December 12, 2018

TO: TruGreen Commercial
3950 Laura Alice Way
Concord, CA 94520

CONSTRUCTION MANAGERS

CONTRACTORS

BUILDERS

Subject: **San Leandro Unified School District - SLHS Natural Turf Baseball Field**
San Leandro High School
2200 Bancroft Ave. San Leandro, CA 94577

Enclosed please find one copy of the subject PO/Contract. Please follow the instructions in this letter as carefully and completely as possible.

The PO/Contracts, Insurance Certificates and W-9's shall be returned to:

Bond Office
C/O San Leandro Unified School District
1145 Aladdin Ave., San Leandro, CA 94577
Attention: Renee Robles OR Email @ Rrobles@slusd.us

Not later than Wednesday December 19, 2018

I. PO/CONTRACT

A. CONTRACT AMOUNT:

1. Your contract amount is based on the following bid award:

Base Bid $11,350.00

B. IF YOU ARE A CORPORATION:

1. Have the Agreement signed by two officers, one from each of the two following groups:

a. The Chairman of the Board, the President, or any Vice President.

b. The Secretary, the Assistant Secretary, the Chief Financial Officer, or an Assistant Treasurer.

2. Have the "Acknowledgement" on each copy completed by a Notary Public.

3. Affix the corporate seal.

4. Return copy to the address given on Page One (1) of this letter. You will receive a fully executed copy for your files, together with the Notice to Proceed.

RGM and ASSOCIATES
3230 Monument Way
Concord, CA 94518

Phone: 925-671-7717
Fax: 925-671-7788

C. IF YOU ARE <u>NOT</u> A CORPORATION:

1. All copies must be signed by:

a. Owner of the Business, if a sole proprietorship;

b. Or if a partnership, all partners must sign under the partnership name.

2. Have the "Acknowledgement" on each copy completed by a Notary Public.

3. Return to the address given on Page One (1) of this letter. You will receive a fully executed copy for your file, together with the Notice to Proceed.

II. INSURANCE

A. Please see Exhibit "A".

III. INVOICE

A. Direct all invoices to:

Bond Office
C/O San Leandro Unified School District
13701 Bancroft Ave San Leandro, CA 94578
Attention: Renee Robles OR Email @ Rrobles@slusd.us

Please return the contracts together with the required insurance certificates no later than**, Wednesday December 19, 2018.**

We appreciate your careful and complete compliance with our instructions.

Sincerely,

Ridge Greene
RGM and Associates

Enclosures: Instruction Letter and PO/Contract
Exhibit A – "Terms and Conditions"
Exhibit B – "Certificate Regarding Workers' Compensation"
Exhibit C – "Notice to Contractors Regarding Criminal Record Checks"
Exhibit D – "Asbestos and Other Hazardous Materials Certification"
Exhibit E – "Scope of Work"

Exhibit "A"

This attachment amends the District's Purchase Order Terms and Conditions for small contract purposes and/or for services, e.g., installation, incidental to a purchase. The Additional Terms and Conditions are as follows:

1. **Time for Completion.** Seller/Contractor shall complete the work described in the District's Purchase Order, to the District's satisfaction and for the price stated therein, by _____.

2. **Seller's/Contractor's Invoices.** Invoices shall be prepared and submitted in duplicate unless otherwise specified. Invoices shall contain: purchase order number and date, descriptions of items, sizes, quantities, unit prices, extended total, place and date of delivery. Invoices or vouchers not on printed bill heads shall be signed by the vendor or person furnishing the supplies or services. Every invoice shall be properly itemized.

3. **Changes.** No change or modification in terms, quantities, or specification may be made without express authorization from the Purchasing Office. This will be followed by a written change order. No other department/schools, officer, or employee may authorize changes.

