

Council Business Meeting

October 20, 2020

Agenda Item	Adoption of Resolution No. 2020-19 Exemption from Competitive Bidding Requirements for contract to Japanese Garden Specialty LLC.	
From	Michael A. Black, AICP	APRC Director
Contact	Michael.Black@ashland.or.us	

SUMMARY

Resolution No. 2020-19 is requesting approval of an Exemption of a Public Improvement Contract for the Japanese Garden Redesign Project. This project is being funded by a grant through the Ashland Parks Foundation. Due to the artistic and specialized nature of landscape design of a traditional Japanese Garden, staff is requesting an exemption to the competitive bidding requirements to award this public improvement contract.

POLICIES, PLANS & GOALS SUPPORTED

APRC Commission Goals 2019-21 Biennium

Goal 17: *Continue to be part of the solution for realizing an Authentic Japanese Garden in Lithia Park and securing a large donation to accommodate the building and long-term maintenance of the garden*

PREVIOUS COUNCIL ACTION

The Japanese Garden Landscape project was approved in the 2019-21 Biennial budget process as a CIP (Capital Improvement Project) for the Parks and Recreation Department. The Ashland Parks and Recreation Commissioners (APRC) approved the design of the Japanese Garden (January 2019) The design was amended to incorporate the 100-year old Douglas fir trees into the design and was approved by the Commission on October 28, 2019. At the September 23, 2020 Special Business Meeting, the APCR approved the contact for the Japanese Garden construction be awarded to Japanese Garden Specialty, LLC. and that the contract should be presented to the City Council for approval.

BACKGROUND AND ADDITIONAL INFORMATION

Ashland Parks Foundation (APF) received a donation of \$1,380,000 million dollars from local resident Jeff Mangin and the Marchal family in 2018 to redesign the Japanese Garden in Lithia Park. The Foundation, in return, is granting those funds and the design of the garden, which has already been approved by the Parks Commissioners, to APCR to redesign and reconstruct the current Japanese Garden.

APF hired landscape designer Toru Tanaka of Japanese Garden Specialty, LLC to design a new authentic Japanese Garden. Tanaka was trained in Japan and was the Director of Portland's Japanese Garden. Very few qualified designers/contractors exist that specialize in this area of expertise. In fact, the APF engaged the two prominent Japanese Garden Designers in the northwest (Toru Tanaka and Hoichi Korisu) to participate in a design competition prior to selecting a designer. Toru Tanaka won that design competition based on the conceptual plan that he produced for the APF. The Ashland Parks Foundation as the grantor of this project hired the designer and is requiring that Japanese Garden Specialty, LLC. be the contractor to ensure that cultural sensitivities and accuracies are carried from the design to the construction.

The current Japanese style garden in Lithia Park was evaluated during the Lithia Park Master Plan Process. During design week in June 2018, it was determined that the garden could potentially be redesigned and even expanded without negatively affecting the adjoining park spaces. A few of the core garden needs identified in the project include creating a truly authentic Japanese Garden that is respectful of the history and culture of this unique garden form and making the garden ADA accessible.

Ashland Parks and Recreation staff and the Ashland Parks Foundations held two public information/workshops on August 1 and August 9, 2018, to engage the public about the Japanese Garden redesign.

The Japanese Garden plans were originally approved in January of 2019. Soon after the approval, which included the removal of two 100-year old Douglas fir trees, the plans for the garden were put on hold by the donor and the Parks Foundation who were funding the project. The plan was amended to incorporate the 100-year old Douglas fir trees into the design and the plans for the bamboo garden have been scrapped. The amended plan was approved by the Commission on October 28, 2019 with the following conditions;

1. All twelve of the Douglas fir trees in the “Boy Scout Grove” shall be retained, including the two within the boundary of the proposed Japanese Garden.
 - a. **Condition Satisfied.** All the trees in the Douglas Fir Boy Scout Grove are being preserved.
2. A special tree protection plan shall be created to protect the entire Doug fir grove.
 - a. Construction and any other work within the drip line of the Douglas fir Boy Scout Grove would only occur as recommended by certified arborists with the goal of maximizing protection for these trees above and below ground.
 - b. The exception to the above being that the area within the drip line south of the existing east west sidewalk by the Douglas fir trees may require root disturbance to gain ADA access and other reasons. It is understood that work in this area would include supervision by certified arborists but reasonable measures to allow Garden construction and planting work would be allowed.
 - c. **Condition Satisfied.** Two certified arborists and Kerry KenCairn, a local landscape architect, created a tree protection plan that satisfies this condition of approval. The tree protection plan can be found on page T2.0 in the construction plan set.
3. The “Bamboo Forest” area near the Douglas fir trees from the original plan shall be eliminated from the approved Japanese Garden plan.
 - a. **Condition Satisfied.** The proposed “Bamboo Forest” has been eliminated from the plan.
4. A comprehensive tree protection plan will be implemented by the Ashland Parks Arborist for the area outside of the proposed garden for areas adjacent to, or with potential impact from the proposed construction project.
 - a. **Condition Satisfied.** The same team that created the plan in item 2, above, has created the comprehensive tree protection plan.
5. The construction of the project is being funded completely by the APF and any contributions from Ashland Parks and Recreation will be through in-kind labor, project management and equipment usage.
 - a. **Condition Satisfied.** The grant from the Ashland Parks Foundation will cover all material and construction costs, except for specific in-kind contributions. See attached MOU between Ashland Parks Foundation and Ashland Parks and Recreation.
6. Staff shall work with APF and the donor to secure a contract for a ten-year period for a monetary maintenance contribution of up to \$60,000 per year.
 - a. **Condition Satisfied.** The donor has agreed to the ten-year contribution to be administered by the Ashland Parks Foundation. See attached Donation Agreement for the Maintenance of the Japanese Garden

APRC has presented the Japanese Garden design to the Tree Commission, Historic Commission, Community Development, and Public Works.

Climate Energy and Action Plan (CEAP) considerations – This project is a landscape project and has minimal long-term environmental impacts. The design does not include the use natural gas or fossil fuels. This project is as water efficient as possible while maintain the authenticity of a traditional Japanese Garden and will make upgrades to the aging irrigation system. Recycled materials will be used when possible including wood and boulders.

FISCAL IMPACTS

The total for this project is \$1,380,000, which includes the current bid from the contractor of \$1,278,985.00, plus \$100,000, which is being added for the deck at the pond (\$75,000) and a small contingency. This project is being funded in total by a grant from APF and APRC will only be contributing to the project through in-kind donations, including arborist work, excavation and demolition work and limited general labor. The Foundation is granting APRC up to \$1,380,000 of expenses related to the design and renovation. The grant of \$1,380,000 is enough to cover the cost of the renovation. APRC staff will offer support to the construction with in-kind matches associated with some onsite construction and the use of some of APRC's equipment. Budget overages in the project that cannot be covered by the grant from APF may require modification to the plan and/or phasing of the project.

In addition to the cost of the construction, APRC will also be concerned with the increased cost of maintenance for the enhanced garden. Currently, the cost of maintenance and materials for the garden is estimated at \$20,000 per year. APRC has budgeted to cover those expenses and will continue to do so as part of Lithia Park maintenance.

