



E.A. ProScapes

Landscape Maintenance & Snow Removal

LANDSCAPE MAINTENANCE AGREEMENT

THIS LANDSCAPE MAINTENANCE AGREEMENT (the "Agreement") is entered into effective the 2nd day of October 2024, by and between Westbrook Village Community Association (the "Customer") and E.A. ProScapes, LLC (the "Contractor"). The Contractor and Customer, for the mutual covenants and other consideration as specified in this Agreement, agree as follows:

Contractor shall provide landscape maintenance services as described in this Agreement and provide additional services requested by the Customer at separate costs that are not included herein.

1. CONTRACT TERM

The term of this Agreement shall be for a period of twelve (12) months, with an automatic renewal for each subsequent season as set forth in this Section 1, with the first term commencing on January 1, 2025, and ending on December 31, 2025. Unless terminated pursuant to Section 5 of this Agreement or a new Agreement has been executed by both parties prior to the beginning of any new twelve (12) month term, this Agreement will automatically renew on January 1st of the following year and remain in full effect for each additional contract term of twelve (12) months. An annual increase, not to exceed 5%, will be applied to the Contract Price for each renewal term. Unit and hourly rates will adjust to E.A. ProScapes LLC then current rates for each renewal term and such rates shall be provided to Customer upon request.

2. REQUIREMENTS

- a. The Contractor shall furnish all labor, materials and equipment to perform landscape maintenance services in accordance with the requirements herein specified.
- b. By execution of this Agreement, the Customer guarantees that sufficient funds are available for the payment of all contracted services and additional work required by the Customer.
- c. The Contractor shall be responsible for any damage caused by the negligence of Contractor, Contractor's employees or subcontractors, while performing the requirements of this Agreement. Labor and materials for the repair or replacement of these damages shall be provided by the Contractor. Contractor reserves the right to determine the extent of any damages, the method of repair of such damages and whether any claimed damage by Customer has been caused by the negligence of Contractor, Contractor's employees or subcontractors. The parties shall first attempt to resolve through good faith negotiations any dispute over whether the alleged damage was the result of such negligence or the extent of such damages. In the event the dispute cannot be resolved through good faith

negotiations, the parties shall then in good faith attempt to resolve the dispute through mediation conducted by an impartial third party mediator agreed upon between the parties and the costs of such mediation shall be split equally between the parties. In the event the dispute relating to damages is not resolved through mediation, Customer has the right to bring a legal action to resolve the dispute in a court of competent jurisdiction. However, during the pendency of such dispute, Customer must pay all undisputed amounts to Contractor pursuant to the terms set forth in this Agreement.

- d. The Contractor will hold the Customer harmless for all costs associated with liens filed on Customer's property as a result of the Contractor's failure to pay all sums due or claimed for materials, labor or services associated with this Agreement.

3. DISPUTE RESOLUTION

Except for the collection of delinquent fees, both parties agree to first enter into good faith negotiations to resolve any dispute arising out of or relating to this Agreement. In the event that such negotiations are not successful, the parties agree to mediate the dispute through use of a professional mediator agreed upon by the parties. Each party shall be responsible for payment of one half of the mediation fee. If the dispute is not resolved in mediation, then a Court action may be filed in a court of competent jurisdiction in the County where the premises is located. Neither party may request a trial to a jury. To the contrary, it is agreed upon by and between the parties to this Agreement that any right to have a trial on any issue touching or concerning this Agreement will be to a Court, and the right to a jury trial is expressly waived. The prevailing party in any matter which is filed in Court, will be entitled to recover from the other party all reasonable attorneys' fees and costs, including expert costs, incurred in conjunction with the dispute.

During the period of time it takes to resolve any dispute pursuant to this Section 3, Customer agrees to pay for all contractual and additional service work which is not a part of the dispute, as invoiced and as per the terms of this Agreement.

4. MODIFICATION OR AMENDMENT

This Agreement represents the entire understanding between Customer and Contractor. This Agreement may be amended if the amendment is made in writing and signed by both parties.