4. **Rules and Regulations.** All work and materials shall be in full accordance with the latest rules and regulations of the Safety Orders of the Division of Industrial Safety, current OSHA requirements, the National Electric Code, the Uniform Plumbing Code published by the Western Plumbing Officials Association, and all other applicable State laws or regulations. The Seller/Contractor and Subcontractors shall comply with Sections 6360 et seq. of Labor Code, together with Title 22 with regard to hazardous substances in the workplace. The Seller/Contractor and each Subcontractor shall supply to their employees and, where site is occupied, to District, copies of Material Safety Data Sheets (MSDS) for hazardous substances that may be used in the course of the Work, together with notice of actual hazardous substances to which employees may be exposed while performing work and appropriate protective measures.

5. **Safety / Inspection:** The Contractor shall at all times maintain proper facilities and provide safe access for inspection by the District to all part of the work, and to the shops wherein the work is in preparation. Where the specifications require work to be specially tested or approved, it shall not be tested or covered up without timely notice to the Superintendent, or his representative, of its readiness for inspection, and without the approval thereof, or consent thereto by the latter. Should any such work be covered up without such notice, approval or consent, it must, if required by the Superintendent, or his representative, be uncovered for examination at the Contractor's expense.

6. **Protection of Work and Property:** Contractor shall erect and properly maintain at all times, as required by conditions and progress of the Work, all necessary safeguards, signs, barriers, lights, and security persons for protection of workers and the public and shall post danger signs warning against hazards created by the Work. In an emergency affecting life and safety of life or of Work or of adjoining property, Contractor, without special instruction or authorization from District, is permitted to act at his discretion to prevent such threatened loss or injury.

7. **Agreement Authority.** It is understood that the aforementioned terms and conditions are the complete and exclusive statement of the agreement between the parties, which supersedes all proposals or prior agreements, oral or written, and all other communications between the parties relating to the subject matter hereof.

8. **Prevailing Wages.** For all public works contracts in excess of $1,000.00 contractor shall pay prevailing wages in accordance with Labor Code Sections 1770 to 1777 inclusive.

9. **Hold Harmless.** Seller/Contractor shall indemnify, defend with counsel acceptable to District, and hold harmless to the full extent permitted by law, District and its Board of Trustees, officers, agents, employees and volunteers from and against any and all liability, loss, damage, claims, expenses and costs (including, without limitation, attorney fees and costs and fees of litigation) (collectively, "Liability") of every nature arising out of or in connection with Seller's/Contractor's performance of the project or its failure to comply with any of its obligations contained in these contract documents, except such Liability caused by the active negligence, sole negligence or willful misconduct of the District. Such indemnification shall extend to all claims, demands, or liabilities occurring after completion of the project as well as during the progress of the work. Pursuant to Public Contract Code Section 9201, if applicable, District shall timely notify Seller/Contractor of receipt of any third-party claim relating to this Agreement.

10. **Insurance.** Without limiting Contractor's indemnification duties, it is agreed that Contractor shall maintain in force at all time during the performance of the contract the policies of insurance hereinafter described:

    a. Seller/Contractor shall obtain public liability and workers compensation insurance in an amount acceptable to District with company or companies licensed to do business in the State of California and acceptable to District.

    b. Neither Contractor/Subcontractor shall commence work under Contract until all insurance requirements have been provided and approved by the District. Evidence of insurance in the form of a Certificate of Insurances naming the District, Consultants and their officers and their employees, as additional insured, shall be provided prior to commencement of work.

    c. Written notification by the carrier to the District at least thirty (30) days prior to reduction, cancellation, failure to renew, or other termination, is required. Insurance afforded under the Contractor's policy shall be primary and any insurance maintained by the District shall apply, if required by law, in excess of, and not contributory with, insurance required under the terms of this Agreement. All insurance shall be carried with financially responsible insurance companies, licensed in the State of California and approved by the District, and shall be kept in force until the Contractor's work is accepted by the District.

    d. Contractor will, at its own expense, maintain coverage's in conformance with these requirements. Certificates of insurance evidence the existence of coverage shall be filed with the District prior to commencement of work and no later than ten (10) calendar days after the notice of award date.

