

LANDSCAPE SERVICES AGREEMENT

Terms and Conditions

THIS LANDSCAPE SERVICES AGREEMENT (this "Agreement") is entered into as of March 1, 2023 between BrightView Landscapes, LLC ("BrightView"), and Town of Zionsville ("Client"). If Client is other than the record owner of each property where goods or services will be delivered under this Agreement, then Client is executing and entering into this Agreement on its own behalf and as duly authorized agent for the record owner(s) of those properties.

NOW, THEREFORE, Client and BrightView mutually agree to the following terms and conditions:

1. Services.

- (a) For purposes of this Agreement: (i) the "Services" consist of the landscape maintenance, construction, irrigation, and other general landscape services described in the "Scope of Landscape Services" attached hereto, together with delivery or installation of any associated goods and materials, and (ii) the "Landscape Site(s)" consist of the exterior landscaped areas for each of the site(s) identified in the attached Scope of Landscape Services, where Services will be furnished by BrightView in accordance with the Scope of Landscape Services. More than one Scope of Landscape Services may be attached hereto, in the event of multiple Landscape Sites.
- (b) During the Term (defined below), BrightView shall furnish the Services or arrange for the Services to be furnished in accordance with applicable professional horticulture standards and any local requirements or regulations in effect, using appropriately trained, uniformed, and supervised personnel, and properly maintained equipment.
- (c) All tools, equipment, surplus materials, landscape waste materials and rubbish will be removed from each Landscape Site after Services are completed.
- (d) Any regulated substances required to be applied as part of the Services shall be applied in accordance with applicable laws and regulations by properly licensed personnel. Other materials shall be applied in accordance with the manufacturer's directions.

2. Term. The "Initial Term" of this Agreement shall start on March 1, 2023 and end on December 31, 2023. Thereafter, this Agreement shall renew automatically for successive one-year periods (each, a "Renewal Term") on each anniversary of the start date of the Initial Term (each, an "Anniversary Date"), unless either party gives written notice to the other party of its intent not to renew at least 90 days prior to the next Anniversary Date. The Initial Term, together with any Renewal Term, comprises the "Term."

3. Work Orders. If Client requests services from BrightView that are not set forth on the Scope of Landscape Services or at a worksite for which there is no attached Scope of Landscape Services, then BrightView may elect in its sole discretion to furnish such additional services and any related goods and materials pursuant to a written work authorization signed by Client (each, a "Work Order"). For services, goods, or materials furnished pursuant to a Work Order, payment shall be due from Client to BrightView as specified by such Work Order or, if unspecified in such Work Order, then upon delivery of the services, goods, and materials identified in the Work Order (the "Work Order Charges").

4. Insurance. During the Term, BrightView will maintain general liability insurance, automobile liability insurance, and

workers' compensation insurance covering its activities in connection with the Services and any Work Order. Such insurance shall be in commercially reasonable amounts. Evidence of such insurance will be provided to Client upon request.

5. Cooperation.

- (a) Client will cooperate with BrightView to facilitate the Services, and will permit or schedule adequate access to the Landscape Site(s) as required to perform the Services safely, efficiently, and within any specified timeframes. Client will notify BrightView in writing of any limitation on access to Landscape Site(s) as soon as possible, and in any event at least 48 hours to any scheduled delivery of services, goods, or materials.
- (b) If required, Client will provide water with adequate spigots or hydrants or such other items as identified on the Scope of Landscape Services.
- (c) Client shall provide written notice to BrightView of any proposed change in the ownership or management of the Landscape Site(s) at least 30 days prior to the effective date of any such change. A change in the ownership or management of the Landscape Site(s) shall not relieve Client of its obligations hereunder, including but not limited to the payment of the Service Fee and any amounts due to BrightView with respect to any Work Order, unless Client shall have given proper notice of termination pursuant to this Agreement.

6. Service Fee.

- (a) For Services performed pursuant to this Agreement, Client shall pay BrightView an annual service fee of \$25,033.00 (the "Service Fee"), subject to annual adjustments as described below.
- (b) Client shall pay the Service Fee to BrightView in advance through monthly payments according to the attached Billing Information and Schedule (See Billing Schedule). If no Billing Information and Schedule is attached to this Agreement or if the attached Billing Information and Schedule does not specify the months and amounts due, then the Service Fee shall be payable in advance in 8 equal monthly installments, beginning in the month of March. Monthly payments are due not later than the 10th calendar day of each month. Overdue Service Fees or Work Order Charges shall be subject to an administrative charge equal to the lower of: (i) 1.5% per month (18% per year) and (ii) the highest rate permitted by law, in either case multiplied by the unpaid balance. In addition to this administrative charge, Client shall reimburse BrightView for all costs and expenses (including but not limited to attorneys' fees and court costs) which are reasonably incurred by BrightView in

collecting overdue Service Fees, Work Order Charges, and administrative charges.

