



2380 Grandview Rd. | Ferndale, WA 98248
 Office: (360)366-3303 | Cell: (360)410-7389 | Fax: (360)366-3304
 LICENSE #WESTERS101JS

**CONTRACT AGREEMENT
 WASHINGTON**


August 22, 2024

Contracting Party:

Location & Project Name:

City of Lynden	Paving: Jim K trail Depot Rd-Bender Rd
Phone: 360 961 2277 (Brent DeRuyter)	Email: deruyterb@lyndenwa.org

APPROXIMATE QUANTITY	UNIT OF MEASURE	DESCRIPTION	UNIT PRICE	TOTAL PRICE
24,780	Sq ft	-Grind and pulverize existing asphalt walking trail		
		-Excavate and remove worst of tree damaged areas		
		-Saw cut and remove broken shoulder in multiple places		
		-Apply tack coat (glue)		
		-Pre-level excavation areas		
		-Pave asphalt overlay @ 2" compacted		
		-Seal joints	\$5.33/ sq ft	
		will cut and remove tree roots on areas that are heaving and do root management on roots that get exposed during prep process		

APPROXIMATE TOTAL:	\$132,041.00
 <small>A 2.5% convenience fee will apply on all credit card payments</small>	
<small>(Plus sales tax where applicable) Total price to be based on actual quantity or measurement unless otherwise specified.</small>	

Exclusions Include: Curbing, utility patching, utility adjustments, testing, saw cutting, striping, and engineering.

Notes:	
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WRS' proposed prices herein assume that WRS' work hereunder will be complete on or before:
 Unless Contracting Party has signed and returned this agreement within thirty (30) calendar days of the date first stated above, WRS' proposal shall be null and void. This proposal is subject to the General Conditions on Page 2.

Contracting Party's signature on one copy returned to WRS will render this a legal contract for the performance of the above work. Contracting Party's signature also acknowledges receipt of WRS' Notice to Customer statement attached as Page 3.

Approved by Contracting Party:

Western Refinery Services, Inc.

By:

By: *Joel Nunnikhoven*

Date:

Cell | 360-410-7389 | Estimator

Joel Nunnikhoven | Email | joeln@wrsweb.com

GENERAL PROVISIONS

1. **DEFINITIONS.** As used herein, (i) "Contractor" shall mean Western Refinery Services, Inc., or any division thereof; (ii) "Contracting Party" shall mean the person or entity purchasing materials and/or services as set forth on the front page hereof and pursuant to these General Provisions; and (iii) "Agreement" shall mean the contract formed between Contractor and Contracting Party by Contracting Party's acceptance of those terms and conditions set forth on the front page hereof and these General Provisions.
2. **ACCEPTANCE.** Unless Contracting Party has signed and returned this Agreement to Contractor within thirty (30) calendar days of the date first stated on the front page hereof, Contractor's proposal shall be null and void. Any revisions, changes, or modifications made or suggested to the proposal, or in other writing issued by Contracting Party for purposes of accepting the proposal set forth herein, shall be null and void and shall not become a part of the Agreement unless agreed upon in writing by Contractor and Contracting Party.
3. **COST ESCALATION FOR ASPHALT.** Contractor's proposal herein is based upon local vendor posted prices for liquid asphalt as of the date of Contractor's proposal. In the event the actual prices at time the work is performed exceed such posted prices, the Contract Price shall be equitably adjusted by a change order to reflect such increase. Contractor reserves the right to terminate this Agreement if an equitable adjustment cannot be agreed upon by Contracting Party and Contractor. Payment for any such adjustment shall be made in accordance with the terms and conditions of this Agreement.
4. **CREDIT VERIFICATION.** This Agreement is subject to Contractor's verification of Contracting Party's credit and Contractor's determination that such credit is adequate or satisfactory to Contractor. Contractor reserves the right to withdraw its proposal should Contractor reasonably determine that such credit verification is unsatisfactory or inadequate.
5. **TERMS OF PAYMENT.** Unless otherwise provided for herein, payment shall be due to Contractor within ten (10) days of the date of any invoice issued by Contractor to Contracting Party. Interest shall accrue on all overdue invoices at the rate of one and a half percent (1.5%) per month (eighteen percent (18.00%) per annum) or the highest rate allowed by law, whichever is lower.
6. **SCHEDULE.** This Agreement is subject to Contractor's review and approval of the Contracting Party's schedule. Contracting Party shall coordinate with any other contractors and subcontractors' work to prevent any delay or interference with Contractor's work.
7. **CHANGES.** Contracting Party may, without invalidating this Contract, order extra work, orally or in writing, or make changes by altering, adding to, or deducting from the work, and the Contract Price and Contract Time shall be adjusted accordingly. All such work shall be executed under the conditions hereof. Contractor may require a written change order prior to proceeding with the work, or may proceed with the work and thereafter prepare a change order documenting the change in the Contract Price or Contract Time. If additional work has been accepted by Contracting Party, payment shall be made to Contractor with the next regular payment as provided herein. In case of any dispute over the adjustment of the Contract Price or Contract Time, Contractor shall proceed with the Work so long as the Contracting Party timely pays Contractor all undisputed amounts, plus fifty percent (50%) of the disputed amount, and provides a detailed written explanation of the reason for the dispute, and as such, the dispute shall be resolved in accordance with the procedures set forth herein.
8. **PROPERTY LINES.** Contracting Party warrants that Contracting Party knows the actual location of all legal property lines and that, prior to commencement of work hereunder, Contracting Party shall place stakes clearly indicating such property lines.
9. **PERMITS.** Any permits that must be secured prior to commencement of the work hereunder shall be secured and paid for by Contracting Party.
10. **DELAYS.** If Contractor is delayed at any time in the commencement or progress of the work by: Contracting Party, any employee or agent of Contracting Party, any separate contractor employed by Contracting Party, changes ordered in the work by Contracting Party, labor disputes, fire, abnormal adverse weather conditions, force majeure, unusual delay in transportation or materials, labor shortages or unavailability, action or inaction of public authorities not arising out of fault of Contractor, casualties, or any other causes beyond Contractor's reasonable control, then the Contract Time shall be extended and the Contract Price shall be increased by change order for a period of time and in an amount reasonably necessary to alleviate the effect of such events on Contractor. Contractor reserves the right to terminate this Agreement if an equitable adjustment cannot be agreed upon by Contracting Party and Contractor. Payment for any such adjustment shall be made in accordance with the terms and conditions of this Agreement.
11. **HAZARDOUS SUBSTANCES.** Contracting Party agrees to indemnify, defend, and hold harmless Contractor and its employees and subcontractors from liability related to the existence of hazardous substances at the project site, unless such liability results directly from hazardous substances brought on to the project site by Contractor or its subcontractors, or arises out of the negligence or wrongful act of Contractor or its subcontractors. If Contractor encounters a substance on the project site which Contractor believes is a hazardous substance, Contractor shall immediately notify Contracting Party and shall cease work, in whole or in part, and any delays (and costs arising therefrom) shall be Contracting Party's responsibility.
12. **TERMINATION FOR CAUSE.** In the event that Contracting Party fails to timely pay for the work, Contractor shall be entitled to exercise any remedy provided by law or this Agreement, including, without limitation (i) cessation of further work until payment has been made and Contractor Party provides adequate assurances of future performance; (ii) termination of this Agreement; (iii) a lawsuit for monies