    e. Contractors shall be responsible for the project from the date that work commences until final acceptance of the Project by the District. Therefore, Contractor, not the District, shall assume all risks for death, personal injury, or property damage from all causes, including but not limited to, vandalism or other "Acts of God." Contractor shall not, however, be responsible for any death, injury or property damage caused solely by the District. Contractor may purchase, at Contractor's sole expense, any insurance policies desired to cover this risk.

f. Worker's Compensation

i. State: Statutory Amount (minimum)	$1,000,000.00
ii. Employer's Liability: Statutory Amount (minimum)	$1,000,000.00

g. General Liability

iii. Bodily Injury (each occurrence)	$1,000,000.00
iv. Property Damages (each occurrence)	$1,000,000.00
v. Product and Completed Insurance (aggregate)	$2,000,000.00

h. Contractual Liability

vi. Bodily Injury (each occurrence)	$1,000,000.00
vii. Property Damages (each occurrence)	$1,000,000.00
viii. Product and Completed Insurance (aggregate)	$1,000,000.00

i. If the General Liability policy includes a General Aggregate, such General Aggregate shall be no less than $2,000,000.00

j. Any deductibles or self-insured retentions must be declared to and approved by the District. At the option of the District, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the District, its officers, officials, employees and volunteers; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses. Either option shall be implemented at the Contractor's expense.

11. **Licenses and Permits.** The Contractor shall, at his own expense, obtain all necessary permits and licenses, easements, etc., for the construction of the project, give all necessary notices, pay all fees required by law, and comply with all laws, ordinances, rules and regulations relating to the work and the preservation of the public health and safety. The Contractor shall pay for all taxes on materials and equipment's. The District is exempt from Federal Excise Tax and Contractor shall not pay such tax on any item under this Contract.

12. **Termination.** District shall have the right in its sole discretion to terminate the Contract for its own convenience. Termination shall have no effect upon any of the rights and obligations of the parties arising out of any transaction occurring prior to the effective date of termination.

13. **No Discrimination.** It is the policy of the District that in connection with all work performed under contracts, there will be no discrimination against any prospective or active employee engaged in the work because of race, color, ancestry, national origin, religious creed, sex, as or marital status. The Seller/Contractor agrees to comply with applicable Federal and California laws, including but not limited to, the California Fair Employment Practice Act, beginning with Government Code Section 12900 and Labor Code Sections 1735, 1777.5, 1777.6, and 3077.5. In addition, the Contractor agrees to require like compliance by any subcontractors employed on the work.

14. **Contractor's License.** Contractors are required by law to be licensed and regulated by the Contractors State License Board. Any questions concerning a contractor may be referred to the Registrar, Contractors State License Board, P.O. Box 26000, Sacramento, California 95826.

15. **Miscellaneous Provisions.**

a. Every provision of law and clause required by law to be inserted in this Contract shall be deemed to be inserted, and this Contract shall be read and enforced as though it were included, and if through mistake or otherwise any other provision is not inserted or is not correctly inserted, upon application of either party the contract shall be amended to make the insertion or correction. All references to statutes and regulations shall include all amendments, replacements, and enactments on the subject which are in effect as of the date of this Contract, and any later changes which do not materially and substantially alter the positions of the parties.

b. This Contract shall be construed, and its performance enforced under California law. Venue shall be in the Superior Court of the State of California in the county in which District is located.

c. The District's failure to enforce any provisions of this Contract or the waiver of any provisions in a particular instance shall not be construed as a general waiver of any part of such provision.

d. The parties do not intend, by any provision of this Contract, to create in any third part any benefit or right owed by one party to the other party.

e. If any term or portion of this Contract is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Contract shall continue in full force and effect.

f. The headings of the sections and any exhibits to this agreement are inserted for convenience only, and do not constitute a part of this agreement, and are not to be used in its construction.

IN WITNESS WHEROF, this agreement is hereby executed by the parties or their duly authorized representatives and effective on April 11, 2018.