It is anticipated that the cost of maintenance of the garden will increase almost four times, making the new expense for the garden between \$70,000 and \$80,000 per year. The Donor and the Ashland Parks Foundation agree to enter into an agreement to pay up to \$1,380,000 for the construction of the Japanese Garden and up to \$60,000 per year for a period of ten years toward regular maintenance costs of the Japanese Garden.

In summary, expenses are expected to increase immediately upon the opening of the new Japanese Garden. Those expenses could grow from \$20,000 per year to approximately \$75,000 per year. With an annual donation of \$60,000 per year for ten years from the Foundation, coupled with the \$20,000 per year from the APRC budget. Staff is comfortable that the increase in maintenance will not cause an undue hardship on the budget.

STAFF RECOMMENDATION

The Japanese Garden has been reconstructed several times over the 100 years since it was installed. There was a major reconstruction in the 1950s and then again in the 1980s. One of the challenges with maintaining a living landscape is that it will always need regeneration after a time. The Japanese Garden is at a point when regeneration, or reconstruction, is necessary in order to maintain the aesthetic that so many people enjoy. The fact that we can regenerate the garden without public funds, and that we have secured what amounts to a \$600,000 maintenance endowment over ten years, is why we are so excited about moving this project forward at this point.

The garden needs work to maintain its aesthetic. It also requires an accomplished designer who is qualified in both the physical and cultural requirement to design and build an authentic Japanese Garden. We have been granted a gracious gift to not only maintain but expand the garden's aesthetic and we are excited to move this project forward. This project will also employ several local contractors and their employees for up to two years.

Staff recommends the adoption of Resolution No. 2020-19 which grants an Exemption from the competitive bidding process for the Japanese Garden Project.

ACTIONS, OPTIONS & POTENTIAL MOTIONS

- 1) I move approval of Resolution No. 2020-19 that the City Council, acting as local contract review board, approve this exemption to a public improvement contract and awarding the contract to Japanese Garden Specialty LLC.

REFERENCES & ATTACHMENTS

Attachment 1: Resolution No. 2020-19 with draft written finding of fact for the Exemption of the competitive bidding process for a public improvement project.

Attachment 2: Public Improvement Contract

Attachment 3: MOU Ashland Parks Foundation for funding of Japanese Garden Project

Attachment 4: MOU Ashland Parks Foundation for Japanese Garden Maintenance

1 **RESOLUTION NO. 2020-19**

2 A RESOLUTION APPROVING CERTAIN FINDINGS AND EXEMPTING A PUBLIC
3 IMPROVEMENT CONTRACT FOR THE JAPANESE GARDEN PROJECT FROM THE
4 COMPETITIVE BIDDING REQUIREMENTS OF ORS 279C.335

5 **RECITALS:**

6 A. Pursuant to Ashland Municipal Code 2.50.040.F, the City Council of the City of Ashland
7 (City) acts as the local contract review board for the City, and in that capacity, has the authority
8 to exempt a public improvement contract or a class of public improvement contracts from the
9 competitive bidding requirements of ORS 279C.335(1) after approving certain findings as set
forth in 279C.335(2).

10 B. Before a local contract review board may approve the findings required by ORS 279C.335(2)
11 and grant an exemption from the competitive bidding requirements of ORS 279C.335(1), a
12 public hearing must be held, and notification of the public hearing must be published in at least
13 one (1) trade newspaper of general statewide circulation a minimum of 14 days before the
hearing.

14 C. A public hearing on the City’s request for an exemption from the competitive bidding
15 requirements of ORS 279C.335(1) for the public improvement contract for the Japanese Garden
16 Project was held on October 20, 2020.

17 D. Notification of the public hearing was published in the *Daily Journal of Commerce* a
18 minimum of 14 days before the public hearing as required by ORS 279C.335(5).

19 **NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ASHLAND, OREGON,**
20 **RESOLVES AS FOLLOWS:**

21 SECTION 1. The City Council, acting as the local contract review board, hereby approves the
22 findings submitted by the City and set forth in “Exhibit A” which is attached hereto and fully
23 incorporated herein.

24 SECTION 2. Based upon the approved findings set forth in “Exhibit A”, the City Council,
25 acting as the local contract review board, hereby exempts the public improvement contract for
26 the construction of the Japanese Garden Project from the competitive bidding requirement of
27 279C.335(1).

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SECTION 3. This resolution is effective upon adoption.

ADOPTED by the City Council this _____ day of _____, 2020.

ATTEST:

Melissa Huhtala, City Recorder

SIGNED and APPROVED this _____ day of _____, 2020.

John Stromberg, Mayor

Reviewed as to form:

Katrina L. Brown, Assistant City Attorney

EXHIBIT A

FINDINGS OF FACTS SUPPORTING AN EXEMPTION FROM THE COMPETITIVE BIDDING REQUIREMENTS FOR THE ASHLAND PARKS AND RECREATION COMMISSION JAPANESE GARDEN RENOVATION PROJECT

I. The following findings in support of an exemption from the competitive bidding requirements are submitted to the local contract review board for consideration:

(a) The exemption is unlikely to encourage favoritism in awarding public improvement contracts or substantially diminish competition for public improvement contracts.

This project meets the criterion. Exempting the Japanese Garden contract will not encourage favoritism, due to the specialized nature and cultural importance of an authentic Japanese Garden. Very few qualified designers/contractors exist that specialize in this area of expertise. In fact, the Ashland Parks Foundation engaged the two most prominent Japanese Garden Designers in the northwest (Toru Tanaka and Hoichi Korisu) to participate in a design competition prior to selecting a designer. Toru Tanaka won that design competition based on the conceptual plan that he produced for the APF. The Ashland Parks Foundation (APF), as the grantor of this project, hired the designer and is requiring that Japanese Garden, LLC be the contractor to ensure that cultural sensitivities and accuracies are carried forward from the design through construction.

(b) Awarding a public improvement contract under the exemption will likely result in substantial cost savings and other substantial benefits to the contracting agency or the state agency that seeks the exemption. In approving a finding under 279C.335(2)(b), the local contract review board shall consider the type, cost and amount of the contract and, to the extent applicable to the particular public improvement contract or class of public improvement contracts, the following:

(A) How many persons are available to bid: Authentic Japanese Gardens, including their design and construction is a specialty, and as such, there are a limited number of qualified persons to bid on this type of project. As stated above, both of the qualified Japanese Garden designers in the northwest were engaged for this project, and Toru Tanaka was selected by the APF.

(B) The construction budget and projected operating costs for the completed public improvement: The total for this public improvement contract is \$1,380,000, which includes the current bid from the proposed contractor of \$1,278,985.00. This project is being funded in total by the grant from APF, and APRC will only be contributing to the project through in-kind donations, including arborist work, excavation and

demolition work and limited general labor. Budget overages in the project that cannot be covered by the grant from APF may require modification to the plan and/or phasing of the project.

In addition to the cost of the construction, APRC will also be concerned with the increased cost of maintenance for the enhanced garden. Currently, the cost of maintenance and materials for the garden is estimated at \$20,000 per year. APRC has budgeted to cover those expenses and will continue to do so as part of Lithia Park's expenses. It is anticipated that the cost of maintenance of the garden will increase almost four times, making the new expense for the garden between \$70,000 and \$80,000 per year. The donor agrees to enter into an agreement to pay up to \$60,000 per year for a period of ten years toward regular maintenance costs of the Japanese Garden.

