

PUBLIC WORKS AGREEMENT

between the Town of Ruston and

Westgro Corp.

THIS AGREEMENT is made by and between the Town of Ruston, a Washington municipal corporation (hereinafter the "Town"), and Westgro Corp. organized under the laws of the State of Washington, located and doing business at 2331 Schnebly Rd. Ellensburg, WA 98926, 425-531-4156 and Victor Dickson (hereinafter the "Contractor").

AGREEMENT

The parties agree as follows:

I. DESCRIPTION OF WORK.

Contractor shall perform the following services for the Town in accordance with the following described plans and/or specifications:

See Attached

Contractor further represents that the services furnished under this Agreement will be performed in accordance with generally accepted professional practices within the Puget Sound region in effect at the time such services are performed.

II. TIME OF COMPLETION. The parties agree that work will begin on the tasks described in Section I above immediately upon execution of this Agreement. Upon the effective date of this Agreement, Contractor shall complete the work described in Section I by December 31, 2017.

III. COMPENSATION. The Town shall pay the Contractor a total amount not to exceed Thirty thousand nine hundred forty-eight dollars (\$30,948). Applicable Washington State Retail Sales Tax on this contract shall be governed by WAC 458-20-171 and its related rules for the work contemplated in this Agreement. The Contractor shall invoice the Town monthly. The Town will pay for the portion of the work described in the invoice that has been completed by the Contractor and approved by the Town. The Town's payment shall not constitute a waiver of the Town's right to final inspection and acceptance of the project.

- A. Performance Bond. Pursuant to Chapter 39.08 RCW, the Contractor, shall provide the Town a performance bond for the full contract amount to be in effect until sixty (60) days after the date of final acceptance, or until receipt of all necessary releases from the State Department of Revenue and the State Department of Labor and Industries and until settlement of any liens filed under Chapter 60.28 RCW, whichever is later.
- B. Retainage. The Town shall hold back a retainage in the amount of five percent (5%) of any and all payments made to contractor for a period of sixty (60) days after the date of final acceptance, or until receipt of all necessary releases from the State Department of Revenue and the State Department of Labor & Industries and until settlement of any liens filed under Chapter 60.28 RCW, whichever is later. The amount retained shall be placed in a fund by the Town pursuant to RCW 60.28.011(4)(a), unless otherwise instructed by the Contractor within fourteen (14) calendar days of Contractor's signature on the Agreement.
- C. Defective or Unauthorized Work. The Town reserves its right to withhold payment from Contractor for any defective or unauthorized work. Defective or unauthorized work includes, without limitation: work and materials that do not conform to the requirements of this Agreement; and extra work and materials furnished without the Town's written approval. If Contractor is unable, for any reason, to satisfactorily complete any portion of the work, the Town may complete the work by contract or otherwise, and Contractor shall be liable to the Town for any additional costs incurred by the Town. "Additional costs" shall mean all reasonable costs, including legal costs and attorney fees, incurred by the Town beyond the maximum Contract price specified above. The Town further reserves its right to deduct the cost to complete the Contract work, including any Additional Costs, from any and all amounts due or to become due the Contractor.
- D. Final Payment: Waiver of Claims. THE CONTRACTOR'S ACCEPTANCE OF FINAL PAYMENT (EXCLUDING WITHHELD RETAINAGE) SHALL CONSTITUTE A WAIVER OF CONTRACTOR'S CLAIMS, EXCEPT THOSE PREVIOUSLY AND PROPERLY MADE AND IDENTIFIED BY CONTRACTOR AS UNSETTLED AT THE TIME FINAL PAYMENT IS MADE AND ACCEPTED.

IV. INDEPENDENT CONTRACTOR. The parties intend that an Independent Contractor-Employer Relationship will be created by this Agreement and that the Contractor has the ability to control and direct the performance and details of its work, the Town being interested only in the results obtained under this Agreement.

VII. CHANGES. The Town may issue a written change order for any change in the Contract work during the performance of this Agreement. If the Contractor determines, for any reason, that a change order is necessary, Contractor must submit a written change order request to the person listed in the notice provision section of this Agreement, section XV(D), within fourteen (14) calendar days of the date Contractor knew or should have known of the facts and events giving rise to the requested change. If the Town determines that the change increases or decreases the Contractor's costs or time for performance, the Town will make an equitable adjustment. The Town will attempt, in good faith, to reach agreement with the Contractor on all equitable adjustments. However, if the parties are unable to agree, the Town will determine the equitable adjustment as it deems appropriate. The Contractor shall proceed with the change order work upon receiving either a written change order from the Town or an oral order from the Town before actually receiving the written change order. If

VI. PREVAILING WAGES. Contractor shall file a "Statement of Intent to Pay Prevailing Wages," with the State of Washington Department of Labor & Industries prior to commencing the Contract work. Contractor shall pay prevailing wages in effect on the date the bid is accepted or executed by Contractor, and comply with Chapter 39.12 of the Revised Code of Washington, as well as any other applicable prevailing wage rate provisions. The latest prevailing wage rate revision issued by the Department of Labor and Industries is attached.

If the Town terminates this Agreement for good cause, the Contractor shall not receive any further money due under this Agreement until the Contract work is completed. After termination, the Town may take possession of all records and data within the Contractor's possession pertaining to this project which may be used by the Town without restriction.

- A. The Contractor's refusal or failure to supply a sufficient number of properly skilled workers or proper materials for completion of the Contract work.
- B. The Contractor's failure to complete the work within the time specified in this Agreement.
- C. The Contractor's failure to make full and prompt payment to subcontractors or for material or labor.
- D. The Contractor's persistent disregard of federal, state or local laws, rules or regulations.
- E. The Contractor's filing for bankruptcy or becoming adjudged bankrupt.
- F. The Contractor's breach of any portion of this Agreement.

