

96136



**the evergreen  
state college**

**CONTRACT BETWEEN  
THE EVERGREEN STATE COLLEGE  
AND  
STOP BUGGING ME! PEST CONTROL**

This Contract is made and entered into by and between The Evergreen State College hereinafter referred to as "EVERGREEN", and the below named firm, hereinafter referred to as "CONTRACTOR,"

Stop Bugging Me LLC  
2930 4<sup>th</sup> Ave S, #100  
Seattle, WA 98134  
Phone: 206-749-2847  
Email: tomg@stopbuggingmenow.com  
Federal ID No.: 27-1281599  
WA State UBI No.: 602 937 107

**PURPOSE**

The purpose of this contract is for the CONTRACTOR to provide Integrated Pest Management Services for THE EVERGREEN STATE COLLEGE Residential and Dining Services at the Olympia, WA Campus located at 2700 Evergreen Parkway NW, Olympia, WA 98505.

**SCOPE OF WORK**

The CONTRACTOR will provide services, and otherwise do all things necessary for or incidental to the performance of work, as set forth below and as referenced in RFP 96136 under Basic Preventative, Routine, and Expanded Services.

**Basic Preventative Service**

Service provided that utilizes IPM principles to inspect, monitor, and treat if necessary buildings/areas on a monthly, or quarterly schedule. Repetitive in nature but free to adjust in response to the need.

**Routine Service**

Routine Service calls occur regularly, may occur in any part of RAD areas of responsibility and most often are resolved in one half to one hour visits.

**Expanded Service**

Requests for service that are beyond those that are covered in preventative or routine and include bio-waste removal if requested. Expanded service will be specific to an infestation or location and require estimated Tech time of beyond 4 hours.

Scope of work also includes:

- Supply all labor, equipment and materials to control pests in a safe manner with little or no interruption in service.
- Conduct inspections, identify pest problems, and make IPM recommendations.
- Identify thresholds and what controls need to be in place.

- Create an IPM plan and follow-up on recommendations.
- Specify when monitoring shall be completed and what if any pesticides should be used.
- Prepare clear, accurate and complete list of products with MSDS information for each used or to be used on campus.
- Provide a logbook or an electronic document of all work completed, including but not limited to, where traps are located and where pesticides were applied.
- Demonstrate strong communication skills.
- Disclose problems constructively and identify potential solutions.
- Facilitate diverse groups including diffusing conflicts, listening and understanding all viewpoints, to professionally express opinions, findings & recommendations so that it is understood by various professionals and staff representatives.
- Apply relevant laws, regulations, policies and procedures to include compliance with federal/state/local/board laws (RCWs, Ordinances, and Resolutions).
- Guide and facilitate a customer through a developed IPM plan and provide training.

#### **DELIVERABLES**

Work is to be scheduled during the following time periods for Basic Preventative Services.

<b>1. Before the start of Fall Quarter and Check-In</b>	<b>Second Week of September</b>
<b>2. Once During Winter Break</b>	<b>Last 2 Weeks of November</b>
<b>3. Once During Spring Break</b>	<b>Last Week of March</b>
<b>4. Once After End of Year Check-Out</b>	<b>Second Week of June</b>

#### **AREAS OF SERVICE**

##### **Residential Buildings:**

4 Dormitory Style Buildings (Phase 1 – A, B, C, D)  
14 Apartment Style Buildings (Phase 2 – E thru U)  
18 Modular Style Buildings & MOD Shop Building (Phase 3)

##### **College & Public Use Buildings:**

Housing Community Center (HCC or “Corner Store”)  
Constantino Recreation Center (CRC)  
Seminar II Café (Einstein’s Bagels)  
College Activity Building (CAB) – The Greenery, The Marketplace, The Flaming Eggplant Café

#### **PERIOD OF PERFORMANCE**

The period of performance under this contract will be from November 1<sup>st</sup>, 2017, or date of execution, whichever is later, until October 31<sup>st</sup>, 2019. EVERGREEN reserves the right to extend the contract on a per year basis, if agreeable by both parties, and is not to exceed a total of ten (10) years, or 2027. Annual pricing shall not be increased during any term, and shall be negotiated and agreed upon by both parties, and included in any amendment to extend the contract.

