LCB Meeting (July 15, 2011)
Contract Discussion Notes

Respectfully submitted by Matt Triplett CLP, CLT, CLIA

Contract examples enclosed:

A. Handwritten contract
   a. Could be scribbled on just about anything
   b. Meets required points of landscape contracting law
   c. No Terms and Conditions
B. Half-page (front and back), short form, fill-in-the-blank
   a. Easily filled out in the field
   b. Select few terms and conditions
C-1. Single page short form
   a. Most likely prepared in an office setting, could be done with a mobile office
   b. Only the necessary points of law are covered
   c. Probably not suitable for most field personnel to act quickly
C-2. Single-page short form
   a. Office setting (base or mobile)
   b. Begins including basic terms and conditions
   c. Includes negotiated terms that would probably not be made in the field
D. Single-page (front and back) medium form
   a. Much more extensive discussion of terms and conditions
   b. More of how a "formal" contract might be construed
E. Three-page medium form
   a. Begins to introduce clauses possibly drafted by counsel
   b. Intermediate-level legal clarifications
   c. Begins the level of "not likely done in the field" in earnest
   d. Beginning to get large enough that some consumers become intimidated
F. Seven-page long'ish form
   a. Would most likely be reviewed by counsel
   b. This level is the beginning of the larger contracts for larger-scale projects
   c. For the purposes of clarity, this length begins to be comprehensive enough to be "solid"

Further examples to pass around:

A. Master Subcontract Agreement
   a. Twenty-page contract between contractor and sub
   b. Very comprehensive and would benefit most situations in depth of clarity
B. American Institute of Architects "Conventional Family" document set
   a. Illustrates the depths to which work is accomplished and monitored in the building trades

LANDSCAPING CONTRACT

JOE FREDSCAPER, OLCB LIC # 0000[redacted]
234 ST., NOWHERE, OR 97000
503-000-0000

JILL OREGONIAN
159 WAY, HERE, OR 97000

WORK DONE @ ABOVE ADDRESS
6 - 1 GAL. ROSES
7 - 3 GAL. PINES
} TO BE PLANTED IN BACK YARD IN 30 DAYS ONCE PLANTS ARRIVE

$600 PAID IN ADVANCE
1 YEAR GUARANTEE ON WORK & LABOR.

JOE _____ JILL _____

OR. LAND. CONT. BOARD
LICENSED
2111 FRONT ST. NE STE 2-101
SALEM, OR 97301-0738
503-967-6291

A

Landscape & Irrigation

OLCB #

DATE: _____

CUSTOMER: _____
ADDRESS: _____
_____

All work to be performed on this agreement is to be performed at this address.

IRRIGATION & LANDSCAPE LIGHTING SERVICE AND REPAIRS CONTRACT AGREEMENT TERMS AND CONDITIONS

GENERAL DESCRIPTION OF WORK TO BE PERFORMED: _____

_____

_____

START DATE: _____ COMPLETION DATE: _____

ALL REPAIR AND SERVICE WORK IS PERFORMED ONA "TIME & MATERIALS" (T&M) BASIS.

LABOR RATES..... SR. TECHNICIAN..... $ .00 FIRST HOUR
$. 00 PER HOUR AFTER (BY 1/4 HR.)
ASSISTANT/LABORER.....$. .00 PER

MATERIAL PRICES.... ALL MATERIALS ARE INVOICED AT "LIST PRICE", OR BY PUBLISHED PRICES AS LISTED BY *LANDSCAPE & IRRIGATION.*

WHEN MATERIALS MUST BE PURCHSED AT ANY RETAIL OUTLET, CUS TOMER WILL BE INVOICED ACTUAL PURCHASE PRICE PLUS . %.

WE RESERVE THE RIGHT TO CHARGE FOR TRAVEL TIME IN ORDER TO OBTAIN 'SPECIAL' MATERIALS THAT WE DO NOT NORMALLY STOCK ON OUR SERVICE VEHICLE. SHOULD THIS OCCUR, YOU WILL BE INVOICED $ .00 PER HOUR FOR TRAVEL TIME.

GUARANTEE,,,,, ALL WORK PERFORMED BY *LANDSCAPE & IRRIGATION* IS GUARAN TEED. PLEASE REVIEW ATTACHED WARRANTY STATEMENT FOR DE-TAILS.

PAYMENT..... YOU WILL BE FURNISHED A DETAILED INVOICE OF ALL CHARGES AT THE TIME WORK HAS BEEN COMPLETED. THE TOTAL AMOUNT DUE IS PAY-ABLE IMMEDIATELY UPON COMPLETION OF THE REQUESTED WORK. WE ACCEPT CASH OR PERSONAL CHECKS FOR THE TOTAL AMOUNTS DUE.

