



**TOWN OF MILLIKEN
TOWN BOARD
AGENDA MEMORANDUM**

To: Mayor Woodcock and Board of Trustees From: Bill Landwehr, Public Works Director Via: Kent Brown, Town Administrator	Meeting Date: Wednesday, March 22, 2017
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Agenda Item #	Action: X	Discussion:	Information:
Agenda Title: Authorization of the Town Administrator to sign the contract for weed spraying and fertilization with TruGreen for the 2017 season.			
Attachments: (1) Proposal			

PURPOSE

To Authorize the Town Administrator to sign the contract for weed spraying and fertilization for the Town of Milliken’s Parks, Open Space and Right of Way areas with TruGreen. Town of Milliken has worked with TruGreen for a number of years.

BACKGROUND

An RFP was completed in 2014. Bids came in where TruGreen was the lowest bidder; but, was not awarded the bid. Lutey’s Landscape bid the proposal at \$15,500 and TruGreen was at \$13,260 in 2014. The contract was completed with Lutey’s Landscape; however, we only ended up spending \$6,828.50 on spraying with Lutey’s, as it was a bigger job then their resources that they dedicated could undertake and there were numerous weed problems in several parks. For 2015, the Town went back to TruGreen. The Town of Milliken used TruGreen from 2004-2008, 2012-2013 and 2015-2016. In general, Town staff has been satisfied with the service provided by TruGreen, any problem areas or issues are quickly communicated and addressed. There has been additional acreage added to the contract since 2014.

For 2017, the recommendation is to continue the contract with TruGreen.

BUDGET IMPLICATONS

For 2017 the town budgeted \$80,000.00 for maintenance contracts that include mowing and weed eating, weed spraying and tree spraying/tree trimming. This contract for \$17,505.50 which in coordination with the prior approved contract with Green Man will fit within the budgeted amount.

STAFF RECOMMENDATION

Staff recommends that the Board authorizes the Town Administrator to execute a professional services contract with TruGreen in a form approved by the Town Attorney.

SUGGESTED MOTION

“I move to authorize the Town Administrator to sign a 2017 service contract with TruGreen for weed spraying and related services in a form approved by the Town Attorney.”



Brian Jones

970-461-4603

Customer Information

Bill To:

TOWN OF MILLIKEN PAKS&OPENSAPC

PO BOX 290
MILLIKEN, CO 80543
USA

Service Location:

212 QUENTINE AVE
MILLIKEN, CO 80543
USA

Detail of Charges

Service Location	Line Item Description	Round #	Round Description*	Total Price
TOWN OF MILLIKEN PAKS&OPENSAPC	Weed Control Service	1		\$2,600.00
TOWN OF MILLIKEN PAKS&OPENSAPC	Weed Control Service	1		\$2,600.00
TOWN OF MILLIKEN PAKS&OPENSAPC	Weed Control Service	1		\$2,600.00
Florence Park	Lawn Service	2	Late Spring - Fertilizer, broadleaf weed, crabgrass control (As Needed/Weather Dependent)	\$285.00
Florence Park	Lawn Service	3	Early Summer - Fertilizer, broadleaf weed control (As Needed/Weather Dependent)	\$285.00
Florence Park	Lawn Service	5	Early Fall - Fertilizer, broadleaf weed control (As Needed/Weather Dependent)	\$285.00
FBC Park	Lawn Service	2	Late Spring - Fertilizer, broadleaf weed, crabgrass control (As Needed/Weather Dependent)	\$240.00
FBC Park	Lawn Service	3	Early Summer - Fertilizer, broadleaf weed control (As Needed/Weather Dependent)	\$240.00
FBC Park	Lawn Service	5	Early Fall - Fertilizer, broadleaf weed control (As Needed/Weather Dependent)	\$240.00
Fitness Park	Lawn Service	2	Late Spring - Fertilizer, broadleaf weed, crabgrass control (As Needed/Weather Dependent)	\$160.00
Fitness Park	Lawn Service	3	Early Summer - Fertilizer, broadleaf weed control (As Needed/Weather Dependent)	\$160.00
Fitness Park	Lawn Service	5	Early Fall - Fertilizer, broadleaf weed control (As Needed/Weather Dependent)	\$160.00
ADA Park	Lawn Service	2	Late Spring - Fertilizer, broadleaf weed, crabgrass control (As Needed/Weather Dependent)	\$70.00
ADA Park	Lawn Service	3	Early Summer - Fertilizer, broadleaf weed control (As Needed/Weather Dependent)	\$70.00
ADA Park	Lawn Service	5	Early Fall - Fertilizer, broadleaf weed control (As Needed/Weather Dependent)	\$70.00