V. TERMINATION. The Town may terminate this Agreement for good cause. "Good cause" shall include, without limitation, any one or more of the following events:

1. The date of the Contractor's claim;
2. The nature and circumstances that caused the claim;
3. The provisions in this Agreement that support the claim;
4. The estimated dollar cost, if any, of the claimed work and how that estimate was determined; and
5. An analysis of the progress schedule showing the schedule change or disruption if the Contractor is asserting a schedule change or disruption.

A. Notice of Claim. Provide a signed written notice of claim that provides the following information:

FAILURE TO PROVIDE A COMPLETE, WRITTEN NOTIFICATION OF CLAIM WITHIN THE TIME ALLOWED SHALL BE AN ABSOLUTE WAIVER OF ANY CLAIMS ARISING IN ANY WAY FROM THE FACTS OR EVENTS SURROUNDING THAT CLAIM OR CAUSED BY THAT DELAY.

At a minimum, a Contractor's written claim shall include the information set forth in subsections A, items 1 through 5 below.

VIII. CLAIMS. If the Contractor disagrees with anything required by a change order, another written order, or an oral order from the Town, including any direction, instruction, interpretation, or determination by the Town, the Contractor may file a claim as provided in this section. The Contractor shall give written notice to the Town of all claims within fourteen (14) calendar days of the occurrence of the events giving rise to the claims, or within fourteen (14) calendar days of the date the Contractor knew or should have known of the facts or events giving rise to the claim, whichever occurs first. Any claim for damages, additional payment for any reason, or extension of time, whether under this Agreement or otherwise, shall be conclusively deemed to have been waived by the Contractor unless a timely written claim is made in strict accordance with the applicable provisions of this Agreement.

The Contractor accepts all requirements of a change order by: (1) endorsing it, (2) writing a separate acceptance, or (3) not protesting in the way this section provides. A change order that is accepted by Contractor as provided in this section shall constitute full payment and final settlement of all claims for contract time and for direct, indirect and consequential costs, including costs of delays related to any work, either covered or affected by the change.

Claims, below, may elect to protest the adjustment as provided in subsections A through E of Section VIII, adjustment, the Contractor must complete the change order work; however, the Contractor for that portion of the contract work. If the Contractor disagrees with the equitable Contractor waives its right to make any claim or submit subsequent change order requests the Contractor fails to require a change order within the time specified in this paragraph, the Contractor waives its right to make any claim or submit subsequent change order requests

B. Records. The Contractor shall keep complete records of extra costs and time incurred as a result of the asserted events giving rise to the claim. The Town shall have access to any of the Contractor's records needed for evaluating the protest.

The Town will evaluate all claims, provided the procedures in this section are followed. If the Town determines that a claim is valid, the Town will adjust payment for work or time by an equitable adjustment. No adjustment will be made for an invalid protest.

C. Contractor's Duty to Complete Protested Work. In spite of any claim, the Contractor shall proceed promptly to provide the goods, materials and services required by the Town under this Agreement.

D. Failure to Protest Constitutes Waiver. By not protesting as this section provides, the Contractor also waives any additional entitlement and accepts from the Town any written or oral order (including directions, instructions, interpretations, and determination).

E. Failure to Follow Procedures Constitutes Waiver. By failing to follow the procedures of this section, the Contractor completely waives any claims for protested work and accepts from the Town any written or oral order (including directions, instructions, interpretations, and determination).

IX. LIMITATION OF ACTIONS. CONTRACTOR MUST, IN ANY EVENT, FILE ANY LAWSUIT ARISING FROM OR CONNECTED WITH THIS AGREEMENT WITHIN 120 CALENDAR DAYS FROM THE DATE THE CONTRACT WORK IS COMPLETE OR CONTRACTOR'S ABILITY TO FILE THAT CLAIM OR SUIT SHALL BE FOREVER BARRED. THIS SECTION FURTHER LIMITS ANY APPLICABLE STATUTORY LIMITATIONS PERIOD.

X. WARRANTY. Upon acceptance of the contract work, Contractor must provide the Town a one-year warranty bond in a form and amount acceptable to the Town. The Contractor shall correct all defects in workmanship and materials within one (1) year from the date of the Town's acceptance of the Contract work. In the event any parts are repaired or replaced, only original replacement parts shall be used—rebuilt or used parts will not be acceptable. When defects are corrected, the warranty for that portion of the work shall extend for one (1) year from the date such correction is completed and accepted by the Town. The Contractor shall begin to correct any defects within seven (7) calendar days of its receipt of notice from the Town of the defect. If the Contractor does not accomplish the corrections within a reasonable time as determined by the Town, the Town may complete the corrections and the Contractor shall pay all costs incurred by the Town in order to accomplish the correction.

XI. DISCRIMINATION. In the hiring of employees for the performance of work under this Agreement or any sub-contract, the Contractor, its sub-contractors, or any person acting on behalf of the Contractor or sub-contractor shall not, by reason of race, religion, PUBLIC WORKS AGREEMENT - 5
(Roadway/Pedestrian Path - Over \$10K, under \$50K, and Performance Bond)

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

A. Minimum Scope of Insurance. Contractor shall obtain insurance of the types described below:
No Limitation. Contractor's maintenance of insurance as required by the agreement shall not be construed to limit the liability of the Contractor to the coverage provided by such insurance, or otherwise limit the Town's recourse to any remedy available at law or in equity.
Contractor, its agents, representatives, employees or subcontractors.
the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, employees or subcontractors.