In summary, expenses are expected to increase immediately upon the opening of the new Japanese Garden. Those expenses could grow from \$20,000 per year to approximately \$75,000 per year. With an annual donation of \$60,000 per year for ten years from the Foundation, coupled with the \$20,000 per year from the APRC budget. Staff is comfortable that the increase in maintenance will not cause an undue hardship on the budget.

- (C) Public Benefits that may result from granting the exemption: The guiding principles of this project is to create an authentic Japanese Garden that is respectful of and accurate as to Japanese history and culture. Improvements include ADA accessibility, cultural authenticity, and improvements to the garden design and experience.
- (D) Whether value engineering techniques may decrease the costs of the public improvement: N/A
- (E) The costs and availability of specialized expertise that is necessary for the public improvement: As stated above, authentic Japanese gardens, including their design and construction, are a very specialized form of garden. As such, there are a very limited number of qualified persons to bid on this type of project.
- (F) Any likely increases to public safety: Improving aging stone walkways will improve trip hazards.
- (G) Whether granting the exemption may reduce risk to the contracting agency, the state agency, or the public that are related to the public improvement: N/A

- (H) Whether granting the exemption will affect the sources of funding for the public improvement: The granting agency, APF, is directing that the City use Japanese Garden Specialty, LLC for the construction of this project. If this contractor is not able to be utilized, funding for the construction of this project will not be available.
- (I) Whether granting the exemption will better enable the contracting agency to control the impact that market conditions may have on the cost of and time necessary to complete the public improvement: N/A
- (J) Whether granting the exemption will better enable the contracting agency to address the size and technical complexity of the public improvement: N/A
- (K) Whether the public improvement involves new construction or renovates or remodels an existing structure: This project is a landscape renovation of the existing Japanese Garden in Lithia Park. This improvement project will expand the existing garden area by approximately 700 square feet while preserving historic elements.
- (L) Whether the public improvement will be occupied or unoccupied during construction: The Japanese Garden will be unoccupied and unavailable for public use during construction. A limited area of Lithia Park will be closed for use during construction. This area is limited to the current Japanese Garden and the immediately surrounding areas.
- (M) Whether the public improvement will require a single phase of construction or multiple phases of construction work to address the specific project conditions: This project is a single-phase project to end by December 31, 2022.
- (N) Whether the contracting agency or state agency has, or has retained under contract and will use contracting agency or state agency personnel, consultants and legal counsel that have the necessary expertise and substantial experience in alternative contracting methods to assist in the developing the alternate contacting method that the agency or state agency will use to award the public improvement contract and to help negotiate, administer and enforce the terms of the public improvement contract: The City of Ashland Legal Department staff has extensive contracting experience and is assisting in developing this alternative contact. Legal counsel, along with APRC staff, will help negotiate, administer, and enforce the terms of the resulting public improvement contact. The process for which approval is sought was also recommended by other jurisdictions when a project does not fit into the traditional competitive design/bid/build process for public improvements.

II. Conclusion

- (a) **Favoritism:** Exemption the public improvement contract for the Japanese Garden from the competitive bidding requirements of ORS 279C.335(1) will not encourage favoritism, due to the specialized nature and cultural importance of an authentic Japanese Garden. Very few qualified designers/contractors exist that specialize in this area of expertise. In fact, the APF engaged the two prominent Japanese Garden Designers in the northwest (Toru Tanaka and Hoichi Korisu) to participate in a design competition prior to selecting a designer. Toru Tanaka won that design competition based on the conceptual plan that he produced for the APF.
- (b) **Cost Savings:** The Ashland Parks Foundation as the grantor of this project hired the designer and is requiring that Japanese Garden, LLC, be the contractor to ensure that cultural sensitivities and accuracies are carried from the design to the construction. This project is being grant funded by Ashland Parks Foundation. APRC will only be contributing to the project through in-kind donations, including arborist work, excavation and demolition work and limited general labor. Budget overages in the project that cannot be covered by the grant from APF may require modification to the plan and/or phasing of the project.

In addition to the cost of the construction, APRC will also be concerned with the increased cost of maintenance for the enhanced garden. APF is granting an annual donation of \$60,000 per year for ten (10) years from the Foundation, coupled with the \$20,000 per year from the APRC budget. Staff is comfortable that the increase in maintenance will not cause an undue hardship on the budget.

An exemption from competitive bidding requirements is appropriate under the facts set forth above.

PUBLIC IMPROVEMENT CONTRACT



20 East Main Street
Ashland, Oregon 97520
Telephone: (541) 488-5587
Fax: (541) 488-6006

CONSULTANT: Japanese Garden Specialty, LLC

CONSULTANT'S CONTACT: Toru Tanaka

ADDRESS: P.O. Box 19403
Portland, Oregon 97280

This Public Improvement Contract (hereinafter "Contract") is entered into by and between the CITY OF ASHLAND, an Oregon municipal corporation (hereinafter "City"), and JAPANESE GARDEN SPECIALTY, LLC, a domestic limited liability company (hereinafter "Contractor").

NOW THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties mutually covenant and agree as follows:

1. PROJECT MANAGER:

The City's Project Managers for this Contract are:

Michael Black, Director Ashland Parks and Recreation Commission.

2. WORK:

2.1 The Work under this Contract is for the Japanese Garden Project, Project No. 000646, as more fully described in the Contract Documents listed in Article 6, below. Contractor shall complete all Work as specified in the Contract Documents. The Work is generally described as follows: the complete construction of an authentic Japanese Garden including, but not limited to, the installation of pathways, fencing, walls, drainage, irrigation, pond, waterfall, creek, plantings of trees and landscape and decorations as based on drawings and site plans.

2.2 Contractor shall, at its own risk and expense, perform the Work described in the Contract Documents and furnish all permits, labor, tools, machinery, materials, transportation, equipment and services of all kinds required for, necessary for, or reasonable incidental to, performance of the Work, that is, the construction of the Japanese Garden Project, Project No. 000745. Contractor shall secure all municipal, County, State, or Federal Permits or licenses including payment of permit fees, license fees, and royalties necessary for or incidental to the performance of the Work. The risk of loss for such Work shall not shift to the City until written acceptance of the Work by the City.

3. EFFECTIVE DATE AND DURATION:

This Contract is effective as of the date of execution by the City (the "Effective Date"). All Work under this Contract shall, unless otherwise terminated or extended, be completed by or before December 31, 2022.

4. CONSIDERATION

4.1 The City agrees to pay Contractor, at the times and in the manner provided in the Contract Documents, a sum not to exceed **\$1,278,985.00 (one million two hundred seventy-eight thousand and nine hundred and eighty-five U. S. dollars)** for performing the Work required by this Contract, including all allowable expenses. In no event shall Contractor's total of all compensation and reimbursement under this Agreement exceed the sum of **\$1,278,985.00 (one million two hundred seventy-eight thousand and nine hundred and eighty-five U.S. dollars)** without the express, written approval from the City official whose signature appears below, or such official's successor in office. Any progress payments made to Contractor shall be made only in accordance with the schedule and the requirements as set forth in” Exhibit A, Standard Terms and Conditions for Public Improvement Contracts.”