**COMPENSATION AND PAYMENT**

Evergreen shall pay an amount not to exceed \$11,537.83 (plus any applicable taxes) annually, or \$961.49 monthly, for the performance of Basic Preventative and Routine Services as set forth in the Scope of Work. Pricing is as follows:

Bait	\$2,508.33
Preventative Spray	\$280.00
Technician Cost	\$7,549.50
Annual Cost	\$10,337.83
Bait Station Purchase	<u>\$1,200.00</u>
Total Annual Cost	\$11,537.83

Additional Service pricing is as follows:

Emergency Visit*	\$60.00 each visit
Stinging Insects	\$50.00 (up to 3 nests)
Cockroach Deep Cleanout	\$150.00
Additional Unit	\$30.00
Additional Exterior	\$30.00
Bed Bug K9 Inspection	\$200/hour
Bed Bug Treatment	\$360.00 (includes 1 follow-up)
Third Bed Bug Treatment	\$180.00 (includes 1 follow-up)
WDO Inspection	By Bid

\*each service is an additional fee

CONTRACTOR'S compensation will be dependent upon EVERGREEN receiving completed monthly invoices in a timely manner.

**PREVAILING WAGE**

In accordance with RCW 39.12 and WAC 296-127, L&I intents of wages paid shall be provided when CONTRACTOR's initial invoicing is submitted. Final payment shall be released at completion of the project, only when the proper affidavit has been received. Prevailing Wage intents and affidavits do not apply for Basic Preventative or Routine Services. For Expanded Services like extraction, demolition and/or removal of pest damaged material (e.g. insulation), and installation of new material, Prevailing Wage documentation will apply.

**BILLING PROCEDURES AND PAYMENT**

Evergreen will pay CONTRACTOR upon receipt of properly completed invoices. The invoices shall describe and document to EVERGREEN's satisfaction a description of the work performed, and fees charged. Complete and accurate invoices should be sent to:

The Evergreen State College  
Attn: Accounts Payable  
2700 Evergreen Parkway NW  
Olympia, WA 98505

Complete and accurate invoices can also be emailed to: [ruizr@evergreen.edu](mailto:ruizr@evergreen.edu) and [accountspayable@evergreen.edu](mailto:accountspayable@evergreen.edu)

Payment shall be considered timely if made by the Evergreen within thirty (30) days after receipt of properly completed invoices. Payment shall be sent to the address designated by the CONTRACTOR.

EVERGREEN may, in its sole discretion, terminate the contract or withhold payments claimed by the CONTRACTOR for services rendered if the CONTRACTOR fails to satisfactorily comply with any term or condition of this contract.

No payments in advance or in anticipation of services or supplies to be provided under this contract shall be made by EVERGREEN.

### **CONTRACT MANAGEMENT**

The Contract Manager for each of the parties shall be the contact person for all communications and billings regarding the performance of this Contract.

CONTRACTOR Contract Manager	EVERGREEN Contract Manager
Tom Grim, General Manager Stop Bugging Me LLC 2930 4 <sup>th</sup> Ave S, #100 Seattle, WA 98134  <i>Phone</i> : (206) 749-2847 <i>Email address</i> : info@stopbuggingmenow.com	Ray Ruiz The Evergreen State College 2700 Evergreen Parkway NW Olympia, WA 98505  <i>Phone</i> : (360) 867-5119 <i>Email address</i> : ruizr@evergreen.edu

### **INSURANCE**

The CONTRACTOR shall provide insurance coverage as set out in this section. The intent of the required insurance is to protect the state should there be any claims, suits, actions, costs, damages or expenses arising from any negligent or intentional act or omission of the CONTRACTOR or subcontract, or agents of either, while performing under the terms of this contract.