owed; and (iv) foreclosure of a lien against the property on which the work was performed. All of these remedies shall be cumulative and in addition to any other remedies provided by law or equity. If the Contractor defaults, or neglects to carry out the work in accordance with this Agreement, Contracting Party shall provide thirty (30) working days' written notice of the default with an opportunity to cure. If Contractor fails to timely correct said default, or fails to commence and continue correction of such default with diligence and promptness, Contracting Party may terminate this Agreement in writing.

13. **INDEMNITY.** Contractor shall indemnify and hold harmless Contracting Party from and against claims, damages, losses, and expenses, including, but not limited to, attorneys' fees, arising out of or resulting from the performance of the work hereunder; provided, however, that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, but only to the extent caused by negligent acts or omissions of Contractor, a subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable. Contracting Party shall indemnify and hold harmless Contractor from and against claims, damages, losses, and expenses, including, but not limited to attorneys' fees, to the extent caused by negligent acts or omissions of Contracting Party or anyone directly or indirectly employed by it, or anyone for whose acts it may be liable.

14. **WARRANTIES.** The Contractor warrants to the Contracting Party that materials furnished under the Agreement will be of good quality and new (unless otherwise required or permitted by the Agreement), that the work will be free from defects not inherent in the quality required or permitted, and that the work will conform to the requirements of the Agreement. This warranty shall extend for a period of one (1) year from the date of substantial completion of the work or the use of the project by the Contracting Party, whichever occurs first. Except as otherwise provided herein, Contractor makes no warranties or representations of any kind, express or implied (including no warranty of merchantability or fitness for a particular purpose), and none shall be implied by law. The warranty shall not apply to any damage or loss to the work occasioned by Contracting Party's failure to perform ordinary and reasonable maintenance during the warranty period and/or any written notice of defects received after the one (1)-year period. Contracting Party agrees that oral agreements, statements, and representations made by Contractor and its employees or agents shall not constitute a warranty of any kind.

15. **TIME LIMITATIONS ON CLAIMS.** Any actions arising out of or related to Contractor's performance of the work, including any action arising under the Agreement, must be commenced with one (1) year after substantial completion of Contractor's work hereunder, and no such action may be maintained which is not commenced within such one (1)-year period.

