LANDSCAPING AND GROUNDS MAINTENANCE AGREEMENT
CITY OF CEDAR HILLS

This Landscaping and Grounds Maintenance Agreement ("Agreement") is entered into as of the 10 day of March, 2018 ("Effective Date"), by and between the City of Cedar Hills, a municipal corporation ("City") and Wilsons Outdoor Maintenance, a [Utah] [Limited Liability Company, Corporation, Partnership – describe the nature of your entity], ("Contractor").

RECITALS:

WHEREAS, The City, desires to enter this Agreement with an independent contractor for certain landscape maintenance work; and

WHEREAS, The Contractor wants to perform landscape maintenance work for the City; and

WHEREAS, The City has issued its requests for proposal for ground keeping and land maintenance; and

WHEREAS, the Contractor has been determined by the City to have submitted the most responsible, responsive proposal; and

NOW THEREFORE, in consideration of the mutual promises, covenants, terms and conditions herein the parties hereby agree as follows:

AGREEMENT:

1. Services. Contractor shall perform in a competent manner to the satisfaction of the City, the following described services for maintenance of landscape areas in the City, to-wit:

   A. Mow all lawn areas once a week. Collect all grass clippings. All lawns are to be left in a "clean and neat manner". This will require some lawn grass clippings to be collected where “puddles” of grass accumulate, but allows grass mulching most of the time.

   B. Trim and edge all lawn areas at time of mowing.

   C. The Contractor shall collect, remove, and dispose all grass clippings, trimmings, and other yard waste material. The Contractor is responsible for proper disposal of these wastes and their associated fees.

   D. Water all lawn and garden areas as needed to keep green and healthy. Avoid over watering.
E. Provide small shrubs, plants, and flowers for all parks and flowerbed areas annually.

F. Spray/Weed all shrubs, flower beds, and rock landscape, as needed or at least two (2) times per month, during growing season.

G. Provide at least on (1) application of an effective Herbicide to all lawn areas each growing season and additional applications as needed and agreed upon by the City and Contractor. The Contractor is to use Pesticides and Herbicides judiciously. Proper licensing is required. The Contractor is to maintain a log of the type, quantities, dates, location, and cost as needed of Pesticide and Herbicide applications. The Contractor must also apply warning markers to sprayed locations.

H. Prune lower tree branches, trees, and shrubs as necessary to control growth, along property borders, a minimum of two (2) times per year.

I. Replace, at the Contractors expense, any trees or shrubs that are significantly damaged or killed, by the Contractors actions.

J. Fertilize all lawn areas as necessary, during the season, with a slow release Fertilizer. Application rate shall be a minimum one (1) pound of nitrogen/1000 square foot/application and shall include potassium concentrations sufficient to maintain plants under drought conditions. The Contractor is to maintain a log of the type, quantities, dates, and location of Fertilizer applications.

K. Provide continuous and general sprinkler system maintenance during the year, including, but not limited to:

1. Monitor and adjust timers (clocks), and WeatherTRAK system.
2. Providing quality replacement parts for sprinkler system.
3. Labor to install sprinkler parts.
4. Load and check sprinkler lines.
5. Maintain/clean secondary water system filters as needed.
6. Repair sprinkler system as needed.
7. Adjust and clean sprinkler heads.
8. Repair and maintain water lines that are four (4) inches or smaller.
9. Winterize sprinkler system.

L. All work must meet the approval of the Public Works Director.

M. Till soft fall areas, one (1) time per year.

N. Arrange and weed all soft-fall areas weekly.

O. Work with Public Works Director to prepare/repair effected park areas as needed, be flexible with scheduled events.

P. Remove trash from lawns and parking areas, including leaf removal.
Q. Special beautification:
   1. Clear grass clippings from sidewalks, curbs, and parking lot areas.
   2. Treat for noxious weeds. Apply effective herbicide along sidewalks and parking lot/curb edges as needed.
   3. Treat for crab grass, etc. upon request by the City at additional cost to the City

R. Trim shrubs, hedges, and brush along fence lines one (1) time per year.

S. Aerate lawn areas as needed. Aerate all parks at least one (1) time per year.

2. **Licensure.** That Contractor represents and warrants that is in possession of a valid state license for landscape and yard maintenance as required by the State of Utah, a pesticides license/certification, and is in good stand with the Utah Division of Occupational and Professional Licensing.