MT View Park	Lawn Service	2	Late Spring - Fertilizer, broadleaf weed, crabgrass control (As Needed/Weather Dependent)	\$650.00
MT View Park	Lawn Service	3	Early Summer - Fertilizer, broadleaf weed control (As Needed/Weather Dependent)	\$650.00
MT View Park	Lawn Service	5	Early Fall - Fertilizer, broadleaf weed control (As Needed/Weather Dependent)	\$650.00
Lola Park	Lawn Service	2	Late Spring - Fertilizer, broadleaf weed, crabgrass control (As Needed/Weather Dependent)	\$385.00
Lola Park	Lawn Service	3	Early Summer - Fertilizer, broadleaf weed control (As Needed/Weather Dependent)	\$385.00
Lola Park	Lawn Service	5	Early Fall - Fertilizer, broadleaf weed control (As Needed/Weather Dependent)	\$385.00
Sappington Park	Lawn Service	2	Late Spring - Fertilizer, broadleaf weed, crabgrass control (As Needed/Weather Dependent)	\$450.00
Sappington Park	Lawn Service	3	Early Summer - Fertilizer, broadleaf weed control (As Needed/Weather Dependent)	\$450.00
Sappington Park	Lawn Service	5	Early Fall - Fertilizer, broadleaf weed control (As Needed/Weather Dependent)	\$450.00
Skate Park	Lawn Service	2	Late Spring - Fertilizer, broadleaf weed, crabgrass control (As Needed/Weather Dependent)	\$85.00
Skate Park	Lawn Service	3	Early Summer - Fertilizer, broadleaf weed control (As Needed/Weather Dependent)	\$85.00
Skate Park	Lawn Service	5	Early Fall - Fertilizer, broadleaf weed control (As Needed/Weather Dependent)	\$85.00
Sign Park	Lawn Service	2	Late Spring - Fertilizer, broadleaf weed, crabgrass control (As Needed/Weather Dependent)	\$65.00
Sign Park	Lawn Service	3	Early Summer - Fertilizer, broadleaf weed control (As Needed/Weather Dependent)	\$65.00
Sign Park	Lawn Service	5	Early Fall - Fertilizer, broadleaf weed control (As Needed/Weather Dependent)	\$65.00
Florence Park	Revive Soil Amendment	1		\$313.50
FBC Park	Revive Soil Amendment	1		\$264.00
Fitness Park	Revive Soil Amendment	1		\$176.00
ADA Park	Revive Soil Amendment	1		\$77.00
MT View Park	Revive Soil Amendment	1		\$715.00
Lola Park	Revive Soil Amendment	1		\$423.50
Sappington Park	Revive Soil Amendment	1		\$495.00
Sign Park	Revive Soil Amendment	1		\$71.50