APPROVAL..... I HAVE READ AND APPROVE THE WORK AND CONDITIONS PRINTED HEREON, AND AUTHORIZE *LANDSCAPE & IRRIGATION* TO PERFORM THE REQUESTED WORK.

CUSTOMER SIGNATURE: _____

CONTRACTOR SIGNATURE: _____

LANDSCAPE & IRRIGATION IS LICENSED AND BONDED WITH THE OREGON LANDSCAPE CONTRACTORS BOARD AT: 2111 FRONT ST. NE, SUITE 2-101, SALEM, OR 97301, PHONE: 503.378.5909

NOTE: PLEASE REVIEW NOTES ON BACK SIDE REGARDING SUBCONTRACTOR WORK.

Cell Phone

Dr.

, OR 97

Landscape & Irrigation is a

SUBCONTRACTED WORK..... WHEN NECESSARY, *LANDSCAPE & IRRIGATION* MAY REQUIRE ADDITIONAL ASSISTANCE THAT REQUIRES HAVING A 'LABORER, OR ASSOCIATE TECHNICIAN ON THE JOB-SITE. *LANDSCAPE & IRRIGATION* HIRES **CONTRACT LABOR** FROM LOCAL AGENCIES TO FILL THIS NEED. THESE INDIVIDUALS ARE QUALIFIED AND EXPERIENCED IN PERFORMING LANDSCAPE AND IRRIGATION WORK, AND ARE COVERED BY WORKERS COMPENSATION AND LIABIL-ITY INSURANCE. EACH INDIVIDUAL HAS A HISTORY OF WORKING WITH THIS CONTRACTOR IN THE PAST AND IS PERSONALLY ENDORSED BY THE OWNER BILLING RATES FOR SAID INDI-VIDUAL(S) IS NOTED ON THE FACE SIDE OF THIS AGREEMENT.

SUBCONTRACT LABOR WILL / WILL NOT BE USED ON THIS PROJECT.

CONTRACTORS INITIALS: _____

Fancy Company Logo,
Company Name, address, phone number

Consumer
Who They Represent
Their Address
Portland, OR 97XXX

Work to be performed @ Name of Property – City, OR

Landscape Improvement Proposal / Contract

A. On-site Location 1:

1. Remove a bunch of ugly plants
2. Install 3 Camas Basalt Boulders (~250 lbs each)
3. Install the following plants:
   a. 2 *Camellia sasanqua* 'Yuletide' (1 gal)
   b. 8 *Polystichum munitum* (1 gal)
4. Spread dark bark-mulch around immediate planting area

Total: $X,XXX.XX

B. On-site Location 2:

1. Remove a bunch of ugly plants
2. Install 3 Camas Basalt Boulders (~250 lbs each)
3. Install the following plants:
   a. 2 *Camellia sasanqua* 'Yuletide' (1 gal)
   b. 8 *Polystichum munitum* (1 gal)
4. Spread dark bark-mulch around immediate planting area

Total: $X,XXX.XX

C. On-site Location 3:

1. Remove a bunch of ugly plants
2. Install 3 Camas Basalt Boulders (~250 lbs each)
3. Install the following plants:
   a. 2 *Camellia sasanqua* 'Yuletide' (1 gal)
   b. 8 *Polystichum munitum* (1 gal)
4. Spread dark bark-mulch around immediate planting area

Total: $X,XXX.XX

Grand Total: X,XXXX.XX

All work to be completed according to industry standards. Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders and will become an extra charge. All plant material may carry a one year warranty from date of planting under normal conditions. Company may substitute a similar plant species when necessary. Company provides no warranty on transplanted, non-irrigated, vandalized, neglected, or missing plant material. Proposal price will be honored for xxxxx months from proposal date. This bid assumes that, after utility and services location, no fixtures such as wiring, plumbing, etc. will be vulnerable to damages caused by reasonable hand excavation and tilling necessary to the performance of this work; any damage to unidentified or misidentified services will not be the responsibility of the Company. Work to be completed within xxxx days from receipt of signed proposal, unless prohibited by extraneous circumstances. Payment in full is due upon completion.
Company (#XXXX) is licensed by the **State of Oregon Landscape Contractors Board** 2111 Front St NE Ste 2-101, Salem, OR 97301, Phone: 503.986.6561

Authorized Signature_____

Company Name

Representing _____

_____
Company Manager

Date Accepted _____

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LANDSCAPE CONSTRUCTION CONTRACT

BETWEEN

NAME & ADDRESS OF CONTRACTOR:	**<Business Name>** *Address* *Address* **Phone**	***NAME & ADDRESS OF CLIENT/OWNER:***	***<Client>*** ***Address*** ***Address*** **Phone**

LET IT BE KNOWN: **<BUSINESS NAME>** is a licensed Landscape Contracting business with the **Oregon Landscape Contractors Board; 2111 Front St, NE Suite 2-101; Salem, Oregon 97301**
Telephone: (503) 967-6291.
License #

The Client/Owner and Contractor agree to the following (Please Note: Subcontractors may be used to complete the agreed upon work and any changes to the scope of work will be only be performed according to signed change orders)

Scope of Work: _____

_____

_____

_____

_____

List of Plant Materials (See addendum):

DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION DATE:

The date of commencement of work to satisfy this contract shall be on or before <date> and work will continue uninterrupted until <date or other defining agreed upon termination>.