4.2 The City certifies that sufficient funds have been appropriated to make payments required by this Contract during the current fiscal year. Contractor understands and agrees that City’s payment of amounts under this Contract attributable to Work performed after the last day of the current fiscal year is contingent upon City appropriations, or other expenditure authority sufficient to allow City in the exercise of its reasonable discretion, to continue to make payments under this Contract. In the event City has insufficient appropriations, limitations or other expenditure authority, City may terminate this Contract without penalty or liability to City, effective upon the delivery of written notice to Contractor, with no further liability to Contractor.

5. CONTRACTOR’S REPRESENTATIONS

In order to induce the City to enter into this Contract, Contractor makes the following representations:

- 5.1 Contractor has examined and carefully studied the Contract Documents and any data and reference items identified in the Contract Documents.
- 5.2 Contractor has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- 5.3 Contractor is familiar with and is satisfied as to all laws and regulations that may affect cost, progress, and performance of the Work.
- 5.4 Contractor has carefully studied all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, and reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings.
- 5.5 Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and

performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (3) Contractor's safety precautions and programs.

- 5.6 Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
- 5.7 Contractor is aware of the general nature of work to be performed by the City and others at the Site that relates to the Work, as indicated in the Contract Documents.
- 5.8 Contractor has given the City written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by City is acceptable to Contractor.
- 5.9 The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

6. CONTRACT DOCUMENTS

- 6.1 The Contract Documents consist of the following:
 - A. This Public Improvement Contract (pages 1 to 46, inclusive).
 - B. Performance bond (pages 35 to 36, inclusive).
 - C. Payment bond (pages 37 to 38, inclusive).
 - D. Exhibit A, Standard Terms and Conditions for Public Improvement Contracts, including all attachments thereto (pages 9 to 28, inclusive).
 - E. Project Specifications for *Japanese Garden Design*.
 - F. Construction Diagrams entitled "*Japanese Garden Amended Site Plans*"
 - G. Addenda (N/A).
 - H. Contractor's Bid entitled "*Garden Specialty Quote 8.20.20*"
 - I. Certificate of Representation.
 - J. The following documents which may be delivered or issued on or after the Effective Date of this Contract and are not attached hereto:
 - 1. City's Notice to Proceed.
 - 2. Work Change Directives.
 - 3. Written Change Orders.
- 6.2 The documents listed in Subarticle 6.1. are attached to this Contract (except as expressly stated otherwise above) and fully incorporated herein.
- 6.3 There are no Contract Documents other than those listed above in this Article 6.
- 6.4 The Contract Documents may only be amended, modified, or supplemented as provided in the Standard Terms and Conditions for Public Improvement Contracts.

7. INSURANCE

7.1 Workers' Compensation. Contractor shall obtain and maintain during the term of this Contract, and until City's final acceptance of all Work performed hereunder, Workers' Compensation insurance in compliance with ORS Chapter 656. All employers, including Contractor and any subcontractors, that employ subject workers who perform any work under this Contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its subcontractors complies with this requirement.

7.2 Commercial General Liability. Contractor shall obtain and maintain during the term of this Contract and until City's final acceptance of all Work performed hereunder, a policy or policies of liability insurance including commercial general liability insurance with a combined single limit, or the equivalent, of not less than \$2,000,000 (two million dollars) per occurrence for Bodily Injury, Death, and Property damage. Such insurance shall include coverage for broad form contractual liability; broad form property damage; personal and advertising injury; owners and contractor protective; premises/operations; and products/completed operations. Coverage shall not exclude excavation, collapse, underground, or explosion hazards. Aggregate limits shall apply on a per project basis.

7.3 Commercial Automobile Liability. Contractor shall obtain and maintain during the term of this Contract and until City's final acceptance of all Work performed hereunder, a policy or policies of commercial automobile liability insurance with a combined single limit, or the equivalent of not less than \$2,000,000 (two million dollars) for each accident for Bodily Injury, Death, and Property Damage, including coverage for owned, hired, and non-owned vehicles.

7.4 Notice of Cancellation or Change. There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) required under this Contract without thirty (30) days' prior written notice from the Contractor or its insurer(s) to the City. This notice provision shall be by endorsement physically attached to the certificate of insurance.

7.5 Additional Insured. Each policy for the commercial general liability insurance and the commercial automobile liability insurance shall name as additional insured, "the City of Ashland, Oregon, its officers, agents and employees" with respect to claims arising out of Contractor's services to be provided under this Contract. This coverage shall be evidenced by an endorsement physically attached to the certificate of insurance.

8. GOVERNING LAW, VENUE

This Contract shall be governed by the laws of the State of Oregon without regard to conflict of laws principles. Exclusive venue for litigation of any action arising under this Agreement shall be in the Circuit Court of the State of Oregon for Jackson County unless exclusive jurisdiction is in federal court, in which case exclusive venue shall be in the federal district court for the district of Oregon. Each party expressly waives any and all rights to maintain an action under this Contract in any other venue, and expressly consents that, upon motion of the other party, any case may be dismissed or its venue transferred, as appropriate, so as to effectuate this choice of venue.

9. AMENDMENTS

This Contract may be amended only by written instrument executed by both parties with the same formalities as this Contract.

IN WITNESS WHEREOF the parties have caused this Public Improvement Contract to be signed in their respective names by their duly authorized representatives as of the dates set forth below.

CITY:

CONTRACTOR:

Adam Hanks, Interim City Administrator

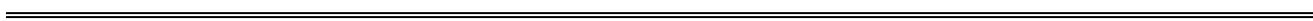
Signature

Date

Printed Name

Title

Date



CONTRACTOR DATA AND CERTIFICATION

Business Name (please print): _____

Contact Name: _____ Phone: _____ Fax: _____

Address _____

Do Not Write Federal and State Tax ID Numbers on this Contract: One copy of W-9 is to be submitted with the signed contract to be kept on file in the City of Ashland Finance Department.

Ashland Business License #: _____ Construction Contractors Board #: _____

Citizenship: Nonresident alien _____ Yes _____ No

Business Designation (check one): _____ Individual _____ Sole Proprietorship
_____ Partnership _____ Corporation _____ Government/Nonprofit

The above information must be provided prior to contract approval. Payment information will be reported to the Internal Revenue Service (IRS) under the name and taxpayer I.D. number provided above. (See IRS 1099 for additional instructions regarding taxpayer ID numbers.) Information not matching IRS records could subject you to 31 percent backup withholding.

I, the undersigned, understand that the Standard Terms and Conditions For Public Improvement Contracts (**Exhibit A**) together with **Exhibits A through K** together with all other Contract Documents as described in this Contract, and the separately bound Oregon 2018 Standard Specifications for Construction, as amended by the City of Ashland’s most recent Addenda to the 2018 Standard Specifications are an integral part of this Contract and agree to perform the Work described in the Contract Documents, in accordance with the terms and conditions contained therein. I further understand the City is prohibited from entering into a contract when the contractor has neglected or refused to file any return, pay any tax, or properly contest a tax, pursuant to ORS 305.385; I hereby certify, under penalty of perjury and false swearing, that I/my business am/is not in violation of any Oregon tax laws; I further certify that the certification and representations in Standard Term and Condition #16 [CCB Registration Requirements] are true and correct, and further I certify that I am an independent contractor as defined in ORS 670.600.