Subtotal	\$17,505.50
Total Sales Tax Amount	\$0.00
Grand Total	\$17,505.50

Standard Terms and Conditions

1. Term. The term of this Agreement shall be three (3) years from the date signed by you, the Customer. This Agreement shall automatically renew for additional one (1) year terms unless canceled in writing by either party no less than sixty (60) days written notice prior to the end of the then-current term.
2. Price Increases. (a) Increase in Property Size. Because the size of your property is a significant factor in determining the cost of TruGreen's services, TruGreen may increase the specified charges proportionally to reflect any additional costs incurred should you add property under this Agreement. (b) Fuel, Material, and Labor Cost Increases. Because the product, labor, and fuel costs constitute a significant portion of TruGreen services, TruGreen may increase the price hereunder in the event of a cost increase in any of these areas. Similarly, TruGreen may experience cost increases as a result of other unforeseen circumstances, including, but not limited to, changes in government regulation, etc. To offset cost increases based on any of these issues, TruGreen shall provide you thirty (30) days written notice prior to any such necessary price adjustment, including a statement of the associated reason. If you do not object in writing to the price adjustment within such thirty (30) day period, the Agreement shall continue thereafter at the adjusted price. If you object, you and TruGreen will enter into a ten-day good-faith negotiation period. If a mutually acceptable solution cannot be reached during such ten-day period, either party may terminate this Agreement upon thirty (30) days written notice. (c) Annual Price Increases. TruGreen may elect to increase the price of services under this Agreement after the first year or after any subsequent anniversary date of the Agreement by a percentage amount not to exceed five percent (5%) of the then current price, or consistent with any increase in the current consumer price index, whichever is greater. With the exception of increases as described in subparagraphs (a) and (b) of this paragraph 2, TruGreen shall not increase its prices on an elective basis more frequently than once during any Agreement year.
3. Payment Terms. Payment is due to TruGreen within 30 days after the invoice date. In the event that you fail to make payment when due, TruGreen reserves the right to terminate this Agreement. A late service fee equal to the lesser of 1.5% per month (18% a.p.r.) or the maximum interest rate allowed by law will be charged on any balance unpaid over thirty (30) days. A service charge of \$25.00 will be charged for any returned check. Should it become necessary to bring an action to collect amounts due under this agreement, you agree to pay all costs of such collection including, but not limited to, any reasonable outside counsel, in-house counsel, paralegal or other professional fees and court costs.
4. Check processing policy ACH. When you provide a check as payment, you authorize TruGreen either to use information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check transaction. If TruGreen uses information from your check to make an electronic fund transfer, funds may be withdrawn from your account as soon as the same day we receive your payment and you will not receive your check back from your financial institution. Returns: in the event that your payment is returned unpaid, you authorize us the option to collect a fee as allowed by law through an electronic fund transfer from your account.
5. Termination. In the case of your non-payment or default, TruGreen has the right to terminate this Agreement immediately upon notice to you. You may cancel this Agreement for material breach by TruGreen, provided that TruGreen is provided written notice by you of the details of the breach, and thereafter fails to cure the breach within thirty (30) days after said notice. Additional termination provisions for landscape companies, property management companies, agents and other similar entities. To the extent you represent one or more property owners and/or properties covered under this agreement, and in the event such owner terminates your contract with regard to one or more properties, then upon notice to TruGreen, you may terminate this Agreement only as it relates to such property for which owner terminated its contract with you. To the extent that this Agreement applies to other properties, not terminated by the owner, this Agreement shall continue in full force and effect with regard to such other properties.
6. Sale of Property. You agree to notify TruGreen in writing immediately in the event that you sell any property which is the subject of this Agreement. TruGreen shall make the appropriate adjustment in price to accommodate the reduction of square footage treated in the event that property is sold. In the event all property which is the subject of the Agreement is sold, this Agreement shall be terminated upon receipt by TruGreen of your written notice that you have sold the property.
7. LIABILITY. TRUGREEN IS RESPONSIBLE FOR DIRECT DAMAGES RESULTING FROM ITS NEGLIGENCE, BUT IS NOT RESPONSIBLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL PUNITIVE, OR SPECIAL DAMAGES ARISING OR RESULTING FROM THE PERFORMANCE OR NONPERFORMANCE OF ANY OBLIGATIONS UNDER THE AGREEMENT INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR INCOME, REGARDLESS OF THE BASIS FOR THE CLAIM.
8. Duty to Inspect. You have a duty to inspect the property within fifteen (15) days after service has been performed by TruGreen. If you believe TruGreen provided deficient work, you agree to notify TruGreen immediately in writing. If written notice is not received by TruGreen within fifteen (15) days after the date of service, you agree that any and all claims alleging damage of any nature or to recover past payments and/or rights to withhold future payments due under this Agreement are waived.
9. Notice to tenants, employees, invitees. To the extent necessary, you have a duty to notify all tenants, employees, visitors and any other invitee on the premises of a scheduled service prior to the performance of any scheduled service by TruGreen.
10. No Warranties. Except as expressly set forth in this Agreement TruGreen makes no warranty or representation of any kind, expressed or implied, concerning either products used or services performed, including no implied warranty of merchantability or fitness of the product for any particular purpose, and no such warranty shall be implied by law, usage of trade, course of performance, course of dealing, or on any other basis.