CONTRACT SUM

This contract is a "time and materials" contract and client agrees to pay <rate> per man hour for labor, profit and overhead for labor provided by employees of the contractor and <rate> per man hour for labor, profit and overhead associated with the labor provided by <LCP Name>, licensed individual landscape construction professional. Materials will be paid for on a "at cost plus 20% profit" basis subject to invoices submitted by the contractor. Client also agrees to pay "one way" travel for all labor provided by contractor for full (8 hour) days of work. Contractor assumes all responsibility for permits, community requirements and city approvals.

TERMS OF PAYMENT

Progress Billings: for labor will be made twice a month to include work from the first day (1st) of the month through the fifteenth day (15th) and from the sixteenth day (16th) of the month through the last day of the month until substantial completion of the project.

Payment of billings is to be made within 5 days of the date of billing; with the provision work will stop on the project if payment is not received within 10 days of the billing date. Payments due and unpaid under the Contract Documents shall bear a finance charge of 2% of the balance for every 30 days the balance remains unpaid after the payment due date. Payments for materials will be made upon presentation of the invoice by the contractor to the client.

If the Owner/Client fails to make payment when due or substantially breaches any other obligation of this Contract, the Contractor may terminate this Contract with seven days notice and recover from the Owner/Client payment for work executed and for proven loss with respect to materials, equipment, tools, construction equipment and machinery, including reasonable overhead, profit and damages.

WARRANTY: All worked performed by contractor is warranted for a period of 12 months from the date of substantial completion. Plants carry no warranty unless maintained by the contractor after installation under a separate maintenance contract, whereupon the warranty is for a period of 12 months after substantial completion of this contract.

DISPUTES: In the event of Breach of Contract or other form of contract dispute this contract allows for binding arbitration as a method of resolution.

This agreement entered into as of <date>.

OWNER/CLIENT	CONTRACTOR
_____	_____
(Signature)	**(Signature)**
_____	_____
(Printed name, title and address)	**(Printed name, title and address)**

C-2

503. Office
Cell Phone

Landscape & Irrigation
Inc. Company

, OR 97

OLCB #

www.ljhlandscapeandirrigation.com

Date:_____

IRRIGATION & LANDSCAPE LIGHTING SERVICE AND REPAIRS

CONTRACT AGREEMENT TERMS AND CONDITIONS

This Service & Repair Agreement between **Landscape & Irrigation** and _____Client/Owner) located at_____(address) is valid for a period of Months from the date noted above. **Landscape & Irrigation** agrees that this Service Agreement will consist of all labor and materials for:

_____

_____

_____

Thank you for hiring. Landscape & Irrigation for your landscape irrigation or low-voltage landscape lighting system service and/or repairs. We sincerely appreciate your business.

As a licensed, bonded and insured Landscape Contracting Business, we will use new manufactured parts, not used or reconditioned parts, for all irrigation and lighting repairs. In some instances, do the age of some existing valves, where we may need to "re-build" the item, you will be told up-front, *prior* to performing such work.

Most sprinkler parts are fully interchangeable with the majority of irrigation systems. We work on any irrigation system, including the following brands: RainBird, Hunter, Irritrol, Toro, Weathermatic, Nelson, Lawn Genie, Orbit, K-Rain, and more. If you prefer, the use of the same brand part as your existing system (if it is still available), we will use that brand for your repair. However, it might require a separate trip to the parts warehouse for a brand that we don not stock in our vehicle.

We will repair what you request and have authorized us to perform. You may also specify the service call as a "tune-up" or "unknown problem", which allows us to repair other problems that might be discovered in your system during diagnosis.

A "tune-up" is the most comprehensive choice. It is also referred to as '**Spring Start-up Service**', but whatever you call it, the method is the same. With this service we will turn on your system, check for line leaks, check for clogged nozzles, adjust all spray heads for proper spray pattern, verify correct program settings on timer, test valves, test solenoids, test master valve, and inspect the back-flow preventer. If anything is broken upon discovery, we will repair it, or give you an estimate of cost for those repairs.

Our repair rates are the same for landscape repairs as they are for landscape lighting system repairs. We are very experienced at repairing <u>any</u> brand, make, or model of irrigation and lighting systems.

