

LANDSCAPE SERVICES AGREEMENT

Date: September 11, 2023

BrightView: BrightView Landscape Services, Inc.

Client: City of Kyle

Contract Start Date: October 1, 2023

Contract End Date: September 30, 2024

Service Fee*: \$35,596.11

*Plus sales tax where applicable

THIS LANDSCAPE SERVICES AGREEMENT (the "Agreement") is entered into as of the Date above between BrightView and Client. If Client is not the record owner of each property where BrightView will deliver goods or perform services under this Agreement, then Client is executing this Agreement on its own behalf and as a duly authorized agent for the record owner(s) of each property.

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

1. Services.

- (a) For purposes of this Agreement: (i) the "Services" consist of the landscape maintenance, construction, irrigation, and/or other general landscape services described in the "Scope of Landscape Services" attached hereto, together with delivery or installation of any associated goods and materials, and (ii) the "Landscape Site(s)" consist of the exterior landscaped areas for each of the site(s) identified in the attached Scope of Landscape Services, where Services will be furnished by BrightView in accordance with the Scope of Landscape Services. More than one Scope of Landscape Services may be attached hereto, in the event of multiple Landscape Sites.
- (b) During the Term (as defined in Section 2. Term), BrightView shall furnish the Services or arrange for the Services to be furnished in accordance with applicable professional horticulture standards and any local requirements or regulations in effect, using appropriately trained, uniformed, and supervised personnel, and properly maintained equipment.
- (c) All tools, equipment, surplus materials, landscape waste materials and rubbish will be removed from each Landscape Site after Services are completed.
- (d) Any regulated substances required to be applied as part of the Services shall be applied in accordance with applicable laws and regulations by properly licensed personnel and BrightView shall not be held liable for the use of such substances if properly applied in accordance with applicable laws and regulations. Other materials shall be applied in accordance with the manufacturer's directions.

2. **Term.** The "Initial Term" of this Agreement shall begin on the Contract Start Date and conclude on the Contract End Date. Thereafter, this Agreement shall have the option to renew this Agreement for two (2) additional terms of one (1) year.

3. **Work Orders.** If Client requests services from BrightView that are not set forth on the Scope of Landscape Services or at a worksite for which there is

no attached Scope of Landscape Services, then BrightView may elect in its sole discretion to furnish such additional services and any related goods and materials pursuant to a written work authorization signed by Client (each signed written work authorization, a "Work Order"). For services, goods, or materials furnished pursuant to a Work Order, payment shall be due from Client to BrightView as specified by such Work Order or, if unspecified in such Work Order, then upon delivery of the services, goods, and materials identified in the Work Order (the "Work Order Charges").

4. **Insurance.** During the Term, BrightView will maintain general liability insurance, automobile liability insurance, and workers' compensation insurance covering its activities in connection with the Services and any Work Order. Such insurance shall be in commercially reasonable amounts. Evidence of such insurance will be provided to Client upon request. BrightView will notify Client if any change in carrier occurs and provide updated policy documents at the time of the change.

5. Cooperation.

- (a) Client will cooperate with BrightView to facilitate the Services, and will permit or schedule adequate access to the Landscape Site(s) as required to perform the Services safely, efficiently, and within any specified timeframes. Client will notify BrightView in writing of any limitation on access to Landscape Site(s) as soon as possible, and whenever possible at least 48 hours to any scheduled delivery of services, goods, or materials.
- (b) If required, Client will provide water with adequate spigots or hydrants or such other items as identified on the Scope of Landscape Services.
- (c) Client shall provide written notice to BrightView of any proposed change in the ownership or management of the Landscape Site(s) at least 30 days prior to the effective date of any such change. A change in the ownership or management of the Landscape Site(s)

shall not relieve Client of its obligations hereunder, including but not limited to the payment of the Service Fee and any amounts due to BrightView with respect to any Work Order, unless Client shall have given proper notice of termination pursuant to this Agreement.