CONTRACTOR:

Signature/Title

Printed name

Date

CERTIFICATE OF REPRESENTATION

Contractor, under penalty of perjury, hereby certifies that:

- (a) The number shown on this form is its correct taxpayer ID (or is waiting for the number to be issued to it; and
- (b) Contractor is not subject to backup withholding because
 - (i) it is exempt from backup withholding or
 - (ii) it has not been notified by the Internal Revenue Service (IRS) that it is subject to backup withholding as a result of a failure to report all interest or dividends, or
 - (iii) the IRS has notified it that it is no longer subject to backup withholding. Contractor further represents and warrants to City that
 - (a) it has the power and authority to enter into and perform the work,
 - (b) the Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms, and
- (c) The work under the Contract shall be performed in accordance with the highest professional standards, and
- (d) Contractor is qualified, professionally competent and duly licensed to perform the work. Contractor also certifies under penalty of perjury that its business is not in violation of any Oregon tax laws, and it is a corporation authorized to act on behalf of the entity designated above and authorized to do business in Oregon or is an independent contractor as defined in the contract documents, and has checked four or more of the following criteria:
 - _____ (1) I carry out the labor or services at a location separate from my residence or is in a specific portion of my residence, set aside as the location of the business.
 - _____ (2) Commercial advertising or business cards or a trade association membership are purchased for the business.
 - _____ (3) Telephone listing is used for the business separate from the personal residence listing.
 - _____ (4) Labor or services are performed only pursuant to written contracts.
 - _____ (5) Labor or services are performed for two or more different persons within a period of one year.
 - _____ (6) I assume financial responsibility for defective workmanship or for service not provided as evidenced by the ownership of performance bonds, warranties, errors and omission insurance or liability insurance relating to the labor or services to be provided.

**STANDARD TERMS AND CONDITIONS
FOR PUBLIC IMPROVEMENT CONTRACTS**

1. Contractor is Independent Contractor

- a. Contractor shall perform all of the Work required by this Contract as an independent contractor.
- b. The Contractor represents and warrants that Contractor (i) is not currently an employee of the federal government or the State of Oregon, and (ii) meets the specific independent contractor standards of ORS 670.600, as certified on the Independent Contractor Certification Statement attached as **Exhibit D**.
- c. Contractor will be responsible for any federal or state taxes applicable to any compensation or payment paid to Contractor under this contract.
- d. Contractor is not eligible for any federal Social Security, unemployment insurance, state Public Employees' Retirement System, or workers' compensation benefits from compensation or payments to Contractor under this contract.

2. Subcontracts and Assignment

- a. Contractor shall not subcontract any of the Work required by this Contract, or assign, sell, dispose of, or transfer any of its interest in this contract, nor delegate duties under the contract, either in whole or in part, without the prior written consent of the City. Such consent if provided shall not relieve the Contractor of any of the obligations under the contract. Any assignee or transferee shall be considered the agent of the contractor and be bound to abide by all provisions of the contract. If the City consents in writing to an assignment, sale, disposal or transfer of the Contractor's rights or delegation of Contractor's duties, the Contractor and its Surety, if any, shall remain liable to the City for complete performance of the Contract as if no such assignment, sale, disposal, transfer or delegation had occurred unless the City otherwise agrees in writing. [OAR 137-049-0200(2)]
- b. Use of Subcontractors, material suppliers or equipment suppliers shall in no way release Contractor from any obligations of contract with City. Contractor will provide in all subcontract agreements that the Subcontractor, material supplier and equipment supplier will be bound by the terms and conditions of this Contract to the extent that they relate to the Subcontractor's work, material or equipment. All Subcontracts are assignable to the City at City's option, in the event this Contract is terminated for default of Contractor.
- c. Contractor covenants and agrees to bind any and all subcontractors for performance of Work under this Contract in the same manner Contractor is bound to City. Contractor further agrees that if subcontractors are employed in the performance of this contract, the Contractor and its subcontractors are subject to the requirements and sanction of ORS Chapter 656, Workers' Compensation.

3. No Third Party Beneficiaries

City and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives or provides any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

4. Successors in Interest

The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and approved assigns, if any.

5. Contract Documents

The Contract Documents, which comprise the entire agreement between the City and Contractor, are listed in Article 6 of the primary Public Improvement Contract.

6. Contractor's Representations

By executing this Contract, the Contractor hereby certifies that the representations made by the Contractor in the Contract Documents, including specifically the Offer, are true and correct and are incorporated herein by this reference. Contractor further certifies that Contractor has given the City written notice of conflicts, errors, ambiguities, or discrepancies that it has discovered in the Contract Documents, and the written resolution thereof by the City is acceptable to the Contractor, and the Contract Documents are generally sufficient to indicate and convey understanding of terms and conditions for performing and furnishing the project work.

7. Drug Testing [ORS 279C.505(2)]

- a. Contractor shall certify to the City that it has a drug-testing program in place for all its employees that includes, at a minimum, the following:
 - i. A written employee drug-testing policy,
 - ii. Required drug testing for all new Subject Employees or alternatively, required testing of all Subject Employees every 12 months on a random selection basis, and
 - iii. Required testing of a Subject Employee when the Contractor has reasonable cause to believe the Subject Employee is under the influence of drugs.
- b. A drug-testing program that meets the above requirements will be deemed a "Qualifying Employee Drug-testing Program." For the purposes of this section, an employee is a "Subject Employee" only if that employee will be working on the Public Improvement project job site.
- c. By executing and returning this contract the Contractor certifies, represents and warrants to the City that a Qualifying Employee Drug-testing Program is in place at the time of execution, will continue in full force and effect for the duration of this contract, and that Contractor will comply with the provisions of subsection (d) below. Further, the City's performance obligation (which includes, without limitation, the City's obligation to make payment) is contingent on Contractors compliance with this representation and warranty.
- d. Contractor will require each subcontractor providing labor for the project to:
 - i. Demonstrate to the Contractor that it has a Qualifying Employee Drug-testing Program for the subcontractor's Subject Employees, and represent and warrant to the Contractor that the Qualifying Employee Drug-testing Program is in place at the time of subcontract execution and will continue in full force and effect for the duration of the subcontract; or
 - ii. Require that the subcontractor's Subject Employees participate in the Contractor's Qualifying Employee Drug-testing Program for the duration of the subcontract.

8. Notice to Proceed

Written Notice to Proceed will be given by the City after the Contract has been executed and the Performance Bond, Payment Bond, and all required insurance documents approved. Notice To Proceed shall not be unreasonably delayed and shall generally occur within thirty (30) days of the contract date. Reasonable delay may be occasioned by the need to obtain necessary permits or easements or utility relocation. The Contractor shall commence the project work within ten (10) days of the date of the written Notice To Proceed. Contractor is not to commence work under the Contract prior to such written notice.

9. Suspension of the Work

The City, and its authorized representatives, may suspend portions or all of the project work due to causes including, but not limited to:

- a. Failure of the Contractor to correct unsafe conditions;
- b. Failure of the Contractor to carry out any provision of the Contract;
- c. Failure of the Contractor to carry out orders;
- d. Conditions, in the opinion of the City, which are unsuitable for performing the project work;
- e. Allowance of time required to investigate differing site conditions;
- f. Any reason considered to be in the public interest.

