (one way)	Mileage (total)	Description
109th Street	2.0	4.0	From Erie Parkway north to TOE limit sign/R.R. tracks
111th Street	1.05	1.05	From trail entrance north to Erie Parkway, east side of 111 th Street
111th Street	1.35	1.35	From south side of Schofield Farm property line north to Erie Parkway. Mow entire ditch on west side of road or Erie Parkway
119th Street	0.5	1.0	East side from southwest corner of Thomas Reservoir property south ½ mile. West side from Water Plant entrance south half mile to yellow marker
	0.2	0.2	East side from Jasper Road north to Boulder County maintenance sign
	0.3	0.6	South of Jasper Road from R.R. tracks to Billings Avenue
	0.55	0.55	South of Jasper, east side from R.R. tracks south to Town limits
Airport Drive	0.5	1.0	From CO HWY 7 north to Baron Court
Arapahoe Road	0.6	0.6	West of Lakota Ranch Road to east of Beasley Drive, south side of Arapahoe Road only.
	0.5	0.5	From County Line Road west to Boulder County maintenance sign, south side of Arapahoe Road only.
Bonanza Drive – west side	0.9	0.9	From Commons Court to Commander Circle
Bonanza Drive – east side	0.25	0.25	From Sunset Drive north, to south of Cessna Court
County Line Road – west side	4.25	4.25	From well pad entrance opposite City of Lafayette Water Reclamation Facility north to CO HWY 52, except do not mow from Arapahoe to Vista Parkway, Bonnell to Austin, or from Telleen Avenue to Jay Road/Cheesman Street
County Line Road – east side	4.15	4.15	CO HWY 52 south to CO HWY 7 except do not mow east side from Old Town to Austin Avenue.
Erie Parkway	0.25	0.25	North side from 109th Street east to 111th Street
Erie Parkway	1.8	1.8	South side. from WCR 5 to eastern Town limits
Jasper Road	1.9	1.9	North side, from WCR5 to I-25 off-ramp
	0.25	0.25	Mow entire median from County Line Road west to shrub bed
	0.25	0.25	North side from County Line Road west to subdivision's fence line that runs north/south. Mow entire area between curb and sidewalk and mow strip on the north side of sidewalk
	0.30	0.30	South side from County Line Road west to subdivision's fence line that runs north/south. Mow entire area between curb and sidewalk and mow strip on the south side of sidewalk
	0.75	1.5	From 119th Street west to Town limit sign
Kenosha Road	0.75	0.75	North side, from County Line Rd to Boulder Cty maintenance sign
	0.25	0.25	South side, from County Line Road west to well pad access road
Sheridan Avenue	0.8	0.8	East side from WCR 4, 0.8 miles south to marker 169 th Ave
Vista Parkway	0.5	0.5	From County Line Road east to bridge, north side only
Weld County Road 1.5	0.55	1.1	From Water Reclamation Facility to 200ft north of Fletcher Dr
Weld County Road 3	0.5	1.0	From WCR 12 south to WCR 10.5
Weld County Road 3	0.3	0.6	From WCR 10 south to Mount Pleasant Cemetery
Weld County Road 4	0.5	0.5	North side only from WCR 5 east to Sheridan Street (WCR 5.5)
Weld County Road 5	3.35	6.7	From TOE Adopt-a-Road sign south to WCR 4
Weld County Road 5	0.95	1.9	From WCR 12 north to HWY 52
Weld County Road 6	1.4	2.8	From WCR 5 east to Carol Drive
Weld County Road 6	0.5	0.5	North side from WCR 5 west to Republic Landfill property line
Weld County Road 7	4.4	8.8	From Town's 1.5mg water tank north to CO 52
Weld County Road 10	1.0	2.0	From WCR 3 east to WCR 5
Weld County Road 10	0.9	1.8	From WCR 7 east to TOE limit sign
Weld County Road 10.5	.95	1.9	From County Line Road east to WCR 3
Weld County Road 12	1.9	3.8	From WCR 5 east to TOE limit sign
TOTAL		62.35	

Service Description	Quantity	Price Per Occurrence	Frequency	Extended Cost
Open Space - Public Works Facilities (site 1)	7.9 Acres	\$ 807	3x	\$ 2,421
Open Space - Public Works Facilities (site 2)	3.05 Acres	\$ 312	3x	\$ 936
Open Space – Cemetery (site 3)	11.05 Acres	\$ 1,128	3x	\$ 3,384
Open Space – Properties (site 4)	4.0 Acres	\$ 409	3x	\$ 1,227
Open Space – Properties (site 5)	0.55 Acres	\$ 85	2x	\$ 170
Open Space – Properties (site 6A-6B)	28.05 Acres	\$ 8,587	1x	\$ 8,587
Open Space – Properties (site 7-8)	2.7 Acres	\$ 276	3x	\$ 828
Rights-of-Way	62.35 Miles	\$ 6362	3x	\$ 19,086
TOTAL				\$ 36,639