

MAINTENANCE AGREEMENT 2015

PARKER JORDAN METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado (hereinafter referred to as "Owner") and **COX PROFESSIONAL LANDSCAPING SERVICES**, a Colorado corporation, (hereinafter referred to as "Contractor") hereby enter into this Maintenance Agreement 2015 ("Contract") as of the date set forth below and hereby agree as follows:

1. The Parties agree that Contractor, in consideration for certain amounts to be paid by Owner, shall perform landscape maintenance (the "Services") upon Owner's property (the "Property") pursuant to the terms of the Contract. The scope and type of the Services to be provided, the cost of the Services, and a description of the Property on which the Services will be performed are further described in **Exhibit A** attached hereto and incorporated herein by this reference.
2. This Contract shall be in force from **June 11, 2015** through **December 31, 2015**. This Contract may be extended by the mutual consent of the parties.
3. Owner shall pay Contractor for such labor and materials and in such a manner as set forth in **Exhibit A**.
4. Should Owner, by its authorized representative, direct or request that work beyond the Services described herein be done by Contractor, the price of such additional work shall be included in the monthly billing as additional services. Contractor is entitled to be paid only for all such additional work requested or directed in writing by Owner or its authorized representative.
5. Contractor has by careful examination ascertained (a) the nature and location of the Services; (b) the configuration of ground on which the Services are to be performed; (c) the character, quality, and quantity of the labor, materials, equipment and facilities necessary to complete the Services; (d) the general and local conditions pertaining to the Services; (e) all other matters which in any way can affect the performance of the Contract by Contractor. Contractor enters into the Contract 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 Owner or any agent of Owner and not contained in the Contract. Contractor has reviewed specifications for compliance with the Federal and State Occupational Health and Safety Acts and will take the necessary procedures to protect its employees and the public from any hazardous conditions associated with the Services.
6. Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Services. Contractor shall take all responsible precautions for the safety of and shall provide all reasonable protection to prevent damage, injury, or death to any of the following: (a) all employees performing the Services and all other persons who may be affected thereby; (b) all the working materials and equipment related to the Services, whether in storage on or off the site,

under the care, custody, or control of the Contractor or any of its subcontractors; and (c) other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, and structures. Contractor shall give all notices and comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the safety of persons or property or their protection from damage, injury or loss. Contractor shall erect and maintain, as required by existing conditions and progress of the work to be performed hereunder, all reasonable safeguards for safety and protection, including posting danger signs and barriers and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent properties.

7. Contractor agrees to protect, defend, indemnify and hold Owner and its contractors free and harmless from and against any and all losses, claims, liens, demands and causes of action of every kind and character, including the amount of judgment penalties, interest, court costs and legal fees incurred by Owner or its contractors in defense of same, arising in favor of any party, including governmental agencies or bodies, on account of taxes, claims, liens, debts, personal injuries to employees of Owner, death or damages to property (including property of Owner) and, without limitation by failure to include in the above enumeration, all other claims or demands of every character occurring in or anywise incident to, in excepting only those claims arising out of accidents resulting from the sole negligence of Owner. Contractor also agrees to investigate, handle, respond to, provide defense for, and defend any such claim, demand, or suit at Contractor's expense; and, furthermore, Contractor agrees to bear all other costs and expenses related thereto, even if such claim, demand, or suite is groundless, false, or fraudulent.
8. Contractor shall, at a minimum, carry insurance in the types and amounts set forth in **Exhibit B** attached hereto and incorporated herein by this reference. Contractor shall comply with all of the provisions and requirements concerning insurance set forth in **Exhibit B**.
9. Contractor shall require each subcontractor employed by Contractor for provision of the Services to procure and maintain a policy of workers' compensation or employer's liability insurance. The policy shall protect the subcontractor's employees engaged in providing the Services, including, but not limited to, executive, managerial, and supervisory employees. Such insurance shall be at the subcontractor's own cost and expense and remain in effect for the entire duration of the subcontractor's provision of the Services. Contractor shall require each subcontractor to deposit with Contractor a certificate satisfactory to Contractor evidencing such insurance.
10. Owner may terminate the Contract by giving five (5) calendar days' notice in writing to Contractor, with or without cause, and without prejudice to any other rights or remedies given to Owner by law or by the Contract. Owner may terminate the Contract immediately if Contractor commits any of the following acts:
 - (a) Contractor becomes a debtor in bankruptcy, voluntarily or involuntarily;
 - (b) Contractor makes a general assignment for the benefit of its creditors;