11. Force majeure. Except for the payment of TruGreen's invoices owed by you, if either TruGreen or you shall be prevented or delayed in the performance of any or all of the provisions of this Agreement, by reason of any labor dispute, industry disturbance, delay in transportation, governmental, regulatory or legal action, act of God or any cause beyond such party's control, the obligations hereunder of such party shall be extended for as long as such cause shall be in effect and any delay or loss suffered by the other party shall not be chargeable in any way to such party; provided, however, the other party suffering such cause shall immediately notify the other party of such inability and shall use reasonable efforts to remedy same with all reasonable dispatch. If any event of force majeure should prevent a party from performing its obligations under this Agreement for a period of ninety consecutive (90) days, the other party shall have the right to cancel this Agreement upon notice to the party unable to perform its obligations.
12. No assignment. You shall not have the right to assign this Agreement or agree to the transfer of this Agreement by operation of law or otherwise without the prior written consent of TruGreen. This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and to any permitted successors and assigns.
13. Watering, Cultural Practices. The success of this program depends on proper watering, mowing and cultural practices. Some products used by TruGreen may include label directions requiring the watering of the material after application. If any of these products are used on the property, TruGreen will provide you with watering instructions following the application and you agree to assume such watering responsibility. Climate conditions, soil conditions, plant diseases, plant material, and miscellaneous external factors will impact response to treatment. Results for difficult-to-control diseases will vary depending on environment, culture and agronomic programs used or treatment applied. Treatment for diseases may include additional cost. Consult your TruGreen specialist for details.
14. Modification of program. This program consists of lawn care and/or tree and shrub care as indicated above. Specific products, rates of application and method of application will vary with the season, weather conditions, and the needs of your lawn as determined by your TruGreen specialist. Your regularly scheduled programs may be modified depending on the weather and the condition of your landscape. The application methods and procedures used to perform service under this Agreement will be determined solely by TruGreen. Your TruGreen specialist will keep you informed on any modifications to this schedule.
15. Insects and Borers. Total insect elimination is not desirable with any program because beneficial insects will be lost along with the targeted pests. Plants invaded by borers have a high probability of death or decline. Sound cultural practices and control applications may extend the life of some plant species. Treatment for boring insects may include additional cost. Consult your TruGreen specialist with details.
16. Authorization to provide service. TruGreen agrees to furnish labor and materials for purposes of this Agreement and is authorized by you to treat the property at the address shown above. You represent and warrant to TruGreen that you are the owner of said property, or in the event that you are not the owner of the property to which this Agreement applies, you represent and warrant that you have the legal authority to execute and bind the owner of the property to the terms and conditions of this Agreement.
17. MANDATORY ARBITRATION. Any claim, dispute or controversy, regarding any contract, tort, statute, or otherwise ("Claim"), arising out of or relating to this agreement or the relationships among the parties hereto shall be resolved by one arbitrator through binding arbitration administered by the American Arbitration Association (MAAA), under the AAA Commercial or Consumer, as applicable, Rules in effect at the time the Claim is filed ("AAA Rules"). Copies of the AAA Rules and forms can be located at www.adr.org, or by calling 1-800-778-7879. The arbitrator's decision shall be final, binding, and non-appealable. Judgment upon the award may be entered and enforced in any court having jurisdiction. This clause is made pursuant to a transaction involving interstate commerce and shall be governed by the Federal Arbitration Act. Neither party shall sue the other party other than as provided herein or for enforcement of this clause or of the arbitrator's award; any such suit may be brought only in Federal District Court for the District of, or if any such court lacks jurisdiction, in any state court that has jurisdiction. The arbitrator, and not any federal, state, or local court, shall have exclusive authority to resolve any dispute relating to the interpretation, applicability, unconscionability, arbitrability, enforceability or formation of this Agreement including any claim that all or any part of the Agreement is void or voidable. However, the preceding sentence shall not apply to the clause entitled "Class Action Waiver."
18. CLASS ACTION WAIVER. Any Claim must be brought in the parties' individual capacity, and not as a plaintiff or class member in any purported class, collective, representative, multiple plaintiff, or similar proceeding ("Class Action"). The parties expressly waive any ability to maintain any Class Action in any forum. The arbitrator shall not have authority to combine or aggregate similar claims or conduct any Class Action nor make an award to any person or entity not a party to the arbitration. Any claim that all or part of this Class Action Waiver is unenforceable, unconscionable, void, or voidable may be determined only by a court of competent jurisdiction and not by an arbitrator. THE PARTIES UNDERSTAND THAT THEY WOULD HAVE HAD A RIGHT TO LITIGATE THROUGH A COURT, TO HAVE A JUDGE OR JURY DECIDE THEIR CASE AND TO BE PARTY TO A CLASS OR REPRESENTATIVE ACTION, HOWEVER, THEY UNDERSTAND AND CHOOSE TO HAVE ANY CLAIMS DECIDED INDIVIDUALLY, THROUGH ARBITRATION.
19. Unless expressly noted otherwise herein, this Agreement and any invoice issued by TruGreen pursuant to the terms hereof, set forth the entire understanding of the parties, and supersede any and all proposals, negotiations, representations and prior agreements relating to the subject matter of this Agreement, written or otherwise, including, without limitation any sales agreement previously executed by the parties. To the extent that any terms set forth in an invoice should conflict with the terms set forth in this Agreement this Agreement shall control. No terms, conditions, or warranties other than those stated herein or in any invoice issued by TruGreen, and no agreements or understanding, oral or written, in any way purporting to modify these conditions shall be binding on the parties hereto unless hereafter made in writing and signed by authorized representatives of both parties.
20. This customer service Agreement is only valid if accepted by you within 30 days of the date submitted to customer.

By: _____ Date: _____
REPRESENTATIVE/GENERAL MANAGER

Print Name: _____ Date: _____
AUTHORIZED AGENT/CUSTOMER

Customer Signature: _____ Date: _____
AUTHORIZED AGENT/CUSTOMER