XIII. INSURANCE. The Contractor shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, employees or subcontractors.

TERMINATION OF THIS AGREEMENT.
THE PROVISIONS OF THIS SECTION SHALL SURVIVE THE EXPIRATION OR

It is further specifically and expressly understood that the indemnification provided herein constitutes the contractor's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. The parties further acknowledge that they have mutually negotiated this waiver.
Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the Town, its officers, officials, employees, agents and volunteers, the Contractor's liability hereunder shall be only to the extent of the Contractor's negligence.
The Town's inspection or acceptance of any of Contractor's work when completed shall not be grounds to avoid any of these covenants of indemnification.

XII. INDEMNIFICATION. Contractor shall defend, indemnify and hold the Town, its officers, officials, employees, agents and volunteers harmless from any and all claims, injuries, damages, losses or suits, including all legal costs and attorney fees, arising out of or in connection with the Contractor's performance of this Agreement, except for that portion of the injuries and damages caused by the sole negligence of the Town.

the work to which the employment relates.
color, sex, age, sexual orientation, national origin, or the presence of any sensory, mental, or physical disability, discriminate against any person who is qualified and available to perform

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
 2. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate and a \$2,000,000 products-completed operations aggregate limit.
 3. Builders Risk insurance shall be written in the amount of the completed value of the project with no coinsurance provisions.
- B. Minimum Amounts of Insurance. Contractor shall maintain the following insurance limits:
1. Automobile Liability insurance covering interests of the Town, the Contractor, Subcontractors, and Sub-subcontractors in the work. Builders Risk insurance shall be on an all-risk policy form and shall insure against the perils of fire and extended coverage and physical loss or damage including flood and earthquake, theft, vandalism, malicious mischief, collapse, temporary buildings and debris removal. This Builders Risk insurance covering the work will have a deductible of \$5,000 for each occurrence, which will be the responsibility of the Contractor. Higher deductibles for flood and earthquake perils may be accepted by the Town upon written request by the Contractor and written acceptance by the Town. Any increased deductibles accepted by the Town will remain the responsibility of the Contractor. The Builders Risk insurance shall be maintained until final acceptance of the work by the Town.
 2. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop gap liability, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract. The Commercial General Liability insurance shall be endorsed to provide the Aggregate Per Project Endorsement ISO form CG 25 03 11 85. There shall be no endorsement or modification of the Commercial General Liability insurance for liability arising from explosion, collapse or underground property damage. The Town shall be named as an insured under the Contractor's Commercial General Liability insurance policy with respect to the work performed for the Town using ISO Additional Insured endorsement CG 20 10 10 01 and Additional Insured-Completed Operations endorsement CG 20 37 10 01 or substitute endorsements providing equivalent coverage.
 3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
 4. Builders Risk insurance covering interests of the Town, the Contractor, Subcontractors, and Sub-subcontractors in the work. Builders Risk insurance shall be on an all-risk policy form and shall insure against the perils of fire and extended coverage and physical loss or damage including flood and earthquake, theft, vandalism, malicious mischief, collapse, temporary buildings and debris removal. This Builders Risk insurance covering the work will have a deductible of \$5,000 for each occurrence, which will be the responsibility of the Contractor. Higher deductibles for flood and earthquake perils may be accepted by the Town upon written request by the Contractor and written acceptance by the Town. Any increased deductibles accepted by the Town will remain the responsibility of the Contractor. The Builders Risk insurance shall be maintained until final acceptance of the work by the Town.

C. Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Commercial General Liability and Builders Risk insurance:

1. The Contractor's insurance coverage shall be primary insurance as respect the Town. Any insurance, self-insurance, or insurance pool coverage maintained by the Town shall be excess of the Contractor's insurance and shall not contribute with it.

2. The Contractor's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the Town.

D. Contractor's Insurance For Other Losses. The Contractor shall assume full responsibility for all loss or damage from any cause whatsoever to any tools, Contractor's employee owned tools, machinery, equipment, or motor vehicles owned or rented by the Contractor, or the Contractor's agents, suppliers or contractors as well as to any temporary structures, scaffolding and protective fences.

E. Waiver of Subrogation. The Contractor and the Town waive all rights against each other any of their Subcontractors, Sub-subcontractors, agents and employees, each of the other, for damages caused by fire or other perils to the extend covered by Builders Risk insurance or other property insurance obtained pursuant to the Insurance Requirements Section of this Contract or other property insurance applicable to the work. The policies shall provide such waivers by endorsement or otherwise.

F. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

G. Verification of Coverage. Contractor shall furnish the Town with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the Automobile Liability and Commercial General Liability insurance of the Contractor before commencement of the work. Before any exposure to loss may occur, the Contractor shall file with the Town a copy of the Builders Risk insurance policy that includes all applicable conditions, exclusions, definitions, terms and endorsements related to this project.

H. Subcontractors. Contractor shall ensure that each subcontractor of every tier obtain at a minimum the same insurance coverage and limits as stated herein for the Contractor (with the exception of Builders Risk insurance). Upon request the Town, the Contractor shall provide evidence of such insurance.

XIV. WORK PERFORMED AT CONTRACTOR'S RISK. Contractor shall take all necessary precautions and shall be responsible for the safety of its employees, agents, and subcontractors in the performance of the contract work and shall utilize all protection necessary for that purpose. All work shall be done at Contractor's own risk, and Contractor

shall be responsible for any loss of or damage to materials, tools, or other articles used or held for use in connection with the work.