SELLER/CONTRACTOR	DISTRICT
TruGreen Commercial	**San Leandro Unified School District**
By: _____	By: _____
[Name/Title]	[Name/Title]

_____
Contractor's License #

Exhibit "B"

CERTIFICATE REGARDING WORKERS' COMPENSATION

Labor Code Section 3700 in relevant part provides:

> "Every employer except the State shall secure the payment
> Of compensation in one or more of the following ways:
>
> (a) By being insured against liability to pay compensation in one or more insurers duly authorized to write compensation insurance in this State.
>
> (b) Be securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof of satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his employees."

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with such provisions before commencing the performance of the work of this Contract.

_____
Contractor

By: _____

(In accordance with Article 5 [commencing at Section 1860], Chapter 1, Part 7, Division 2 of the Labor Code, the above certificate must be signed and filed with the awarding body prior to performing any work under this Contract.)

Exhibit "C"

NOTICE TO CONTRACTORS REGARDING CRIMINAL RECORD CHECKS
(EDUCATION CODE SECTION 45125.1)

Education Code section 45125.1 provides that if the employees of any entity that has a contract with a school district may have any contact with pupils, those employees shall submit or have submitted their fingerprints in a manner authorized by the Department of Justice together with a fee determined by the Department of Justice to be sufficient to reimburse the Department for its costs incurred in processing the application.

The Department of Justice shall ascertain whether the individual whose fingerprints were submitted to it has been arrested or convicted of any crime insofar as that fact can be ascertained from information available to the Department When the Department of Justice ascertains that an individual whose fingerprints were submitted to it has a pending criminal proceeding for a violent felony listed in Penal Code section 667.5(c), or a serious felony listed in Penal Code section 1192.7(c), or been convicted of such a felony, the Department shall notify the employer designated by the individual of the criminal information pertaining to the individual. The notification shall be delivered by telephone and shall be confirmed in writing and delivered to the employer by first-class mail.

The contractor shall not permit an employee to come in contact with pupils until the Department of Justice has ascertained that the employee has not been convicted of a violent or serious felony. The contractor shall certify in writing to the governing board of the school district that none of its employees who may come in contact with pupils have been convicted of a violent or serious felony. The contractor shall provide a list of the names of its employees who may come in contact with pupils to the governing board of the **School District.**

Penal Code section 667.5(c) lists the following "violent" felonies: murder; voluntary manslaughter; mayhem; rape; sodomy by force; oral copulation by force; lewd acts on a child under the age of 14 years; any felony punishable by death or imprisonment in the state prison for life; any felony in which the defendant inflicts great bodily injury on another, any robbery perpetrated in an inhabited dwelling; arson; penetration of a person's genital or anal openings by foreign or unknown objects against the victim's will; attempted murder, explosion or attempt to explode or ignite a destructive device or explosive with the intent to commit murder; continuous sexual abuse of a child; and carjacking.

Penal Code section 1192.7 lists the following "serious" felonies: murder, voluntary manslaughter, mayhem; rape; sodomy by force; oral copulation by force; a lewd or lascivious act on a child under the age of 14 years; any felony punishable by death or imprisonment in the state prison for life; any felony in which the defendant personally inflicts great bodily injury on another, or in which the defendant personally uses a firearm; attempted murder; assault with intent to commit rape or robbery; assault with a deadly weapon on a peace officer, assault by a life prisoner on a non inmate; assault with a deadly weapon by an inmate; arson; exploding a destructive device with intent to murder, or explosion causing great bodily injury or mayhem; burglary of an inhabited dwelling; robbery or bank robbery; kidnapping; holding of a hostage by a person confined in a state prison; attempt to commit a felony punishable by death or imprisonment in the state prison for life; any felony in which the defendant personally uses a dangerous or deadly weapon; selling or furnishing specified controlled substances to a minor, penetration of genital or anal openings by foreign objects against the victim's will; grand theft involving a firearm; carjacking; and a conspiracy to commit specified controlled substances offenses.

