

INDOOR FOLIAGE MAINTENANCE AGREEMENT

This Indoor Foliage Maintenance Agreement ("Agreement") is entered into this 26th day of January, 2018, to be effective as of January 1, 2018 ("Effective Date"), by and between the **Southwest Metropolitan Water and Sanitation District**, a quasi-municipal corporation and political subdivision of the State of Colorado (hereinafter referred to as the "District") and **Bristol Botanics, Inc.**, a Colorado corporation (hereinafter referred to as "Contractor") whose business address is 2390 South Tejon Street, Englewood, Colorado 80110, and whose telephone number is 303-792-0123.

RECITALS

WHEREAS, the District desires to receive weekly, and in certain cases, quarterly foliage maintenance services for the plants located in the District's office at 8739 W. Coal Mine Avenue, Littleton, Colorado ("Office"); and

WHEREAS, Contractor represents that it has the personnel, equipment, and expertise necessary to perform such services for the District, and that it has performed similar services for other public and private entities; and

WHEREAS, the District staff, after reviewing the Contractor's proposal dated October 26, 2017 ("Scope of Services") has determined to retain the Contractor to perform the required foliage maintenance services for the plants in the Office, upon the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the promises set forth herein, the District and Contractor agree as follows:

1. **Scope of Services**. Subject to and in accordance with the terms and provisions of this Agreement, Contractor shall provide all labor, equipment, materials, oversight and direction necessary to perform the foliage maintenance services described in the Scope of Services, a copy of which is attached hereto as ***Exhibit A*** (consisting of three pages) and incorporated herein by this reference (the "Services"). In the event of a conflict or any inconsistency between the text of this Agreement and ***Exhibit A***, the text of this Agreement shall control.

2. **Notice to Proceed**. From and after the Effective Date, and provided District receives satisfactory certificates of insurance as required by Paragraph 15 below, concurrent with District's delivery of an executed copy of this Agreement to Contractor, Contractor shall immediately initiate the weekly performance of Services, if it has not already done so. Any work not described in the Scope of Services, shall be performed by Contractor only after receiving specific written direction to do so from the District Manager.

3. **Completion of Work.** Time is of the essence with respect to Contractor's performance of Services hereunder. Contractor shall give this Agreement and the Services to be performed hereunder such priority as is necessary to cause the Services to be timely and promptly completed. Unless delayed by acts or the failure to act of the District or other causes beyond the control of Contractor and without extending any deadline established elsewhere in this Agreement, all Services shall be entirely completed and all deliverables as set forth in the Scope of Work shall be delivered to the District no later than December 31 of the calendar year of the Term then in effect.

4. **Confidentiality of Information.** Subject to the Public (Open) Records Act, Section 24-72-102, et. seq., C.R.S., as amended, Contractor will hold in strictest confidence all information furnished by the District or others during the performance of Services, including the results of any reports or investigations or observations made by Contractor or communicated to Contractor during its performance of Services. Contractor shall not disclose such information to others without the prior written consent of the District.

5. **Ownership of Work Product.** All documents of whatsoever kind or nature, if any, produced for the District as a result of the performance of Services under this Agreement by Contractor, including but not limited to all printed materials and electronic documents, shall be the sole property of the District and may not be used, sold or disposed of in any manner without prior written approval of the District's representative. All documents produced for the District as a result of Services performed hereunder shall be turned over to the District as and when completed.

6. **Standard of Care.** The District will not supervise the work of Contractor or instruct the Contractor on how to perform the Services. Contractor shall be fully responsible for the professional quality, technical accuracy, timely completion and coordination of Services including all work and reports, if any, that are a part thereof, whether such work is performed directly by Contractor or by subcontractors or subconsultants, as approved by the District in accordance with Paragraph 24 below. Without additional compensation and without limiting the District remedies, Contractor shall promptly remedy and correct any errors, omissions, or other deficiencies in the Services. Contractor represents that all Services provided under this Agreement shall be performed with competence and in accordance with the standard of care of Contractor's profession prevailing in Colorado.