XV. MISCELLANEOUS PROVISIONS.

A. Non-Waiver of Breach. The failure of the Town to insist upon strict performance of any of the covenants and agreements contained in this Agreement, or to exercise any option conferred by this Agreement in one or more instances shall not be construed to be a waiver or relinquishment of those covenants, agreements or options, and the same shall be and remain in full force and effect.

B. Resolution of Disputes and Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. If the parties are unable to settle any dispute, difference or claim arising from the parties' performance of this Agreement, the exclusive means of resolving that dispute, difference or claim, shall only be by filing suit exclusively under the venue, rules and jurisdiction of the Pierce County Superior Court, Pierce County, Washington, unless the parties agree in writing to an alternative dispute resolution process. In any claim or lawsuit for damages arising from the parties' performance of this Agreement, each party shall pay all its legal costs and attorney's fees incurred in defending or bringing such claim or lawsuit, including all appeals, in addition to any other recovery or award provided by law; provided, however, nothing in this paragraph shall be construed to limit the Town's right to indemnification under Section XII of this Agreement.

C. Written Notice. All communications regarding this Agreement shall be sent to the parties at the addresses listed on the signature page of the Agreement, unless notified to the contrary. Any written notice hereunder shall become effective three (3) business days after the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated in this Agreement or such other address as may be hereafter specified in writing.

D. Assignment. Any assignment of this Agreement by either party without the written consent of the non-assigning party shall be void. If the non-assigning party gives its consent to any assignment, the terms of this Agreement shall continue in full force and effect and no further assignment shall be made without additional written consent.

E. Modification. No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of the Town and Contractor.

F. Entire Agreement. The written provisions and terms of this Agreement, together with any Exhibits attached hereto, shall supersede all prior verbal statements of any officer or other representative of the Town, and such statements shall not be effective or be construed as entering into or forming a part of or altering in any manner this Agreement. All of the above documents are hereby made a part of this Agreement. However, should any

language in any of the Exhibits to this Agreement conflict with any language contained in this Agreement, the terms of this Agreement shall prevail.

G. Compliance with Laws. The Contractor agrees to comply with all federal, state, and municipal laws, rules, and regulations that are now effective or in the future become applicable to Contractor's business, equipment, and personnel engaged in operations covered by this Agreement or accruing out of the performance of those operations.

H. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute an original, and all of which will together constitute this one Agreement.

IN WITNESS, the parties below execute this Agreement, which shall become effective on the last date entered below.

<p>TOWN OF RUSTON:</p> <p>By: _____ (signature) Print Name: Bruce Hopkins Mayor Its _____ DATE: _____</p>	<p>CONTRACTOR:</p> <p>By: _____ (signature) Print Name: James V. Dickson Its President (title) DATE: 11-16-16</p>
<p>NOTICES TO BE SENT TO:</p> <p>TOWN OF RUSTON:</p> <p>Mayor of Ruston Town of Ruston 5117 N. Winnifred Ruston WA 98408 (253) 759-3544 (telephone) (253) 752-3754 (facsimile)</p>	<p>NOTICES TO BE SENT TO:</p> <p>CONTRACTOR:</p> <p>Victor Dickson Westgro Corp. 2331 Schnebly Rd. Ellensburg, WA 98926 425-531-4156 (telephone) 509-968-3047 (facsimile)</p>
<p>APPROVED AS TO FORM:</p> <p>_____ Office of the Town Attorney</p>	

Specifications for Landscape Management Program

A professionally designed, installed and managed landscape grows in value each year. It is a living investment that will enhance your image and create positive first impressions of beauty, prestige and practicality.

WESTGRO's program is designed with this in mind and is based on the following comprehensive service. The cost for this service is included in the contract price - unless otherwise stated.

Tree, Shrub & Groundcover Care

A. Watering - (Applies only to site with automatic irrigation systems) All plants are irrigated to insure an adequate water supply for penetration below the root zone.

B. Pruning

1. Pruning Trees - Any limb obstructing walkways, driveways or considered hazardous shall be removed immediately. Pruning is limited to a 12-foot height under this contract.

- In general deciduous trees will be pruned for shape and health during the dormant season. Trees should add beauty to the site and enhance the structures - not obstruct them.
- Conifers are typically pruned in late summer through fall. Lower limbs are removed to present a well-roomed appearance.
- Long-term goals will be discussed with the client to insure a program that promotes the desired results. The idea is to have ongoing pruning that eliminates unnecessary major pruning, which is costly to the client and harmful to the trees.

2. Pruning Shrubs - In general, all shrubs will be limbed up off the ground. This gives a clean look and prevents litter and debris build up around plant material. Pruning is to prevent obstructing windows, doorways, walkways and to provide healthy growth in a natural form.

- Broadleaf Shrubs such as Photinia and Laurels require shearing to obtain the appearance of a well-trimmed site. Shearing is to promote a teardrop shape:
- The shearing of shrubs is to occur twice during the growing season. A flush of growth is allowed between each "Shearing" for the health of the shrub.

3. Pruning Hedges

- Existing hedges up to 5 ft. in height will be maintained.

4. Ground Cover

- To be trimmed as necessary throughout the year to keep growth off of buildings and walkways bordering shrubs and trees.

C. Staking and Guying - Established stakes and guys will be used only as necessary. Tree ties and other bands will be checked frequently and loosened to prevent girdling. Trees requiring new stakes and guys will be performed by contractor on a labor plus material basis.

D. Insect and Disease Control - For environmental protection, pesticides will only be applied when absolutely necessary. These will be EPA approved pesticides. Minor only. Summer pest control reinforces disease suppression and attacks new insects. Minor only (selective). Fertilizing - The type of fertilizer will depend on plant and soil conditions, but will generally be a complete fertilizer. This will be applied twice a year.