5. TERMINATION

Either party may terminate this Agreement by providing written notice to the other party, at least 30 days prior to the commencement date of the next automatic renewal term as described in Section 1 of this Agreement. In addition, Contractor may terminate this Agreement immediately upon Customer failing to remit payment to Contractor in compliance with the terms of this Agreement. For other breaches of this Agreement, the non-breaching party must send written notice to the other party of such alleged breach and demand that the breach be remedied within fourteen (14) days. If, after sending proper notice, the alleged breach is not remedied within the specified period of time, the non-breaching party may terminate this Agreement upon 14 days written notice to the other party.

Contractor and Customer agree that work performed is proportionally greater during the growing season rather than the winter months. In the event of termination by either party, full payment for actual services performed or materials provided become due and payable on or before date of termination. In the event of pre-payment of services or materials not performed or provided, a refund will be issued on the termination date.

If payment for services rendered is delinquent by 15 days or more, Contractor and its affiliated companies have the option of suspending services until the account is made current or terminating the Agreement immediately.

6. NOTICES

Any notice shall be given:

IF TO CONTRACTOR:

E.A. ProScapes LLC
1325 Reserve Dr.
Longmont, CO 80504
ea.proscapes.co@gmail.com

IF TO CUSTOMER:

Westbrook Village Community Association
c/o Brian Harpole
bkharpo@comcast.net

Except as otherwise provided in this Agreement, any and all notices and demands, including notices of termination, given under this Agreement shall be deemed to have been given and received on the earliest to occur of the following (a) upon personal delivery to the referenced party; (b) upon deposit in the United States mail, postage prepaid, registered or certified mail, addressed to the applicable party at the address listed above, or at such other address as may be designated by any party by written notice from time to time; or (c) by the sending of an electronic mail to the email address provided above, or at such email address as may be designated by any party by written notice from time to time.

7. INSURANCE

The Contractor shall be covered by a minimum of \$1,000,000 (1M each occurrence limit/2M general aggregate limit) of general liability insurance. Contractor shall also carry workers compensation insurance as required by applicable law and comprehensive automobile liability insurance in the amount of \$1,000,000 with a combined single limit. Upon request, the Contractor shall provide proof of coverage to the Customer and will name Customer as additional insured.

8. UNFORSEEABLE CIRCUMSTANCES

Contractor may be unable to perform and shall be excused due to acts of God, extreme or unusual weather, labor problems such as strikes and shortages, delays, supply shortages and any government or governing agencies regulations.

A 3% fuel surcharge will be added to all monthly contract invoices should fuel prices exceed \$4.00/gallon. Contractor reserves the right to increase the fuel surcharge in relation to fuel prices.

9. SCOPE OF WORK

Section 22 of this Agreement specifies the Scope of Work to be carried out under the terms of this Agreement for the Contract Price.

10. ROUTINE MAINTENANCE

a. MOWING

All manicured turf areas to be mowed at an approximate height of 3 – 3-1/2” during the growing season. Mowing will vary in frequency when the turf is growing at a slower rate in the spring and in the fall. Clippings will be mulched and excessive clumps will be distributed or gathered and removed. Catchers will be used only where deemed necessary by Contractor.

b. TRIMMING

Areas inaccessible to mowers will be string trimmed. The Contractor will use care in utilizing string trimmers; however, the Customer acknowledges that structures may be damaged by long term use of string trimmers and Contractor will not be responsible for such damage.

c. EDGING

All concrete walks and curbs adjacent to turf areas will be edged with a steel-bladed edger. Contractor will use care in utilizing edging equipment; however, the Customer acknowledges that irrigation system components or items buried beneath the surface may be damaged and Contractor will not be responsible for such damage.

d. WEEDING

Beds will be weeded using a combination of hand pulling and chemical control. Unless specified in this Agreement, maintaining annual floral beds is not a part of the Scope of Work set forth in this Agreement and shall be contracted for separately.

e. CLEAN-UP

At the time of mowing, all turf and bed areas will be monitored for loose trash and debris. Contractor shall not monitor the parking lots for loose trash and debris and shall also not monitor for vandalism. Contractor shall not be responsible for removing bio-hazards and cleaning-up from storms or other acts of God. Grass clippings will be blown from walks, porches and curb lines.