7. **Compensation.** For Services performed under this Agreement, the District shall compensate Contractor on an equal lump sum monthly basis in accordance with the lump sum prices set forth on *Exhibit A*. Notwithstanding any other provision contained herein to the contrary, however, total compensation paid to Contractor for 2018 or any subsequent calendar year of the Term shall not exceed \$2,884.00, without District's prior

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express written consent. If, for any reason, Contractor is not able to perform all of the weekly services contemplated in the Scope of Services during the month of January, the January 2018 installment payable to Contractor shall be reduced proportionately in accordance with the amount of work Contractor performs in January 2018.

The compensation to Contractor as provided for by this Agreement is entire and complete. Contractor has not received and will not receive any other compensation in connection with this Agreement. Contractor agrees that it has not paid or promised to pay any compensation to anyone (except District approved subcontractors and the Contractor's officers and employees) in order to obtain this Agreement. Subject to paragraph 24 below, it is understood and agreed that Contractor will contract with and pay directly all subcontractors providing services, if any, retained by Contractor for any Services or portion thereof that are provided by a subcontractor.

8. **Method of Payment.** Contractor shall invoice the District an equal amount each month in accordance with the provisions of paragraph 7 above. Invoices submitted by Contractor shall include a description of the Services rendered and an itemization of the charges contained therein and shall be supported by such data or documentation substantiating Contractor's right to payment as the District's manager may reasonably require.

It is contemplated that invoices submitted by Contractor will normally be paid by the 10th day of each month following the month in which the invoices are received by the District. Notwithstanding any other provision contained in this Agreement to the contrary, the District shall have the right to refuse to pay all or any portion of the money portion of an invoice that is inconsistent with this Agreement. The District may reasonably delay payment until it can verify the accuracy of an invoice, obtain releases or waivers if applicable, with respect to the work covered in the invoice, or resolve a dispute with a Contractor regarding an invoice. Any undisputed amounts will be paid and not withheld however.

9. **Conflict of Interest.** During the term of this Agreement, Contractor shall not engage in any business or personal activities or practices or maintain any relationships that conflict in any way with the Contractor fully performing its obligations under this Agreement or compromises the effectiveness of Contractor.

10. **Records and Audits.** Contractor shall at all times maintain a system of accounting records in accordance with its normal billing procedures, together with supporting documentation for all Services performed under this Agreement. Contractor shall make available for audit and reproduction by the District, all records, in whatever form, related to any and all Services performed under this Agreement. Contractor shall provide such availability during the term of this Agreement and for two (2) years

thereafter. Contractor shall refund to the District any charges determined by any District audit to be inconsistent with this Agreement.

11. **Changes in Services.** The District shall have the right to order additions, deletions or changes to any Services authorized under this Agreement. Request for additional Services may be made by the District Manager or other representative orally or in writing, provided, the oral request shall be confirmed by a written request within two days after the oral request. If the District directs Contractor to proceed with any work that is outside the Scope of Work, Contractor shall be paid for the change as agreed by the Parties.

12. **Independent Contractor.** In the performance of Services under this Agreement, Contractor shall be, for all purposes, an independent contractor and not an employee or agent of the District. Contractor and its employees and subcontractors, if any, shall in no way represent themselves to third parties as agents or employees of the District.

13. **No Unemployment Insurance or Workers' Compensation Benefits.** Contractor is not entitled to unemployment insurance or workers' compensation benefits as a result of the performance of Services for the District. Contractor is required to provide workers' compensation and unemployment insurance benefits for all contractor employees and/or subcontractors retained by Contractor.

14. **Payment of Taxes.** Contractor is fully liable for any federal and state income and withholding taxes, unemployment taxes, FICA taxes, and worker's compensation payments and premiums applicable to any Services, or additional services performed under this Agreement. Contractor shall indemnify the District for any liability resulting from nonpayment of any such taxes and sums.