- (c) A receiver is appointed on account of Contractor's insolvency;
 - (d) Contractor refuses or fails, except as provided in Paragraph 14 of this Agreement, to supply enough properly skilled workmen or proper materials to provide the Services specified in the Contract;
 - (e) Contractor fails to make prompt payment to subcontractors, laborers, or material men for labor performed on or materials furnished to provide the Services;
 - (f) Contractor persistently disregards any law or ordinance relating to the Services provided; or
 - (g) Contractor otherwise commits a substantial violation of any provision of the Contract.
11. Should Owner terminate the services of Contractor under the Contract and take over the provision of Services pursuant to Paragraph 10 of the Contract, Contractor shall not be entitled to receive any further payment under the Contract.
12. Should Owner fail to pay to Contractor any amount payable by Owner to Contractor pursuant to the Contract within ten (10) days after such amount becomes due, Contractor may, by giving five (5) days written notice thereof to Owner, terminate Contractor's services under the Contract, stop providing the Services, and use all lawful means, including without limitation, actions by labor or contractors' associations induced by contractor, to prevent further work from being done until all past due payments have been received by Contractor and Owner has posted a bond satisfactory to Contractor for the payment of all amounts that will thereafter become due to Contractor under the Contract. Notwithstanding Contractor's right to terminate the Contract or undertake any of the actions pursuant to the immediately preceding sentence, it is expressly understood and agreed that Contractor shall not have the right to refuse to render the Services or to terminate the Contract by reason of nonpayment of specific items or elements of a monthly payment statement if Owner in good faith challenges such items or elements and if Owner issues payment of all items and elements that are not challenged.
13. Either party, Contractor or Owner, shall be excused from any delays or defaults by it in the performance of its duties under the Contract unavoidably caused by the act of the other party, the act of any agent of the other party, the act of any governmental authority, the act of any public enemy, acts of God, the elements, wars, war defense conditions, strikes, walkouts, or other causes beyond its control. Each party shall use due diligence to avoid any such delay or default and to resume performance under the Contract as promptly as possible after any such delay or default.
14. Any and all notices or other matters required or permitted by the Contract or by law to be served on, given, or delivered to either party hereto, shall be in writing and shall be deemed duly given, served or delivered when personally delivered to the party to whom it is addressed, or in lieu of such personal service when deposited in the United States Postal Service, first-class postage prepaid, and addressed to Owner at its address herein below set forth or to Contractor at its address herein below set forth. Either party, Owner

or Contractor, may change its address for the purpose of this paragraph by giving written notice of such change to the other party in manner provided in this paragraph.