11. SPRING CLEAN-UP

Contractor shall be responsible for gathering and removal of leaves from manicured turf and bed areas one (1) time in the spring. At the determination of Contractor, select perennials and ornamental grasses shall be cut back to near ground level at that time.

12. FALL CLEAN-UP

Manicured turf and bed areas will have leaves and debris removed in the fall after all leaves have dropped, at a time determined by the Contractor. Weather permitting, this is performed on two (2) occasions in October and/or November approximately 10-14 days apart. At such time, select perennials shall be cut back to near ground level and may include ornamental grasses if deemed appropriate by Contractor.

13. TURF FERTILIZATION, INSECT & DISEASE

- a. Contractor will determine and administer an appropriate fertilization program for manicured turf areas based upon the season, turf conditions and timing of this Agreement's term.
- b. Unless otherwise provided for in this Agreement, turf insect and disease control applications are not included but may be proposed separately at an additional cost.

14. CHEMICAL CONTROL PLAN

- a. The Contractor shall provide chemical applications targeted toward common weeds in manicured turf areas. Select weed species may require separate applications not included in this Agreement.
- b. Dependent upon the date this Agreement is initially executed and dependent upon seasonal conditions, one (1) pre-emergent application for problematic mulch bed and rock bed areas may be included at the Contractor's discretion.
- c. Post emergent, broad leaf weed control will be made to sidewalk cracks, curb lines and bed areas on a regular basis throughout the contract term.
- d. A grass free area will be established chemically around trees in turf areas and maintained seasonally.
- e. Unless specified differently within this Agreement, Integrated Pest Management (IPM), which can include services such as topical spraying, injections and fertilizations, is not included in this Scope of Services at the Contract Price, but may be proposed separately at an additional cost.

15. TURF AERATION

As a Scope of Service at the Contract Price, aeration of the turf shall be performed one (1) time per year, in the spring or fall, at the discretion of the Contractor. Core aeration is beneficial in breaking up soil compaction and allowing air, water and nutrients to enter the root zone.

16. TREE AND SHRUB PRUNING

- a. Contractor shall perform aesthetic (shearing and shaping) pruning of deciduous and evergreen shrubs under ten feet (10'). Pruning select species, such as flowering varieties, will occur so as not to discourage blooming. Follow-up pruning to maintain certain clearances may be performed at the Contractor's discretion. The number of pruning occurrences for each term of this Agreement is shown in Section 22 of this Agreement.

- b. Low limbs on trees and shrubs under ten feet (10') which overhang sidewalks and drives will be pruned to maintain clearances as determined by Contractor. Tree suckers will be removed routinely and at the Contractor's discretion, to maintain a neat appearance.
- c. Trees and shrubs over ten feet (10') in height are not included in this Agreement.
- d. Pruning shall be accomplished with proper tools and equipment. Debris resulting from all pruning operations shall be collected and removed by Contractor before departing the worksite.

17. STRUCTURAL, RENEWAL, SELECTIVE PRUNING

Unless specified differently within this Agreement, corrective, selective hand pruning and removal of deadwood is not included as part of this Agreement, but may be proposed separately at an additional cost.

18. IRRIGATION SYSTEM MAINTENANCE AND OPERATION

Irrigation system services are dependent on the dates of this agreement, please see 'Scope of Work for Contract Price' at the end of this agreement for specific occurrences.

a. ACTIVATION

The irrigation system will be activated in the spring. Actual date of activation will be at the discretion of the Contractor and dependent on weather conditions.

b. SYSTEM MONITORING

Contractor shall assess the sprinkler system operation weekly to ensure proper function. Pattern adjustments and controller programming is included in this agreement and will be performed as the Contractor deems necessary with water conservation being a priority.

c. WINTERIZATION

In the fall, as weather conditions warrant and at a time determine by Contractor, the Contractor will deactivate the irrigation system to aid in preventing freeze damage. This may include wrapping backflow devices at an additional cost, unless specified differently in this Agreement. After deactivation, the Contractor will evacuate water from accessible lines and components of the irrigation system using compressed air.

d. REPAIRS & TROUBLESHOOTING

Contractor will perform repairs and or troubleshooting to keep the system in operating condition. Irrigation repairs will be billed as per the hourly rates outlined in this Agreement. Materials and equipment fees will be charged when applicable.

