



Proposal #23862

Date: 9/18/2024

Customer:

Kirk Blake
Academica West
290 North Flint Street
Kaysville, UT 84037

Property:

HighMark Charter
2467 E South Weber Dr
South Weber, UT 84405

Winter Services 2024-25 (Per Push)

This Snow & Ice Management Services Agreement is made and entered into on [September 18, 2024 (the "Effective Date") by and between: Lawn Butler Holdings, LLC with the primary address at 86 South, 1250 West, Centerville, UT, 84014 ("Contractor"), and HighMark Charter located at 2467 E South Weber Dr Utah 84405 ("Customer").

In consideration of the mutual covenants and promises set forth below, Contractor and Customer agree as follows:

Services and Scope of Work. (a) **Program Services.** Customer requests and agrees to accept, and Contractor agrees to provide, such snow and ice maintenance program services ("Program Services", and together with Hourly Services, if any, referred to as "Services") from the 15th of November of a calendar year through the 15th of April of the succeeding calendar year ("Snow Season"), at the interval(s) and/or the times, as set forth in one or more applicable proposals, estimates, invoices, or scope of work (each, a "SOW") at the property described in the applicable SOW ("Premises"). Services are to be provided as weather conditions, transportation conditions, and conditions of the Premises permit; and the determination and evaluation of weather conditions shall be made by the Contractor in its sole but reasonable discretion. (b) **Additional Services.** Contractor shall not be required to perform any services other than the Services listed on a SOW. Any service described in a SOW as "Optional" indicates that this service is to be separately requested and paid for by Customer. If Customer requests any services in addition to the services set forth in a SOW, they will be invoiced on a per hour basis ("Hourly Services"), and the parties may enter into a supplemental SOW. (c) **Obstructions.** Contractor is not responsible for plowing or shoveling areas that are blocked by parked cars, locked gates, or other obstructions ("Obstructions"). Contractor will, however, make reasonable efforts to clear between and around any such Obstructions. In the event any such Obstructions result in any additional visits being necessary to complete Contractor's duties hereunder, additional fees may be incurred. (d) **Extreme Conditions.** Snow accumulations of over eight (8") inches may require use of additional or specialized equipment to remove snow accumulations from the Premises. Customer agrees to allow Contractor to bring in such equipment as needed to assist in the clearing of such accumulated snow. Because of additional equipment, fees for snow and ice removal during Extreme Conditions may be charged hourly. (e) **Excavation Services.** The trucking of snow off the Premises, the movement of snow within the Premises, or use of loaders to pile snow during snowstorms is excluded from the Program Services. Additional fees for Excavation Services will be charged hourly.

Fees and Payment. (a) **Fees.** Customer shall pay Contractor for the performance of the Services in the amounts and in accordance with the fees and/or rate schedule, as well as costs of all material and products, as set forth in the applicable SOW ("Fees"). For the Fees agreed to be paid in installments, the parties acknowledge that the installment plan for the Fees is implemented for Customer's

convenience and does not directly correspond with the schedule and time-and-materials value of Services, and that preparation for the Services is performed early in the season; accordingly, any early termination of the Agreement is subject to payment of all unpaid Fees (as liquidated damages and not as a penalty). (b) Invoices. Invoices shall include a reasonably detailed description of the Services performed or to be performed. (c) Payment. Unless otherwise specified in the applicable SOW, Customer is obligated to pay invoices within 30 days of the invoice date. If Customer has arranged for payment by credit card, Contractor is authorized to charge Customer's card on or after the invoice date. All invoices paid via credit card will be charged up to a four percent (4%) processing fee, subject to applicable state law. All amounts payable by Customer under this Agreement shall be paid to Contractor without setoff or counterclaim, and without any deduction or withholding. Contractor's acceptance of partial payment or any payment of less than the full amount payable at any given time shall not constitute a waiver or release of Contractor's right to unpaid amounts. (d) Late Payment. Late payments shall be subject to interest on the unpaid invoice amount(s) until the date payment is received, at the annual rate of 18% or the highest rate permitted by law, whichever is lower. In addition, and without prejudice to any other right or remedy, if Customer fails to timely make any payment under this Agreement, Contractor may, in its sole discretion, take any or all of the following actions: (i) restrict or suspend Services, or (ii) terminate the Agreement and/or the applicable SOW immediately if payment of any invoiced undisputed amount remains overdue for more than 30 days. Customer shall be liable for all reinstatement fees imposed by Contractor to remove credit hold on account, as well as all costs and expenses arising out of Contractor's collection efforts on any invoiced undisputed amount and late charges, including reasonable attorney's fees. Invoices that are not disputed within 10 business days of the invoice date are conclusively deemed to be accepted as accurate by Customer.

Insurance. Contractor will maintain general liability, automotive and workers compensation coverage as required by the governing laws of the states in which Services are being performed. Contractor will provide evidence of such coverage to Customer upon request.