PLEASE NOTE: We do <u>**not**</u> provide exact written quotes in advance for repair services, as there is no way to know how long a repair will take due to excavation, type of repairs, existing materials, method of original installation, and a dozen other reasons, plus the time for the diagnosis process of the actual repairs to find and repair all of the problems. You will be charged on a **TIME & MATERIALS (T&M)** basis. This does not mean that we are going to do $1,000.00 worth of repairs without Your final invoice will reflect all materials and labor expended.

<u>DELAYS & ACCESS:</u>

If it is raining heavily at 7:00AM, or heavy rains are forecast, or has already happened, it is our policy that the day will be considered a "rain out" and we will not schedule work for that day. Should this happen, we will call you (or email) later in the day to reschedule your repair service. Once the day has been called a "rain out", even if it becomes sunny and warm later in the day, we will not work.

Due to the shear volume of landscape irrigation system repairs that we perform, and with an inability to schedule an exact time, most of our customers will leave a garage door opener on their back patio In a plastic bag), or, a side garage door unlocked. Some will also provide us the service code to their garage door opener, from which any of these options will allow us access to the timer inside the garage.

Landscape & Irrigation will not be responsible for any failure, default or delay due to causes beyond our control.

REPAIR RATES , CHARGES, AND PAYMENT:

1.) Our repair rate is invoiced at $ 00 **for the first hour (minimum charge), then $ .00 per hour after** for a single Sr. Technician, **or $ .00 per hour for a two-man crew,** and **billed in 1/4 hour increments after the first hour.** Most customers request that we perform an evaluation of the entire system (a "tune-up", or Spring Service Turn-up") in an effort to locate and repair other problems while we are on-site that they may not be aware of. You may also specify an exact repair if you know the problem(s), or list the repair request as 'unknown'. Any service call has a minimum charge of $ .00.

2.) The cost of parts and materials used in performing any repairs will be billed and invoiced at the "list Price", or prices set by us in our billing guidelines. Should we need to purchase material items from a retail store, we will bill the actual cost of the item(s), plus % for overhead and profit. Our service vehicle is generally fully stocked with all necessary repair parts for all of the most common types of repairs.

3.) If we have to travel to the parts supplier, or retail outlet for a 'special' purchase, we <u>may</u> charge you $ .00 per hour to cover travel labor and fuel expenses for that time.

4.) If necessary, we charge a $ 00 'valve and wire finder equipment fee used to locate missing wires and valves on your property. Use of this tool is rare, but if the customer has older valve boxes covered by grass or ground covers, this electronic device helps save on labor vs. having to locate by hand, if the customer does not know their locations.

PLEASE NOTE: Your detailed invoice will be presented to you after completion of the work, or we will e-mail or fax you the invoice within ( ) days of completing your repair and service work. **Full payment is required on the same day that you receive your invoice.** We do not carry over balances, or finance in-house. Unless prior arrangements have been made, or you are a previous Landscape & Irrigation customer, a late fee of $ 00 will be added to all invoices if payment is not received within days.

WARRANTY/GUARANTY:

All repair parts carry the applicable manufacturer's limited warranty which varies for the exact part but normally is -year months). Labor warranty for repairs is also -year months), from the date work is completed.

If payment is not received as stated above, in a timely fashion, all warranties and guaranties will become null and void.

WORK COMPLETION:

The work described herein shall be completed on or before:_____/_____/_____, unless circumstances exist, or occur beyond our control, whereupon a new completion date will be established.

APPROVAL AND SIGNATURES:

Customer/client is the legal and lawful owner of the property where service and repairs are to be performed. Furthermore, customer/client has the full authority to make this Agreement with Landscape & Irrigation, and hereby grants permission to Landscape & Irrigation full access to the property for the purpose of servicing or repairing their landscape irrigation &/or lighting systems.

This agreement is intended by customer/client and Landscape & Irrigation to be complete and exclusive statement of terms of the contract between customer/client and Landscape & Irrigation regarding the repairs to either, or both, the landscape irrigation system or the landscape low-voltage lighting system.

_____ _____

CUSTOMER SIGNATURE LANDSCAPE & IRRIGATION AUTHORIZED SIGNATURE

_____ DATE _____ DATE

LANDSCAPE & IRRIGATION (a HOOK-MAN Enterprises, Inc. Company) IS LICENSEDE (#8792) AND BONDED WITH THE OREGON STATE LANDSCAPE CONTRACTORS BOARD, LOCATED AT: 2111 FRONT St. NE, SUITE 2-101, SALEM, OR 97301, PHONE: 503-378.5909; FAX 503-378.5950; LIC #8792.

