

RESOLUTION NO. 25-55

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CASTLE PINES,
COLORADO, APPROVING AN AGREEMENT FOR SERVICES AND EQUIPMENT
BETWEEN THE CITY OF CASTLE PINES AND BROKEN ARROW LANDSCAPE &
DESIGN, INC. FOR 2026 GENERAL PUBLIC WORKS, PARKS, OPEN SPACE, AND
STORMWATER MAINTENANCE**

WHEREAS, the City of Castle Pines, Colorado (the “City”) is authorized to enter into contracts for the performance of general municipal governance and services; and

WHEREAS, the City needs general public works maintenance services for rights-of-way, parks, open space, and stormwater improvements (the “Services”); and

WHEREAS, Broken Arrow Landscape & Design, Inc., a Colorado corporation (the “Contractor”) has the necessary skill and expertise to perform the Services; and

WHEREAS, the City Council desires to approve an agreement for services and equipment with the Contractor for the performance of Services for calendar year 2026 (the “Agreement”).

THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CASTLE PINES, COLORADO, THAT:

Section 1. The recitals contained above are incorporated herein by reference and are adopted as findings and determinations of the City Council.

Section 2. The City Council hereby: (a) approves the Agreement in substantially the same form as attached hereto and incorporated herein as **Exhibit A**; (b) authorizes the City Attorney, in consultation with the City Manager, to make such changes as may be necessary to correct any non-material errors that do not increase the obligations of the City; and (c) authorizes the City Manager to execute the Agreement on behalf of the City when the Agreement is in its final form.

Section 3. If any section, paragraph, clause, or provision of this Resolution is held to be invalid or unenforceable by a court of competent jurisdiction, the invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect any of the remaining sections, paragraphs, clauses, or provisions of this Resolution.

Section 4. This Resolution shall take effect upon its approval by the City Council.

INTRODUCED, READ, AND ADOPTED AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF CASTLE PINES BY A VOTE OF 7 IN FAVOR, 0 AGAINST, AND 0 ABSENT THIS 9th DAY OF DECEMBER 2025.

[Signature Page to Follow]



ATTEST:

Tobi Duffey

Tobi Duffey, MMC, City Clerk

Tracy Engerman

Tracy Engerman (Jan 7, 2026 13:57:24 MST)

Tracy Engerman, Mayor

APPROVED AS TO FORM:

Linda Michow

Linda Michow (Dec 12, 2025 15:14:11 MST)

Linda C. Michow, City Attorney

EXHIBIT A
AGREEMENT FOR SERVICES AND EQUIPMENT WITH BROKEN ARROW
LANDSCAPE & DESIGN, INC. FOR 2026 GENERAL PUBLIC WORKS, PARKS, OPEN
SPACE & STORMWATER MAINTENANCE

City of Castle Pines, Colorado
AGREEMENT FOR SERVICES AND EQUIPMENT

Project/Services Name: General Public Works, Parks, Open Space, and Stormwater Maintenance

THIS AGREEMENT FOR SERVICES AND EQUIPMENT ("Agreement") is made and entered into by and between the City of Castle Pines, a home rule municipality of the State of Colorado, with offices at 7437 Village Square Drive, Suite 200, Castle Pines, Colorado 80108 (the "City"), and **Broken Arrow Landscape & Design, Inc.**, a Colorado Corporation with offices at 37985 Ridge Road, Agate, CO 80101 ("Contractor") (each individually a "Party" and collectively the "Parties").

RECITALS

WHEREAS, the City requires certain professional services, including the purchase and installation of certain equipment and materials, as more fully described in **Exhibit A**; and

WHEREAS, Contractor represents that it has the requisite expertise and experience to perform the professional services; and

WHEREAS, the City desires to contract with the Contractor subject to the terms of this Agreement.

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. Services. 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 (the "Services" or "Scope of Services"). The Parties recognize and acknowledge that, although the City has requested certain general services to be performed or certain work product to be produced, the Contractor has offered to the City the process, procedures, terms, and conditions under which the Contractor plans and proposes to achieve or produce the services and/or work product(s) and the City, through this Agreement, has accepted such process, procedures, terms, and conditions as binding on the Parties.

B. Equipment. Contractor shall supply and convey to the City title for all materials and equipment supplied by Contractor as specified in **Exhibit A** ("Equipment"). Contractor represents and agrees that all the Equipment meets the appropriate standards and specifications as set forth in **Exhibit A** and that the City's purchase of the Equipment shall have the warranty terms set forth in Section IV of this Agreement. Contractor shall not substitute any specified Equipment without prior written approval of the City.

C. Changes to Services or Equipment. A change in the Scope of Services or Equipment shall not be effective unless authorized through a written amendment to this Agreement signed by both Parties. If Contractor proceeds without such written authorization, Contractor shall be deemed to have waived any

Castle Pines PSA (Broken Arrow Landscape & Design, Inc.)