The contract time will not be extended, nor will the Contractor be entitled to any additional compensation if the work is suspended pursuant to subsections (a), (b) or (c). If the project work is suspended pursuant to subsection (f), the Contractor is entitled to a reasonable extension of the contract time and reasonable compensation for all verified costs resulting from the suspension plus a reasonable allowance for overhead with respect to such costs. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination. The foregoing provision concerning compensation in the event of a suspension of Work of this contract shall not apply if such suspension occurs as a result of the Contractor's violation of any Federal, State, or Local statutes, ordinances, rules or regulations, or as a result of any violation by the Contractor of the terms of this contract, including a determination by the City that the Contractor has not progressed satisfactorily with the Work in accordance with specifications.

10. Early Termination

- a. The City and the Contractor, by mutual written agreement, may terminate this Contract at any time.
- b. The City, on 30 days written notice to the Contractor, may terminate this Contract for any reason deemed appropriate in its sole discretion.
- c. The City may terminate this contract, in whole or in part, at any time for any reason considered by the City, in the exercise of its sole discretion, to be in the public interest. The City will provide the Contractor, and the Contractor's surety, seven (7) days prior written notice of a termination for public convenience.
- d. Either the City or the Contractor may terminate this Contract in the event of a breach of the Contract by the other. Prior to such termination, however, the party seeking the termination shall give to the other party written notice of the breach and of the party's intent to terminate. If the Party has not entirely cured the breach within 15 days of the notice, then the party giving the notice may terminate the Contract at any time thereafter by giving a written notice of termination.

11. Payment on Early Termination

- a. If this contract is terminated under 10(a),(b), or (c), the City shall pay the Contractor for work performed in accordance with the Contract prior to the termination date.
- b. If this contract is terminated under 10(d), by the Contractor due to a breach by the City, then the City shall pay the Contractor as provided in subsection (a) of this section.
- c. If this contract is terminated under 10(d), by the City due to a breach by the Contractor, then the City shall pay the Contractor as provided in subsection (a) of this section, subject to set off of excess costs, as provided for in section 12, Remedies.

12. Remedies

In the event of termination under 10(d), by the City due to a breach by the Contractor, then the City may complete the work either itself, by agreement with another contractor, or by a combination thereof. In the event the cost of completing the work exceeds the remaining unpaid balance of the total compensation provided under this contract, then the Contractor shall pay to the City the amount of the reasonable excess. After notice of termination under paragraph 10(c), the Contractor and the Contractor's surety shall provide the City with immediate and peaceful possession of the Project site and premises, and materials located on and off the Project site and premises for which the Contractor received progress payment. In no circumstances shall Contractor be entitled to lost profits due to termination.

The remedies provided to the City under section 10 through 12 for a breach by the Contractor shall not be exclusive. The City also shall be entitled to any other equitable and legal remedies that are available.

In the event of breach of this Contract by the City, then the Contractor's remedy shall be limited to termination of the Contract and receipt of payment as provided in section 11(b).

13. Access to Records

Contractor shall maintain and the City and its authorized representatives shall have access to all books, documents, papers and records of Contractor which relate to this contract for the purpose of making audit, examination, excerpts, and transcripts for a period of three years after final payment. Copies of applicable records shall be made available upon request. Payment for cost of copies is reimbursable by the City.

14. Ownership of Work

All work products of the Contractor that result from this Contract, including but not limited to background data, documentation and staff work that is preliminary to final reports, are the property of City. Draft documents and preliminary work submitted to the City for review and comment shall not be considered as owned, used or retained by the City until the final document is submitted.

The City shall own all proprietary rights, including but not limited to copyrights, trade secrets, patents and all other intellectual or other property rights in and to such work products. Pre-existing trade secrets of the Contractor shall be noted as such and shall not be considered as a work product of this contract. All such work products shall be considered “works made for hire” under the provisions of the United States Copyright Act and all other equivalent laws.

Use of any work product of the Contractor by the City for any purpose other than the use intended by this Contract is at the risk of the City. Use of any work product by Contractor is prohibited without the written consent of the City. All documents or other materials submitted to City by Contractor shall become the sole and exclusive property of City. Such materials are subject to Oregon Public Records laws.

15. Compliance with Applicable Law

Contractor certifies and shall comply and require all Subcontractors to comply with all federal, state, and local laws and ordinances, including specifically City of Ashland and State of Oregon Public contracting laws and rules applicable to the work under this Contract, including without limitation ORS Chapter 279A, ORS Chapter 279B, ORS Chapter 279C, ORS 279C.500 through 279C.670, and specifically ORS 279A.120(3), ORS 279C.515, ORS 279C.520, ORS 279C.530, ORS 279C.830 and ORS 279C.580 as set forth on **Exhibit B, attached hereto and made a part hereof by this reference**. In addition, the provisions of ORS 279C.360, ORS 279C.365(4), and ORS 279C.370 (Bid Documents and Disclosure); ORS 279A.010(p), 279A.120, 279C.375, and 279C.380(4), (Award of Contract and Bond); ORS 279A.110 (Prohibition on Discrimination in Subcontracting); ORS 279C.585 (Substitution first-tier Subcontractor); ORS 279C.650 to 279C.670 (Termination); ORS 279C.520, ORS 279C.540, 279C.545 (Hours); ORS 279C.800 to 279C.870 (Oregon Prevailing Wage Law), if applicable; ORS 279C.550 to 279C.565 (Retainage); ORS 279C.4570 (Payments); and ORS 279C.600 to 279C.625 (Bonds) ORS 279A.125 (Recyclable Products) are all incorporated into this contract by this reference as though set forth in full. Without limiting the foregoing, Contractor expressly agrees to comply with: (i) any requirements of the DAVIS BACON ACT (40 U.S.C. 3142 and applicable Davis- Bacon Related Acts; (ii) Title VI of the Civil Rights Act of 1964; (iii) Section V of the Rehabilitation Act of 1973; (iv) the Americans with Disabilities Act of 1990, (v) ORS 659A.142, (vi) all regulations and administrative rules established pursuant to those laws; and (vii) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. In addition, Contractor expressly agrees to comply with all federal and state tax laws. A condition or clause required by law to be in this contract shall be considered included and incorporated into the Contract and made a part hereof by these references.

16. Registration with Construction Contractor’s Board

The Contractor, hereby certifies that the Contractor is licensed with the Construction Contractors Board or licensed by the State Landscape Contractor’s Board in accordance with ORS 701.035 to 701.055 and, further, that all subcontractors performing work as described in ORS 701.005(2) (i.e., construction work) will be licensed with the Construction Contractors Board or licensed by the State Landscape Contractor’s Board in accordance with ORS 701.035 to 701.055 before the subcontractors commence work under the contract.