3. **Insurance.** Contractor has and shall maintain a comprehensive general property and general liability insurance policy of at least $1,000,000.00 to insure, and indemnify, defend, and hold the City harmless from and against all liability in connection with Contractor's performance of the services required in this contract to provide maintenance and repair work for the City. Proof of said insurance shall be provided to the City before the effective date, and the City shall be named as an additional insured on each type of insurance required under this section. In addition hereto, the Contractor shall provide all insurance in the types and amounts required by “Exhibit A” which is attached hereto and incorporated herein by this reference.

4. **Workers Compensation.** Contractor shall also maintain Worker Compensation insurance, and unemployment insurance for his employees in accordance with State Law. Contractor shall submit a certified letter upon request of the City stating that all his employees have proper legal status, including current green card/immigrations status, and that Utah Bureau of Criminal Identification (BCI) background checks have been conducted for his employees working within the City.

5. **Term.** The initial term of this Agreement is for a period of five (5) years, commencing January 1, 2018, and ending December 31, 2023. At the end of this period this Agreement may be extended for up to three (3) years upon the written agreement of the City and Contractor.

6. **Compensation.** The amount of this Agreement for landscaping maintenance during shall be $148,900.00. The Agreement amount shall automatically increase each year by the positive percent difference in the December General Sector Consumer Price Index (CPI) for the Denver Region through 2020 and each year extension thereafter. Negative percent CPI amounts will not be included. Agreement payments will be spread through the calendar year beginning in January, 2018, with payment schedule agreed upon each January. Payments shall be paid within 30 days after receipt of invoice, not to exceed the fixed price amount for each year as set forth above.
as late as the end of November. Sprinkler systems to be winterized and blown out after the water shutoff date. The Contractor shall also be available for consultation with Public Works personnel throughout the year, as requested by public works personnel.

8. **Termination.** This Agreement may be terminated by either party for any or no reason upon ninety (90) days written notice to the other party for just cause; i.e., work performance. However, each party shall be responsible to perform their respective duties under this contract during said ninety (90) day period.

9. **Unimproved Land.** Landscape maintenance of improvements to unimproved or additional open space areas will be negotiated between the City and Contractor as needed, modifying the amount set forth in Paragraph 6.

10. **Independent Contractor.** Contractor is to provide all tools, equipment, and materials necessary to perform this Agreement, together with all necessary personnel and manpower to satisfactorily provide maintenance services.

11. **Compliance with Laws and Regulations.** Contractor agrees to comply, at Contractors expense, with all State or Federal Laws in effect relating to withholdings for employees and agrees to provide workman’s compensation for all contracted employees through duration of this Agreement.

12. **Indemnification.** Contractor agrees to indemnify, defend and hold harmless the City from any and all liability, claims, suits, damages, fees, fines, costs, and attorneys or causes of action, of every kind or nature, which arise from, or are in anyway related to Contractors performance and completion of this Agreement, or the Contractors failure of the same, by Contractor or by its agents and employees.

   A. The City agrees to pay for any parts and repairs necessary for delivery of water to the City’s sprinkling systems and any line over four (4) inches in size. Contractor shall be responsible for parts and repairs to any line four (4) inches or smaller and shall warranty all such work and material for the duration of the contract and subject to final inspection at the termination of contract.

   B. Contractor not responsible to maintain lines under asphalt surfaces.

13. All work to be completed to the satisfaction of the City in a safe and workmanlike manner. The Contractor shall provide proper supervision of all contracted employees.

14. **Work Hours.** All work required to be performed by this Agreement shall be completed between the hours of 6:00 am and 10:00 pm, Monday through Saturday. Extraordinary circumstances may require after-hours and/or Sunday work when authorized by the City.