6. Service Fee.

- (a) For Services performed pursuant to this Agreement, Client shall pay BrightView the Service Fee subject to adjustments as described below. Client shall pay the Service Fee to BrightView through monthly payments. The Service Fee shall be payable in 12 equal monthly installments, beginning in the month of October (the "Monthly Installment Plan"). Monthly invoices will be dated the 1st of each month, and payments of undisputed amounts are due within fifteen (15) days of the invoice date. If Client disputes that services billed for were provided, a notice of that dispute must be provided with an opportunity to cure pursuant to section 7(b) herein.
- (b) Overdue Service Fees or Work Order Charges shall be subject to an administrative charge equal to the lower of: (i) 1.5% per month (18% per year) or (ii) the highest rate permitted by law, in either case multiplied by the unpaid balance. In addition to this administrative charge, Client shall reimburse BrightView for all costs and expenses (including but not limited to attorneys' fees and court costs) which are reasonably incurred by BrightView in collecting an overdue Service Fee, Work Order Charges, and administrative charges.
- (c) If tax laws change increasing applicable sales taxes, BrightView may adjust the Service Fee to reflect such increase.
- (d) The parties hereby acknowledge that, notwithstanding the Service Fee, the monthly installment plan, and the types and frequency of services, goods, and materials furnished each month throughout the year may vary according to seasonal requirements and best horticultural practices. The monthly installment plan is for Client's convenience of payment only and billings do not necessarily reflect the actual cost or value of Services performed during any particular month or other billing period. If this Agreement is terminated for any reason on a date other than an Anniversary Date, then all sums paid by Client to BrightView for Services performed since the most recent Anniversary Date shall be subtracted from the time-and-materials value (as determined in good faith by BrightView) of Services performed since that date and, if the result is a positive number (a "Shortfall"), the Shortfall shall become due and payable and Client shall promptly pay such Shortfall to BrightView. A Shortfall is not liquidated or other damages arising from a termination of this Agreement but represents the portion of the charges for Services performed prior to but unpaid by Client as of the Termination Date. For the avoidance of doubt, in no event will a Shortfall invoiced to the Client exceed the total amount that would have been received by the BrightView had the terminated Agreement continued uninterrupted until the end of its then current term.

- (e) Unless specified otherwise hereunder, every 12 months the Service Fee shall be increased by an amount calculated by multiplying the Service Fee for the immediately preceding 12 months by 3%.
- (f) In the event that, during the performance of Services, the cost of materials or fuel (collectively, "Variable Costs") required by BrightView to perform the Services increases by more than twenty percent (20%) over the Variable Costs on the Contract Start Date, the Service Fee shall be increased by an amount equal to the increase in the Variable Costs.
- (g) Client must provide at least 10 days' prior written notice to BrightView, Attn.: Legal Department/Contracts, 980 Jolly Road, Suite 300, Blue Bell, PA 19422 if: (i) Service Fee required to be paid pursuant to this Section 6 are subject to a bona fide dispute and (ii) Client intends to pay, in full satisfaction of such disputed Service Fee, less than the amount invoiced by BrightView.

7. Termination.

- (a) Either BrightView or Client may terminate this Agreement without cause upon 90 day's prior written notice to the other party. If Client terminates this Agreement without cause prior to end of the then current term, Client will, within fifteen (15) days of BrightView providing an invoice reflecting the final payment amount, pay BrightView (i) all amounts owed to date for Services performed; (ii) if termination occurs prior to the first automatic renewal, reimbursement of any partner incentives such as, but not limited to, Enhancement Credits; discounts, rebates, etc. and (iii) to compensate BrightView for having to allocate employees and resources to the Landscapes Sites, an amount equal to what BrightView would have earned if this Agreement remained in effect through the end of the then current monthly term (as calculated in accordance with Section 6(a)).
- (b) If either party materially breaches the terms of this Agreement and fails to cure such breach within 30 days after written notice from the non-breaching party specifying such breach, then the non-breaching party may elect to immediately terminate this Agreement by written notice to the breaching party. In addition to and without limiting the foregoing, if Client fails to timely pay any undisputed Service Fee, Work Order Charges, or administrative fees due under this Agreement, then BrightView may elect, in its sole discretion, to (i) delay, withhold, suspend, Services with further notice to Client but without further opportunity to cure, and BrightView shall have no responsibility whatsoever for any consequences thereof, and fees (as set out hereunder) shall continue to accrue and any extra expenses resulting from such withholding shall be for the Client's responsibility and/or (ii) immediately terminate this Agreement upon written notice to Client. Furthermore, and without limiting any of the foregoing, if Client fails to timely pay any Service Fee, Work Order Charges, or administrative fees due under this Agreement, BrightView may also elect, in its sole discretion, to suspend Services for any other Agreement between Client and BrightView. Unless