15. This Contract and the exhibits attached hereto set forth the entire agreement and understanding between the parties as to the subject matter hereof and merge and supersede all prior discussions, agreements and understandings of any and every nature between them as to the subject matter hereof. This Contract and any exhibits attached hereto may be amended, modified, supplemented or altered only by a written agreement signed by both Owner and Contractor.
16. The Contract is for the personal services of Contractor in providing the Services. Contractor may not assign the Contract, its right to moneys becoming due under the Contract, or its duties under the Contract to any other person or entity without the written consent of Owner.
17. Hazardous Materials:
 - (a) Use of Hazardous Materials. Except in strict compliance with Federal, State, and Local laws, statutes, ordinances, and regulations, Contractor shall not introduce any Hazardous Materials, as defined below, in, on, over, or under the property owned or controlled by the Owner.
 - (b) Definition of Hazardous Materials. Hazardous Materials means: (a) any toxic or hazardous wastes, whether products or wastes, pollutants, or substances, including, without limitation, asbestos, radon, polychlorinated biphenyls, petroleum products and by-products; (b) substances defined as hazardous substances or toxic substances or similarly identified in the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, 42 U.S.C. 9601 *et seq.*, the Hazardous Materials Transportation Act, 49 U.S.C. §1802 *et seq.*, the Resource Conservation and Recovery Act, 42 U.S.C. §6901 *et seq.*, the Toxic Substance Control Act of 1976, as amended, 15 U.S.C. §2601 *et seq.*, the Clean Water Act, 33 U.S.C. §1251 *et seq.*, the Clean Air Act, as amended, 42 U.S.C. §7401 *et seq.*; (c) any oil, petroleum or their by-products as defined by the Colorado Revised Statutes, Title 25, Article 15, as amended from time to time; (d) any "hazardous substance" as defined by the Colorado Revised Statutes, Title 25, Article 18 and regulations promulgated thereunder; (e) any substance, the presence of which on Owner's property is prohibited by any law similar to those set forth in this section; and (f) any other substance that by law requires special handling in its collection, storage, treatment, or disposal.
 - (c) Indemnification for Use of Hazardous Materials. Contractor, its successors and assigns, will defend, indemnify and hold harmless Owner, Owner's licensees, invitees, agents, successors, and assigns from any and all losses, claims, liability, damages, and costs, including, without limiting the generality of the foregoing, court costs and reasonable attorney's fees, caused by, resulting from, or in any way arising out of the use of the Hazardous Materials by Contractor, its contractors, subcontractors, employees, successors, and assigns.

18. Immigration Laws:

Contractor shall comply with any and all federal, state and local laws, rules and regulations regarding the hiring of employees and retention of subcontractors, including without limitation Section 8-17.5-101, *et seq.*, C.R.S. Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract or contract with a sub-contractor who (a) knowingly employs or contracts with an illegal alien to perform work under this Contract, or (b) fails to certify to Contractor that the subcontractor will not knowingly employ or contract with an illegal alien to perform work under this Contract.

Contractor has verified or attempted to verify through participation in the E-Verify Employment Verification Program administered by the United States Department of Homeland Security ("E-Verify Program") that it does not knowingly employ or contract with an illegal alien. Contractor shall apply to participate in the E-Verify Program every three months until all requirements under the Contract are completed or until Contractor is accepted into the E-Verify Program, whichever occurs earlier. Contractor shall not utilize the E-Verify Program procedures to independently undertake pre-employment screening of job applicants.

Contractor shall require each subcontractor to certify that subcontractor will not knowingly employ or contract with an illegal alien to perform work under the Contract. If Contractor obtains actual knowledge that a subcontractor performing work under the Contract knowingly employs or contracts with an illegal alien, Contractor shall be required to: (a) notify the subcontractor and Owner within three (3) days that 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 notice from Contractor, the subcontractor does not stop employing or contracting with the illegal alien; except that 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. Contractor shall comply with any reasonable request by the Colorado Department of Labor and Employment ("Department") made in the course of an investigation by the Department pursuant to Section 8-17.5-102(5), C.R.S.

In addition to any other legal or equitable remedy, Owner may be entitled to for a breach of this Contract, if Owner terminates this Contract, in whole or in part, due to Contractor's breach of any of this Immigration Laws section, Contractor shall be liable for actual and consequential damages of Owner resulting from such termination, and Owner shall report such violation by Contractor to the Colorado Secretary of State as required by law.

19. Miscellaneous Provisions:

- (a) This Contract shall be construed in accordance with and governed by the laws of the State of Colorado. Venue for any action arising from the performance or

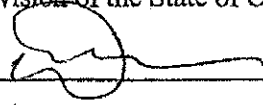
nonperformance of this Contract shall lie only in the District Court in and for Arapahoe County, Colorado.