E. Fertilization - Promotes color, develops health and vigor.

- Spring Fertilization - Provides storage of nutrients for winter hardiness.
- Fall Fertilization - Chemical and mechanical means will be used to keep open ground between plants free from weeds.

- Irrigation Systems**
- A. Maintenance** - The irrigation system will be maintained in proper working order by the contractor. This service includes adjusting sprinklers, valves and electric controllers.
- B. Repairs** - Damage to irrigation system due to the contractor's operation will be replaced at no charge to the owner. Failure of the system due to normal wear, vandalism, accidents caused by others, etc. will be reported to the owner and replaced on a material plus labor charge basis.
- C. Start up, Testing and Winterization** - The contractor will winterize the system in the late fall. At the beginning of the growing season the contractor will test the irrigation system, flush all lateral lines and adjust the heads to insure proper coverage. The owner will be notified that these operations have been carried out and that the system is in proper working order. Billing to be as shown under special provisions.

- E. Weed Control** - Mechanical and chemical means will be used as necessary, using only EPA approved materials.
- F. Insect and Disease Control** - For environmental protection, chemicals will be applied only when absolutely necessary. EPA approved pesticides are used for specific 'target area' applications as part of our integrated pest management (IPM) program.
- D. Fertilizing** - A healthy green color will be maintained by applying 4-6 pounds of actual nitrogen per 1000 square feet each year.
- Early Summer Application - Complete balanced fertilizer broadleaf weed control (condition permitting).
 - Late Summer Application - Complete balanced fertilizer.
 - Fall Application - Complete balanced fertilizer, broadleaf weed control.
 - Late Fall Application - Complete balanced fertilizer for root development and winter storage of nutrients.
- C. Watering** - (Applies only to sites with automatic irrigation systems) Irrigation systems will be run at such frequency to insure replacement of soil moisture below the root zone. Sprinkler heads will be kept clear to insure good water coverage.
- B. Edging** - All established turf edges, both hard and soft, are to be continually improved. This is an area of great concern due to the impact on curb appeal. Edges to be done on a bi-weekly basis, with a complete rotation occurring every other week.
- Chippings will be blow-cleaned from sidewalks, entrances, etc. after each mowing.
 - Chippings will be left on turf where practical to replenish soils with their nutrients. (At no time will this be allowed to create "clumps" or "piling" left on turf).
 - Trimming to be performed weekly around all obstacles and uneven surfaces.
- A. Mowing** - Lawn areas will be maintained to insure a neat appearance. The frequency and height of mowing will be determined by the contractor after careful inspection of the site and consideration of turf and soil conditions.

Lawn Care

- G. Plant Replacement** - Plants that have died due to contractor error negligence will be replaced at no cost to the owner. All other dead or unhealthy plants will be replaced upon approval by the owner and billed on a material plus labor basis.
- H. Leaf Collection** - To be done on a partial basis throughout the fall season. After leaf drop is complete a thorough cleanup shall be performed of all landscape areas.
- I. Mulched Beds** - Are to present a well-groomed appearance by quarterly raking of beds. High visibility areas (i.e. office, entries and models) are to be groomed on a weekly basis.

Quality Control

On a monthly basis, our account manager will personally inspect the entire site to insure on-going quality control. This inspection will include but not be limited to: condition of grass areas (color, height, quality of cut), soil moisture content, weed control, edges, plant growth, hard surfaces, insect and disease controls. Also to be analyzed are the following: our crew's work schedule; is it timely with what the weather conditions are as well as the hours being put to best use to benefit the landscape.

Terms of Cancellation

This agreement will be in effect for a period of one year. Either party may cancel the agreement with just cause during such term upon (30) days written notice to either party. Just cause is defined as either party's failure to comply with the terms and conditions of this Service Agreement. Westgro reserves the right to cancel service at any time with or without written notice for non-payment or late monthly payments.

Licenses & Insurance

The contractor agrees to have all licenses and to provide all necessary insurance as required by law. All pesticides will be applied by licensed applicators only, as per Washington State Law.

Billing & Payments

Regular monthly service bills will be issued by the first of the month in which the service is being performed. Payment is due by the 25th of the same month. Additional work orders authorized by the owner will be billed upon completion of the service. Payment will be due within 10 days. Overdue bills are assessed a penalty at the rate of 2% of the unpaid balance, compounded and charged monthly. Any costs associated with collecting past due accounts will be payable by the client.

Optional Services

- A. Bark Mulch - Bark and/or other specified mulch will be replenished in the planting beds if authorized by the owner. This service will be billed on a material plus labor charge basis.
- B. Seasonal Color - Annual and/or perennial bedding plants will be furnished and installed upon authorization by the owner. This service will be billed on a material plus labor charge basis. Maintenance of annual plants is also offered as an option.
- C. Lime Application - Neutralizes soil to increase efficiency of fertilizer (as needed). This service will be billed on a material plus labor charge basis.
- D. Core Aeration - Reduces compaction, helps control thatch build-up and increases water penetration. This service will be billed on a material plus labor charge basis.
- E. Deadheading Rhododendrons- the removal of spent blossoms.