Project/Services Name: 2026 General Public Works, Parks, Open Space, and Stormwater Maintenance

claim for additional compensation, including a claim based on the theory of unjust enrichment, quantum meruit or implied contract. Except as expressly provided herein or as otherwise provided in writing by the City, no agent, employee, or representative of the City is authorized to modify any term of this Agreement.

D. Duty to Inform. The Contractor shall perform the Services in accordance with this Agreement and shall promptly inform the City concerning ambiguities and uncertainties related to the Contractor's performance that are not addressed by the Agreement.

E. Time of Performance. The Contractor shall perform all Services in accordance with this Agreement commencing on the Effective Date, as set forth in Section II of this Agreement, until such Services are terminated or suspended in accordance with this Agreement. The Contractor shall not temporarily delay, postpone, or suspend the performance of the Services without the written consent of the City Council, City Manager, or a person expressly authorized in writing to direct the Contractor's services. Contractor agrees that failure to complete any of the Services during the term of this Agreement may be deemed a breach of this Agreement.

II. TERM AND TERMINATION

A. Term. This Agreement shall commence on January 1, 2026 (the "Effective Date") and shall continue until **December 31, 2026** or until terminated as provided herein ("Termination Date"). The Parties may mutually agree in writing to extend the term of this Agreement, subject to annual appropriation.

B. City Unilateral Termination. This Agreement may be terminated by the City for any or no reason upon written notice delivered to the Contractor at least ten (10) days prior to termination. In the event the City exercises its right of unilateral termination as provided by this paragraph:

1. Unless otherwise provided in any notice of termination, the Contractor shall provide no further services in connection with this Agreement after Contractor's receipt of a notice of termination; and

2. The Contractor shall deliver all finished or unfinished materials, documents, equipment, data, studies and reports prepared by the Contractor pursuant to this Agreement to the City and such materials, documents, equipment, data, studies, and reports shall become the property of the City; and

3. The Contractor shall submit to the City a final accounting and final invoice of charges for all outstanding and unpaid Services performed and reimbursable expenses incurred prior to the Contractor's receipt of notice of termination and for any services authorized to be performed by the notice of termination as provided by Section II.B of this Agreement. The Contractor shall deliver such final accounting and final invoice to the City within thirty (30) days of the date of termination; thereafter, the City shall not accept and Contractor shall not submit any other invoice, bill, or other form of statement of charges owing to the Contractor.

C. Termination for Non-Performance. Should a party to this Agreement fail to materially perform in accordance with the terms and conditions of this Agreement, this Agreement may be terminated

by the performing party if the performing party first provides written notice to the non-performing party. Such notice shall specify the non-performance, provide a demand to cure the non-performance, state a reasonable time to cure the non-performance, and set a date upon which the Agreement shall be terminated if there is a failure to timely cure the non-performance. For purpose of this Section II.C, "reasonable time" shall not be less than five (5) business days. In the event of a failure to timely cure a non-performance and upon the date of the resulting termination for non-performance, the Contractor shall prepare a final accounting and final invoice of charges for all performed but unpaid Services and any reimbursable expenses authorized by this Agreement. Such final accounting and final invoice shall be delivered to the City within fifteen (15) days of the Termination Date contained in the written notice. Thereafter, the City shall not accept and Contractor shall not submit any other invoice, bill, or other form of statement of charges owing to the Contractor. If the notice of non-performance is provided in accordance with this Section II.C, nothing in this Section II.C shall prevent, preclude, or limit any claim or action for default or breach of contract resulting from non-performance by a Party.

D. Suspension of Services. The City may suspend the Contractor's performance of the Services at the City's discretion and for any reason by delivery of written notice of suspension to the Contractor, which notice shall state a specific date of suspension. Upon Contractor's receipt of such notice of suspension from the City, the Contractor shall immediately cease performance of the Services on the date of suspension except: (1) as may be specifically authorized by the notice of suspension (e.g., to secure the work area from damage due to weather or to complete a specific report or study); or (2) for the submission of an invoice for Services performed in accordance with this Agreement prior to the date of suspension. Contractor shall not re-commence performance of the Services until it receives written notice of re-commencement from the City.

E. Delivery of Notices. Any notice required or permitted by this Section II and its subsections shall be addressed to the City Representative or the Contractor Representative at the address set forth in Section XIII.D of this Agreement, or such other address as either Party may notify the other of, and shall be deemed given upon delivery if personally delivered, or forty-eight (48) hours after deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested.

III. REPRESENTATIVES AND SUPERVISION

A. City Representative. The City representative responsible for oversight of this Agreement and the Contractor's performance of Services hereunder shall be the City Manager or the City Manager's designee ("City Representative"). The City Representative shall act as the City's primary point of contact with the Contractor.

B. Contractor Representative. The Contractor representative under this Agreement shall be Geronimo Guerrero Sr., Owner ("Contractor Representative"). The Contractor Representative shall act as the Contractor's primary point of contact with the City. The Contractor shall not designate another person to be the Contractor Representative without prior written notice to the City.