CONTRACTING AGREEMENT

This Agreement is made this 20th day of May, 2011, between [redacted], an Oregon corporation ("CONTRACTOR"), and [redacted] an Oregon non-profit corporation ("OWNER/OWNERS AGENT") for Waterproofing the C-5 Deck Project (the "Project") located at [illegible], Portland, OR [illegible]

1. The Work. Contractor shall perform the following work, including providing all labor, materials, equipment, services and other items required for the completion of such work ("Contractor's Work"):

   - Excavation, removal and disposal of existing plants, soil and drainage medium in the planters indicated in the Contract Documents.

2. Time. The Contractor will complete the "Contractor's Work" in **21 calendar days** from the date a Notice to Proceed is issued. This Contract must be fully executed before the Notice to Proceed is issued.

3. Price. Owner shall pay Contractor for the "Contractor's Work" the fixed price sum of **$[illegible].00 ([illegible] Dollars and no/100).**

4. Payment. The price shall be paid:

   3.1 Progress payments (as-completed basis) after review and approval by Architect.

   3.2 Final payment after the Architect has received and approved the Closeout Documents and As-Built Drawings from the Contractor.

5. Contractor's Rights and Obligations. Contractor shall supervise and direct the "Contractor's Work", using its skill and attention, and shall be responsible for scheduling and procedures, and for coordinating its "Contractor's Work" with the work of other subcontractors and suppliers in connection with the Project.

   5.1 Contractor shall provide and pay for all labor, materials, equipment, tools and other services or things necessary for performance of the work.

   5.2 Contractor shall at the completion of the Project, ensure that the premises are free from accumulation of waste materials or rubbish, and at completion of the work shall remove all its waste materials and rubbish from the Project.

   5.3 Contractor shall provide Certificate(s) of Insurance to the Owner which comply with Section 9 of this Agreement prior to a execution of the Agreement. Coverage shall also including Workers' Compensation, Liability, and Automobile.

   5.4 Contractor shall keep the Project at all times free from any and all material supplier liens and contractor's liens of any variety.

6. Limited Warranty. Contractor provides the following express, limited warranties, all of which are conditioned upon Owner's performance of its obligations set forth herein, including those in Section 8, below.

E

6.1 For a period of 2 years after completion of the "Contractor's Work", the repairs or restorations which are not excluded by other portions of this Limited Warranty will be free of defects in materials and/or workmanship.

7. [redacted]nsibility for inspecting and maintaining the work following completion. Owner shall promptly report to Contractor any condition or event which does or may affect the obligations of Contractor under the Limited Warranty.

8. Reciprocal Indemnifications. To the fullest extent permitted by law, Owner shall indemnify and hold harmless Contractor, its agents and employees from and against all claims, damages, losses and expenses, including but not limited to injuries to Contractor or any of its agents or employees performing work on the Project and attorney fees, arising out of Owner's or its members' negligence or willful misconduct.

To the fullest extent permitted by law, Contractor shall indemnify and hold harmless Owner, its members and directors from and against all claims, damages, losses and expenses, including but not limited to property damage and injuries to members of Owner or their guests, and attorney fees, arising out of or in connection with the performance of Contractor's Work. However, Contractor's obligation to indemnify shall not apply to any claims, damages, losses and expenses arising out of the negligent or willful misconduct of Owner, its members or directors.

9.Insurance. During the term of this Agreement, Contractor shall maintain in effect a policy of commercial general liability insurance with limits of no less than $1,000,000 per occurrence and $2,000,000 aggregate coverage. In addition, Contractor's insurance shall specifically allow Contractor to work on multi-family condominium projects and name the Owner as an additional insured. Contractor shall be responsible for verifying that any subcontractors that Contractor brings into the Project have the same level of commercial general liability coverage as required of Contractor by this Section.

10. Change Orders. Owner, without invalidating this Agreement, may order changes in the work, and the price and time for performance shall be adjusted accordingly. All such changes in the work shall be authorized by a written Change Order signed by Owner and acknowledged by Contractor or its agent.

11. Complete Agreement. This Agreement and any drawings, brochures and exhibits incorporated by section 1 plus any signed Change Orders as set out in Section 10 constitute the complete agreement of the parties. No modification shall be binding unless it is in writing and signed by the party against whom the modification is asserted.

12. Assignment. Owner shall not assign this Agreement, either in part or in whole, without prior written approval of Contractor. Contractor shall not assign this Agreement, either in part or in whole, without prior written approval of Owner.

13. Choice of Law; Arbitration; Attorney Fees. This Agreement shall be governed, construed, performed and enforced in accordance with the laws of the State of Oregon, without regard to its conflict of law principles.

13.1 Any dispute or claim that arises out of or relates to this Agreement, or to the breach thereof, shall be resolved by binding arbitration in accordance with the arbitration rules of Arbitration Service of Portland, Inc. that are in effect at the time the arbitration is initiated, and judgment upon

the award rendered pursuant to such arbitration may be entered in any court having jurisdiction thereof.

