

MAINTENANCE CONTRACT

NAVIGATOR'S LANDING PATH MAINTENANCE

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by and between the **CITY OF MEDFORD**, a municipal corporation of the State of Oregon, hereinafter termed "CITY" and **OVERSTREET LANDSCAPE & HYDROSEEDING, INC.**, hereinafter termed the "CONTRACTOR".

WITNESSETH:

I. THE WORK.

CONTRACTOR, in consideration of the payments to be made by CITY, in the manner and at the times hereinafter provided, and of the covenants and agreements hereinafter contained, hereby agrees to furnish all materials and labor for:

**Maintain existing landscape and irrigation, including weed control, pest control, trash removal and irrigation repairs. Bi-weekly visits will be scheduled. See attached Exhibit A.**

**\$395 per month for a twelve month period; July 1, 2010 thru June 30, 2011.**

and to furnish all necessary machinery, tools, apparatus, materials and labor and to do said work in the most substantial and workmanlike manner according to the solicitation, general provisions, general specifications and any special provisions hereto attached, and the plans therefore on file in the office of the applicable department of the City of Medford, Oregon, and in accordance with such modifications of the same and other directions as may be made by CITY as provided for therein.

It is agreed that said plans, specifications and provisions, and the schedule of rates and prices during the course of the project as set forth in the solicitation and in the said provisions and specifications are hereby specifically referred to and made a part of this contract, and shall have the same force and effect as though all the sums and provisions thereof were fully inserted herein.

The services of CONTRACTOR are to commence immediately after the date of this Agreement, and shall be undertaken in such a sequence as to assure their expeditious completion in light of the purposes of this Agreement. All work covered herein shall be completed by June 30, 2011.

II. CONDITIONS CONCERNING PAYMENT, CONTRIBUTIONS, LIENS, WITHHOLDING (ORS 279B.220).

CONTRACTOR shall:

(1) Make payment promptly, as due, to all persons supplying to CONTRACTOR labor or material for the performance of the work provided for in this contract.

(2) Pay all contributions or amounts due the Industrial Accident Fund from CONTRACTOR or SUBCONTRACTOR incurred in the performance of the contract.

(3) Not permit any lien or claim to be filed or prosecuted against CITY on account of any labor or material furnished.

(4) Pay to the Department of Revenue all sums withheld from employees under ORS 316.167.

III. CONDITION CONCERNING SALVAGING, RECYCLING, COMPOSTING OR MULCHING YARD WASTE MATERIAL (ORS 279B.225).

CONTRACTOR shall salvage, recycle, compost or mulch yard waste material at an approved site, if feasible and cost-effective.

IV. CONDITION CONCERNING PAYMENT FOR MEDICAL CARE AND PROVIDING WORKERS' COMPENSATION (ORS 279B.230).

(1) CONTRACTOR further agrees promptly as due, to make payment to any person, co-partnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention incident to sickness or injury, to the employees of CONTRACTOR, of all sums which CONTRACTOR agrees to pay for such services and all monies and sums which CONTRACTOR collected or deducted from the wages of employees, under any law, contract or agreement, for the purpose of providing or paying for such services.

(2) All employers working under this contract shall comply with ORS 656.017 or employers that are exempt under ORS 656.126.

V. CONDITION CONCERNING HOURS OF LABOR (ORS 279B.235).

(1) No person shall be employed for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or when the public policy absolutely requires it, and in such cases, except in cases of contracts for personal services designated under ORS 279A.055, the employee shall be paid at least time and a half pay:

(a)(A) For all overtime in excess of eight hours a day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or

(B) For all overtime in excess of 10 hours a day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and

(b) For all work performed on Saturday and on any legal holiday specified in ORS 279B.020.

(2) CONTRACTOR shall give notice in writing to employees who work on a public contract, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.

(3) Persons employed under contracts for personal services as described in ORS 279A.055 shall be paid at least time and a half for all overtime work in excess of 40 hours in any one week, except for individuals under personal services contracts who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. 201 to 209 from receiving overtime.

(4) ORS 279B.235(4) does not apply to this contract.

(5)(a) Persons employed under contracts for services shall receive at least time and a half pay for work performed on the legal holidays specified in a collective bargaining agreement or in ORS 279B.020(1)(b)(B) to (G) and for all time worked in excess of 10 hours in any one day or in excess of 40 hours in any one week, whichever is greater.

(b) CONTRACTOR shall give notice in writing to employees who work on a contract for services, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.

#### VI. CONTRACTS GOVERNED BY FEDERAL LAW.

Notwithstanding any other provision hereof, any applicable federal laws, rules or regulations are to govern in any case where federal funds are involved and the federal laws conflict with any provision hereof. Where applicable, CONTRACTOR shall comply with any attached conditions regarding federally funded projects.

#### VII. INDEMNITY AND COMPLIANCE WITH LAWS AND REGULATIONS.

CONTRACTOR agrees that CONTRACTOR will be solely responsible for any damage or trespass to or upon adjacent property or injury thereto and any and all other liability or damages resulting from or in connection with CONTRACTOR'S operation, and that

CONTRACTOR will hold CITY harmless from any claim, liability, damages or obligation arising therefrom and indemnify CITY for the amount of any obligation it may incur on account thereof or arising therefrom. Provided, however, that CONTRACTOR shall not be required to indemnify CITY against liability for damage arising out of death or bodily injury to persons or damage to property caused solely by the negligence of CITY.