The CONTRACTOR shall provide insurance coverage which shall be maintained in full force and effect during the term of this Contract, as follows:

1. Commercial General Liability Insurance Policy – Provide a Commercial General Liability Insurance Policy, including contractual liability, in adequate quantity to protect against legal liability arising out of contract activity but no less than \$1,000,000 per occurrence. Additionally, the CONTRACTOR is responsible for ensuring that any subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.
2. Automobile Liability – In the event that services delivered pursuant to this contract involve the use of vehicles, either owned or un-owned by the CONTRACTOR, automobile liability insurance shall be required. The minimum limit for automobile liability is:  
  
\$1,000,000 per occurrence, using a Combined Single Limit for bodily injury and property damage
3. The insurance required shall be issued by an insurance company(s) authorized to do business within the state of Washington, and shall name the state of Washington, its agents and employees as additional insured under the insurance policy(s). All policies shall be primary to any other valid and collectable insurance. CONTRACTOR shall instruct the insurers to give EVERGREEN 30 days advance notice of any insurance cancellation.

CONTRACTOR shall submit to EVERGREEN within fifteen days of the contract effective date, a certificate of insurance which outlines the coverage and limits defined in the Insurance section. CONTRACTOR shall submit renewal certificates as appropriate during the term of the contract.

*completed*

**ADDITIONAL WORK**

EVERGREEN reserves the right to use CONTRACTOR for additional, similar work over the next three (3) years at the same rates as offered herein. Any additional services, projects, and related budgets agreed to by the parties will be set forth in additional Statements of Works (SOW) generally in the form of a new contract and signed by both parties. Any change in the terms and conditions of a new contract shall be mutually agreed upon in writing prior to any performance of those services, and each will be incorporated by reference in the new contract.

**ASSURANCES**

EVERGREEN and the CONTRACTOR agree that all activity pursuant to this contract will be in accordance with all the applicable current federal, state and local laws, rules, and regulations.

**ORDER OF PRECEDENCE**

Each of the exhibits listed below is by this reference hereby incorporated into this contract. In the event of an inconsistency in this contract, the inconsistency shall be resolved by giving precedence in the following order:

- Applicable federal and state of Washington statutes and regulations
- Special Terms and Conditions as contained in this basic contract instrument
- Exhibit A – General Terms and Conditions
- Any other provision, term or material incorporated herein by reference or otherwise incorporated

**ENTIRE AGREEMENT**

This contract including referenced exhibits represents all the terms and conditions agreed upon by the parties. No other statements or representations, written or oral, shall be deemed a part hereof.

**CONFORMANCE**

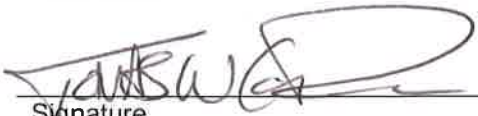
If any provision of this contract violates any statute or rule of law of the state of Washington, it is considered modified to conform to that statute or rule of law.

**APPROVAL**


This contract shall be subject to the written approval of EVERGREEN'S authorized representative and shall not be binding until so approved. The contract may be altered, amended, or waived only by a written amendment executed by both parties.

THIS CONTRACT, consisting of 12 pages, is executed by the persons signing below who warrant that they have the authority to execute the contract.