FINGERPRINTING AND EMPLOYEE BACKGROUND CHECK REQUIREMENTS

Education Code Section 45125.1 provides in relevant part:

A. If the employees of an entity which has a contract with a school district may have any contact with students, those employees must have their fingerprints submitted to the Department of Justice;

B. The Department of Justice shall determine whether the individuals have been arrested or convicted of a crime and notify the employer of the criminal history.

C. An entity with a school district contract shall not permit an employee to come into contact with pupils until the Department of Justice ascertains that the employee has not been convicted of a felony as defined in education Code Section 45122.1;

D. The entity must certify that none of its employees who may come into contact with pupils have been convicted of a felony as defined in Education Code Section 45122.1.

E. The entity must provide lists of the names of the employees who may come into contact with pupils.

I am aware of the provisions of the Education Code section 45125.1 which require fingerprinting and background checks of school district contractor's and subcontractor's employees, certification that employees with pupil contact have not committed a felony as defined in the Education Code section 45122.1 and provision of lists of those employees to the school district. I will comply with such provisions before commencing the performance of the work of this contract. I will provide a new certification and an updated list in the event that during the course of the contract, new and different employees may come into contact with pupils

_____

PROPER NAME OF BIDDER / CONTRACTOR

_____

SIGNATURE OF BIDDER / CONTRACTOR

_____

DATE

The above certificate must be signed and filed with the awarding body prior to performing any work under this contract.

(SUBMIT WITH BID / CONTRACT)

CERTIFICATE OF COMPLIANCE
WITH EDUCATION CODE SECTION 45125.1

TO: THE GOVERNING BOARD OF SAN LEANDRO UNIFIED SCHOOL DISTRICT

I CERTIFY THAT:

1. Each employee who may have contact with pupils has been fingerprinted;

2. The Department of Justice has provided a report on the criminal background of each employee;

3. No employee who may come into contact with pupils has been convicted of a crime as defined in education Code section 45122.2; and

4. Attached is a list of the names of each employee who may come into contact with pupils.

_____

CONTRACTOR

_____

PROJECT

_____

PRINT NAME

_____

SIGNATURE

_____

DATE

(SUBMIT WITH AWARD OF CONTRACT)

"Exhibit D"

ASBESTOS & OTHER HAZARDOUS MATERIALS CERTIFICATION

Contractor hereby certifies that no Asbestos, or Asbestos-Containing Materials, polychlorinated biphenyl (PCB), or any material listed by the federal or state Environmental Protection Agency or federal or state health agencies as a hazardous material, or any other material defined as being hazardous under federal or state laws, rules, or regulations "New Material Hazardous", shall be furnished, installed, or incorporated in any way into the Project or in any tools, devices, clothing, or equipment used to affect any portion of Contractor's work on the Project for District.

Contractor further certifies that it has instructed its employees with respect to the above-mentioned standards, hazards, risks, and liabilities.

Asbestos and/or asbestos-containing material shall be defined as all items containing but not limited to chrysotile, crocidolite, amosite, anthophyllite, tremolite, and actinolite. Any or all material containing greater than one-tenth of one percent (.1%) asbestos shall be defined as asbestos-containing material.

Any disputes involving the question of whether or not material is New Hazardous Material shall be settled by electron microscopy or other appropriate and recognized testing procedure, at the District's determination. The costs of any such tests shall be paid by Contractor if the material is found to be New Hazardous Material.

All Work or materials found to be New Hazardous Material or Work, or material installed with "New Hazardous Material" containing equipment will be immediately rejected and this Work will be removed at Contractor's expense at no additional cost to the District.

Contractor has read and understood the document Hazardous Materials Procedures & Requirements and shall comply with all the provisions outlined therein.