Term and Fees Adjustment. (a) Term. This Agreement shall commence on the Effective Date and shall continue in full force and effect for a period of five (5) years or other term as set forth in the applicable SOW ("Initial Term"). Thereafter, this Agreement will automatically renew for successive one-year terms ("Renewal Term") unless and until terminated in accordance with this Agreement, or unless either party provides written notice of its intention not to renew the Agreement at least ninety (90) days prior to the expiration of the then-current term. The Initial Term and each applicable Renewal Term will constitute the "Term" of this Agreement. Customer shall continue to be responsible for payment to Contractor for the Services through the end of the Term. (b) Fees Adjustments. Fees shall remain fixed for the Initial Term. Unless otherwise agreed to by the parties, for each Renewal Term, Fees shall be increased in accordance with the Consumer Price Index (CPI) increase calculated as follows: the base month for price adjustments will be the most recent month for which the CPI is published, as of the date of the renewal, based on the Consumer Price Index (CPI) – Non seasonally adjusted – all urban consumers – all items – for the Chicago-Naperville-Elgin region, as it appears in the periodical Producer Price Indices published by the U.S. Department of Labor, Bureau of Labor Statistics.

Termination. (a) Termination for Cause. Either party may terminate this Agreement: (i) if the other party materially breaches the Agreement and, where the breach is remediable, does not remedy the breach within 30 days of the non-breaching party's written notice describing the breach; (ii) immediately upon written notice, if the other party becomes insolvent, enters into compulsory or voluntary bankruptcy proceeding, liquidation, dissolution, or ceases for any reason to carry on business, or takes or suffers any similar action which in the other party reasonably believes means that it might become unable to pay its debts generally as they become due. Failure to make any payment when due shall constitute a material breach; upon Customer's failure to make payment under this Agreement, Contractor may, in its sole discretion, take any or all actions set forth in Section 2(d). (b) Effect of Termination. If the Agreement is terminated for any reason other than Contractor's material breach, Customer shall pay Contractor any unpaid Fees in accordance with the applicable SOW. All Fees shall be due and payable within thirty (30) days after the effective date of termination of the applicable SOW.

Contractor's Responsibilities. All work shall be completed in workmanlike manner in accordance with standard snow & ice maintenance practices.

Customer's Responsibilities. Customer will permit adequate access to the Property as required to perform the Services in a timely, safe and efficient manner. For any and all actual or alleged incidents resulting in potential or apparent injury or damage, Customer shall promptly notify Contractor and assist in obtaining details and information required by Contractor. Customer agrees that if Customer fails to so promptly notify and assist Contractor, Customer shall indemnify, defend, and hold harmless Contractor, for any and all damages or injuries to persons or property or claims, actions, obligations, liabilities, costs, expenses and fees arising from any such incident.

Representations, Warranties, and Disclaimers. (a) Contractor represents and warrants that it has all right, title and authority necessary to perform the Services and carry out its responsibilities under this Agreement and each SOW, as applicable. Customer represents and warrants that it has all right, title and authority (including, but not limited to permits and consents) necessary to engage Contractor to perform Services at the Property, and that the Services set forth in the applicable SOW are permitted by all applicable laws. (b) Customer acknowledges that snow and ice are part of wintertime life in this area. Customer acknowledges that storms which bring snow, rain, sleet, or ice, coupled with changing temperature conditions, can create dangerous and hazardous conditions which can occur suddenly, frequently and without warning, and that such conditions are difficult to prevent and/or correct. Customer is aware of the risks associated with traversing across driveways, walkways or parking lots affected by winter weather conditions. Customer acknowledges that Contractor shall not be responsible, and to the maximum extent permitted under the applicable state law hereby waives any claims against Contractor, for personal injury of any kind resulting from natural accumulations or unnatural accumulations created by the actions of Customer or other third parties. (c) Customer represents and warrants that each person designated on the SOW as a Primary Contact is authorized to provide, modify, and approve, on Customer's behalf, work directions, and sign, modify or terminate SOW. Customer understands and agrees that Contractor shall be permitted to act upon the directions and apparent authority of each Primary Contact, unless and until Contractor receives written notice from Customer that a Primary Contact is no longer authorized to act on Customer's behalf, or that such Primary Contact's authority is limited. (d) Contractor will use commercially reasonable efforts to complete Services in the time frame set forth in the SOW. Contractor shall not be responsible for any delay that is due to weather conditions or other events beyond Contractor's control. (e) Unless otherwise stated in the applicable SOW, following completion of the work by Contractor, the proper maintenance of the site shall be the obligation of the Customer. (f) To the extent made part of the Commitment, Contractor may apply certain chemicals/products ("Treatment") to road surfaces, driveways, and sidewalks. Customer represents and agrees that the Treatment is appropriate for the respective surfaces and shall hold Contractor harmless from any damages caused by the application of the Treatment to the respective surfaces and surrounding areas, including vegetation. It is Customer's responsibility to install fencing or implement other measures to reduce chemical damage to vegetation. (g) EXCEPT AS EXPRESSLY PROVIDED IN THE AGREEMENT, AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, NEITHER PARTY (INCLUDING PARTY'S REPRESENTATIVES) MAKES ANY WARRANTIES TO THE OTHER PARTY, AND EACH PARTY DISCLAIMS ANY AND ALL WARRANTIES, ORAL OR WRITTEN, EXPRESS, IMPLIED OR STATUTORY, WITH RESPECT TO ITS PERFORMANCE UNDER THIS AGREEMENT, FITNESS FOR A PARTICULAR PURPOSE, AND IMPLIED WARRANTIES ARISING FROM ANY COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE IN TRADE.