- (b) This Contract shall be binding upon and inure to the benefit of the parties hereto, their heirs, legal representatives, successors, and permitted assigns; provided that, neither party may assign this Contract, nor any of its rights, interests, or obligations hereunder, without the prior written consent of the other party and any attempt to assign this Contract in whole or in part shall be null and void. This Contract shall not create any rights or benefits to parties other than Owner and Contractor.
- (c) Any failure of a party to comply with any obligation, covenant, agreement or condition herein may be waived, but no such waiver shall be effective unless such waiver is in writing and is signed by the party against whom the waiver is to be effective. Such waiver shall not operate or be construed as a waiver of any other or subsequent breach of such or any other provision.
- (d) Any party hereto breaching this Contract shall indemnify and hold harmless the non-breaching party from any attorneys' fees or other costs disbursed or incurred in connection with a breach of this Contract.
- (e) Contractor acknowledges and agrees that Owner is a political subdivision of the State of Colorado and, as such, (1) any and all financial obligations described hereunder are subject to annual budget and appropriations requirements, and (2) neither Contractor nor any of Contractor's subcontractors shall have lien rights against Owner, nor against any property lying within the boundaries of Owner, in the event of nonpayment of any amount due under this Contract.
- (f) Owner, its directors, officials, officers, agents and employees are relying upon and do not waive or abrogate, or intend to waive or abrogate by any provision of this Contract the monetary limitations or any other rights immunities or protections afforded by the Colorado Governmental Immunity Act, Section 24-10-101 *et seq.*, C.R.S., as the same may be amended from time to time.
- (g) No elected official, director, officer, agent or employee of the Owner shall be charged personally or held contractually liable by or to Contractor under any term or provision of this Contract, or because of any breach thereof or because of its or their execution, approval or attempted execution of this Contract.
- (h) The caption of each paragraph of this Contract is added as a matter of convenience only and shall be considered of no effect in the interpretation or construction of any provision or provisions of this Contract.

Executed this 6th day of JULY, 2012. ^S _{KAC}

OWNER:

Parker Jordan Metropolitan District,
a quasi-municipal corporation and political
subdivision of the State of Colorado

By 

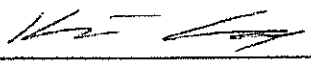
Its SECRETARY

Owner's Address:

8390 East Crescent Pkwy #500
Greenwood Village, CO 80111

CONTRACTOR:

**Cox Professional Landscaping
Services, a Colorado corporation**
LLC.

By 

Its OWNER

Contractor's Address

KEVIN COX
c/o Kenneth K. Cox
6800 S. Dawson Circle, Suite 104
Centennial, CO 80112

EXHIBIT A
Request for Proposal providing for the
Scope of Work, Cost of Services, and Description of Property



Professional Landscape Services LLC

"Whatever it Takes"

**SCOPE OF WORK
PARKER JORDAN METROPOLITAN DISTRICT
Effective for 2015 Season**

Weed Control

Manual removal Weekly
Chemical Application 5 applications

Trash/Debris Removal Weekly

Leaf Removal Once (Fall)

Pruning Once (Fall)

Irrigation

System Inspection Monthly
Winterization Once

**EXHIBIT A
Contractor Bill Back and Material Costs
For Parker Jordan Metropolitan District
Contractor Labor Rates and General Material Costs
Effective for 2015 Landscape Season**

Material Costs:

Western Red Cedar \$ 63.95 per cubic yard
Dyed Brown Mulch \$ 40.00 per cubic yard
River Rock 1-1/2" Local \$ 42.00 per ton

Labor Rates:

Irrigation Technician \$ 50.00 per man-hour
Assistant Irrigation Technician \$ 45.00 per man-hour
General Laborers \$ 40.00 per man-hour

After hours/Emergency/Holiday rates 150% of above labor rates

Auditor - Irrigation/Water Management \$ 75.00 per hour
Consulting – Arborist \$ 90.00 per hour