BrightView terminates this agreement as provided herein, BrightView will resume services once Client has paid any outstanding bill amounts, or the parties have agreed in writing to a temporary adjustment of billing amounts. If BrightView fails to resume services within one week of receipt of full payment from Client, Client shall not be responsible for any amounts accrued after the date of payment.

- (c) Either BrightView or Client may immediately terminate this Agreement upon written notice to the other party if (i) the other party makes an assignment for the benefit of creditors, (ii) a petition of bankruptcy is filed by or against the other party or (iii) all or substantially all of the other party's property is levied upon or scheduled to be sold in a judicial proceeding.

8. General Provisions.

- (a) BrightView will at all times perform the Services and any Work Order in accordance with all applicable workplace safety requirements and standards promulgated by federal and local authorities. Except as it applies to the safety of their own staff, BrightView will not at any time provide safety evaluation, inspection, or consulting services under this Agreement or any Work Order for the benefit of Client or any third party and, consequently, Client shall not rely on BrightView to provide such safety-related services at any time. Further, BrightView does not and will not at any time provide representations, warranties, or assurances as to the safety, including as it relates to BrightView's use of chemicals during Service, (or lack of safety) of any Landscape Site(s) or Work Order site with respect to periods before, during, or after Services are performed or Work Order services are performed and, consequently, Client shall not rely on BrightView to provide any such assurances at any time. If Client desires safety evaluation, inspection, or consulting services, or safety representations, warranties, or assurances, then BrightView and Client may execute and enter into a separate written agreement whereby BrightView will assist Client for an additional fee only in identifying (without recommending) third-party service providers that Client may then, in Client's sole discretion, elect to engage independently to obtain safety services and/or assurances. BrightView will be fully and solely responsible for the safety of their employees. Under no circumstances shall Client be responsible for or liable for the safety, or lack thereof, of BrightView employees, contractors, or other services participants.
- (b) During the Term of this Agreement and for a period of 12 months following this Agreement's termination, the Client shall not, without the written permission of BrightView or an affected affiliate, directly or indirectly (i) solicit, employ or retain, or have or cause any other person or entity to solicit, employ or retain, any person who is employed by BrightView and performing Services hereunder, or (ii) encourage any such person not to devote his or her full business time to the Client, or (iii) agree to hire or employ any such person. Recognizing that compensatory monetary damages resulting from a breach of this section would be difficult to prove, Client agrees that such

breach will render it liable to BrightView for liquidated damages in the amount of \$10,000 for each such employee.

- (c) This Agreement shall be governed by the law of the state where the Services will be furnished. If the Services will be furnished in more than one state, then the law of the State of Delaware will govern this Agreement, except with regard to its conflicts of laws doctrines. Both parties expressly agree that any and all legal proceedings arising under this Agreement will be brought exclusively in the state courts located where Services will be furnished.
- (d) Unless otherwise specifically set forth in the Scope of Landscape Services or a Work Order, BrightView is not providing design or landscape architecture services under this Agreement and it is the Client's sole responsibility to ensure that (i) the directions provided to BrightView for Services are in compliance with all applicable laws, ordinances, rules, regulations, and orders and (ii) the height and location of the hedges, foliage, and/or other plant matter on the Landscape Sites do not obstruct a person's line of sight of proximate roadways, private or public.
- (e) Neither party may assign this Agreement without the prior written consent of the other party; provided, however, that consent shall not be required to assign this Agreement to any company which controls, is controlled by, or is under common control with BrightView or in connection with assignment to an affiliate or pursuant to a merger, sale of all or substantially all of its assets or equity securities, consolidation, change of control or corporate reorganization. This Agreement is binding on, and inures to the benefit of, the parties hereto (including the record owner of the Landscape Site(s) if other than Client) and their respective heirs, legal representatives, successors and assigns.
- (f) This Agreement, together with attached Scope of Landscaping Services, Work Order hereunder, and any other schedules and exhibits attached hereto, constitute the entire agreement of the parties with respect to the Services and Work Orders and supersedes all prior contracts or agreements with respect to the Services or Work Orders, whether oral or written.
- (g) Except as otherwise provided herein, this Agreement may be amended or modified from time to time only by a written instrument executed and agreed to by both Client and BrightView.
- (h) The waiver by Client or BrightView of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any other or subsequent breach by Client or BrightView of such provision or any other provision.
- (i) BrightView's total liability for any losses, damages, and expenses of any type whatsoever incurred by Client or any of its affiliates, guests, tenants, invitees, and lessees ("Losses"), which are caused by wrongful acts or omissions of BrightView in connection with, or related to, BrightView's performance of the Services, shall be limited solely to proven direct and actual damages in an aggregate