13.2 The prevailing party shall be entitled to reasonable attorney fees and costs in the event of a dispute or claim to enforce this Agreement.

14. Termination. If Owner fails to make any payment due hereunder, Contractor may, after five (5) business days written notice to Owner and without prejudice to any other remedy it may have, terminate this Agreement and leave the Project.

14.1 A late charge of two percent (2%) of the unpaid balance per month or portion of a month will be added to any unpaid balance which remains unpaid thirty (30) or more days after same is due and after a notice has been given that it s past due. Provided such unpaid balance complies with the conditions set forth in Paragraphs 3. Payment; 3.1 & 3.2.

15. Savings Clause. Should any provision of this Agreement at any time be in conflict with any law, ruling or regulation or be unenforceable for any reason, then such provision shall continue to be in effect only to the extent that it remains valid. In the event that any provision of this Agreement becomes less than operative, the remaining provisions of this Agreement shall, nevertheless, remain in full force and effect.

This Agreement is entered into as of the date first written above.

CONTRACTOR:

_____

By:_____

Print Name:_____

Title:_____

Date:_____

Construction Contractors Board License _____

OWNER:

Association, an Oregon non-profit corporation

By:_____

Print Name:_____

Title: Chairperson

Date:_____

Landscape Contracting Business (herein called the "Contractor")
Address
City, OR 97XXX
Phone Number

Consumer
Company (herein called the "Owner")
Address
City, OR 97XX-XXXX

Project Site Location
Project Descriptive Title
VEGETATED CORRIDOR MITIGATION

CONTRACT TERMS

SECTION ONE
DESCRIPTION OF WORK

On portions of XXX located at XXX in the NW ¼ of Section 27,XXXXXX, OR, Contractor agrees to perform work (herein called the "Work") and to provide relevant materials as described in the documents prepared by XXXXX Consultants (Project XXXX) and the *Wetland Location Survey* provided by XXXX Inc. (herein collectively called the "Specifications" and attached as Exhibits A and B) as requested by Clean Water Services acting as and herein referred to as the "Consultant."

SECTION TWO
CONTRACT

Upon execution, this Contract represents a legal agreement between Landscape Contracting Business and Consumer for the services specifically outlined within this Contract. This offer may be withdrawn by the Contractor, orally or in writing, at any time before acceptance but in any event this offer shall automatically expire at 12:00 noon on XXXX if not properly executed.

This Contract becomes a contract only upon signed and dated acceptance by both Parties. No agent or representative has authority to waive, extend, alter, delete from, or add to this Contract, in part or in whole, after its execution, except as specifically provided herein. The Contractor will not be held liable for any lawsuit, insurance claim, or other monetary reimbursement made in relationship to work that has been altered, adapted or modified in any way after completion by someone other than the Contractor or its subcontractors, or if the requirements of this Contract are not followed. Unless stated otherwise herein, this Contract includes prices for all labor, materials, subcontractor costs, permit fees and manufacturer warranties.

F

SECTION THREE
COMPENSATION

The Owner agrees to pay Contractor for the performance of the Work described in this Contract the total sum of **$XXX,XXX.00**, and to make payments as follows: one initial payment of $XX,XXX.00 to be paid between the time of Contract execution and the beginning of work; one $XX,XXX.00 payment at the mid-point of the work as determined by the Contractor; and one final payment of $XX,XXX.00, to be made upon completion of work subject to the Owner's final approval.

Except as otherwise agreed by the Parties, all past due balances shall accrue and bear interest at the rate of XX.X percent (XX.X%) per annum and billed monthly. The Contractor will make efforts to advise the Owner on a timely basis when an invoice has not been paid. If any billing goes unpaid for longer than a period of XXXX days from the date of an invoice, this Contract may be declared null and void by the Contractor and subject to the CANCELLATION section of this contract. In any case, the continued accrual of interest charges will occur even in cancellation.

SECTION FOUR
CONTRACT EXCLUSIONS

Contractor and Owner agree this Contract represents the full extent of the work to be performed in accordance with the CONTRACT TERMS, GENERAL CONDITIONS, and Specifications as solely defined by this Contract. Any work not specifically stated within this Contract is excluded from this Contract.

SECTION FIVE
CANCELLATION

If, after execution, this Contract is cancelled by the Owner, through no fault of the Contractor, then the Owner agrees to surrender the remaining portions of any payments already made to the Contractor and immediately pay all outstanding billings and any outstanding amounts owed for all completed work including, but not limited to labor, materials, subcontractor costs, and fees. If, after execution, this Contract is cancelled by the Contractor, through no fault of the Owner, then the Contractor agrees to repay any payments made for labor or materials not yet performed or installed. In lieu of re-payment of monies paid for materials not installed, the Owner or Contractor may negotiate to offset such amounts by allowing the Owner to retain a portion or all of the materials paid for by the Owner that have not yet been installed. The Contractor retains the right to cancel this Contract in accordance with the terms outlined in the COMPENSATION and SCHEDULING sections.