**Stop Bugging Me LLC  
Tom Grim**

  
\_\_\_\_\_  
Signature  
G.M.  
\_\_\_\_\_  
Title  
11/13/17  
\_\_\_\_\_  
Date

**THE EVERGREEN STATE COLLEGE  
Ray Ruiz**

  
\_\_\_\_\_  
Signature  
Building & Grounds Supervisor  
\_\_\_\_\_  
Title  
11/20/17  
\_\_\_\_\_  
Date

11/20/17

EXHIBIT A

GENERAL TERMS AND CONDITIONS

DEFINITIONS

As used throughout this contract, the following terms shall have the meaning set forth below:

- A. "Agency" shall mean The Evergreen State College [EVERGREEN], an institution of higher education of the state of Washington, any division, section, office, unit or other entity of EVERGREEN, or any of the officers or other officials lawfully representing that Agency.
- B. "Agent" shall mean the President, George Bridges and/or the delegate authorized in writing to act on the President's behalf.
- C. "Contractor" shall mean that firm, provider, organization, individual or other entity performing service(s) under this contract, and shall include all employees of the Contractor.
- C. "Subcontractor" shall mean one not in the employment of the Contractor, who is performing all or part of those services under this contract under a separate contract with the Contractor. The terms "Subcontractor" and "Subcontractors" mean Subcontractor(s) in any tier.

ACCESS TO DATA

The Contractor shall provide access to data generated under this contract to EVERGREEN, the Joint Legislative Audit and Review Committee, and the State Auditor at no additional cost. This includes access to all information that supports the findings, conclusions, and recommendations of the Contractor's reports, including computer models and methodology for those models.

ADVANCE PAYMENTS PROHIBITED

No payments in advance of or in anticipation of goods or services to be provided under this contract shall be made by EVERGREEN.

AMENDMENTS

This contract may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, also referred to as the "ADA" 28 CFR Part 35

The Contractor must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

ASSIGNMENT

Neither this Contract, nor any claim arising under this Contract, shall be transferred or assigned by the Contractor without prior written consent of EVERGREEN.

ATTORNEYS' FEES

In the event of litigation or other action brought to enforce contract terms, each party agrees to bear its own attorney's fees and costs.

CONFIDENTIALITY / SAFEGUARDING OF INFORMATION

The Contractor shall not use or disclose any information concerning EVERGREEN, or information which may be classified as confidential, for any purpose not directly connected with the administration of this contract, except with prior written consent of EVERGREEN, or as may be required by law.

#### CONFLICT OF INTEREST

Notwithstanding any determination by the Executive Ethics Board or other tribunal, EVERGREEN may, in its sole discretion, by written notice to the Contractor terminate this contract if it is found after due notice and examination by the Agent that there is a violation of the Ethics in Public Service Act, Chapter 42.52 RCW; or any similar statute involving the Contractor in the procurement of, or performance under this contract.

In the event this contract is terminated as provided above, EVERGREEN shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the contract by the Contractor. The rights and remedies of EVERGREEN provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which the Agent makes any determination under this clause shall be an issue and may be reviewed as provided in the "Disputes" clause of this contract.

#### COPYRIGHT PROVISIONS

Unless otherwise provided, all Materials produced under this contract shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by EVERGREEN. EVERGREEN shall be considered the author of such Materials. In the event the Materials are not considered "works for hire" under the U.S. Copyright laws, Contractor hereby irrevocably assigns all right, title, and interest in Materials, including all intellectual property rights, to EVERGREEN effective from the moment of creation of such Materials.

Materials means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register and the ability to transfer these rights.

For Materials that are delivered under the contract, but that incorporate pre-existing materials not produced under the contract, Contractor hereby grants to EVERGREEN a nonexclusive, royalty-free, irrevocable license (with rights to sublicense others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The Contractor warrants and represents that Contractor has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to EVERGREEN.

The Contractor shall exert all reasonable effort to advise EVERGREEN, at the time of delivery of Materials furnished under this contract, of all known or potential invasions of privacy contained therein and of any portion of such document that was not produced in the performance of this contract. EVERGREEN shall receive prompt written notice of each notice or claim of infringement received by the Contractor with respect to any data delivered under this contract. EVERGREEN shall have the right to modify or remove any restrictive markings placed upon the data by the Contractor.