17. Prevailing Wages/ BOLI Fee

- a. Contractor shall certify in the Contract and it shall be a condition of the bond, as provided in ORS 279C.800 through 279C.870, that in performing this Contract, Contractor will pay and cause to be paid not less than the prevailing rate of wages as of the date of the Public Notice, per hour, per day, and per week for and to each and every worker who may be employed in and about the performance of the Contract. In accordance with ORS 279C.838, each worker in each trade or occupation employed in the performance of the Contract either by Contractor, subcontractor or other person doing or contracting to do or contracting for the whole or any part of the work on the Contract shall be paid not less than the applicable state or federal prevailing rate of wage, whichever is higher. Copies of the current BOLI prevailing wage schedule and federal wage rate schedule, if applicable, can be found at the following website: www.oregon.gov/boli. When both federal and state prevailing wages are required to be included in the contract specifications, the City shall also include in the specifications information showing which prevailing rate of wage is higher for workers in each trade or occupation in each locality, as determined by the Commissioner of the Bureau of Labor and Industries under ORS 279C.815 (2)(c).
- b. Contractor shall be bound by and shall fully comply with ORS 279C.800 to 279C.870, Oregon's Prevailing Wage Law. CONTRACTOR AGREES TO BE BOUND BY AND WILL COMPLY WITH PROVISIONS OF ORS 279C.840. Pursuant to ORS 279C.830(1), the existing prevailing rate of wage that may be paid to workers in each trade or occupation required, in the form of a BOLI document, is included in the contract and bid documents and made a part hereof by this reference. For public works for which the contract price is \$50,000 or more, all workers shall be paid not less than such specified minimum hourly rate of wage. [ORS 279C.830(1)]
- c. The City of Ashland shall pay the fee to the Commissioner of the Bureau of Labor and Industries pursuant to the administrative rule of the commissioner and as provided in ORS 279C.825(1). The fee shall be paid on or before the first progress payment or 60 days from the date work first begins on the Contract, or as otherwise provided by administrative rule, whichever is the earliest date. The fee is payable to the Bureau of Labor and Industries Wage and Hour Division Prevailing Wage Unit 800 N.E. Oregon Street #32 Portland Oregon 97232.
- d. Contractor and some subcontractors shall also file with the Construction Contractors Board a public works bond with a corporate surety authorized to do business in this state in the amount of \$30,000 as required by ORS 279C.836 and shall cause all subcontractors to do the same prior to starting work on the project. [ORS 279C.830(2)] The bond must provide that the contractor or subcontractor will pay claims ordered by the Bureau of Labor and Industries to workers performing labor upon public works projects. The bond must be a continuing obligation, and the surety's liability for the aggregate of claims that may be payable from the bond may not exceed the penal sum of the bond. The bond must remain in effect continuously until depleted by claims paid under this section, unless the surety sooner cancels the bond. Contractor shall verify that subcontractors have complied with this requirement prior to permitting the subcontractor to start work on the project.
- e. If the Contract is for a public work and the Contract price is \$50,000 or more, Contractor shall supply and file, and require every Subcontractor to supply and file, with the City and with the Wage and Hour Division, Bureau of Labor and Industries (BOLI), 800 NE Oregon #32, Portland, Oregon 97232 a certified statement in writing that conforms to the requirements of ORS 279C.845.

18. Hours of Labor /Overtime limitation [ORS 279C.520] [ORS 279C.540] [ORS 279C.545]

Pursuant to ORS 279C.520, no person may 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, the employee shall be paid at least time and a half pay:

- (a)

- (1) For all overtime in excess of eight hours in any one day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or
 - (2) For all overtime in excess of 10 hours in any one 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 279C.540.
- (c) Collective bargaining and negotiated labor agreements may provide exceptions to the requirements of this section and from ORS 279C.520 and ORS 279C.540.
- (d) When labor is employed by the City through another as a contractor, any worker employed by the contractor shall be foreclosed from the right to collect for any overtime provided in ORS 279C.540 unless a claim for payment is filed with the contractor within 90 days from the completion of the contract, providing the contractor has:
- (1) Caused a circular clearly printed in boldfaced 12-point type font and containing a copy of this section to be posted in a prominent place alongside the door of the timekeeper's office or in a similar place that is readily available and freely visible to workers employed on the work.
 - (2) Maintained the circular continuously posted from the inception to the completion of the contract on which workers are or have been employed.
- (e) At or before the commencement of work, the Contractor shall give notice in writing to employees or by posting, of the number of hours and days per week the employees may be required to work. [279C.520(2)(5)]

19. Medical Care and Workers Compensation [ORS 279C.530]

- (1) Pursuant to ORS 279C.530(1), Contractor shall promptly, as due, 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 the contractor, of all sums that the contractor agrees to pay for the services and all moneys and sums that the contractor collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services.
- (2) Pursuant to ORS 279C.530(2), All employers, including Contractor, that employ subject workers who work under this contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers Compensation coverage unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its subcontractors complies with these requirements..

20. Retainage

The withholding of retainage by a contractor or subcontractor on public improvement contracts shall be in accordance with ORS 701.420. [ORS 279C.555] "Retainage" means the difference between the amount earned by a contractor on a public improvement contract and the amount paid on the contract by the City. [ORS 279C.550] Moneys retained by a contracting agency under ORS 279C.570(7) shall either be: (a) retained in a fund by the City and paid to the contractor in accordance with ORS 279C.570; or (b) At the election of the contractor, paid to the contractor in accordance with the two options below:

- The contractor may deposit bonds, securities, or other instruments with the City or in any bank or trust company to be held in lieu of the cash retainage for the benefit of the contracting agency. In such event the City shall reduce the retainage in an amount equal to the value of the bonds, securities or instruments. and pay the amount of the reduction to the contractor in accordance with ORS 279C.570. Interest on the bonds or securities shall accrue to the contractor. {or}

- If the contractor elects, the City shall deposit the retainage, as accumulated, in an interest-bearing account in a bank, savings bank, trust company or savings association for the benefit of the City. Earnings on the account shall accrue to the contractor.

If the contracting agency incurs additional costs as a result of the exercise of the options in ORS 279C.560(1) or (5), the City may recover such costs from the contractor by reduction of the final payment. As work on the contract progresses, the contracting agency shall, upon demand, inform the contractor of all accrued costs. Bonds and securities deposited or acquired in lieu of retainage, as permitted above, shall be of a character approved by the City Attorney and City Finance Director, including but not limited to:

- a. Bills, certificates, notes or bonds of the United States.
- b. Other obligations of the United States or its agencies.
- c. Obligations of any corporation wholly owned by the federal government.
- d. Indebtedness of the Federal National Mortgage Association.
- e. General obligation Bond of the State of Oregon or a political subdivision thereof.

Unless the City finds that accepting a bond or instrument poses an extraordinary risk that is not typically associated with such bond or instrument, the contractor may deposit a surety bond for all or any portion of the amount of funds retained, or to be retained, by the City in a form acceptable to the City. The bond and any proceeds there from shall be made subject to all claims and liens and in the same manner and priority as set forth for retainage under ORS 279C.550 to 279C.570 and 279C.600 to 279C.625. The City shall reduce the retainage in an amount equal to the value of the bond and pay the amount of the reduction to the contractor in accordance with ORS 279C.570. Whenever a City accepts a surety bond from a contractor in lieu of retainage, the contractor shall accept like bonds from any subcontractor or supplier from which the contractor has retainage. The contractor shall then reduce the retainage in an amount equal to the value of the bond and pay the amount of the reduction to the subcontractor or supplier. [279C.560]