16. **LIMITATION OF LIABILITY.** Contractor's sole liability and Contracting Party's sole and exclusive remedy for any and all damages (whether special, direct, incidental, consequential, or other) sustained by Contracting Party or others arising from Contractor's performance of the Agreement shall be limited to correcting defective work. In no event shall Contractor be liable to Contracting Party or any third party for more than the amount of Contractor's proposal, or for any delay damages or other consequential damages of any kind or nature. Under no circumstances shall Contractor be liable for (i) damage to or breakage of underground pipes, conduits, or utilities; (ii) damage to approaches (including sidewalks) from the street to the property line; (iii) damage to the completed pavement surface due to the action of petroleum-product spillage; (iv) subgrade failure or utility ditch failure; or (v) growth of horsetail weeds, morning glories, deep-rooted ferns, or perennials subsequent to the application of soil sterilization (weed killer) that have not reached maturity prior to such application. Any soil sterilization provided for in the Agreement shall be applied at the rate specified by the manufacturer thereof. Notwithstanding any other provision of this Agreement, Contractor shall not be liable to Contracting Party for any consequential damages incurred due to the fault of Contractor, its agents, employees, or subcontractors. Consequential damages include, but are not limited to, loss of use and loss of profit.

17. **ARBITRATION/ATTORNEYS' FEES.** At the Contractor's sole option, all claims, disputes, and other matters in question between Contractor and Contracting Party arising out of or relating to this Agreement shall be decided by arbitration before a single arbitrator in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect, or by an arbitrator mutually agreed upon by the parties. If Contractor elects to arbitrate any such dispute, Contractor and Contracting Party agree to be bound by the findings and award of such arbitration finally and without recourse to any court of law other than for the enforcement of the arbitrator's decision. If the Contractor does not select Arbitration as the means of dispute resolution, all claims, disputes, and other matters in question between Contractor and Contracting Party arising out of, or relating to, this Agreement shall be decided by an action filed exclusively in the Superior Court of Whatcom County, Washington, regardless of where the Project was located. The substantially prevailing party in any arbitration or litigation shall be entitled to an award of its attorneys' fees, costs, and expert fees incurred. The parties expressly waive their rights to a jury trial.

18. **GOVERNING LAW.** This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

19. **SEVERABILITY.** In the event that any paragraph, part, term, or condition of this Agreement is construed or held to be void, invalid, or unenforceable by an arbitrator or court of competent jurisdiction, the remaining paragraphs, parts, terms and conditions of the Agreement shall not be affected and shall remain in full force and effect.

20. **VOLUNTARY CONTRACT.** Each of the parties to this Agreement has carefully and fully read and understands the terms and conditions hereof, has had full opportunity to consult with legal counsel regarding its meaning and effect, and is entering into this Agreement freely and voluntarily through a representative who is fully authorized and empowered to sign on its behalf.

21. **ENTIRE AGREEMENT.** Contracting Party and Contractor intend that the proposal, those terms and conditions on the front of the page hereof, these General Provisions shall constitute the final, complete, and exclusive Agreement between the parties. This Agreement supersedes all other prior or contemporaneous agreements, representations, understandings, and promises, oral and/or written, by or between the parties, with respect to the subject matter hereof. Contracting Party further acknowledges and agrees that in entering into this Agreement, Contracting Party has not and is not relying upon any

contemporaneous agreements, representations, understandings, and promises, oral and/or written, made by Contractor. No course of dealings between the parties shall be relevant or admissible to explain, supplement, or vary the terms of this Agreement. No amendment or modification of this Agreement shall be effective or binding upon the parties unless made in writing and executed by Contracting Party and Contractor.

State of Washington
NOTICE TO CUSTOMER

This Contractor is registered with the State of Washington, Registration No. WESTERS101JS, and has posted with the state a bond or deposit of Twelve Thousand Dollars (\$12,000.00) for the purpose of satisfying claims against the Contractor for breach of Contract, including negligent or improper work in the conduct of the contractor's business. The expiration date of this Contractor's Registration is 01/25/2025.

THIS BOND OR DEPOSIT MIGHT NOT BE SUFFICIENT TO COVER A CLAIM THAT MIGHT ARISE FROM THE WORK DONE UNDER YOUR CONTRACT.

This bond or deposit is not for your exclusive use because it covers all work performed by this Contractor. The bond or deposit is intended to pay valid claims up to Twelve Thousand Dollars (\$12,000.00) that you and other customers, suppliers, subcontractors, or taxing authorities may have.

FOR GREATER PROTECTION, YOU MAY WITHHOLD A PERCENTAGE OF YOUR CONTRACT.

You may withhold a contractually defined percentage of your construction Contract as retainage for a stated period of time to provide protection to you and help insure that your project will be completed as required by your Contract.

YOUR PROPERTY MAY BE LIENED.

If a supplier of materials used in your construction project, or an employee or subcontractor of your Contractor or subcontractors, is not paid, your property may be liened to force payment and you could pay twice for the same work.

FOR ADDITIONAL PROTECTION, YOU MAY REQUEST THE CONTRACTOR TO PROVIDE YOU WITH ORIGINAL "LIEN RELEASE" DOCUMENTS FROM EACH SUPPLIER OR SUBCONTRACTOR ON YOUR PROJECT.

The Contractor is required to provide you with further information about lien release documents if you request it. General information is also available from the Washington State's Department of Labor and Industries. I have received a copy of this disclosure statement.

(Signature of Customer)