Date: _____

Proper Name of Contractor: _____

Signature: _____

Print Name: _____

Title: _____

“Exhibit E”

SCOPE OF WORK

- Please see attached proposal

TRUGREEN COMMERCIAL

Terry Conlon

(510) 219-4878

Customer Information

Bill To:

San Leandro Unified School District

1145 Aladdin Ave
San Leandro, CA 94577
USA

(510) 618-4440

Service Location:

San Leandro High School

2200 Bancroft Ave
San Leandro, CA 94577
USA

Detail of Charges

Service Location	Line Item Description	Round #	Round Description*	Total Price
San Leandro High School	Fall Seeding	10		$3,400.00
San Leandro High School	Lawn Service	2	Late Spring - Fertilizer, broadleaf weed, crabgrass control (As Needed/Weather Dependent)	$1,325.00
San Leandro High School	Lawn Service	3	Early Summer - Fertilizer, broadleaf weed control (As Needed/Weather Dependent)	$1,325.00
San Leandro High School	Lawn Service	5	Early Fall - Fertilizer, broadleaf weed control (As Needed/Weather Dependent)	$1,325.00
San Leandro High School	Lawn Service	6	Fall - Fertilizer, broadleaf weed control (As Needed/Weather Dependent)	$1,325.00
San Leandro High School	Lawn Service	7	Late Fall - Fertilizer, broadleaf weed control (As Needed/Weather Dependent)	$1,325.00
San Leandro High School	Lawn Service	8	Late Fall/Early Winter - Fertilizer, broadleaf weed control (As Needed/Weather Dependent)	$1,325.00

Subtotal	$11,350.00
Total Sales Tax Amount	$0.00
Grand Total	$11,350.00

Description: Service to Baseball Fields - Round 8 and Vertical-Cutting and seeding (2 passes) will be run late fall 2018. Rounds 2,3,5,6 and 7 will be run during 2019.