- (c) The parties hereby acknowledge that, notwithstanding the Service Fee, the monthly installment plan, and any Billing Information Schedule attached hereto, the types and frequency of services, goods, and materials furnished each month throughout the year may vary according to seasonal requirements and best horticultural practices. The monthly installment plan and Billing Information and Schedule are implemented for Client's convenience of payment only and billings do not necessarily reflect the actual cost or value of Services performed during any particular month or other billing period. If this Agreement is terminated for any reason on a date other than an Anniversary Date, then all sums paid by Client to BrightView for Services performed since the most recent Anniversary Date shall be subtracted from the time-and-materials value (as determined in good faith by BrightView) of Services performed since that date and, if the result is a positive number, then Client shall promptly pay the positive value of that amount to BrightView.
- (d) Unless specified otherwise in the attached Billing Information and Schedule, on each Anniversary Date the Service Fee shall be increased by an amount calculated by multiplying the annual Service Fee for the immediately preceding 12 months, by (*select one option*): 5% or the percentage increase in the Consumer Price Index between the most recently published CPI and the CPI published for the same month for the preceding calendar year. "Consumer Price Index" and "CPI" means the Consumer Price Index for Urban Wage Earners and Clerical Workers (1982-84 = 100) released by the United States Department of Labor, Bureau of Labor Statistics, relating to Consumer Prices for All Items for All Cities.

7. Termination.

- (a) Either BrightView or Client may terminate this Agreement without cause upon 90 days prior written notice to the other party.
- (b) If either party materially breaches the terms of this Agreement and fails to cure such breach within 30 days after written notice from the non-breaching party specifying such breach, then the non-breaching party may elect to immediately terminate this Agreement by written notice to the breaching party. In addition to and without limiting the foregoing, if Client fails to timely pay any Service Fees, Work Order Charges, or administrative fees due under this Agreement, then BrightView may elect, in its sole discretion, to (i) delay or cancel Services without further notice to Client, and/or (ii) immediately terminate this Agreement upon written notice to Client.
- (c) Either BrightView or Client may immediately terminate this Agreement upon written notice to the other party if (i) the other party makes an assignment for the benefit of creditors, (ii) a petition of bankruptcy is filed by or against the other party or (iii) all or substantially all of the other party's property is levied upon or scheduled to be sold in a judicial proceeding.

8. General Provisions.

- (a) BrightView will at all times perform the Services and any Work Order in accordance with all applicable workplace safety requirements and standards promulgated by federal and local authorities. BrightView will not at any time provide safety evaluation, inspection, or consulting services under this Agreement or any Work Order for the benefit of Client or any third party and, consequently, Client shall not rely on BrightView to provide such safety-related services at any time. Further, BrightView does not and will not at any time provide representations, warranties, or assurances as to the safety (or lack of safety) of any Landscape Site(s) or Work Order site with respect to periods before, during, or after Services are performed or Work Order services are performed and, consequently, Client shall not rely on BrightView to provide any such assurances at any time. If Client desires safety evaluation, inspection, or consulting services, or safety representations, warranties, or assurances, then BrightView and Client may execute and enter into a separate written agreement whereby BrightView will assist Client for an additional fee only in identifying (without recommending) third-party service providers that Client may then, in Client's sole discretion, elect to engage independently to obtain safety services and/or assurances.
- (b) This Agreement shall be governed by the law of the state where the Services will be furnished. If the Services will be furnished in more than one state, then the law of the State of Maryland will govern this Agreement, except with regard to its conflicts of laws doctrines. Both parties expressly agree that any and all legal proceedings arising under this Agreement will be brought exclusively in the state and federal courts located in Rockville, Maryland.
- (c) Neither party may assign this Agreement without the prior written consent of the other party; provided, however, that consent shall not be required to assign this Agreement to any company which controls, is controlled by, or is under common control with BrightView or in connection with assignment to an affiliate or pursuant to a merger, sale of all or substantially all of its assets or equity securities, consolidation, change of control or corporate reorganization. This Agreement is binding on, and inures to the benefit of, the parties hereto (including the record owner of the Landscape Site(s) if other than Client) and their respective heirs, legal representatives, successors and assigns.
- (d) This Agreement, together with any attached Billing Information and Schedule, attached Scope of Landscaping Services, Work Order hereunder, and any other schedules and exhibits attached hereto, constitute the entire agreement of the parties with respect to the Services and Work Orders and supersedes all prior contracts or agreements with respect to the Services or Work Orders, whether oral or written.
- (e) Except as otherwise provided herein, this Agreement may be amended or modified from time to time only by a written instrument executed and agreed to by both Client and BrightView.
- (f) The waiver by Client or BrightView of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any other or subsequent breach by Client or BrightView of such provision or any other provision.
- (g) BrightView's total liability for any losses, damages, and expenses of any type whatsoever incurred by Client or