Gas and Oil Price Escalation. Contractor's proposal is based on the average daily price for diesel/gasoline not exceeding \$5.00 per gallon as determined by the Department of Energy ("DOE") National Mid-West Average Price of Diesel. If the price of fuel for diesel or gasoline increases to more than \$5.00 per gallon, the Fees shall automatically increase by an additional three percent (3%) going forward until the average drops below \$5.00 per gallon.

General.

Assignment. Neither party may assign this Agreement without the other party's prior written consent; provided, however, that no consent shall be required to assign this Agreement to an affiliate of Contractor, or pursuant to a merger, sale of assets or equity, consolidation, change of control or similar event. Any assignment in contravention of this Section shall be null and void. Subject to the foregoing, this Agreement shall be binding upon the parties' respective successors and assigns.

Independent Contractor. Contractor shall perform Services as an independent contractor and not as an employee of the Customer.

Law and Jurisdiction; Waiver of Trial by Jury. This Agreement shall be governed by, and construed according to, the laws of the state of Illinois, without regard to conflicts of laws principles. Each party hereby submits itself for the sole purpose of this Agreement and any controversy arising hereunder to the exclusive jurisdiction of the state or federal courts in the County of _____, State of Utah, and waives any objection (on the ground of lack of jurisdiction or *forum non conveniens*, or otherwise) to the exercise of such jurisdiction. **THE PARTIES AGREE THAT THEY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY CLAIM OR PROCEEDING (WHETHER BASED IN CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT.**

Notices. Unless otherwise stated, all notices required under this Agreement shall be in writing and shall be considered given (i) when delivered personally; (ii) upon receipt or refusal of delivery, when sent via a commercial courier that provides proof of delivery, fees prepaid, or (iii) via electronic delivery, receipt of which has been confirmed by electronic mail from the receiving party. All communications shall be addressed to the parties at their addresses as set forth in the SOW, unless such party has given notice to the other party in accordance with this Section of a change of address.

Force Majeure. Neither party shall be liable or be in breach of the Agreement (excluding in relation to the Customer's payment obligations) if the failure to perform the obligation is due to an event beyond its control, including, but not limited to, natural disaster or weather event, fire, explosions, physical access limitations, rules, regulations and restrictions imposed by any government or governmental agency (including, without limitation, water conservation regulations or guidelines), war, riot, insurrection, epidemic, strikes or labor action, or terrorism.

Severability. If any part of this Agreement is found illegal or unenforceable, such provision shall be deemed restated, in accordance with applicable law, to reflect as nearly as possible the original intention of the parties, and the remainder of the Agreement shall continue in full force and effect.

Indemnification. Each party (the "Indemnifying Party") agrees to indemnify, defend, save and hold harmless the other party (the "Indemnified Party"), its offices, agents and employees, from all claims by third parties arising out of the performance of the Services; provided however, that such damages are the direct result of the Indemnifying Party's actions and not due to the Indemnified Party's fault, in whole or in part.

Limitation of Liability. (i) IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR FOR LOST REVENUE, LOSS OF PROFITS, SAVINGS, OR OTHER ECONOMIC LOSS ARISING OUT OF OR IN