@2018 TruGreen L.P. All Rights Reserved

Standard Terms and Conditions

1. Term. The term of this Agreement shall one (1) year from the date signed by you, the Customer.
2. Price increases. Prices of services provided in this agreement may be increased should you add property under this agreement, or in the event of increases in the cost of fuel, material, or labor, or costs incurred by TruGreen due to government regulation and other causes. In addition, TruGreen may elect to increase the price of services under this agreement after the first year, or after any subsequent anniversary date of the agreement by a percentage amount not to exceed five percent (5%) of the then current price, or consistent with any increase in the current consumer price index, whichever is greater. TruGreen shall not increase its prices on an elective basis more frequently than once during any agreement year.
3. Payment Terms. Payment is due to TruGreen within 30 days after the invoice date. In the event you fail to make payment when due, TruGreen reserves the right to terminate this Agreement. A late service fee equal to the lesser of 15% per month (18% a.p.r.) or the maximum interest rate allowed by law will be charged on any balance unpaid over thirty (30) days. A service charge of $25.00 will be charged for any returned check. Should it become necessary to bring an action to collect amounts due under this agreement, you agree to pay all costs of such collection including, but not limited to, any reasonable attorney's fees or other professional fees and court costs.
4. Check processing policy ACH. When you provide a check as payment, you authorize TruGreen either to use information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check transaction. If TruGreen uses information from your check to make an electronic fund transfer, funds may be withdrawn from your account as soon as the same day we receive your payment, and you will not receive your check back from your financial institution. Returns: in the event that your payment is returned unpaid, you authorize us the option to collect a fee as allowed by law through an electronic fund transfer from your account.
5. Termination. In the case of your non-payment or default, TruGreen has the right to terminate this Agreement immediately upon notice to you. TruGreen may terminate this Agreement for convenience upon thirty (30) days prior written notice to you. You may cancel this Agreement for material breach by TruGreen, provided that you give TruGreen written notice of the details of the breach, and thereafter TruGreen fails to cure the breach within thirty (30) days after said notice. (a). Additional termination provisions for landscape companies, property management companies, agents and other similar entities: To the extent you represent one or more property owners and/or properties covered under this agreement, and in the event such owner terminates your contract with regard to one or more properties, then upon notice to TruGreen, you may terminate this Agreement only as it relates to such property for which owner terminated its contract with you. To the extent that this Agreement applies to other properties, not terminated by the owner, this Agreement shall continue in full force and effect with regard to such other properties.
6. Sale of Property. You agree to notify TruGreen in writing immediately in the event that you sell any property which is the subject of this Agreement. TruGreen shall make the appropriate adjustment in price to accommodate the reduction of square footage treated in the event that property is sold. In the event all property which is the subject of the Agreement is sold, this Agreement shall be terminated upon receipt by TruGreen of your written notice that you have sold the property. Should you fail to notify TruGreen as required in this provision, you agree to indemnify TruGreen for any damages incurred as a result of your failure to notify.
7. LIABILITY. TRUGREEN IS RESPONSIBLE FOR DIRECT DAMAGES RESULTING FROM ITS NEGLIGENCE OR BREACH OF THIS AGREEMENT, BUT IS NOT RESPONSIBLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR SPECIAL DAMAGES ARISING OR RESULTING FROM THE PERFORMANCE OR NONPERFORMANCE OF ANY OBLIGATIONS UNDER THE AGREEMENT INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR INCOME, REGARDLESS OF THE BASIS FOR THE CLAIM.
8. Duty to Inspect. You have a duty to inspect the property within fifteen (15) days after service has been performed by TruGreen. If you believe TruGreen provided deficient work, you agree to notify TruGreen immediately in writing. If written notice is not received by TruGreen within fifteen (15) days after the date of service, you agree that any and all claims alleging damage of any nature or to recover past payments and/or rights to withhold future payments due under this Agreement are waived.
9. Notice to tenants, employees, invitees. To the extent necessary, you have a duty to notify all tenants, employees, visitors and any other invitee on the premises of a scheduled service prior to the performance of any scheduled service by TruGreen.
10. No Warranties. Except as expressly set forth in this Agreement, TruGreen makes no warranty or representation of any kind, expressed or implied, concerning either products used or services performed, including no implied warranty of merchantability or fitness of the product for any particular purpose, and no such warranty shall be implied by law, usage of trade, course of performance, course of dealing, or on any other basis.
11. Force majeure. Except for the payment of TruGreen's invoices owed by you, if either TruGreen or you shall be prevented or delayed in the performance of any or all of the provisions of this Agreement, by reason of any labor dispute, industry disturbance, delay in transportation, governmental, regulatory or legal action, act of God or any cause beyond such part's control, the obligations hereunder of such party shall be extended for as long as such cause shall be in effect and any delay or loss suffered by the other party shall not be chargeable in any way to such party; provided, however, the other party suffering such cause shall immediately notify the other party of such inability and shall use reasonable efforts to remedy same with all reasonable dispatch. If any event of force majeure should prevent a party from performing its obligations under this Agreement for a period of ninety consecutive (90) days, the other party shall have the right to cancel this Agreement upon notice to the party unable to perform its obligations.