15. **Insurance.** Neither Contractor nor any subcontractor, agent, or employee thereof shall commence work on any Services authorized under this Agreement until the following minimum insurance coverages have been obtained:

(a) **Workers' Compensation and Employer's Liability Insurance.** Contractor and each subcontractor shall carry Worker's Compensation and Employer's Liability Insurance to cover liabilities under the laws of the State of Colorado in connection with the Services performed under this Agreement. Contractor and each subcontractor, if applicable, shall carrier a separate policy.

(b) **Commercial General Liability Insurance.** Contractor and each subcontractor, if any, shall carry Commercial General Liability Insurance, which shall include blanket contractual liability coverage. Such insurance shall be in the amount of

\$1,000,000 for each occurrence and \$1,000,000 general aggregate in combined single limit coverage for bodily injury and property damage.

(c) **Automobile Liability Insurance.** Contractor and each subcontractor, if applicable, shall carry Automobile Liability Insurance to include owned, non-owned and hired vehicles used in the performance of Services under this Agreement. Such insurance shall be in the amount of \$1,000,000 per occurrence and \$1,000,000 general aggregate and combined single limit coverage for bodily injury and property damage.

Prior to commencing any Services under this Agreement, Contractor shall provide the District a Certificate of Insurance evidencing the policies required by this paragraph as well as the amounts of coverage for the respective types of coverage required. The required Commercial General Liability and Automobile Liability policies shall: (i) name the District as an additional insured for coverage only, with no premium payment obligation; and (ii) provide that the coverage for the District shall not be impaired by Contractor's or any subcontractors' failure to comply with any of the terms or conditions of the policy. Contractor and each subcontractor shall provide Certificates of Insurance (and renewals thereof) identifying this Agreement and demonstrating that the required coverage have been obtained. Contractor shall not allow any subcontractor, agent or employee to commence work on any Services until appropriate Certificates of Insurance has been obtained and approved by the District. The coverages specified in each Certificate of Insurance shall not be terminated, reduced or modified without providing at least thirty (30) prior written days' notice to the District.

16. **Compliance with Laws.**

(a) **Laws and Regulations.** In performing this Agreement, Contractor shall comply with all applicable laws, rules and regulations, including but not limited to all federal, state and local laws.

(b) **Illegal Aliens.** In addition to Paragraph 16(a) above, Contractor certifies that Contractor shall comply with the provisions of Section 8-17.5-101, C.R.S., et seq. Contractor shall not knowingly employ or contract with an illegal alien to perform Services under this Agreement, or enter into a contract with a subcontractor that knowingly employs or contracts with an illegal alien. The Contractor represents, warrants and agrees that it has confirmed the employment eligibility of all employees who are newly hired for employment to perform Services under the Agreement through participation in either the E-Verify Program or the Department Program described in Section 8-17.5-101, C.R.S. The Contractor shall not use either the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed. If the Contractor obtains actual

knowledge that a subcontractor performing Services under this Agreement knowingly employs or contracts with an illegal alien, the Contractor shall: (i) notify the subcontractor and the District within three days that the Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and (ii) terminate the subcontract with the subcontractor if within three (3) days of receiving such notice, the subcontractor does not stop employing or contracting with the illegal alien, unless the subcontractor provides information to establish that the subcontractor has not knowingly employed or contract with an illegal alien. Contractor shall comply with all reasonable requests made in the course of an investigation by the Colorado Department of Labor and Employment. If Contractor fails to comply with any requirement of Section 8-17.5-102(2), C.R.S., the District may terminate this Agreement for breach and the Contractor shall be liable for actual damages to the District. If the Contractor participates in the Department Program, Contractor shall provide the affirmation required under Section 8-17.5-102(5)(e)(III), C.R.S., to the District.