C. City Supervision. The Contractor shall provide all Services with little or no daily supervision by City staff or other contractors. Inability or failure of the Contractor to perform the Services with little or no daily supervision which results in the City's need to allocate resources in time or expense

for daily supervision shall constitute a material breach of this Agreement and be subject to cure or remedy, including possible termination of the Agreement, as provided in this Agreement. Notwithstanding the foregoing, the City reserves the right to monitor and evaluate the progress and performance of the Contractor to ensure the terms of this Agreement are being satisfactorily met in accordance with the City's criteria and standards. Contractor shall cooperate with the City relating to such monitoring and evaluation.

IV. WARRANTIES.

A. New Equipment. Contractor warrants that the Equipment shall be new and suitable for the purpose used by the City and will be of good quality, free from faults and defects and in conformance with **Exhibit A**.

B. Title to Equipment. Contractor further warrants that it has full title to all the Equipment to be conveyed to the City hereunder, that its transfer of such title to the City is rightful and that all such Equipment shall be transferred free and clear from all security interests, liens, claims or encumbrances whatsoever. Contractor agrees to warrant and defend such title against all persons claiming the whole or any part thereof, at no cost to the City.

C. Warranty on Workmanship. Contractor shall, for one year from the date that the City initiates beneficial use of all Equipment provided under this Agreement (last piece of Equipment is put into its intended use), promptly investigate, repair, or otherwise correct any parts, components or Equipment supplied hereunder which contain faults or defects considered to be minor and not affecting the integrity or structure of the Equipment. Contractor shall, for one year from the date that the City initiates beneficial use of all Equipment provided under this Agreement (last piece of Equipment is put into its intended use), promptly replace any parts, components or Equipment supplied hereunder which contain faults or defects considered to be other than minor, including affecting the integrity of the Equipment.

D. Assignment of Equipment Warranties. The Contractor warrants and shall be responsible and liable to the City for the warranties which are provided from the manufacturer(s) of all Equipment supplied hereunder. Contractor shall provide, assign, and take whatever additional steps are necessary to ensure that the Equipment is warranted for the benefit of the City for the respective manufacturers' warranty periods.

V. COMPENSATION

A. Not-to-Exceed Amount. Following execution of this Agreement by the Parties, the Contractor shall be authorized to and shall commence performance of the Services as described in **Exhibit A**, subject to the requirements and limitations on compensation as provided by this Section IV and its subsections. Compensation to be paid hereunder shall not exceed **SEVEN HUNDRED FIFTY THOUSAND DOLLARS AND ZERO CENTS (\$750,000.00)** ("Not-to-Exceed Amount") unless a different amount is agreed to by and between the Parties in accordance with the amendment requirements of this Agreement. Notwithstanding the amount specified in this Section, Contractor shall be paid only for work performed. Contractor shall not be paid until tasks identified in the Scope of Services are performed

to the satisfaction of the City. In consideration for the completion of the Scope of Services by Contractor, the City shall pay Contractor as follows:

☒ If this box is checked, the City shall pay Contractor on a time and materials basis in accordance with the rate schedule shown in **Exhibit B**. This amount shall include all fees, costs and expenses incurred by Contractor, and no additional amounts shall be paid by the City for such fees, costs and expenses. Final payment may be requested by the Contractor upon completion and the City's acceptance of all work or Services as set forth in **Exhibit A**.

☐ If this box is checked, the City shall pay the Contractor the Not-to-Exceed Amount in a single lump sum payment on N/A.

B. Invoicing. The City shall make payments to Contractor in accordance with subsection A of this Section IV within thirty (30) days after receipt and approval of invoices submitted by Contractor. If payment is on a time and materials basis, Contractor shall submit invoices to the City no more frequently than monthly and shall identify the specific Services performed for which payment is requested.

C. Receipts. The City, before making any payment, may require the Contractor to furnish at no additional charge releases or receipts from any or all persons performing work under this Agreement and/or supplying material or services to the Contractor, or any subcontractor if this is deemed necessary to protect the City's interest. The City, however, may in its discretion make payment in part or full to the Contractor without requiring the furnishing of such releases or receipts.

D. Reimbursable Expenses.

1. If this Agreement is for lump sum compensation, there shall be no reimbursable expenses.

2. If the Agreement is for compensation based on a time and materials basis, the following shall be considered "reimbursable expenses" for purposes of this Agreement and may be billed to the City without administrative mark-up, which must be accounted for by the Contractor, and proof of payment shall be provided by the Contractor with the Contractor's monthly invoices:

- ☒ None
- ☐ Vehicle Mileage (billed at not more than the prevailing per mile charge permitted by the IRS as a tax deductible business expense)
- ☐ Printing and Photocopying Related to the Services (billed at actual cost)
- ☐ Long Distance Telephone Charges Related to the Services
- ☐ Postage and Delivery Services
- ☐ Lodging and Meals (but only with prior written approval of the City as to dates and maximum amount)

3. Other Expenses. Any fee, cost, charge, or expense incurred by the Contractor not otherwise specifically authorized by this Agreement shall be deemed a non-reimbursable cost that shall be borne by the Contractor, shall not be billed or invoiced to the City, and shall not be paid by the City.