#### COVENANT AGAINST CONTINGENT FEES

The Contractor warrants that no person or selling agent has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established agents maintained by the Contractor for the purpose of securing business. EVERGREEN shall have the right, in the event of breach of this clause by the Contractor, to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration or recover by other means the full amount of such commission, percentage, brokerage or contingent fee.

#### DISPUTES

Except as otherwise provided in this contract, when a dispute arises between the parties and it cannot be resolved by direct negotiation, either party may request a dispute hearing with Agent.

1. The request for a dispute hearing must:
  - be in writing;
  - state the disputed issue(s);
  - state the relative positions of the parties;
  - state the Contractor's name, address, and contract number; and

- be mailed to the Agent and the other party's (respondent's) Contract Manager within 3 working days after the parties agree that they cannot resolve the dispute.
2. The respondent shall send a written answer to the requester's statement to both the agent and the requester within 5 working days.
3. The Agent shall review the written statements and reply in writing to both parties within 10 working days. The Agent may extend this period if necessary by notifying the parties.
4. The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

Nothing in this Contract shall be construed to limit the parties' choice of a mutually acceptable ADR method in addition to the dispute resolution procedure outlined above.

#### DUPLICATE PAYMENT

EVERGREEN shall not pay the Contractor, if the Contractor has charged or will charge the state of Washington or any other party under any other contract or agreement, for the same services or expenses.

#### GOVERNING LAW

This contract shall be construed and interpreted in accordance with the laws of the state of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

#### INDEMNIFICATION

To the fullest extent permitted by law, Contractor shall indemnify, defend, and hold harmless State, agencies of State and all officials, agents and employees of State, from and against all claims for injuries or death arising out of or resulting from the performance of the Contract. "Claim," as used in this contract, means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorney's fees, attributable for bodily injury, sickness, disease, or death, or injury to or destruction of tangible property including loss of use resulting there from. Contractor's obligation to indemnify, defend, and hold harmless includes any claim by Contractors' agents, employees, representatives, or any subcontractor or its employees.

Contractor expressly agrees to indemnify, defend, and hold harmless the State for any claim arising out of or incident to Contractor's or any subcontractor's performance or failure to perform the Contract. Contractor's obligation to indemnify, defend, and hold harmless the State shall not be eliminated or reduced by any actual or alleged concurrent negligence of State or its agents, agencies, employees and officials.

Contractor waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless State and its agencies, officials, agents or employees.

#### INDEPENDENT CAPACITY OF THE CONTRACTOR

The parties intend that an independent contractor relationship will be created by this contract. The Contractor and his or her employees or agents performing under this contract are not employees or agents of EVERGREEN. The Contractor will not hold himself/herself out as or claim to be an officer or employee of EVERGREEN or of the state of Washington by reason hereof, nor will the Contractor make any claim of right, privilege or benefit which would accrue to such employee under law. Conduct and control of the work will be solely with the Contractor.

#### INDUSTRIAL INSURANCE COVERAGE

The Contractor shall comply with the provisions of Title 51 RCW, Industrial Insurance. If the Contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, EVERGREEN may collect from the Contractor the full amount payable to the Industrial Insurance accident fund. EVERGREEN may deduct the amount owed by the Contractor to the accident fund from the amount payable to the Contractor by EVERGREEN under this contract, and transmit the deducted amount to the Department of Labor and Industries, (L&I) Division of Insurance Services. This provision does not waive any of L&I's rights to collect from the Contractor.



#### LICENSING, ACCREDITATION AND REGISTRATION

The Contractor shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements/standards, necessary for the performance of this contract.

#### LIMITATION OF AUTHORITY

Only the Agent or Agent's delegate by writing (delegation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Contract. Furthermore, any alteration, amendment, modification, or waiver or any clause or condition of this contract is not effective or binding unless made in writing and signed by the Agent.