15. **Attorney’s Fees.** If either party defaults in any of the covenants or agreements contained herein, the defaulting party shall pay all costs and expenses, including reasonable attorney
fees and costs, incurred by the non-defaulting party to protect its rights hereunder, regardless of whether an action is commenced or prosecuted to judgement.

16. **Enforceability.** If any term or provision of the Agreement shall, to any extent, be determined by a court of competent jurisdiction to be void, voidable or unenforceable, such void, voidable or unenforceable term or provision shall not affect any other term or provision of this Agreement.

17. **Miscellaneous.**

   A. **Binding Effect:** This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns.

   B. **Compliance.** Either party may at any time insist upon strict compliance with these terms and conditions, notwithstanding previous custom, practice, or course of dealing to the contrary.

   C. **Construction.** The language in all parts of this Agreement shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against any party. The parties hereto acknowledge and agree that this Agreement has been negotiated by the parties and has been the subject of arm’s length and careful negotiation, that each party has been given the opportunity to independently review this Agreement with legal counsel, and that each party has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions hereof.

Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of the Agreement, this Agreement shall not be interpreted or construed against the party preparing it.

D. **Enforceability.** If any term or provision of this Agreement shall, to any extent, be determined by a court of competent jurisdiction to be void, voidable or unenforceable, such void, voidable or unenforceable term or provision shall not affect any other term or provision of this Agreement.

E. **Severability.** If any term or provision of the Restated Royalty Agreement shall, to any extent be determined by a court of competent jurisdiction to be void, voidable or unenforceable, such void, voidable or unenforceable term or provision shall not affect any other term or provision of this Restated Royalty Agreement.

F. **Entire Agreement.** This Agreement shall constitute the entire agreement and understanding of the Parties with respect to the subject matter hereof, and shall supersede all offers, negotiations and other agreements with respect thereto. Any amendment to this Agreement must be in writing and executed by the authorized representatives of each Party. This Agreement may be executed in any number of
counterparts and by each of the Parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument. Any signature page of the Agreement may be detached from any counterpart and reattached to any other counterpart hereof. The facsimile transmission of a signed original of this Agreement or any counterpart hereof and the retransmission of any signed facsimile transmission hereof shall be the same as delivery of an original.

G. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Utah, including its statute of limitations on contract claims, without regard to its conflicts of law rules.

H. **Interpretation.** Whenever the context shall require, the plural shall include the singular, the whole shall include any part thereof, any gender shall include both other genders, and the terms “and” and “or” shall be interchangeable. The article, section and paragraph headings contained in this Agreement are for purposes of reference only and shall not limit, expand or otherwise affect the construction of any provisions hereof. All references in this Agreement to articles, sections and paragraphs, unless expressly noted otherwise, are to articles, sections and paragraphs contained in this Agreement. Unless the context requires otherwise, references in the Agreement to “party” shall be either party, as applicable, and references to “parties” shall be to both parties.

I. **Jurisdiction and Venue.** For all litigation which may arise with respect to this Agreement, the parties irrevocably and unconditionally submit to the exclusive jurisdiction and venue (and waive and claim of *forum nonconveniens*) of the courts in Salt Lake County, Utah.

J. **Rights to Inventions Made Under a Contract or Agreement.** Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the Contractor in any resulting invention in accordance with 37 CFR part 401, Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements, and any implementing regulations issued by the awarding agency.

K. **Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended.** Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported to the DoC operating unit and the Regional Office of the Environmental Protection Agency (EPA).