12. No assignment. You shall not have the right to assign this Agreement or agree to the transfer of this Agreement by operation of law or otherwise without the prior written consent of TruGreen. This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and to any permitted successors and assigns.
13. Watering; Cultural Practices. The success of this program depends on proper watering, mowing and cultural practices. Some products used by TruGreen may include label directions requiring the watering of the material after application. If any of these products are used on the property, TruGreen will provide you with watering instructions following the application and you agree to assume such watering responsibility. Climate conditions, soil conditions, plant diseases, plant material, and miscellaneous external factors will impact response to treatment. Results for difficult-to-control diseases will vary depending on environment, culture and agronomic programs used or treatment applied. Treatment for diseases may include additional cost. Consult your TruGreen specialist for details.
14. Modification of program. This program consists of lawn care and/or tree and shrub care as indicated above. Specific products, rates of application and method of application will vary with the season, weather conditions, and the needs of your lawn as determined by your TruGreen specialist. Your regularly scheduled programs may be modified depending on the weather and the condition of your landscape. The application methods and procedures used to perform service under this Agreement will be determined solely by TruGreen. Your TruGreen specialist will keep you informed on any modifications to this schedule.
15. Insects and Borers. Total insect elimination is not desirable with any program because beneficial insects will be lost along with the targeted pests. Plants invaded by borers have a high probability of death or decline. Sound cultural practices and control applications may extend the life of some plant species. Treatment for boring insects may include additional cost. Consult your TruGreen specialist with details.
16. Authorization to provide Service. TruGreen agrees to furnish labor and materials for purposes of this Agreement and is authorized by you to treat the property at the address shown above. You represent and warrant to TruGreen that you are the owner of said property, or in the event that you are not the owner of the property to which this Agreement applies, you represent and warrant that you have the legal authority to execute and bind the owner of the property to the terms and conditions of this Agreement.
17. MANDATORY ARBITRATION. Any claim, dispute or controversy, regarding any contract, tort, statute, or otherwise ("Claim"), arising out of or relating to this agreement or the relationships among the parties hereto shall be resolved by one arbitrator through binding arbitration administered by the American Arbitration Association (AAA), under the AAA Commercial or Consumer, as applicable, Rules in effect at the time the Claim is filed ("AAA Rules"). Copies of the AAA Rules and forms can be located at www.adr.org, or by calling 1-800-778-7879. The arbitrator's decision shall be final, binding, and non-appealable. Judgment upon the award may be entered and enforced in any court having jurisdiction. This clause is made pursuant to a transaction involving interstate commerce and shall be governed by the Federal Arbitration Act. Neither party shall sue the other party other than as provided herein or for enforcement of this clause or of the arbitrator's award; any such suit may be brought only in Federal District Court for the District or, if any such court lacks jurisdiction, in any state court that has jurisdiction. The arbitrator, and not any federal, state, or local court, shall have exclusive authority to resolve any dispute relating to the interpretation, applicability, unconscionability, arbitrability, enforceability or formation of this Agreement including any claim that all or any part of the Agreement is void or voidable. However, the preceding sentence shall not apply to the clause entitled "Class Action Waiver."
18. CLASS ACTION WAIVER. Any Claim must be brought in the parties' individual capacity, and not as a plaintiff or class member in any purported class, collective, representative, multiple plaintiffs, or similar proceeding ("Class Action"). The parties expressly waive any ability to maintain any Class Action in any forum. The arbitrator shall not have authority to combine or aggregate similar claims or conduct any Class Action nor make an award to any person or entity not a party to the arbitration. Any claim that all or part of this Class Action Waiver is unenforceable, unconscionable, void, or voidable may be determined only by a court of competent jurisdiction and not by an arbitrator.
THE PARTIES UNDERSTAND THAT THEY WOULD HAVE HAD A RIGHT TO LITIGATE THROUGH A COURT, TO HAVE A JUDGE OR JURY DECIDE THEIR CASE AND TO BE PARTY TO A CLASS OR REPRESENTATIVE ACTION. HOWEVER, THEY UNDERSTAND AND CHOOSE TO HAVE ANY CLAIMS DECIDED INDIVIDUALLY, THROUGH ARBITRATION.
19. Unless expressly noted otherwise herein, this Agreement and any invoice issued by TruGreen pursuant to the terms hereof, set forth the entire understanding of the parties, and supersede any and all proposals, negotiations, representations and prior agreements relating to the subject matter of this Agreement, written or otherwise, including, without limitation any sales agreement previously executed by the parties. To the extent that any terms set forth in an invoice should conflict with the terms set forth in this Agreement, this Agreement shall control. No terms, conditions, or warranties other than those stated herein or in any invoice issued by TruGreen, and no agreements or understanding, oral or written, in any way purporting to modify these conditions shall be binding on the parties hereto unless hereafter made in writing and signed by authorized representatives of both parties.
20. This customer service Agreement is only valid if accepted by you within 30 days of the date submitted to customer.

By: _____ **Date:** _____
REPRESENTATIVE/GENERAL MANAGER

Print Name: _____ **Date:** _____
AUTHORIZED AGENT/CUSTOMER

Customer Signature: _____ **Date:** _____
AUTHORIZED AGENT/CUSTOMER

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