amount not to exceed the amounts actually paid to BrightView hereunder. In no event will BrightView be liable for special, indirect, incidental or consequential damages, irrespective of the form or cause of action, in contract, tort or otherwise, whether or not the possibility of such damages has been disclosed to BrightView in advance or could have been reasonably foreseen by BrightView. Further, BrightView shall not be liable for any Losses resulting from the provision of Services or performance of any Work Order hereunder, if such Losses are due to causes or conditions beyond its reasonable control, including but not limited to Losses in any way related to or associated with state or local water regulations or mandates or BrightView's compliance or good faith efforts to comply with state or local water regulations or mandates.

- (j) BrightView's performance will be excused without penalty to the extent BrightView is unable to perform as a result of accidents, acts of God, extreme weather conditions, inability to secure labor and/or products, fire, earthquake and rules, regulations or restrictions imposed by any government or governmental agency, national or regional emergency, epidemic, pandemic, health related outbreak or other medical events not caused by one of the Parties, or other delays or failure of performance beyond the commercially reasonable control of BrightView. For purposes of this Agreement, the parties agree specifically that water conservation regulations or guidelines are specifically included within the above referenced regulations or restrictions, and that BrightView shall not be liable for any failure to perform as a direct or indirect result of BrightView's compliance with or good faith efforts to comply with state or local water regulations or mandates.
- (k) Unless otherwise expressly provided in a provision that cross-references this Section 8(k), in the event of any conflict or inconsistency between this Agreement, any SOW and/or any exhibit to this Agreement or any SOW, the order of precedence will

be: this Agreement, an exhibit to this Agreement, an SOW and an exhibit to that SOW.

- 9. Verifications.
 - (a) For purposes of compliance with Chapter 2271.002 of the Texas Government Code, and subject to applicable Federal law, BrightView verifies that it does not boycott Israel and will not boycott Israel while this Agreement is in effect. The terms "boycotts Israel" and "boycott Israel" as used in this paragraph have the meanings assigned to the term "boycott Israel" in Section 808.001 of the Texas Government Code, as amended.
 - (b) For purposes of compliance with Section 2274.002, Tex. Gov't Code, and subject to applicable Federal law, BrightView verifies that it does not boycott energy companies and will not boycott energy companies while this Agreement is in effect. The phrase "Boycott Energy Companies" as used in this paragraph have the meanings assigned to the phrase "Boycott Energy Company" in Section 809.001 of the Texas Government Code, as amended.
 - (c) For purposes of compliance with Section 2274.002, Tex. Gov't Code, and subject to applicable Federal law, BrightView verifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate while this Agreement is in effect against a firearm entity or firearm trade association. The phrase "Discriminates Against a Firearm Entity or Firearm Trade Association" as used in this paragraph have the meanings assigned to the phrase "Discriminate Against a Firearm Entity or Firearm Trade Association" in Section 2274.001(3) of the Texas Government Code, as amended.
 - (d) For the purpose of compliance with Section 2252.908, Tex. Gov't Code, BrightView verifies that, if required by relevant law, it will submit a Form 1295, disclosure of interested parties.