L. **Notices.** All notices provided for herein shall be affected either by hand-delivery or by recognized express courier, postage pre-paid, to the addresses listed below or to
such other addresses that the parties may provide in accordance with this Section. Notices provided hereunder shall be deemed to have been given upon personal delivery or on the third Business Day following tender to said courier. Notices will be sent to the parties as follows:

If to Owner:  
City Manager  
City of Cedar Hills  
10246 N. Canyon Rd.  
Cedar Hills, UT 84062

With a copy to (which copy shall not constitute notice):

Kirton & McConkie, P.C.  
2600 W. Executive Parkway  
Suite 200  
Lehi, UT 84043  
Attn: David J. Shaw

If to Contractor:  
Name:  
Company:  
Address:

M. **Waivers.** The failure by either party at any time or times hereafter to require strict performance by the other of any of the undertakings, agreements or covenants contained in this Agreement shall not waive, affect or diminish any right of such party to demand strict compliance and performance therewith. None of the undertakings, agreements or covenants of the parties under this Agreement shall be deemed to have been waived unless such waiver is evidenced by an instrument in writing signed by the party to be charged specifying such waiver.

DATED this 13 day of March 2018

THE CITY OF CEDAR HILLS, Mayor  
CONTRACTOR SIGNATURE

ATTEST:

City Recorder
"EXHIBIT A"
INSURANCE AGREEMENTS FOR PARTIES CONTRACTING WITH THE CITY OF CEDAR HILLS
For: Contractor/Architectural or Engineering Design Services

Contractor shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damage to property that may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors. The cost of such insurance shall be included in the Contractor's proposal.

I. MINIMUM LIMITS OF INSURANCE

Contractor shall maintain limits as SET FORTH IN THE Agreement, but in no event less than:

**General Liability:** $1,000,000 combined single limit per occurrence, personal injury and property damage. $2,000,000 aggregate for Commercial General Liability is required. (ISO 1993 or better) “Limits apply to this project individually”.

**Automobile Liability:** $2,000,000 per occurrence. “Any Auto” coverage is required.

**Works Compensation and Employers Liability:** Workers compensation statutory limits as required by the Workers Compensation Act of the State of Utah and Employers Liability limits at a minimum of $100,000 per occurrence.

**Professional Liability Coverage:** $1,000,000 combined single limit per claim, $2,000,000 aggregate.

II. DEDUCTIBLES AND SELF-INSURED RETENTIONS

Any deductibles or self-insured retention, exceeding 5% limit of policy, must be declared to and approved by the City, either; the insurer may be required to reduce or eliminate such deductibles or self-insured retention as respects the City, its officers, official and employees; or the Contractor may be required to procure a bond guaranteeing payment of losses and related investigations, claims distribution and defense expenses.

III. NOTICE OF INCIDENT OR ACCIDENT

Contractor shall agree to disclose to the City all incidents or occurrences of accident, injury, and/or property damage that occur as a result of fulfilling the provisions of this contract.

IV. OTHER INSURANCE PROVISIONS

The policies are to contain, or be endorsed to contain, the following provisions:

**General Liability and Automotive Liability Coverages**

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A. City of Cedar Hills, its officers, officials, employees and volunteers are to be covered as an additional insured as respects: liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor; premises owned, leased, hired, or borrowed by the Contractor. The coverage shall contain no special limitation on the scope of protection afforded to the City, its officers, officials, employees or volunteers.

B. The Contractors insurance coverage shall be a primary insurance as respects to the City, its officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officials, employees or volunteers shall be in excess of the Contractor’s insurance and shall not contribute with it.

C. Any failure to comply with these reporting provisions of the policies shall not affect coverage provided to the City, its officers, employees or volunteers.

D. The Contractors insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respects to the limits of the insurer’s liability.

**Workers Compensation and Employers Liability Coverage**

The insurer shall agree to waive all rights of subrogation against the City, its officers, officials, employees and volunteers for losses arising from work performed by the contracting party for the City.

**All Coverages**

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

**V. ACCEPTABILITY OF INSURERS**

Insurance is to be placed with insurers with a Best rating of no less than A-, VIII, and in the limits as listed in this document, unless otherwise approved by the City Manager.

**VI. VERIFICATION OF COVERAGE**

Contractor shall furnish the City with acceptable certificates of insurance and with original endorsements effecting coverage required by this clause. The certificates and endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. The City reserves the right to require complete, certified copies of all required insurance policies, with all endorsements, at any time.

**VII. SUBCONTRACTORS**
Contractors shall include all subcontractors as an insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.