#### NONCOMPLIANCE WITH NONDISCRIMINATION LAWS

In the event of the Contractor's non-compliance or refusal to comply with any nondiscrimination law, regulation, or policy, this contract may be rescinded, canceled or terminated in whole or in part, and the Contractor may be declared ineligible for further contracts with EVERGREEN. The Contractor shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.

#### NONDISCRIMINATION

During the performance of this contract, the Contractor shall comply with all federal and state nondiscrimination laws, regulations and policies.

#### PRIVACY

Personal information including, but not limited to, "Protected Health Information," collected, used, or acquired in connection with this contract shall be protected against unauthorized use, disclosure, modification or loss. Contractor shall ensure its directors, officers, employees, subcontractors or agents use personal information solely for the purposes of accomplishing the services set forth herein. Contractor and its subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of EVERGREEN or as otherwise required by law.

Any breach of this provision may result in termination of the contract and the demand for return of all personal information. The Contractor agrees to indemnify and hold harmless EVERGREEN for any damages related to the Contractor's unauthorized use of personal information.

#### PUBLICITY

The Contractor agrees to submit to EVERGREEN all advertising and publicity matters relating to this Contract wherein EVERGREEN's name is mentioned or language used from which the connection of EVERGREEN's name may, in EVERGREEN's judgment, be inferred or implied. The Contractor agrees not to publish or use such advertising and publicity matters without the prior written consent of EVERGREEN.

#### RECORDS MAINTENANCE

The Contractor shall maintain books, records, documents, data and other evidence relating to this Contract and performance of the services described herein, including but not limited to accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract. Contractor shall retain such records for a period of six years following the date of final payment. At no additional cost, these records, including materials generated under the Contract, shall be subject at all reasonable times to inspection, review or audit by EVERGREEN, personnel duly authorized by EVERGREEN, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

#### REGISTRATION WITH DEPARTMENT OF REVENUE

The Contractor shall complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under this contract.

#### RIGHT OF INSPECTION

The Contractor shall provide right of access to its facilities to EVERGREEN, or any of its officers, or to any other authorized agent or official of the state of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this contract.

#### SAVINGS

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this contract and prior to normal completion, EVERGREEN may terminate the contract under the "Termination for Convenience" clause, without the 10 day notice requirement, subject to renegotiation at EVERGREEN's discretion under those new funding limitations and conditions.

#### SEVERABILITY

The provisions of this contract are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the contract.

#### SITE SECURITY

While on EVERGREEN premises, Contractor, its agents, employees, or subcontractors shall conform in all respects with physical, fire or other security policies or regulations.

#### SUBCONTRACTING

Neither the Contractor nor any Subcontractor shall enter into subcontracts for any of the work contemplated under this contract without obtaining prior written approval of EVERGREEN. In no event shall the existence of the subcontract operate to release or reduce the liability of the contractor to the Department for any breach in the performance of the contractor's duties. This clause does not include contracts of employment between the contractor and personnel assigned to work under this contract.

Additionally, the Contractor is responsible for ensuring that all terms, conditions, assurances and certifications set forth in this agreement are carried forward to any subcontracts. Contractor and its subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of EVERGREEN or as provided by law.

#### TAXES

All payments accrued on account of payroll taxes, unemployment contributions, any other taxes, insurance or other expenses for the Contractor or its staff shall be the sole responsibility of the Contractor.

#### TERMINATION FOR CAUSE

In the event EVERGREEN determines the Contractor has failed to comply with the conditions of this Contract in a timely manner, EVERGREEN has the right to suspend or terminate this Contract. Before suspending or terminating the Contract, EVERGREEN shall notify the Contractor in writing of the need to take corrective action. If corrective action is not taken within 30 days, the Contract may be terminated or suspended. In the event of termination or suspension, the Contractor shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original Contract and the replacement or cover Contract and all administrative costs directly related to the replacement Contract, e.g., cost of the competitive bidding, mailing, advertising and staff time. EVERGREEN reserves the right to suspend all or part of the Contract, withhold further payments, or prohibit the Contractor from incurring additional obligations of funds during

investigation of the alleged compliance breach and pending corrective action by the Contractor or a decision by EVERGREEN to terminate the Contract. A termination shall be deemed to be a "Termination for Convenience" if it is determined that the Contractor: (1) was not in default; or (2) failure to perform was outside of his or her control, fault or negligence. The rights and remedies of EVERGREEN provided in this Contract are not exclusive and are in addition to any other rights and remedies provided by law.