CONNECTION WITH THIS AGREEMENT, ANY SCOPE OF WORK OR ANY SERVICES PERFORMED OR DELIVERABLES PROVIDED HEREUNDER, OR FOR ANY DAMAGES CAUSED BY DELAY, RESTRICTION, SUSPENSION, OR TERMINATION OF SERVICES UNDER THIS AGREEMENT OR ANY SCOPE OF WORK, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, WHETHER OR NOT THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. (ii) Each party's aggregate liability to the other for damages with respect to any and all claims concerning the Services, or any other matter covered by this Agreement, regardless of the form of action, shall be limited to the amount of the aggrieved party's actual direct damages not to exceed the amount paid by Customer to Contractor under an applicable SOW in the six (6) month period immediately preceding the first event giving rise to such liability. The limitations in this Section shall not apply with respect to the liability for amounts due from Customer for non-payment of the Fees to Contractor and interest due on such amounts; or the liability for the costs of products and materials, if any, provided to Customer under this Agreement. (iii) Unless directly caused by gross negligence of the Contractor, in no event shall Contractor be responsible or liable for damage to landscaping caused by the piling of snow; damage to items that are snow-covered or not visible; damage caused by equipment when tree, shrub and sidewalk areas are not reasonably delineated; personal injuries resulting from slip and fall accidents; or damages or injuries resulting from any services not specified or agreed upon in the Agreement. (iv) In no event shall Contractor be responsible or liable for any damages or injuries caused by the event beyond Contractor's Control, including without limitations the events listed in Section 15(e).

Entire Agreement; Modification and Waiver. This Snow & Ice Management Services Agreement together with any applicable SOW, constitute the entire agreement ("Agreement") with respect to the services provided by Contractor to Customer, and supersedes all prior agreements (both written and oral), with respect to such services. Unless otherwise expressly permitted in the Agreement, this Agreement may only be modified, or any rights under it waived, by a written document executed by both parties.

Conflicting Terms. If there is a conflict between the terms of the Snow & Ice Management Services Agreement and a SOW, the SOW shall control.

Survival. The terms and conditions of any section reasonably expected to survive termination or expiration of the Agreement, including but not limited to the following sections: Fees and Payment, Indemnification, Limitation of Liability, and General, shall survive the expiration or termination of this Agreement.

Weather Data. (a) Snowfall Totals (regarding seasonal priced contracts.) Snowfall totals will be determined by a Certified Consulting Meteorologist. The information will come from the closest reporting city, within 7 miles of the contracted facility. (b) Snowfall Totals (regarding per occurrence priced contracts). It is understood that the amounts of snow can be different in even nearby areas, so Contractor's field personnel is authorized to make decisions of service based on conditions on site. It is understood and agreed that these decisions may not always match weather data, which is not available until after services are needed, therefore, services may not always match.

Snow Removal Services

Parking Per Push

Items	Quantity	Unit	Price/Unit	Price
Truck Service (Push)	1.00	Ea	\$300.00	\$300.00
Salt (Per Lb)	1.00	Lb	\$0.30	\$0.30
Ice Melt (Per Lb)	1.00	Lb	\$0.40	\$0.40

Site Check/No Service	1.00	Ea	\$0.00	\$0.00
			Parking Per Push :	\$0.00

Sidewalk Service

Items	Quantity	Unit	Price/Unit	Price
Sidewalk Service (Push)	1.00	Ea	\$280.00	\$280.00
Ice Melt (Per Lb)	1.00	Lb	\$0.40	\$0.40
Site Check/No Service	1.00	Ea	\$0.00	\$0.00
Sidewalk Service:				\$0.00
PROJECT TOTAL:				\$0.00

Optional Services

Initial next to the Optional Services you would like to accept.

<input type="checkbox"/> Mapping and Staking (Per Hr)	\$104.00
<input type="checkbox"/> Warranty 5% on invoice total	\$0.00
<input type="checkbox"/> Service Level	\$0.00
<input type="checkbox"/> Billing Contact Name	\$0.00
<input type="checkbox"/> Billing Contact Email	\$0.00

Terms & Conditions

PER SERVICE

Snow Removal Parking Lot- Per Push

** Snow plowing to be provided per service to parking lot every 2-4 inches as well as after storm cleanups.

Snow Removal Sidewalks- Per Push

** Snow plowing to be provided per service to sidewalks every 2-4 inches as well as after storm cleanups.

Shovel Service

** Clearing sidewalks/cleanup/de-icing per man hour.

ATV Service

** Snow plowing/cleanup/de-icing of sidewalks with use of ATV with snow blade.

AS NEEDED SERVICES

Salt

** Salt application to parking lot areas with a \$85.00 minimum application per visit. (this price does not include replacement of plant and sod damage.) Labor not included.

Ice Melt

** Ice melt application to sidewalks and concrete areas with a \$50.00 minimum application per visit. (this price does not include replacement of plant and sod damage.) Labor not included.

Snow Hauling

** Snow removal from property with 16 yard semi truck and/or wheel loader.

Mapping and Staking

** Map property with approved areas for snow stacking. Stake corners and curbs for better visibility in winter to avoid curb damage. (Opting out of mapping will void warranty.) Stakes billed separately.

Warranty

** Warranty is a guarantee free replacement of any damage to curbs due to plows (after mapping has taken place) and/or loss of plants or sod due to salt and ice melt. It does not include repair of normal wear and tear on property.

By _____

By _____

Date 9/18/2024

Date

UT Commercial Snow

HighMark Charter