Cancellation of this Contract can only be made in writing and sent via certified mail to the legally authorized representatives of the Parties at the addresses at the beginning of this Contract.

SECTION SIX
CHANGE ORDERS

A Change Order is a written instrument signed by the Owner and Contractor stating their agreement to a change in the scope of work, the amount of the adjustment, if any, in the Contract sum, and the extent of the adjustment, if

any, in the Contract timelines. Alterations, additions, or deviations to this Contract shall only be made by Change Order. A Change Order may be requested by either the Owner or the Contractor at any time during the Contract period. If contracted materials have been purchased prior to a Change Order request by the Owner, the Owner shall be responsible for all costs incurred by the Contractor to deal with said materials, including restocking fees.

SECTION SEVEN
EXPECTED START DATE

Work is expected to begin following the proper execution of this contract and following the receipt of the initial payment being received by the Contractor and cleared by the Contractor's bank. Specific date requirements as outlined in the General Conditions and Specifications contained within this contract will be followed accordingly.

SECTION EIGHT
SCHEDULING

The Contractor will schedule crews throughout the Contract period with great effort to complete all work by the completion date. While the majority of the Work can be performed in most weather conditions, the Contractor will have the final judgment regarding the deployment of its crews and will adjust crew sizes and availability depending on various factors that include, but are not limited to: weather, worker availability, training, subcontractor timing, etc.

The Contractor will not be responsible for delays arising from causes beyond its reasonable control. Extensive or excessive delays of longer than XXX days will be documented in writing and may be cause for cancellation as described herein. If excessive delays occur near the final completion date, such delays will be documented in writing and, if arising from causes beyond the Contractor's reasonable control, may not subject the Contractor to be held in breach of this Contract.

SECTION NINE
TIME FOR COMPLETION

Contractor agrees to substantially complete the Work within a time frame that is reasonable so as to meet the planting recommendation of between XXXX 1st and XXXX 15th. If the Contractor is delayed in the completion of the Work by the Owner, Consultant, Changes in the Work, or by factors beyond the Contractor's control, the Contract Time is to be extended for such reasonable time as the Contractor and Consultant may determine. The final completion date for planting, landscaping, and irrigation work shall be within XXXX days of starting such work in accordance with the terms stated within this Contract. The final completion date for the maintenance work will be in accordance with the terms stated within this Contract.

SECTION TEN
LICENSING

Landscape Contracting Business is properly licensed (#XXXX) with the State of Oregon Landscape Contractors Board, located at 2111 Front Street NE, Salem, OR 97301; 503-378-5909.

GENERAL CONDITIONS

SECTION ONE
SCOPE OF WORK

In order to carry out the Work described in the Specifications, all labor, materials and equipment shall be arranged, provided or installed by the Contractor. The specifications are basic and they are presumably correct and complete. However, any ambiguity, error, or omission that may develop as a result of the requirements of the particular project shall be corrected by Change Order. It shall be noted that Contractor will be following guidelines for invasive species control as set forth by the publication *Integrated Pest Management Plan* (June 2009); the publication which replaced Clean Water Services' *Integrated Vegetation and Animal Management Guide* (March 2003) referred to in the Specifications. "Invasive species control" refers only to Himalayan Blackberry and Reed Canarygrass, and "control" refers only to controlling the spread of said plants, as detailed on page 1 of Specifications.

SECTION TWO
WORKMANSHIP

All work will be performed in a good manner and in accordance with standard industry practices. Whenever possible, the Contractor and its employees strive to maintain a clean, neat, safe, and professional worksite reflecting positively on the Owner, the Contractor, and parties associated with this Contract. All reasonable care will be taken to perform the Contract as specified.

SECTION THREE
STORAGE FACILITIES

Owner grants Contractor the utilization of a secured on-site storage area within the locked fence surrounding XXXX. After Contractor has procured plant material and delivered it on site within the locked fence surrounding XXXX, ownership and security for plant material is transferred to Owner.

Owner grants Contractor permission to store on site any temporary facilities (e.g., storage trailers, temporary restroom facilities) away from sensitive wetland areas as deemed necessary by the Contractor for the duration of the Contract.

SECTION FOUR
SUBSTITUTION OF MATERIALS

As per Specifications, bare root plants may be substituted for all trees and shrubs.