any of its affiliates, guests, tenants, invitees, and lessees (“Losses”), which are caused directly or indirectly by acts or omissions of BrightView in connection with, or related to, the Services or any Work Order hereunder, including but not limited to any breach of BrightView’s obligations hereunder, shall be limited solely to direct and actual damages in an aggregate amount not to exceed the amounts actually paid to BrightView hereunder. In no event will BrightView be liable for special, indirect, incidental or consequential damages, irrespective of the form or cause of action, in contract, tort or otherwise, whether or not the possibility of such damages has been disclosed to BrightView in advance or could have been reasonably foreseen by BrightView. Further, BrightView shall not be liable for any Losses resulting from the provision of Services or performance of any Work Order hereunder, if such Losses are due to causes or conditions beyond its reasonable control, including but not limited to Losses in any way related to or associated with

state or local water regulations or mandates or BrightView’s compliance or good faith efforts to comply with state or local water regulations or mandates .
(h) BrightView’s performance will be excused to the extent BrightView is unable to perform as a result of strikes, accidents, acts of God, extreme weather conditions, inability to secure labor and/or products, fire, earthquake and rules, regulations or restrictions imposed by any government or governmental agency, or other delays or failure of performance beyond the commercially reasonable control of BrightView. For purposes of this Agreement, the parties agree specifically that water conservation regulations or guidelines are specifically included within the above referenced regulations or restrictions, and that BrightView shall not be liable for any failure to perform as a direct or indirect result of BrightView’s compliance with or good faith efforts to comply with state or local water regulations or mandates.

BrightView and Client hereby agree to the foregoing terms and conditions as of the date first set forth above.

By signing this Agreement in the space provided below, the undersigned Client signatory hereby represents and confirms that it has full power and authority to enter into this Agreement on its own behalf and on behalf of the record owner of each Landscape Site, and that this Agreement is a legally binding obligation of the undersigned and the record owner of each Landscape Site.

BrightView Landscapes, LLC

By: _____

Name: David Sharp

Title: VPGM

Date: [Click here to enter a date.](#)

CLIENT

By: _____

Name: _____

Title: _____

Date: [Click here to enter a date.](#)



JOB #
ALPHA

Billing Information and Schedule

Landscape Site Name:*	Creekside Corporate Park	Landscape Site Location:	10855 Creek Way
Client Business Name:	Town of Zionsville	Client Contact Name:	Wayne Delong
Client Contact Telephone:	317-873-5108	Client Contact Email:	wdelong@zionsville-in.gov
Billing Business Name:	Town of Zionsville	Billing Contact Name:	Wayne Delong
Billing Contact Telephone:	317-873-5108	Billing Contact Address:	1100 West Oak St.
BrightView Contact Name:	Greg Whipple	BrightView Contact Telephone:	317-777-3791

Note: If this Agreement applies to multiple sites, then check here and attach a list of the sites with this information and pricing.

Billing Schedule:

First Year	
January 1 st	\$ _____
February 1 st	\$ _____
March 1 st	\$ <u>3129.13</u>
April 1 st	\$ <u>3129.13</u>
May 1 st	\$ <u>3129.13</u>
June 1 st	\$ <u>3129.13</u>
July 1 st	\$ <u>3129.13</u>
August 1 st	\$ <u>3129.13</u>
September 1 st	\$ <u>3129.13</u>
October 1 st	\$ <u>3129.09</u>
November 1 st	\$ _____
December 1 st	\$ _____
Total Service Fee	
	\$ <u>25,033.00</u>

Additions to Billing Information and Schedule



Scope of Landscape Services

Landscape Site Name:*	Same	Landscape Site Location:	[SITE ADDRESS]
Client Business Name:	[TYPE CLIENT BUSINESS NAME HERE]	Client Contact Name:	[TYPE CLIENT CONTACT NAME HERE]
Client Contact Telephone:	[TYPE CLIENT CONTACT TELEPHONE HERE]]	Client Contact Email:	[TYPE CLIENT CONTACT EMAIL HERE]

Description of Services at this Landscape Site (attach diagrams if necessary):