#### TERMINATION FOR CONVENIENCE

Except as otherwise provided in this contract, EVERGREEN may, by 10 days written notice, beginning on the second day after the mailing, terminate this contract, in whole or in part. If this contract is so terminated, EVERGREEN shall be liable only for payment required under the terms of this contract for services rendered or goods delivered prior to the effective date of termination.

#### TERMINATION PROCEDURES

Upon termination of this contract, EVERGREEN, in addition to any other rights provided in this contract, may require the Contractor to deliver to EVERGREEN any property specifically produced or acquired for the performance of such part of this contract as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

EVERGREEN shall pay to the Contractor the agreed upon price, if separately stated, for completed work and services accepted by EVERGREEN, and the amount agreed upon by the Contractor and EVERGREEN for (i) completed work and services for which no separate price is stated, (ii) partially completed work and services, (iii) other property or services which are accepted by EVERGREEN, and (iv) the protection and preservation of property, unless the termination is for default, in which case the Agent shall determine the extent of the liability of EVERGREEN. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this contract. EVERGREEN may withhold from any amounts due the Contractor such sum as the Agent determines to be necessary to protect EVERGREEN against potential loss or liability.

The rights and remedies of EVERGREEN provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

After receipt of a notice of termination, and except as otherwise directed by the Agent, the Contractor shall:

1. Stop work under the contract on the date, and to the extent specified, in the notice;
2. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract that is not terminated;
3. Assign to EVERGREEN, in the manner, at the times, and to the extent directed by the Agent, all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case EVERGREEN has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
4. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Agent to the extent Agent may require, which approval or ratification shall be final for all the purposes of this clause;
5. Transfer title to EVERGREEN and deliver in the manner, at the times, and to the extent directed by the Agent any property which, if the contract had been completed, would have been required to be furnished to EVERGREEN;
6. Complete performance of such part of the work as shall not have been terminated by the Agent; and
7. Take such action as may be necessary, or as the Agent may direct, for the protection and preservation of the property related to this contract, which is in the possession of the Contractor and in which EVERGREEN has or may acquire an interest.

#### TREATMENT OF ASSETS

- A. Title to all property furnished by EVERGREEN shall remain in EVERGREEN. Title to all property furnished by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in EVERGREEN upon delivery of such property by the Contractor. Title to other property, the cost of which is reimbursable to the Contractor under this contract, shall pass to and vest in EVERGREEN

- upon (i) issuance for use of such property in the performance of this contract, or (ii) commencement of use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by EVERGREEN in whole or in part, whichever first occurs.
- B. Any property of EVERGREEN furnished to the Contractor shall, unless otherwise provided herein or approved by EVERGREEN, be used only for the performance of this contract.
  - C. The Contractor shall be responsible for any loss or damage to property of EVERGREEN which results from the negligence of the Contractor or which results from the failure on the part of the Contractor to maintain and administer that property in accordance with sound management practices.
  - D. If any EVERGREEN property is lost, destroyed or damaged, the Contractor shall immediately notify EVERGREEN and shall take all reasonable steps to protect the property from further damage.
  - E. The Contractor shall surrender to EVERGREEN all property of EVERGREEN prior to settlement upon completion, termination or cancellation of this contract.
  - F. All reference to the Contractor under this clause shall also include Contractor's employees, agents or Subcontractors.

WAIVER

Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Contract unless stated to be such in writing and signed by authorized representative of EVERGREEN.