17. **Indemnification.** Contractor hereby expressly agrees to defend, indemnify and hold harmless the District, its officers, agents, employees and insurers against any and all liability, loss, damage, action, cause of action or expense of whatsoever kind or nature (including court costs and reasonable attorneys' fees) which may result from any loss, injury, death or damage allegedly sustained by any person, firm, corporation or other entity and that arises out of or is caused by any actual or allegedly negligent or wrongful act or omission of the Contractor, its officers, agents or employees (or the Contractor's subcontractors, or any of said subcontractor's officers, agents or employees) in connection with, or in any way arising out of this Agreement. Contractor's obligation to defend and indemnify shall survive termination of this Agreement.

18. **Acceptance Not A Waiver.** The District's approval of any Services and the payment therefore shall not in any way relieve Contractor of responsibility for the quality of the workmanship and materials incorporated into any job or project. The District's approval, acceptance of, or payment for any Services shall not be construed to operate as a waiver of the District's rights under this Agreement, or of any cause of action arising out of the performance of this Agreement.

19. **Term.** This Agreement shall commence on January 1, 2018 and shall expire on December 31, 2018 (the "Initial Term"), unless sooner terminated or extended, as provided herein. The Term of this Agreement shall be automatically extended and renewed for two (2) separate and successive periods of one (1) year each (each an "Extension Period"), unless District or Contractor provides the other Party with a notice of non-renewal at least ninety (90) days prior to the expiration of the then existing Term. During any extension of the Term of this Agreement, all terms, covenants and conditions of this Agreement shall remain and be in full force and effect. For purposes of this Agreement, the Initial Term and the Extension Period, to the extent neither Party delivers

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Notice of Non-Renewal), shall be referred to as the Term of this Agreement. Said Contractor reserves the right to renegotiate Services annually to reflect recognized and significant changes in operating costs provided Contractor gives District notice of its intent to do so within the ninety (90) day period set forth in this paragraph.

20. **Suspension/Termination.** The District reserves the right to terminate this Agreement upon (10) days prior written notice to Contractor for any reason and/or no reason, and/or to suspend all or any portion of the Services by giving (10) days prior written notice to the Contractor. If this Agreement is terminated or suspended either in whole or in part, the District shall pay the Contractor equitably for all Services properly performed prior to the effective date of such suspension or termination. If any of the Emergency Services, or Non-Emergency Services authorized hereunder are suspended by the District and the Contractor is not given an order to resume work within thirty (30) days from the effective date of the suspension, this Agreement shall be considered terminated. Upon termination, Contractor shall immediately deliver to the District any documents then in existence that have been prepared by the Contractor pursuant to this Agreement.

21. **Default.** Every term and condition of this Agreement shall be deemed to be a material element of this Agreement. In the event either Party shall fail or refuse to perform according to the material terms of this Agreement, such Party may be declared in default by the other Party by a written notice.

22. **Remedies.** In the event a Party has been declared in default, such defaulting Party shall be allowed a period of fifteen (15) days within which to correct or commence correcting, the default. In the event the default has not been correct or begun to be corrected, or the defaulting Party has ceased to pursue the correction with due diligence, the Party declaring default may elect to (a) terminate this agreement and seek damages; (b) treat the Agreement as continuing and require specific performance; or (c) avail itself of any other remedy at law or equity. In the event Contractor fails or neglects to perform the Services of this Agreement, the District may elect to correct such deficiencies and charge contractor for the full cost of the corrections.

23. **No Multiple Fiscal Year Obligations.** No provision of this Agreement shall be construed or interpreted as creating an indebtedness or a multiple fiscal year direct or indirect debt or other multiple year financial obligation whatsoever of District within the meaning of any constitutional or statutory debt limitation provision including, without limitation, Article XI, Sections 1, 2, and 6 and Article X, Section 20 of the Colorado Constitution. This Agreement shall not directly or indirectly obligate the District to make any payment beyond the funds legally available to it for the then current fiscal year. No provision of this Agreement shall be construed to pledge or create a lien on any class or source of monies of the District, nor shall any provision of this

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Agreement restrict or limit the discretion of the District in the budgeting and appropriation of its funds. Further, the District shall notify Contractor if funds are exhausted for any fiscal year, and Contractor may, at its discretion, decide whether to continue working for the District during that fiscal year.