Notices. Except as otherwise specified in this Agreement, all notices and other communications under this Agreement must be in writing and sent by overnight courier service such as FedEx or sent by U.S. registered or certified mail, postage prepaid, return receipt requested, and shall be deemed received the next business day following timely deposit with an overnight courier, or three (3) days after timely deposit in the U.S. mail, with the communication addressed as follows:

If to BrightView:

Attn: Chad Norris
Address: 10122 Bradshaw Road
Austin, TX 78747

With a copy to:

Attn: Office of the General Counsel
980 Jolly Road, Suite 300
Blue Bell, PA 19422

If to Client:

Attn: c/o Jerry Hendrix
Address: 100 W. Center Street
Kyle, TX 78640

BrightView and Client agree to all of the terms and conditions set forth in this Agreement, including any schedules and exhibits attached hereto, as of the date first set forth above.

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

BRIGHTVIEW (as defined in the preamble)

CLIENT

By: _____

By: _____

Name: Ben Strickland

Name: Travis Mitchell

Title: Group VP of Texas

Title: City of Kyle Mayor

Date: _____

Date: _____

BrightView Landscapes, LLC and each of its subsidiaries ("BrightView") is committed to taking care of each other, our clients and communities. The BrightView Code of Conduct, which is located at https://www.brightview.com/sites/default/files/bv_code_of_conduct.pdf keeps us true to our values.

If you become aware of a violation of the BrightView Code, we encourage you to report it by:

- Filing a report at www.brightviewconcerns.com; or Calling our 24-hour, 7-day per week compliance hotline at (800) 461-9330. Thank you for your confidence in partnering with BrightView.

This Statement of Work ("SOW") is incorporated into the Agreement by this reference. In the event multiple SOWs or Work Orders are attached to the Agreement as provided herein, each such SOW or Work Order shall be mutually exclusive of each other.

Landscape Site Name:*	La Verde Park	Landscape Site Location:	3875 Burnham, Kyle, TX 78640
Client Business Name:	The City of Kyle	Client Contact Name:	Mariana Espinoza
Client Contact Telephone:	737-999-4322	Client Contact Email:	mespinoza@cityofkyle.com
Billing Business Name:	The City of Kyle	Billing Contact Name:	Victoria Torres
Billing Contact Telephone:	512-938-8753	Billing Contact Address:	100 W Center Street, Kyle, TX 78640
Billing Email:	vtorres@cityofkyle.com		
BrightView Contact Name:	Brianna Plumlee	BrightView Contact Telephone:	512-969-0427

BrightView shall email all invoices to the Billing Email above. Client is responsible to notify BrightView immediately regarding any change to the Billing Email. Client shall pay all invoices within the payment terms in Section 6(a) of the Agreement.

Table A: Recurring Service Fee before Tax:

Total Recurring Service Fee
12
\$2,966.34

Description of Services (attach diagrams if necessary):

Click here to enter text.

**CENTRAL PARK
PLANTING UNDERSTORY**

- SHRUB/ PERENNIAL PLANTING (14,524 SF)
- TURF (16,714 SF)
- RAIN GARDEN PLANTING (1,480 SF)

64%
OF THE SITE IS PERVIOUS



**LA VERDE PARK | TDS MATERIAL EXHIBIT
09/20/2022**

TREES



8 Red Oaks
They have blue tags marked "LA VERDE"
They are approximately 6-8" caliper
Their root containers are 5-6ft diameter.



4 Live Oaks
They have blue tags marked "LA VERDE"
They are approximately 6-8" caliper
Their root containers are 5-6ft diameter

This indicates where to put the trees with the smallest root ball.

Note:
Install trees with smallest root ball size within the zones dashed in green. Follow all other installation requirements per construction documents.

MULCH

This is accepted per specifications.
Type: Shredded Hardwood
Size Range: 3 inches maximum, 1/4 inch minimum
Color: Natural

Note:
Provide physical samples to Lionheart.