E. No Waiver. The City'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.

VI. PROFESSIONAL RESPONSIBILITY

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

B. Standard of Performance. The work performed by Contractor shall be in accordance with generally accepted professional practices and the level of competency presently maintained by other practicing professional firms 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. Subcontractors. The Parties recognize and agree that subcontractors may be utilized by the Contractor for the performance of certain Services if and as described more particularly in **Exhibit A**; however, the engagement or use of subcontractors will not relieve or excuse the Contractor from performance of any obligations imposed in accordance with this Agreement and Contractor shall remain solely responsible for ensuring that any subcontractors engaged to perform Services hereunder shall perform such Services in accordance with all terms and conditions of this Agreement. If Contractor engages subcontractors to perform any part of the Services, Contractor shall require and confirm that the requirements of Section VIII (Insurance) and Section IX (Indemnification) of this Agreement are included in any such subcontract. Contractor shall be responsible and liable to the City for indemnification of the City on behalf of a subcontractor if Contractor fails to confirm that the requirements of Section IX are included in any subcontract between Contractor and a subcontractor related to this Agreement.

VII. INDEPENDENT CONTRACTOR

A. General. 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 and shall not be considered employees or agents of the City. Contractor shall make no representation that it is a City employee for any purposes.

B. Liability for Employment-Related Rights and Compensation. The Contractor shall be solely responsible for all compensation, benefits, insurance and employment-related rights of any person providing Services hereunder during the course of or arising or accruing as a result of any employment, whether past or present, with the Contractor, as well as all legal costs including attorney's fees incurred in the defense of any conflict or legal action resulting from such employment or related to the corporate amenities of such employment. The Contractor will comply with all laws, regulations, municipal codes, ordinances, and other requirements and standards applicable to the Contractor's employees, including, without limitation, federal and state laws governing wages and overtime, equal employment, safety and health, employees' citizenship, withholdings, reports and record keeping. Accordingly, the City shall not

be called upon to assume any liability for or direct payment of any salaries, wages, contribution to pension funds, insurance premiums or payments, workers' compensation benefits, or any other amenities of employment to any of the Contractor's employees or any other liabilities whatsoever, unless otherwise specifically provided herein.

C. Insurance Coverage and Employment Benefits. The City will not include the Contractor as an insured under any policy the City has for itself. The City shall not be obligated to secure nor provide any insurance coverage or employment benefits of any kind or type to or for the Contractor or the Contractor's employees, sub-consultants, subcontractors, agents, or representatives, including but not limited to coverage or benefits related to: local, state, or federal income or other tax contributions, FICA, workers' compensation, unemployment compensation, medical insurance, life insurance, paid vacations, paid holidays, pension or retirement account contributions, profit sharing, professional liability insurance, or errors and omissions insurance. The following disclosure is provided in accordance with Colorado law:

CONTRACTOR ACKNOWLEDGES THAT NEITHER IT NOR ITS AGENTS OR EMPLOYEES ARE ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS UNLESS CONTRACTOR OR SOME ENTITY OTHER THAN THE CITY PROVIDES SUCH BENEFITS. CONTRACTOR FURTHER ACKNOWLEDGES THAT NEITHER IT NOR ITS AGENTS OR EMPLOYEES ARE ENTITLED TO WORKERS' COMPENSATION BENEFITS. CONTRACTOR ALSO ACKNOWLEDGES THAT IT IS OBLIGATED TO PAY FEDERAL AND STATE INCOME TAX ON ANY MONEYS EARNED OR PAID PURSUANT TO THIS AGREEMENT.

D. Employee Benefits Claims. To the maximum extent permitted by law, the Contractor waives all claims against the City for any Employee Benefits; the Contractor will defend the City from any claim and will indemnify the City against any liability for any Employee Benefits for the Contractor imposed on the City; and the Contractor will reimburse the City for any award, judgment, or fine against the City based on the position the Contractor was ever the City's employee, and all attorneys' fees and costs the City reasonably incurs defending itself against any such liability.

VIII. INSURANCE

A. General. During the term of this Agreement, the Contractor shall obtain and shall continuously maintain, at the Contractor's expense, insurance of the kind and in the minimum amounts specified as follows by checking the appropriate boxes:

- ☐ The Contractor shall obtain and maintain the types, forms, and coverage(s) of insurance deemed by the Contractor to be sufficient to meet or exceed the Contractor's minimum statutory and legal obligations arising under this Agreement ("Contractor Insurance"); OR
- ☒ The Contractor shall secure and maintain the following ("Required Insurance"):
 - ☒ Worker's Compensation insurance in the minimum amount required by applicable law for all employees and other persons as may be required by law.