24. **Assignment and Subcontractors.** Contractor shall not assign to any other person or firm the performance of any of the Services hereunder in whole or in part, without the prior written approval of the District, which may be withheld for any reason. All work under this Agreement shall be performed under Contractor's direct supervision and control. Subject to the provisions of this Paragraph 24, this Agreement shall bind and inure to the benefit of the Parties hereto and their respective successors and assigns.

25. **Non-Exclusive Agreement.** District and Contractor agree that this not an exclusive agreement, and District may retain other contractors to perform similar services, at the District's sole discretion.

26. **No Third Party Beneficiaries.** This Agreement is intended to benefit only the Parties hereto and no subcontractor or supplier of Contractor or any other person or entity is intended by the Parties to be a third party beneficiary of this Agreement.

27. **Force Majeure.** The Parties shall not be responsible for any failure or delay in the performance of any obligations under this Agreement caused by Acts of God, flood, fire, war or public enemy.

28. **Governing Law.** This Agreement shall be governed by and construed under the laws of the State of Colorado.

29. **Governmental Immunity.** The Parties understand and agree that the District is relying upon, and has not waived, the monetary limitations of \$350,000 per person, \$990,000 per occurrence, and all other rights, immunities and protections provided the District by the Colorado Governmental Immunity Act, Section 24-10-101, et. seq., C.R.S., at the Act now exists or may hereafter be amended from time to time.

30. **Entire Agreement.** This Agreement constitutes the entire Agreement between the District and Contractor and replaces all prior written or oral agreements and understandings. It may be altered, amended or repealed, only by a duly executed written instrument.

31. **Effective Date.** This Agreement shall be effective in accordance with its terms as of the Effective Date.

32. **Interpretation.** If there is any uncertainty in the interpretation of any provision of this Agreement, all of the provision of this Agreement shall be construed on the basis that all Parties hereto assisted in the drafting and finalization hereof.

33. **Severability.** The terms of this Agreement are severable. If any term of this Agreement is found to be unlawful, the remaining terms shall remain in full force and effect, and the Parties agree to negotiate a substitute term of equivalent value or effect.

34. **Special District Act.** This Agreement is made under and is conformable to all of the requirements imposed by law upon a special district operating in the State of Colorado by the Colorado, including but not limited to, the Colorado Special District Act, Section 32-1-101, et. seq., C.R.S. In so far as applicable, the Special District Act and any other provision of law pursuant to which the District operates shall supersede any apparently conflicting provisions otherwise contained in this Agreement.

35. **Notice.** All notices required or given under this Agreement shall be in writing and shall be deemed effective: (a) when delivered personally to other Party; or (b) seven (7) days after depositing in the United States Mail, First Class Postage Prepaid, addressed as follows: or (c) when sent by facsimile transmission and receipt is confirmed by returned facsimile transmission.

If to Contractor:	President Bristol Botanics, Inc. 2390 South Tejon Street Englewood, CO 80110
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If to District:	Patrick Fitzgerald, District Manager Southwest Metropolitan Water and Sanitation District 8739 West Coal Mine Avenue Littleton, CO 80123
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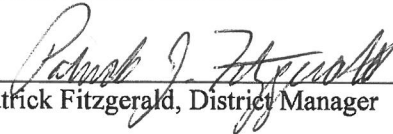
With a Copy To:	Timothy J. Flynn Collins Cockrel & Cole 390 Union Blvd., Suite 400 Denver, Colorado 80228
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Or such other persons or addresses that the Parties may hereafter designate in writing.

IN WITNESS WHEREOF, the Parties have executed this Agreement in duplicate original as of this 26th day of January, 2018, to be effective as of January 1, 2018.

This Agreement must have the signature of an authorized representative of Contractor and the District on both original copies.

SOUTHWEST METROPOLITAN WATER
AND SANITATION DISTRICT

By: 
Patrick Fitzgerald, District Manager

BRISTOL BOTANICS, INC.