DECOMPOSED CONCRETE (DC)

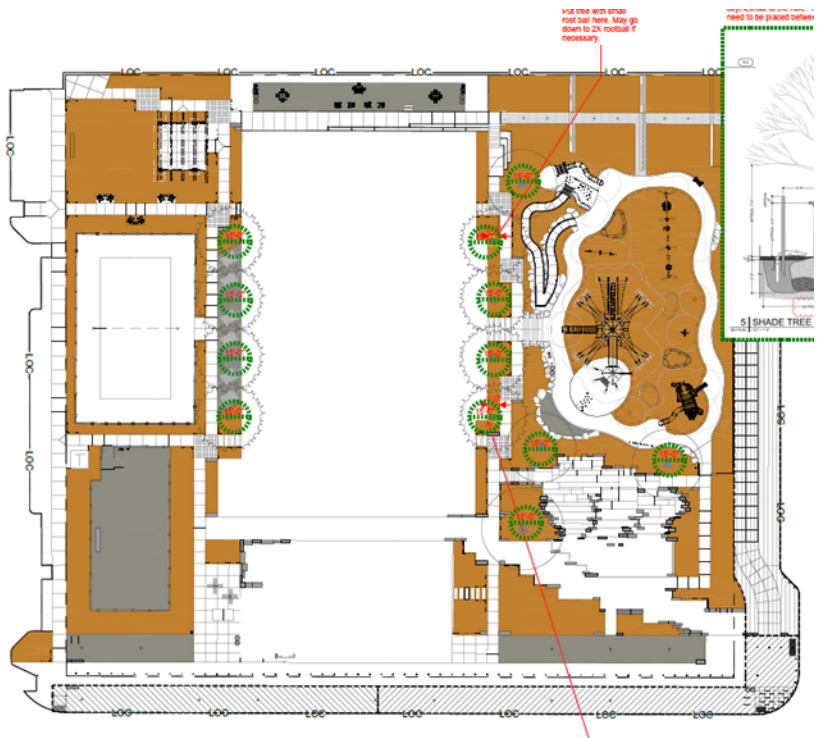
TDS should meet the same sieve size ratio as the Decomposed Granite (DG) specification in order to be ADA compliant.
3/8-inch Sieve – 15 percent minimum, 25 percent maximum.
No. 4 Sieve – 40 percent minimum, 55 percent maximum.
No. 10 Sieve – 60 percent minimum, 85 percent maximum.

Note:
Follow the mock-up specifications of DG for DC prior to final approval.

COMPOST

The dry, planting, and sod soil mix should be achieved using compost from TDS mixed with native soils per Maldonado. Soils need to meet specifications. Use the soils plan for the listed soil mixes. The only soil NOT TO BE MIXED WITH COMPOST IS THE RAIN GARDEN SOIL MIX. THIS BE AN ALL IMPORT SOIL CONDITION.

Note:
Soil test analysis from Stoddard before final approval.



TURF	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	ANNUAL VISITS
Site Visits	●	●	●	●	●	●	●	●	●	●	●	●	42
Mow	●	●	●	●	●	●	●	●	●	●	●	●	42
Trim	●	●	●	●	●	●	●	●	●	●	●	●	42
Backpack blowing	●	●	●	●	●	●	●	●	●	●	●	●	42
Hard Edge Curbs & Walkways	●	●	●	●	●	●	●	●	●	●	●	●	21
Fertilizer			●			●		●		●			4
Pre-Emergent Applications			●							●			2
Post-Emergent Applications			●							●			2
Fire Ant Control	●	●	●	●	●	●	●	●	●	●	●	●	Spot Treat As Needed
SHRUBS AND BEDS	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	ANNUAL VISITS
Weed control detail beds	●	●	●	●	●	●	●	●	●	●	●	●	42
Pre-Emerge & Fertilize Beds			●							●			2
Prune/Shear Shrubs			●	●	●	●	●	●	●	●			8
Perennial Care & Cutback												●	1
TREES	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	ANNUAL VISITS
Prune safety hazards - 8 ft.		●											1
MISC/SEASONAL COLOR	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	ANNUAL VISITS
Spray Crack & Crevices for Weeds	●	●	●	●	●	●	●	●	●	●	●	●	21
Mulch			●						●				2
Litter Removal	●	●	●	●	●	●	●	●	●	●	●	●	42
IRRIGATION	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	ANNUAL VISITS
Check & Inspection	●	●	●	●	●	●	●	●	●	●	●	●	12

NOTE: Service dates are subject to change depending on weather patterns throughout the year. Any services missed due to inclement weather will be made up as soon as possible.