CONTRACTOR shall at all times observe and comply with all federal and state laws and local ordinances and regulations, in any manner affecting the conduct of the work, and all such orders or decrees as exist at the present and those which may be made or enacted later by bodies or tribunals having any jurisdiction or authority over the work, and shall indemnify and save harmless CITY and all its officers, agents and servants against any claim or liability arising or based on the violation of any such law, ordinance, regulation, order or decrees, whether by CONTRACTOR or CONTRACTOR'S employees.

VIII. TERMINATION OF WORK.

CITY may terminate all or a portion of the work covered by this Agreement for its convenience. CITY or CONTRACTOR may terminate work if the other party fails to perform in accordance with the provisions of this Agreement by providing fifteen (15) days prior, written notice to the other by certified mail with receipt for delivery returned to the sender.

IX. DEFAULT.

If CONTRACTOR fails to begin the work under the contract within the time specified, or fails to perform the work with sufficient workmen or equipment or with sufficient materials to insure the prompt completion of said work, or shall neglect or refuse to remove and replace materials or work that have been rejected as defective or unsuitable, or shall discontinue the prosecution of the work or if CONTRACTOR shall become insolvent or declared bankrupt, or commit any act of bankruptcy or insolvency, or allow any final judgment to stand against CONTRACTOR unsatisfied for a period of forty-eight hours, or shall make an assignment for the benefit of creditors, or from any other cause whatsoever, shall not carry on the work in an acceptable manner, CITY shall give notice in writing to CONTRACTOR and CONTRACTOR'S surety of such delay, neglect or default, and if CONTRACTOR, within a period of ten days after such notice shall not proceed in accordance therewith, then CITY in addition to the rights and remedies to which CITY may be entitled by law for the enforcement of its rights hereunder or upon breach of covenant shall have full power and authority, without violating this contract, to take the prosecution of the work out of the hands of CONTRACTOR, to appropriate or use any or all of the materials and equipment on the ground that may be suitable and acceptable and may award a contract for the completion of this contract according to the terms and provisions hereof, or use such methods as in its opinion shall be required for the completion of this contract, in an acceptable manner. All costs and charges incurred by CITY together with the costs of completing the work under the contract, shall be deducted from any money due or which shall become due said

CONTRACTOR. In case the expense so incurred by CITY shall be less than the sum which would have been payable under the contract, if it had been completed by CONTRACTOR hereunder, then CONTRACTOR shall be entitled to receive the difference less any damages for delay to which CITY may be entitled, and in case such expense shall exceed the sum which would have been payable under the contract, CONTRACTOR and the surety shall be liable and agree to and shall pay CITY the amount of said excess with damages for delay of performance, if any. CONTRACTOR shall not make any disposition of the plant, machinery, tools, appliances, supplies or materials used on or in connection with the work, whether by sale, covenants, or encumbrance, inconsistent with the provisions of this contract. The contract may be canceled at the election of CITY for any failure or refusal on the part of the CONTRACTOR to faithfully perform this contract according to its terms and conditions.

#### X. INSURANCE

During the life of this Agreement, CONTRACTOR shall maintain the following minimum insurance:

- (1) Commercial general liability insurance, including personal injury liability, blanket contractual liability, and broad-form property damage liability coverage. The following minimum limits are required: General Aggregate- \$1,000,000; Products/Completed Operations Aggregate- \$1,000,000; Personal & Advertising Injury Aggregate- \$1,000,000; Each Occurrence- \$500,000. "The City of Medford and its officers, employees and agents while acting within the scope of their duties as such" shall be named an additional Insured.
- (2) Commercial automobile bodily injury and property damage liability insurance covering owned, non-owned, rented and hired autos. The combined single limit for bodily injury and property damage shall be not less than \$500,000. "The City of Medford and its officers, employees and agents while acting within the scope of their duties as such" shall be named an additional Insured.
- (3) Statutory workers compensation and employers liability insurance as required by State law.

Coverages 1 and 2 shall be written on an occurrence basis, not on a claims-made basis. Coverages 1 and 2 shall be primary and non-contributing over any other insurance available to CITY. CONTRACTOR shall submit to CITY certificates of insurance for all policies listed above. The certificates shall provide that the insurance company give written notice to CITY at least ten (10) days prior to cancellation of or any material change in the policy.

#### XI. PAYMENTS TO CONTRACTOR.

Subject to ORS 279C.570 (Progress Payments) and subject to ORS 279C.550 (Retainage), and in consideration of the faithful performance of the work herein embraced and provided

for, as set forth in this contract, solicitation, general specifications and special provisions, notice to contractors, and plans which are a part thereof, in accordance with the directions of CITY and to its satisfaction, CITY agrees to pay to CONTRACTOR the amount earned by CONTRACTOR under said contract, as provided in the general specifications and special provisions attached. All payments will be made at the times and in the manner provided in the general and special provisions incorporated herein and in accordance with the regulations of CITY in regard to the payment of claims, which regulations provide, among other things, that all claims against CITY shall be submitted to CITY upon vouchers.

IN WITNESS WHEREOF, CITY and CONTRACTOR have caused this contract to be executed for and on their behalf by their duly authorized officer(s) on the day and year first above written.

ATTEST: \_\_\_\_\_  
City Recorder

**CITY OF MEDFORD**

By \_\_\_\_\_  
Brian Sjothun  
Parks & Recreation Director

Signed by the Contractor  
in my presence as:  
WITNESS:

**OVERSTREET LANDSCAPE &  
HYDROSEEDING, INC.**

\_\_\_\_\_

By \_\_\_\_\_  
Title \_\_\_\_\_