19. WINTER MONITORING

Dependent upon the dates of this Agreement and as weather conditions allow, landscape areas will be monitored weekly for loose trash and debris from November to March. Periodic inspections will be made through the winter months to assess special requirements of the

landscape. Winter monitoring is not included as part of this Agreement but may be added at an additional cost.

20. MISCELLANEOUS SERVICES

- a. Mowing and maintenance of native areas are not included in this Agreement.
- b. Maintaining pet waste stations and trash receptacles is not included in this Agreement.

21. HOURLY RATES

Work not covered in this Agreement will be billed at the rates listed below. If requested, a quotation will be furnished to the Customer for special projects.

Irrigation Technician	\$86.00	Per hour
Water Manager (smart controller or central control mgmt.)	\$123.00	Per hour
Emergency Dispatch (outside of normal business hours of 7am-5pm, weekends and company holidays)	\$145.00	Per hour
Supervisor	\$80.00	Per hour
Laborer	\$70.00	Per hour
Chemical applicator w/ equipment (materials extra)	\$134.00	Per hour
Hand watering (from onsite tap using hoses)	\$70.00	Per hour
Miscellaneous Mowing (standard equipment)	\$91.00	Per hour

*Select services may not be included in this schedule and will be quoted separately

*A one-hour minimum charge per person applies to all services

*Travel time one direction, per person, is charged when applicable

22. SCOPE OF WORK FOR CONTRACT PRICE

Service	Number of Services To be Performed During Each Term of the Agreement
Routine Maintenance (mow, trim, weeding, cleanup)	26
Sidewalk and curb edging	9
Spring clean-up	1
Fall clean-up	2
Cutting ornamental grasses (when applicable)	1
Turf fertilization	4
Pre-emergent weed control-turf areas	1
Post emergent weed control-turf areas	4
Pre-emergent weed control-bed areas	1
Bed area and hardscape weed control	26

Turf aeration	1
Seasonal pruning-shrubs under 10'	1
Pruning-low limb on trees under 10'	1
Irrigation system activation	1
Irrigation system inspection and adjustment	13
Irrigation system winterization	1

23. CONTRACT PRICE AND PAYMENT SCHEDULE

The total Contract Price for the initial twelve (12) month term of this Agreement is **\$33,168.00** and will be invoiced at **\$2764.00** per month from **January 1, 2025 to December 31, 2025**. Increases in the Contract Price for each automatic renewal season following the initial term, shall be determined pursuant to Section 1 of this Agreement.

Invoices will be submitted to Customer for payment during the first week of each month and shall be due within thirty (30) days of the invoice date. Payments shall be made payable to E.A. ProScapes LLC. Any additional work will be invoiced at a time and materials rate immediately upon completion. A brief description including dates, time spent, and material cost will be submitted with each additional work billing.

24. PAYMENT TERMS

Payment for all invoices is due within 30 days of invoice date. A service charge of \$50.00 per month per invoice and two percent (2%) interest per month will be charged on all past due amounts. Billing discrepancies must be brought to the attention of an E.A. ProScapes LLC representative within 30 days of invoice date or all rights to a resolution will be waived.

Collection of any unpaid amount contained in any invoice for services rendered and materials provided by Contractor, will be at Customer's expense and Customer will be required to pay Contractor any attorneys' fees and costs incurred by Contractor for the collection of unpaid amounts. Contractor is entitled to attorneys' fees incurred for collections, whether or not a lawsuit is filed. Provisions relating to dispute resolution in this Agreement do not apply to the collection of delinquent sums and Contractor has the right to take collection action against Customer in a court of competent jurisdiction in the County in which the work has been carried out pursuant to the terms of this Agreement. Colorado law shall apply to any and all collection actions taken by Contractor against Customer.