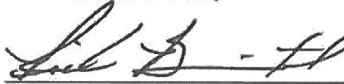
By: 
President

EXHIBIT A
Scope of Services



BRISTOL BOTANICS INC

2018 Foliage Budget
for

Southwest Metropolitan Water

Presented to:

Alyssa Quinn

October 26, 2017

Southwest Metropolitan Water
2018 Budget Summary
10/26/17

Guaranteed Foliage Maintenance (per month price)	\$219.00
Seasonal Blooming: (4 qty) Std Exotic Plan (monthly rate)	\$64.00
Sales Tax (0.00%)	\$0.00
Total Price per Month	<u>\$283.00</u>



BRISTOL BOTANICS
INC

SCOPE OF SERVICES Terms & Conditions:

Maintenance: Upon approval of the installation Contractor shall commence a weekly program for maintaining the health and appearance of the installed plants which shall include the following:

- 1) Inspection of soil moisture levels and replenishment as is necessary;
- 2) Inspection of soil for foliar pests, diseases and other such infestations;
- 3) Trimming and cleaning of all foliage, removal of debris from soil and addition of soil and/or mulch to soil;
- 4) Rotation of plants, as possible and necessary, relative to any predominate light source in order to maintain attractive shape;
- 5) Maintenance of proper growing medium nutrient levels; and
- 6) Cleaning of those portable planters provided by Bristol Botanics, Inc.

The Maintenance Program shall be performed by trained Maintenance Technicians. The implementation of control measures for pest and disease infestations shall be in strict compliance with all federal and local regulations.

Bristol Botanics, Inc., is not responsible for damage caused by the use of wicker, ceramic, or clay containers. This also includes other containers not provided by Bristol Botanics, Inc.

Bristol Botanics, Inc. is not responsible for the care of personal plants. We are not responsible for damaged caused or replacements if we are asked to water such foliage. If personal plants are listed on the specifications, they are governed by the same container proviso as listed above.

Replacement: During all phases of the Services, Contractor shall replace at its sole expense any plants which are determined either by Contractor or client to have deteriorated in health or appearance so as to become of a lesser specification except those noted as not guaranteed on the inventory. All plant replacements shall be made with plants of the same species, size and grade as was in place prior to such deterioration or with another plant of comparable value which is acceptable to the Client.

Contractor shall be relieved of its liability under this subsection in the event that such deterioration resulted from the occurrence of any of the following:

- 1) The occurrence of vandalism or theft;
- 2) The occurrence of significant changes in plant location (s) without the Contractor's prior consent;
- 3) The prolonged absence of light or malfunction of the heating, ventilating, or air conditioning systems;
- 4) Lack of access to the Premises;
- 5) The prolonged absence of hot and cold running water at the Premises;
- 6) Watering or other well-meaning care by any employee of the Client's;
- 7) The occurrence of temperature or humidity extremes;
- 8) Accidental or malicious damage by Client's employees, cleaning crews, or other non-Contractor personnel to either plants or containers;
- 9) Lowering of lighting levels below those which were originally specified, or below those existing at the time of the installation of the plants pursuant to this Agreement;
- 10) Introduction of any liquids into the plant's soil such as cleaning chemicals, alcohol or sugary fluids, or the use of toxic gases such as strong ammonia from floor cleaning;
- 11) The occurrence of other situations or Acts of God which are detrimental to plant survival and beyond the control of Bristol Botanics, Inc.

Payment: Client shall pay Contractor in advance, a monthly payment for maintenance on current inventory payable no later than the tenth (10th) of each month. Contractor reserves the right to renegotiate our Services annually to reflect recognized and significant changes in operating costs. *Maximum legal finance charges will be applied to all payments received after the tenth (10th) of each month.

Term: The term of this agreement is for 1-year from the date below. After this period, this agreement becomes a month-to-month agreement and may be terminated by either party with thirty days written notice.

Accepted By: _____

Date: _____

Account Name: Southwest Metro Water

*by providing a Notice of Non-Renewal in accordance with Paragraph 19 of the Agreement.