Excluded Work

- A. Major Pruning - Trees over 12 feet in height are not included in this contract.
- B. Loss and/or Damage - The contractor assumes no responsibility for losses and/or damage due to vandalism, acts of God and other causes that are beyond the control of the contractor.
- C. Major Hedging - Hedges over 5 feet in height require added equipment and labor. These operations will be performed by the contractor on a material plus labor charge basis.
- D. Cleaning and/or repairing due to vandalism, natural disorders, acts of God(Examples: Wind, Fire, and Freezing temperatures)
- E. Other - Services not specifically included in the above outline are excluded unless mutually agreed upon by the owner and the contractor and are included in the section entitled "Special Provisions".
- F. Lawns - Insect control (crane fly), moss control (iron application)

November 16, 2016

Dan Acker
Project Representative
City of Bellevue
425-452-6122
Contract value \$25,380

Pierre LaRoche
Project Representative
King Co.
206-263-9458
Contract value \$750,000

Chris Tiffany
Capital Project Manager III
King Co.
206-263-3154
Contract value \$300,000

Jeff Martens
Project Manager
Port of Seattle
206-787-4059
Contract value \$300,000



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BLANKET ADDITIONAL INSURED ENDORSEMENT COMMERCIAL CONTRACTORS COVERAGE

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. WHO IS AN INSURED (Section II) is amended

to include as an insured any person or organization whom you are required to add as an additional insured on this policy under a written contract or written agreement. The written contract or written agreement must be:

1. Valid and legally enforceable;
2. Currently in effect or becoming effective during the term of this policy; and
3. Executed prior to an "occurrence" resulting in "bodily injury," "property damage," or "personal and advertising injury."

B. The insurance provided to the additional insured is further limited as follows:

1. That person or organization is an additional insured solely for liability due to your negligence specifically resulting from "your work" for the additional insured which is the subject of the written contract or written agreement. No coverage applies for any liability due to negligence attributable to any person or entity other than the Named Insured.
2. The Limits of Insurance applicable to the additional insured are those specified in the written contract or written agreement or in the Declarations of this policy, whichever is less. These Limits of Insurance are inclusive of, and not in addition to, the Limits of Insurance shown in the Declarations.
3. If we insured the Named Insured for more than one annual policy period:

- a. Only the policy in effect at the time the "bodily injury," "property damage," or "personal and advertising injury" first occurs will apply;
- b. "Bodily injury," "property damage," or "personal and advertising injury," first occurs when it is initially discovered by any person;

- a. Any continuation, progression, change or resumption of "bodily injury," "property damage," or "personal and advertising injury" will be deemed to be one occurrence;
- d. Our limit of liability will not exceed the limits of insurance for one annual policy period.

4. The coverage provided to the additional insured by this endorsement and paragraph f. of the definition of "insured contract" under **DEFINITIONS (SECTION V)** do not apply to "bodily injury" or "property damage" arising out of the "products-completed operations hazard" unless required by the written contract or written agreement. When coverage does apply to "bodily injury" or "property damage" arising out of the "products-completed operations hazard" such coverage will not apply beyond the lesser of:

- a. The period of time required by the written contract or written agreement; or
- b. Five years from the completion of "your work" on the project which is the subject of the written contract or written agreement.

5. The insurance provided to the additional insured does not apply to:

- a. The preparing, approving, or failure to prepare or approve maps, snop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; and

All terms and conditions of this policy apply unless modified by this endorsement.

(1) Give written notice of an occurrence or an offense to us which may result in a claim or "suit" under this insurance;

(2) Agree to trigger or activate any other insurance which the additional insured has for a loss we cover under this Coverage Part by tendering the defense to the insurers of all such other insurance;

2. With respect to the coverage provided under Paragraph 4.b.(1) of the Other Insurance Condition:

(c) This insurance is also excess over any other insurance naming the additional insured as an insured whether primary, excess, contingent or on any other basis, unless the written contract or written agreement described in A. above specifically requires that this insurance be provided on either a primary basis or a primary and noncontributory basis.

1. The following is added to the Duties in The Event of Occurrence, Offense, Claim or Suit Condition:

An additional insured under this endorsement will as soon as practicable:

amended as follows:

LIABILITY CONDITIONS (SECTION IV) are

endorsement, the **COMMERCIAL GENERAL**

- C. With respect to the coverage provided under this Condition:
- a. Occurrence, Offense, Claim or Suit
 - b. Until we receive written notice of a claim or "suit" from the additional insured as required in the Duties in The Event of Occurrence, Offense, Claim or Suit Condition:
 - c. For any loss which occurs prior to our Named Insured commencing operations at the location of the loss:
 - 6. We have no duty to defend or indemnify an additional insured under this endorsement:
 - a. For any liability due to negligence attributable to any person or entity other than the Named Insured. This provision includes any sole negligence or willful misconduct on the part of the additional insured or its "employees";
 - b. Supervisory, inspection, architectural or engineering activities;
 - c. Defects in design or specifications furnished by the additional insured or its "employees";

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CONTRACTORS ENHANCEMENT PLUS ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

LOST KEY COVERAGE

SECTION I – COVERAGES, COVERAGE A
BODILY INJURY AND PROPERTY DAMAGE
LIABILITY, coverage is extended to include the
following:

If a customer's master or grand key, excluding
electronic key card, is lost while in your care,
custody or control we will pay the cost of
replacing the keys, including the master lock and
all keys used in the same lock, the cost of
adjusting locks to accept the new keys, or the
cost to replace the locks, whichever is less.

Limit of Insurance - The most we will pay for
"loss" arising out of any one "occurrence" is
\$5,000.

SECTION V DEFINITIONS is amended as
follows:
The following definition applies to Lost Key
Coverage:

"Loss" means unintentional physical damage or
destruction to tangible property, including theft or
disappearance. Tangible property does not
include money or securities.