- ☒ Comprehensive General Liability insurance with minimum combined single limits of One Million Dollars (\$1,000,000.00) each occurrence and of Two Million Dollars (\$2,000,000.00) aggregate. The policy shall be applicable to all premises and all operations of the Contractor. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall contain a severability of interests provision. Coverage shall be provided on an "occurrence" basis as opposed to a "claims made" basis. Such insurance shall be endorsed to name the City as Certificate Holder and name the City, and its elected officials, officers, employees and agents as additional insured parties.
- ☒ Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than One Million Dollars (\$1,000,000.00) each occurrence with respect to each of the Contractor's owned, hired and non-owned vehicles assigned to or used in performance of the Services. The policy shall contain a severability of interests provision. Such insurance coverage must extend to all levels of subcontractors. Such coverage must include all automotive equipment used in the performance of the Services, both on the work site and off the work site, and such coverage shall include non-ownership and hired cars coverage. Such insurance shall be endorsed to name the City as Certificate Holder and name the City, and its elected officials, officers, employees and agents as additional insured parties.
- ☐ Professional Liability (errors and omissions) insurance with a minimum limit of coverage of One Million Dollars (\$1,000,000.00) per claim and annual aggregate. Such policy of insurance shall be obtained and maintained for one (1) year following completion of all Services under this Agreement. Such policy of insurance shall be endorsed to include the City as a Certificate Holder.

B. Additional Requirements. 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 thirty (30) days prior written notice to the City. 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 City, 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. For any and all insurance policies required hereunder, Contractor shall waive subrogation rights against the City.

C. Insurance Certificates. Contractor shall provide to the City a certificate of insurance and all endorsements required hereunder as evidence that the required policies are in full force and effect prior to the commencement of the Services. The certificate shall identify the Project/Services Name as set forth on the first page of this Agreement.

D. Failure to Obtain or Maintain Insurance. The Contractor's failure to obtain and continuously maintain policies of insurance shall not limit, prevent, preclude, excuse, or modify any liability, claims, demands, or other obligations of the Contractor arising from performance or non-performance of this Agreement. Failure on the part of the Contractor to obtain and to continuously maintain policies providing the required coverage, conditions, restrictions, notices, and minimum limits shall constitute a material breach of this Agreement upon which the City may immediately terminate this Agreement, or, at its discretion, the City may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith. All monies so paid by the City, together with an additional five percent (5%) administrative fee, shall be repaid by the Contractor to the City immediately upon demand by the City. At the City's sole discretion, the City may offset the cost of the premiums against any monies due to the Contractor from the City pursuant to this Agreement.

IX. INDEMNIFICATION

A. Contractor agrees to indemnify and hold harmless the City and its officers, insurers, volunteers, representatives, agents, employees, 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. Contractor's liability under this indemnification provision shall be to the fullest extent of, but shall not exceed, that amount represented by the degree or percentage of negligence or fault attributable to Contractor, any subcontractor of Contractor, or any officer, employee, representative, or agent of Contractor or of any subcontractor of Contractor.

B. If Contractor is providing architectural, engineering, surveying or other design services under this Agreement, the extent of Contractor's obligation to indemnify and hold harmless the City may be determined only after Contractor's liability or fault has been determined by adjudication, alternative dispute resolution or otherwise resolved by mutual agreement between the Parties, as provided by C.R.S. § 13-50.5-102(8)(c).

X. RESERVED

XI. REMEDIES

A. In addition to any other remedies provided for in this Agreement, and without limiting its remedies available at law, the City may exercise the following remedial actions if the Contractor substantially fails to perform the duties and obligations of this Agreement. Substantial failure to perform the duties and obligations of this Agreement shall mean a significant, insufficient, incorrect, or improper performance, activities or inactions by the Contractor. The remedial actions the City may take include:

1. Suspend the Contractor's performance pending necessary corrective action as specified by the City without the Contractor's entitlement to an adjustment in any charge, fee, rate, price, cost, or schedule; and/or

2. Withhold payment to the Contractor until the necessary services or corrections in performance are satisfactorily completed; and/or

3. Deny payment for those services which have not been satisfactorily performed, and which, due to circumstances caused by the Contractor, cannot be performed, or if performed would be of no value to the City; and/or

4. Terminate this Agreement in accordance with this Agreement.

B. The foregoing remedies are cumulative and the City, in its sole discretion, may exercise any or all of the remedies individually or simultaneously.

XII. RECORDS AND OWNERSHIP

A. Retention and Open Records Act Compliance. Contractor hereby acknowledges that the City is a public entity subject to the Colorado Open Records Act, C.R.S. § 24-72-101 *et seq.* ("CORA"). As such, this Agreement may be subject to public disclosure under CORA. Furthermore, all records of the Contractor related to the provision of Services hereunder, including public records as defined in the CORA, and records produced or maintained in accordance with this Agreement, are to be retained and stored in accordance with the City's records retention and disposal policies. Those records which constitute "public records" under CORA are to be at the City offices or accessible and opened for public inspection in accordance with CORA and City policies. Public records requests for such records shall be processed in accordance with City policies. Contractor agrees to allow access by the City and the public to all documents subject to disclosure under applicable law. Contractor's willful failure or refusal to comply with the provisions of this Section shall result in the immediate termination of this Agreement by the City. For purposes of CORA, the City Clerk is the custodian of all records produced or created as a result of this Agreement. Nothing contained herein shall limit the Contractor's right to defend against disclosure of records alleged to be public.