SECTION FIVE
IRRIGATION

Owner grants Contractor complete and uninterrupted access to water sources utilized by XXXXX for the installation and operation of temporary irrigation to ensure plant survivability as required by the Specifications. Contractor will be responsible for proper irrigation system installation and operation except for when the following circumstances adversely affect the system: damage resulting from circumstances beyond the Contractor's control, vandalism, theft, animal or wildlife activity, extreme weather events such as flood, storms, or events, or interruption of water supply. Repairs or changes to the irrigation system necessitated by the aforementioned circumstances or as affected by Change Order will be repaired on a Time and Materials basis at the rate of $XX.XX per hour.

SECTION SIX
WARRANTY

For the purposes of Warranty, "plant material" refers to any trees, shrubs, groundcovers, grasses, or other vegetation installed in accordance with this Contract and covers all original defects in plant material and workmanship. If survivability is less than XX percent, plants will be replaced by the Contractor at the end of two years to obtain the XX.X percent (XX.X%) threshold and is contingent upon the Contractor being the Maintenance provider during said period. Any plant material that is the subject of warranty replacement must be examined by a Contractor Representative prior to being removed from the ground. The Contractor will not warranty any plant material removed from the ground prior to inspection. Every attempt will be made to supply the same type and size of plant material originally installed by the Contractor at no cost to the Owner. However, availability of the same species or size of plant is not guaranteed. In no case will replacements be authorized which exceed the original purchase price.

Except for those warranties specifically provided herein, all other warranties and guarantees expressed or implied are hereby disclaimed. All warranties relating to this Contract will become null and void if the Owner fails to pay for materials, services, or service charges as provided in this Contract. Other circumstances which will void the warranty of this Contract include: any alterations to work performed under this Contract by others; any interruption in Contracted work due to circumstances outside Contractor's control; the use of any system or area provided in this Contract for the purpose in which it was not intended; or damages or losses caused by vandalism, animals, or acts of nature such as fires, floods, weather events that violate the plants' hardiness zones such as extreme heat or freezing, earthquakes, storms, etc.

SECTION SEVEN
EXCLUSIONS

Contractor and associated Subcontractors will attempt to carry out the Work to install plantings during the recommend planting period as set forth by the Specifications (Between 2/1 and 5/1 or between 10/1 and 11/15 for containerized plants; during dormancy for bare root plants). However, if the Contractor determines events during

those time frames are unsuitable for planting, installation will be postponed until favorable conditions exist as determined by the Contractor.

This Contract assumes all excavation necessary for planting will be in workable, native soil. Should excavation find material below grade to be inhibiting efficient execution of Work, the removal of such material and replacement with soil to provide favorable growing conditions will be performed as a Change Order and billed separately as a Time and Materials at the labor rate of $XX.XX per hour.

After plant material has been installed according to Specifications, Contractor is not responsible for damage resulting from circumstances beyond its control, such as those mentioned in the Warranty section. If the aforementioned events result in survival rate dipping below the required XX.X percent (XX.X%), the damaged plants shall be replaced at the Owner's expense and the two year maintenance contract extension shall continue on a Time and Materials basis so as to meet the requirements set forth in the Specifications and as detailed in the Maintenance Contract section.

SECTION EIGHT
INVASIVE SPECIES CONTROL

"Plants on the Invasive Species List...may be removed from...Vegetated Corridors without prior approval when their removal follows the IPM framework outlines in this document" (*Integrated Pest Management Plan*, page 2: June 2009). Consistent with the IPM Calendar in Appendix 2 of this document, mechanical control of invasive species will take place at the discretion of the Contractor as determined by site data gathered during Site Visits as outlined in the Maintenance Contract section.

SECTION NINE
MAINTENANCE CONTRACT

The Vegetated Corridor Mitigation project will be maintained by the Contractor for two years from the date of completion according to the following schedule:

- SITE VISIT 1: February: Inspect and conduct mechanical invasive species control as needed
- SITE VISIT 2: May: Inspect and conduct mechanical invasive species control as needed
- SITE VISIT 3: August: Inspect and conduct mechanical invasive species control as needed
- SITE VISIT 4: November/December/January: Inspect prior to onset of growing season

The Maintenance Contract Period will extend to the period outlined in the Specifications so as to satisfy Consultant on final inspection, or a minimum of two years. Site inspections and all maintenance work resulting from said inspections will be billed on a Time and Materials basis at the rate of $XX.XX per hour. If the survival rate falls below XX.X percent (XX.X%), and plant mortality is determined by the Contractor and Consultant to not have resulted from circumstances specified in the Exclusions section, the Contractor will replace the number of plants required to meet the XX.X percent (XX.X%) survival rate and extend the maintenance period for the affected plants for XXXX years from the date of replanting. If the survivability of the warranted plants should again fall below XX.X percent (XX.X%) after the extended two year maintenance period, the replacement of plants to meet XX.X percent (XX.X%) and the further extension of maintenance may be considered, and agreed upon by all