SECTION I – COVERAGES, COVERAGE A
BODILY INJURY AND PROPERTY DAMAGE
LIABILITY, coverage is extended to include the
following:

At your request, we will pay for "property damage" to
property of others caused by you and while in your
possession, arising out of your business operations
and occurring during the policy period.

SECTION V – DEFINITIONS is amended as
follows:

The following definition applies to Voluntary
Property Damage coverage:

"Loss" means unintentional damage or
destruction but does not include disappearance,
theft, or loss of use.

NON-OWNED WATERCRAFT

SECTION I – COVERAGES, COVERAGE A
BODILY INJURY AND PROPERTY DAMAGE
LIABILITY, 2. Exclusions is amended as follows:

g. **Aircraft, Auto Or Watercraft (2) (a)** is
replaced with:
(a) Less than 51 feet long; and

EXPANDED PROPERTY DAMAGE COV- ERAGE

For the purposes of this endorsement only:

SECTION I – COVERAGES, COVERAGE A
BODILY INJURY AND PROPERTY DAMAGE
LIABILITY, 2. Exclusions is amended as follows:

a. Exclusions j.(3), j.(5), and j.(6) are
deleted in their entirety.

b. Exclusion j.(4) is deleted in its entirety
and replaced by the following:

Personal property in the care custody or
control of the insured:

1. for storage or sale at premises you
own, rent or occupy; or

2. while being transported by any
aircraft, "auto" or watercraft owned
or operated by or rented to or loaned
to any insured.

c. The following exclusions are added:

1. The coverage provided by this
endorsement does not apply to
"property damage" arising out of the
disappearance or loss of use of
personal property.

2. The coverage provided by this
endorsement does not apply to
"property damage" included in the
"products-completed operations
hazard":

Limit of Insurance - The most we will pay for "property damage" provided by this coverage in any one "occurrence" is \$5,000.
Deductible - Our obligation to pay for a covered loss applies only to the amount of loss in excess of \$250.
This insurance is excess over any other valid and collectible insurance.

DAMAGE TO PREMISES RENTED TO YOU
SECTION I - COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, the last paragraph of 2. Exclusions of is replaced by the following:

If **Damage to Premises Rented to You** is not otherwise excluded, exclusions c. through n. do not apply to damage by fire, lightning, explosion, smoke or sprinkler leakage to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to this coverage as described in Section III-Limits of Insurance.

SECTION III - LIMITS OF INSURANCE, paragraph 6 is replaced with:
6. Subject to 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, lightning, explosion, smoke or sprinkler leakage, while rented to you or temporarily occupied by you with permission of the owner. The limit is increased to \$300,000.

SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS, 4. Other Insurance, b. Excess Insurance (1) (a) (ii) is replaced with:
(iii) That is Fire, Lightning, Explosion, Smoke or Sprinkler leakage insurance for premises rented to you or temporarily occupied by you with permission of the owner.

SUPPLEMENTARY PAYMENTS
SECTION I - COVERAGES, SUPPLEMENTARY PAYMENTS - COVERAGES A AND B is amended as follows:
1. 1. b. replaced with:

b. Up to \$2,500 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

2. 1. d. replaced with:
d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$500 a day because of time off from work.

NEWLY FORMED AND ACQUIRED ORGANIZATIONS
SECTION II - WHO IS AN INSURED is amended as follows:
1. 3. a. is replaced with:

a. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier.

ADDITIONAL INSURED - WHEN REQUIRED IN AN AGREEMENT OR CONTRACT WITH YOU PRIMARY AND NON-CONTRIBUTORY
The following is added to SECTION II - WHO IS AN INSURED

4. Any person(s) or organization(s) with whom you have agreed in a valid written contract or written agreement that such person or organization be added as an additional insured on your policy during the policy period shown in the Declarations. Such person or organization is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury".

The person or organization added as an insured by this endorsement is an insured only to the extent you are held liable due to:

a. **Lessors of Leased Equipment**
Maintenance, operation or use of equipment leased to you by such person or organization. This insurance does not apply to any "occurrence" which takes place after the equipment lease expires.

However, their status as additional insured under this policy ends when their lease, contract or agreement with you for such leased equipment expires.

The insurance does not apply to:

- (1) "bodily injury", "property damage", or "personal and advertising injury" arising out of the rendering of or the failure to render any professional architectural, engineering or survey services, including:
- (a) The preparing, approving, or failing to prepare or approve maps, shop drawings, opinions, reports, survey, field orders, change orders or drawings and specifications; or
- (b) Supervisor, inspection, architectural or engineering activities:

- (2) "Bodily injury" or "property damage" occurring after:
- (a) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
- (b) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

However, a person or organization's status as additional insured under this policy ends when your operations for that additional insured are completed.

With respect to paragraph 4 of SECTION II WHO IS AN INSURED, Condition 4. Other Insurance of Section IV - Commercial General Liability Conditions is replaced by the following:

4. Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under Coverages A or B of this Coverage Part, our obligations are limited as follows:

a. Primary Insurance

This insurance is primary if you have agreed in a written contract or written agreement:

b. Managers or Lessors of Premises

The ownership, maintenance or use of that part of the premises you own, rent, lease or occupy.

This insurance does not apply to:

- (1) Any "occurrence" which takes place after you cease to be a tenant in that premises.
- (2) Structural alterations, new construction or demolition operations performed by or on behalf of the person or organization.

c. State or Political Subdivision - Permits

Operations performed by you or on your behalf for which the state or political subdivision has issued a permit.