B. City's Right of Inspection. The City shall have the right to request that the Contractor provide to the City a list of all records of the Contractor related to the provision of Services hereunder retained by the Contractor in accordance with this subsection and the location and method of storage of such records. Contractor agrees to allow inspection at reasonable times by the City of all documents and records produced or maintained in accordance with this Agreement.

C. Ownership. Any work product, materials, and documents produced by the Contractor pursuant to this Agreement shall become property of the City of Castle Pines upon delivery and shall not be made subject to any copyright by the Contractor unless authorized by the City. Other materials, statistical data derived from other clients and other client projects, software, methodology and proprietary work used or provided by the Contractor to the City not specifically created and delivered pursuant to the Services outlined in this Agreement shall not be owned by the City and may be protected by a copyright held by the Contractor and the Contractor reserves all rights granted to it by any copyright. The City shall

not reproduce, sell, or otherwise make copies of any copyrighted material, subject to the following exceptions: (1) for exclusive use internally by City staff and/or employees; or (2) pursuant to a request under the CORA to the extent that such statute applies; or (3) pursuant to law, regulation, or court order. The Contractor waives any right to prevent its name from being used in connection with the Services. The Contractor may publicly state that it performs the Services for the City.

D. Return of Records to City. At the City's request, upon expiration or termination of this Agreement, all records of the Contractor related to the provision of Services hereunder, including public records as defined in the CORA, and records produced or maintained in accordance with this Agreement, are to be returned to the City in a reasonable format and with an index as determined and requested by the City.

XIII. 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 Douglas County, Colorado.

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

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

D. Notice. Unless otherwise provided in this Agreement, any notice under this Agreement shall be in writing, and shall be deemed sufficient when directly presented or sent via pre-paid, first class United States Mail, to the party at the address set forth below.

If to the City:

If to Contractor:

City of Castle Pines Attn: City Manager 7437 Village Square Drive, Suite 200 Castle Pines, CO 80108	Broken Arrow Landscape & Design, Inc. Attn: Geronimo Guerrero Sr. 37985 Ridge Road Agate, CO 80101
With Copy to: Castle Pines City Attorney Michow Guckenberger & McAskin LLP 5299 DTC Boulevard, Suite 300 Greenwood Village, Colorado 80111	With Copy to:

Castle Pines PSA (Broken Arrow Landscape & Design, Inc.)

Project/Services Name: 2026 General Public Works, Parks, Open Space, and Stormwater Maintenance

E. 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.

F. Modification. This Agreement may only be modified upon written agreement signed by the Parties.

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

H. Affirmative Action. The Contractor warrants that it will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Contractor warrants that it will take affirmative action to ensure applicants are employed, and employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

I. Governmental Immunity. The City, its officers, and its 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 ("CGIA"), or otherwise available to the City and its officers or employees.

J. Rights and Remedies. In the event of a breach of this Agreement by Contractor, the City shall have the right, but not the obligation, to obtain specific performance of the Services. In addition, if the City terminates this Agreement, in whole or in part, due to a breach by Contractor, Contractor shall be liable for actual and consequential damages to the City. The rights and remedies of the City 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 City's legal or equitable remedies, or the period in which such remedies may be asserted.

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

L. Binding Effect. The Parties agree that this Agreement, by its terms, shall be binding upon the successors, heirs, legal representatives, and assigns; provided that this Section XII shall not authorize assignment.

M. No Third-Party Beneficiaries. Nothing contained in this Agreement is intended to or shall create a contractual relationship with, cause of action in favor of, or claim for relief for, any third party, including any agent, sub-consultant or subcontractor of Contractor. Absolutely no third-party beneficiaries are intended by this Agreement. Any third party receiving a benefit from this Agreement is an incidental and unintended beneficiary only.

N. Release of Information. The Contractor shall not, without the prior written approval of the City, release any privileged or confidential information obtained in connection with the Services or this Agreement.

O. Attorneys' Fees. If the Contractor breaches this Agreement, then it shall pay the City's reasonable costs and attorney's fees incurred in the enforcement of the terms, conditions, and obligations of this Agreement.

P. Survival. The provisions of Sections VII (Independent Contractor), VIII (Insurance), IX (Indemnification) and XIII (A) (Governing Law and Venue), (J) (Rights and Remedies), (K) Annual Appropriation), (N) (Release of Information) and (O) Attorneys' Fees, shall survive the expiration or termination of this Agreement. Any additional terms and conditions of the Agreement that require continued performance, compliance, or effect beyond the termination date of the Agreement shall survive such termination date and shall be enforceable in the event of a failure to perform or comply.

Q. Agreement Controls. In the event a conflict exists between this Agreement and any term or provisions in any exhibit attached or incorporated into this Agreement, the terms and provisions in this Agreement shall supersede and control over the terms and provisions in such exhibit.

R. Force Majeure. Neither the Contractor nor the City shall be liable for any delay in, or failure of performance of, any covenant or promise contained in this Agreement, nor shall any delay or failure constitute default or give rise to any liability for damages if, and only to extent that, such delay or failure is caused by "force majeure." As used in this Agreement, "force majeure" means acts of God, acts of the public enemy, acts of terrorism, unusually severe weather, fires, floods, epidemics, quarantines, strikes, labor disputes and freight embargoes, to the extent such events were not the result of, or were not aggravated by, the acts or omissions of the non-performing or delayed party.