Tree Wrap – (included on all trees the 1st year
After CPLS installation) Rates for trees older
than 1 year CPLS installation \$ 6.00 per tree

Pesticide Applications \$ 75.00 per hour plus chem.'s



Professional Landscape Services LLC

"Whatever it Takes"

SNOW REMOVAL RATES

The following include equipment operators:

Truck with Plow	\$ 100.00 per hour
ATV with Plow	\$ 75.00 per hour
Snow Blower	\$ 65.00 per hour
Hand Removal	\$ 40.00 per hour
Ice Slicer/Melt Application (labor rate)	\$ 40.00 per hour
Rapid Thaw Product only	\$ 210.00 per ton
Ice Melt Product only	\$ 0.60 per pound

EXHIBIT B
Insurance Requirements

A. Contractor shall acquire and maintain, during the entire term of the Contract, including any extensions of the term, statutory workers' compensation insurance coverage, commercial general liability insurance coverage and automobile liability insurance coverage in no less than the amounts set forth in subparagraph D below. Owner shall be named as an additional insured on Contractor's commercial general liability insurance and automobile liability insurance. Such additional insured coverage provides defense and indemnity coverage only for actions arising from Contractor's acts, actions, omissions or neglect but shall not provide defense or indemnity coverage for Owner's own acts, actions, omissions or neglect or for unproven allegations. Any such policy of insurance obtained to comply with this paragraph shall provide that Owner shall receive thirty (30) days written notice prior to the policy's cancellation, non-renewal or modification to any provisions of such policy affecting the insurance coverage requirements under the Contract.

B. Prior to commencing any work under the Contract, Contractor shall provide Owner with a certificate or certificates evidencing the insurance required by this paragraph, as well as the amounts of coverage for the respective types of coverage. If Contractor sub-contracts any portion(s) of the Services, said sub-contractor(s) shall be required to furnish certificates evidencing statutory workers' compensation insurance and comprehensive general liability insurance coverage in amounts satisfactory to Owner and Contractor. If the coverage required under this paragraph expires during the term of the Contract, Contractor shall provide replacement certificate(s) evidencing the continuation of the required policies.

C. If any policy obtained by Contractor is a claims-made policy, the following conditions shall apply: the policy shall provide 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. Contractor agrees to purchase this extended reporting period. If the policy is a claims-made policy, the retroactive date of any renewal of such policy shall not be later than the date the Contract is signed by the parties to the Contract. If Contractor purchases a subsequent claims-made policy in place of any prior policy, the retroactive date of such subsequent policy shall be no later than the date the Contract is signed by the parties to the Contract.

D. Contractor shall acquire and maintain during the entire term of the Contract, statutory workers' compensation insurance coverage, comprehensive general liability insurance coverage, and automobile liability insurance coverage in the following amounts:

i. Workers' Compensation Insurance in accordance with applicable law, including employers' liability.

ii. Commercial general liability insurance in the amount of \$1,000,000.00 combined single limit bodily injury and property damage, each occurrence; \$2,000,000.00 general aggregate. Coverage shall include all major divisions of coverage and be on a comprehensive basis including:

- a. premises operations;
- b. personal injury liability without employment exclusion;
- c. blanket contractual;
- d. broad form property damages;
- e. medical payments;
- f. independent contractors coverage.

iii. Commercial automobile liability insurance in the amount of \$1,000,000.00 combined single limit bodily injury and property damage, each accident covering any auto.

iv. **All coverages specified above shall waive any right of subrogation against Owner and its directors, officers and employees; such waiver of subrogation shall apply solely to acts, actions, omissions or neglect of Contractor, and in no way limits the right of subrogation for acts, actions, omissions or neglect of Owner or others.** The policies shall state: "Permission is expressly granted to the insured to waive any right of subrogation against an individual, firm or corporation in accordance with the terms of the agreement provided such waiver is executed in writing prior to any occurrence giving rise to claims hereunder."