This insurance does not apply to:

- (1) "Bodily injury" or "property damage" or "personal or advertising injury" arising out of operations performed for the state or municipality; or
- (2) "Bodily injury" or "property damage" included within the "products-completed operations hazard".

d. Owners, Lessees, or Contractors

"Bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

- (1) Your acts or omissions; or
- (2) The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations performed for that additional insured, whether the work is performed by you or on your behalf.

- (1) That this insurance be primary. If other insurance is also primary, we will share with all that other insurance as described in c. below;
- (2) The coverage afforded by this insurance is primary and non-contributory with the additional insured's own insurance.
- Paragraphs (1) and (2) do not apply to other insurance to which the additional insured has been added as an additional insured or to other insurance described in paragraph b. below.
- b. Excess Insurance**
- This insurance is excess over:
- (1) Any of the other insurance, whether primary, excess, contingent or on any other basis;
- (a) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";
- (b) That is fire, lightning, or explosion insurance for premises rented to you or temporarily occupied by you with permission of the owner;
- (c) That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner; or
- (d) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion g. of Section I - Coverage A - Bodily Injury And Property Damage Liability.
- (e) That is any other insurance available to an additional insured under this endorsement covering liability arising out of the premises or operations, or products completed operations, for which the additional insured has been added as an additional insured by that other insurance.

- (2) When this insurance is excess, we will have no duty under Coverages A or B to defend the additional insured against any "suit" if any other insurer has a duty to defend the additional insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the additional insured's rights against all those other insurers.
- (3) When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:
- (a) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (b) The total of all deductible and self-insured amounts under all that other insurance.
- (4) We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.
- c. Method Of Sharing**
- If all of the other insurance available to the additional insured permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.
- If any of the other insurance available to the additional insured does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

MEDICAL PAYMENTS

SECTION III – LIMITS OF INSURANCE, Paragraph 7, is replaced;

7. Subject to 5. above, the higher of:

a. \$10,000; or

b. The amount shown in the Declarations for Medical Expense Limit is the most we will pay under Coverage C for all medical expenses because of "bodily injury" sustained by one person.

This coverage does not apply if Coverage C – Medical Payments is excluded either by the provisions of any coverage forms attached to the policy or by endorsement.

KNOWLEDGE OF AN OCCURRENCE

SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS, The following is added to 2. Duties In The Event Of Occurrence, Offense, Claim Or Suit condition:

e. Knowledge of an occurrence, offense, claim or suit by an agent or employee of any insured shall not in itself constitute knowledge of the insured unless you, a partner, if you are a partnership; or an executive officer or insurance manager, if you are a corporation receives such notice of an occurrence, offense, claim or suit from the agent or employee.

f. The requirements in Section IV – Conditions Paragraph 2.b. will not be considered breached unless there is knowledge of occurrence as outlined in paragraph e. above.

UNINTENTIONAL FAILURE TO DISCLOSE HAZARD

SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS, 6. Representations is amended to include:

d. Your failure to disclose all hazards or prior "occurrences" or offenses existing as of the inception date of the policy shall not prejudice the coverage afforded by this policy provided such failure to disclose all hazards or prior "occurrences" or offenses is not intentional. This provision does not affect our right to collect additional premium or exercise our right of cancellation or non-renewal.

EMPLOYEE BODILY INJURY TO ANOTHER EMPLOYEE

SECTION II – WHO IS AN INSURED The following Paragraph is added to 2.a.(1)

Paragraphs 2.a.(1)(a), (b) and (c) do not apply to "bodily injury" to a co-"employee" in the course of the co-"employee's" employment by you, or to "bodily injury" to a co-"volunteer worker" while performing duties related to the conduct of your business.

BROAD FORM NAMED INSURED

SECTION II – WHO IS AN INSURED The following Paragraph is added to 2.

e. Any business entity incorporated or organized under the laws of the United State of America (including any State thereof), its territories or possessions or Canada (including any Province thereof) in which the Named Insured shown in the Declarations owns, during the policy period, an interest of more than fifty percent. If other valid collectible insurance is available to any business entity covered by this solely by reason of ownership by the Named Insured shown in the Declarations in excess of fifty percent, this insurance is excess over the other insurance, whether primary, excess, contingent, or on any other basis.

AGGREGATE LIMIT PER LOCATION

SECTION III – LIMITS OF INSURANCE The following paragraph is added to paragraph 2:

III Limits of Insurance applies separately to each of your locations owned by or rented to you or temporarily occupied by you with the permission of the owner. For the purposes of this provision, location means premises involving the same or connecting lots, or premises whose connection is interrupted only by a public street, roadway, waterway or railroad right-of-way.

AGGREGATE LIMIT PER PROJECT

SECTION III – LIMITS OF INSURANCE The following paragraph is added to paragraph 2:

The General Aggregate Limit under Section III Limits of Insurance applies separately to each of your construction projects away from premises owned by or rented to you.

All terms and conditions of this policy apply unless modified by this endorsement.

If we revise this coverage form to provide more coverage without additional premium charge, your policy will automatically provide the additional coverage as of the day the revision is effective in your state.

added as follows:
SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS, 10. Liberalization is

LIBERALIZATION

If required by a written contract executed prior to loss, we waive any right of subrogation we may have against the contracting person or organization because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazards";

to include:

SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS, 8. Transfer of Rights of Recovery Against Others to Us is amended

WAIVER OF SUBROGATION

1. 3. "Bodily injury" is deleted and replaced with the following:
"Bodily injury" means physical injury, sickness or disease to a person and, if arising out of the foregoing, mental anguish, mental injury, shock or humiliation, including death at any time resulting therefrom.

follows:

SECTION V – DEFINITIONS is amended as (MENTAL ANGUISH)

BROADENED BODILY INJURY DEFINITION