S. Protection of Personal Identifying Information. In the event the Services include or require the City to disclose to Contractor any personal identifying information as defined in C.R.S. § 24-73-101, Contractor shall comply with the applicable requirements of C.R.S. §§ 24-73-101, et seq., relating to third-party services providers.

T. Authority. The individuals executing this Agreement represent that they are expressly authorized to enter into this Agreement on behalf of the City of Castle Pines and the Contractor and to bind their respective entities.

U. Counterparts and Electronic Signatures. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same document. In addition, the Parties specifically acknowledge and agree that electronic signatures shall be effective for all purposes, in accordance with the provisions of the Uniform Electronic Transactions Act, Title 24, Article 71.3 of the Colorado Revised Statutes.

V. Web Accessibility Compliance Requirements. Contractor agrees to provide Services in a manner that ensures the City's full compliance with applicable web accessibility requirements set forth in C.R.S. § 24-34-802 and associated regulations, as may be amended from time to time.

THIS AGREEMENT is executed and made effective as provided herein.

CITY OF CASTLE PINES, COLORADO:

By: _____

Printed Name: Michael Penny

Title: City Manager

Date of execution: _____

ATTEST:

Tobi Duffey, MMC, City Clerk

APPROVED AS TO FORM *(excluding exhibits)*:

Linda Michow, City Attorney

BROKEN ARROW LANDSCAPE & DESIGN, INC.:

By: _____

Printed Name: _____

Title: _____

Date of execution: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing Agreement for Services and Equipment was subscribed, sworn to and acknowledged before me this ____ day of _____, 20____, by _____ (printed name) as _____ (title) of Broken Arrow Landscape & Design, Inc., a Colorado corporation.

My commission expires: _____

(S E A L)

Notary Public
(Required for all contracts (C.R.S. § 8-40-202(2)(b)(IV)))

EXHIBIT A

SCOPE OF SERVICES

RIGHT OF WAY MAINTENANCE

The Contractor shall furnish and provide the following equipment and personnel on an hourly rate basis for the performance of tasks specified by the City related to maintenance of streets and right of ways (scheduled and emergency), including but not limited to: litter pickup removal of storm-damaged trees, limbs, or other debris, weed control, or other general maintenance tasks as required by the City.

- Crew-cab 4x4 pickup truck
- Dump body trailer with 8-foot bed (when necessary).
- Working Foreman or Supervisor capable of coordinating work required with the City or emergency services personnel and directing the work to be performed.
- Additional Laborers as required.
- Additional small tools as required to perform work will be considered incidental to the bid and includes power tools, shovels, rakes, saws, etc.
- Traffic Control shall be provided to the City on-call traffic control provider as necessary

CONCRETE REPAIRS

The Contractor shall furnish and provide all the labor, equipment, and materials, and satisfactorily complete all the work associated with the repair of concrete pavements, sidewalks, curb/gutter sections, concrete pans, curb ramps, concrete pads, distressed areas, or other miscellaneous concrete work, including the removal and disposal of existing materials when required in accordance with CDOT Standards and Specifications and the requirements specified herein. The work is subject to the following conditions:

- All concrete provided for this work shall have a minimum 28-day flexural strength of 4500 PSI (CDOT Class P) and be installed per CDOT Standards and Specifications.
- The design and layout of all concrete joints and reinforcement shall comply with CDOT standard drawing M-412-1.
- Concrete pavements shall be a minimum of eight (8) inches thick or shall match the thickness of the adjacent pavement, whichever is greater. A minimum of 6 in. of the aggregate base course shall be installed where none is encountered. The subgrade shall be scarified, reconditioned, compacted, and/or replaced as directed by the Public Works Director (or their designee). The subgrade shall be free of debris and shall be flat and smooth.
- The City reserves the right to require compaction testing of subgrade and base course materials prior to final placement of concrete materials.
- Odd-shaped slabs shall be reinforced with 6" x 6". W 1.4 x W 1.4 welded wire mesh reinforcement (ASTM A185, CSA 030.4) placed at a distance equal to the (Slab thickness+4) + 1 inch below the top surface. The placement

tolerance is $\pm 1/4$ inch.

- The Contractor shall receive approval for the installation of joints from the Public Works Director (or their designee) for all work in the City prior to initiating any work.
- Saw cut all joints in the existing pavement at neat and straight edges.
- The use of pre-formed joint sealers is not acceptable.
- The Contractor shall provide one set of flexural test bars and one (1) set of concrete cylinders for concrete poured each day or for each 50 cubic yards, or portion thereof, poured each day, whichever is greater. The Contractor is responsible for all testing and reporting costs.
- The City will assemble a list of projects and provide the list to the Contractor. The Contractor will be required to mobilize and complete all work on the project list between the months of May through October.
- Should the total quantity of work required during the months specified be less than ten (10) cubic yards, the work will be delayed until the next scheduled work period.
- Mobilization shall be included in the unit costs.
- Concrete spall repairs shall be saw cut and patching materials must be approved in advance by the Public Works Director (or their designee), unless otherwise directed by the Public Works Director. Spall repairs shall be made in accordance with Federal TM 5-822- 9 REPAIR OF RIGID PAVEMENTS, USING EPOXY RESIN GROUTS, MORTARS, AND CONCRETES.
- All patches shall restore the finished surface to smooth surface sloped to match the grade of the adjacent pavement.
- The Contractor is cautioned that exposure of large quantities of subgrade or base materials may require compliance with the City Is MS4 permitting requirements. The City will not waive any fees required for MS4 permits and no additional compensation shall be paid to the Contractor for complying with these requirements. It is the Contractor's responsibility to understand these requirements and to obtain all necessary permits to complete the work. The Contractor shall be fully responsible for payment of any fines or penalties associated with non-compliance.
- It is the responsibility of the Contractor, wherever needed, to provide a Storm Water Management Plan (SWMP) to the City. BMP's shall be installed and maintained until the project is complete and approved by the City.
- Concrete pans subject to vehicle traffic and shall be a minimum of eight (8) inches thick and reinforced with 6"x6" – W 1.4x W 1.4 welded wire mesh reinforcement (ASTM A1 85. CSA 030.4) placed at a distance of three (3) inches below the top surface.
- All surfaces shall be broom-finished. Wet finished will not be allowed.

- Expansion joints shall be placed at 30-45-foot intervals along sidewalk and curb/gutter sections. Expansion joints placed between any new concrete and any adjacent concrete pavement. All expansion joints shall be sealed. Contraction joints shall be installed in 8-12-foot intervals along sidewalk and curb/gutter sections.
- The Contractor shall be fully responsible for payment of any fines or penalties associated with non-compliance.

PARKS & OPEN SPACE MAINTENANCE

The Contractor will undertake comprehensive maintenance for the City's parks and open spaces to enhance their beauty and usability for the community. This will involve a variety of tasks, including:

- **Mowing:** Regular cutting of grass to maintain a neat appearance and promote healthy turf growth.
- **String Trimming:** Precision trimming around trees, walkways, and other obstacles to ensure clean edges and prevent overgrowth.
- **Fire Mitigation:** Implementing strategies to reduce fire hazards, such as clearing dry brush and maintaining defensible space around wooded areas.
- **Irrigation Repairs:** Addressing leaks and blockages in the irrigation system to ensure that plants receive adequate water throughout the seasons.
- **Trash Removal:** Regularly picking up litter and debris to keep parks clean and inviting for visitors.
- **Facility Repairs:** Maintaining and repairing park facilities such as benches, picnic tables, playgrounds, and restrooms to ensure they are safe and functional.
- **Landscaping:** Designing and maintaining flower beds, shrubs, and other landscaping features to enhance the aesthetic appeal of the parks.
- **Tree and Flower Bed Maintenance:** Pruning trees and caring for flower beds to promote healthy growth and display vibrant blooms throughout the year.
- **Snow Removal:** Timely clearing of snow from pathways and parking areas during winter to ensure safe access for residents.
- **Trail Maintenance:** Regular inspections and upkeep of trails to provide safe and enjoyable walking, biking, and hiking experiences.

EXHIBIT B
COMPENSATION

Concrete Repairs	Unit	Unit Prices
Removal of Concrete Pavement - 10 inches	SY	\$49.50
Install Aggregate Base Course - 10 inches	TON	\$79.00
Construct Concrete Pavement	CY	\$862.00
Concrete Spall Repairs	SF	\$130.00
Sawcut	LF	\$5.75
Removal of Gutter	LF	\$12.75
Removal of Curb and Gutter	LF	\$12.75
Removal of Sidewalk - 6 inch	SY	\$23.00
Removal of Curb Ramp	SY	\$25.00
Construct Concrete Sidewalk - 4 inches	SY	\$75.25
Construct Concrete Sidewalk - 6 inches	SY	\$89.75
Construct Concrete Curb Ramp	SY	\$189.00
Construct Concrete Curb	LF	\$45.00
Construct Concrete Gutter	LF	\$45.50
Construct Concrete Curb and Gutter	LF	\$45.50
Construct Concrete Cross Pans - 8 inches	SY	\$182.75
Construct Concrete Median Cover - 6 inches	SY	\$97.50
Sawcut	LF	\$5.75

Parks and Open Space Maintenance	Unit	Unit Prices
Labor	HOUR	\$52.00
Tractor, Mowing, (Native)	HOUR	\$125.00
String Trimming	HOUR	\$52.00
72" Mower (Native)	HOUR	\$65.00
Fire Mitigation (Scrub Oak)	HOUR	\$65.00
Mini X	HOUR	\$125.00
Truck 5 yard Hauling	HOUR	\$125.00
Skid-Steer	HOUR	\$125.00
Snow Removal with ATV and Plow	HOUR	\$70.00