21. Progress Payments

- a. Payment for all work under the Contract will be made promptly by the City at the price or prices bid, and those prices shall include full compensation for all approved incidental work.
- b. Contractor shall make progress estimates of work performed in any calendar month and submit to the City for approval, before the fifth of the following month, or as mutually agreed between the Contractor and City. These estimates shall include value of labor performed and materials incorporated in the work since commencing work under the Contract. Such estimates need not be made by strict measurements and may be approximate only, and shall be based upon the whole amount of money that will become due according to terms of the Contract when Project has been completed. The City may include in payments eighty five percent (85%) of the cost to Contractor of materials or equipment not yet incorporated in the Work but delivered and suitably stored at the site, or at some other location agreed upon in writing. Such a payment shall be conditioned upon submission by the Contractor of bills of sale or such other documentation satisfactory to the City Attorney to establish the City's title to such materials or equipment or otherwise protect the City's interest including applicable insurance and transportation to the site, and a statement from Contractor explaining why it is necessary to procure said equipment and/or materials. When such payments are made, the Contractor warrants and guarantees that the title to all materials and equipment covered by a progress payment, whether incorporated in the project or not, will pass to the City upon receipt of such payment by the Contractor, free and clear of all liens, claims, security interests or encumbrances. Notwithstanding the above, when the progress estimate indicates that the progress payment would be less than one thousand dollars (\$1,000), no progress payment will be made for that estimate period, unless approved by the City.
- c. If the Contract price is determined, in whole or in part, on a Lump Sum basis, Contractor shall prepare an itemized cost breakdown relating thereto and have the City approve same before commencing work;

progress estimates based on said itemized cost breakdown may be the basis for progress payments. Upon direction by the City, Contractor shall provide for revision of the costs breakdown to reflect the true costs of the work as it progresses.

- d. If the Contract price is determined wholly on a unit basis, City may use unit prices bid in making progress estimates on the work. In case said unit prices do not, in the opinion of the City, truly represent actual relative costs of different parts of work, a percentage of the Unit Price may be used in making progress estimate adjustments.
- e. If the City receives written notice of any unsettled claims for damage or other costs due to Contractor's operations including, without limitation, claims from any City Department or other governmental agency, an amount equal to the claim may be withheld from the progress payments, final payments or retainage until such claim has been resolved to the satisfaction of City.
- f. Progress payments will be made by City on a monthly basis within thirty (30) days from sign off by the Contractor of the progress payment or fifteen (15) days after the payment is approved by City of work performed, whichever is the earlier date. Failure to pay progress payments within the timeframe set forth above will result in the imposition of interest as required by ORS 279C.570(2)(3). Defective or improper invoices will be addressed as set forth in ORS 279C.570(4)(5)(6).
- g. Payment will be issued by City for the amount of the approved estimate, less five percent (5%) retainage. Except as provided in paragraph 19 above and the applicable ORS Sections noted herein, such amount of retainage shall be withheld and retained by City until it is included in and paid to Contractor as part of the final payment of the Contract amount. Upon Substantial Completion of the work under the Contract which shall be understood to be not less than ninety-seven and one-half percent (97.5%) of the work, the City may, at its discretion, reduce the retained amount equivalent to not less than one hundred percent (100%) of the contract value or estimated value or estimated cost, whichever is greater, of the work remaining to be done. [279C.570(7)]
- h. The City may decline to approve an application for payment and may withhold such approval if, in the City's opinion, and in good faith, the work has not progressed to the point indicated by the Contractor's submittal. The City may also decline to approve an application for payment or may reduce said payment or, because of subsequently discovered evidence or subsequent inspections, City may nullify the whole or any part of any payment previously made to such extent as may be necessary in their opinion to protect the City from loss because of: (1) defective work not remedied, (2) third party claims filed or failure of the Contractor to make payments properly to Subcontractors for labor, materials or equipment, unless Surety consents to such payment, (3) reasonable doubt that the work can be completed for the unpaid balance of the Contract sum, (4) damage to another contractor's work, (5) reasonable indication that the work will not be completed within the Contract time, (6) unsatisfactory prosecution of the work by the Contractor, (7) claims against the Contractor by the City, (8) failure to submit a construction schedule or failure to keep said construction schedule updated, or (9) exceeding work limits. When any or all of the criteria set forth above have been remedied satisfactorily to the City, payment shall be made for amounts withheld because of them. Withholding of progress payments or partial payments under the criteria set forth above shall not entitle the Contractor to interest on such withheld payments or partial payments, except as provided in ORS 279C.570(9).
- i. If Contractor fails to complete the Project within the time limit fixed in the Contract or any extension, no further estimate may be accepted or progress or other payments allowed until the Project is completed, unless approved otherwise by City. Progress estimates are for the sole purpose of determining progress payments and are not to be relied on for any other purpose. A progress payment is not considered acceptance or approval of any work or materials or waiver of any defects therein. [ORS 279.570(2)].

22. Final Estimate and Final Payment

- a. **SUBSTANTIAL COMPLETION.** Contractor shall notify the City in writing when all or a portion of the work is considered substantially complete. If it appears to the City that the work is not substantially complete, the City shall not make an inspection. The City may make a general list of major work components remaining. If it appears that the work is substantially complete, the City shall, within fifteen (15) days after receiving notice, make an inspection and either accept the work or notify Contractor of work yet to be performed. If accepted, City shall prepare a Certificate of Substantial Completion, **Exhibit F**. Upon acceptance of the Certificate of Substantial Completion by both parties, the City shall be responsible for operation and maintenance of that part of the work described in the Certificate of Substantial Completion, subject to the warranty requirements and protection of the work and all other applicable terms of the contract documents. The date of substantial completion of all the work shall stop the accrual of liquidated damages, if applicable.

- b. **FINAL COMPLETION.** Contractor shall notify the City in writing when work is 100% complete. If it appears to the City that the work is not 100% complete, the City shall not make a final inspection. The City may make a general list of major work components remaining. If it appears that the work is 100% complete, the City shall, within fifteen (15) days after receiving notice, make a final inspection and either accept the work or notify Contractor of work yet to be performed on the Contract. A Certificate of Final Completion shall not be prepared until all provisions of the Contract have been met, including but not limited to, the submission by the Contractor of a signed Certificate of Compliance, **Exhibit G** and executed "Release of Liens and Claims."**(Exhibit H)**.

- b. When the work is 100% complete, the City shall prepare a final pay estimate and Certificate of Final Completion accepting the work as of a certain date. The Contractor shall execute and return the final pay estimate and Certificate of Final Completion within five (5) working days of receipt. Unless otherwise provided as a Special Provision, when City accepts the Certificate of Final Completion, the date the Contractor signs the Certificate of Final Completion shall be the date the City accepts Ownership of the work and the start date of the warranty period. The contractor may substitute a Warranty Bond in replacement of the Performance and Payment Bonds in accordance with Section 29. The City shall include in the final pay estimate an addition to the contract amount for any contract deduction from the contract amount for any liquidated damages and a deduction from the contract price in a fair and equitable amount for any damages to the City or for any costs incurred or likely to be incurred by the City due to Contractor's failure to meet any contract provision or specification other than timely completion.

- c. If the Contractor believes the quantities and amounts specified in the final pay estimate prepared by the City to be incorrect, Contractor shall submit to the City within five (5) working days of receipt of the City's final pay estimate, an itemized statement of any and all claims for additional compensation under the Contract which are based on differences in measurements or errors of computation. Any such claim not so submitted and supported by an itemized statement within said period is expressly waived and the City shall not be obligated to pay the same.

- d. The Contractor shall commence any suit or action to collect or enforce the claim or claims for any additional compensation arising from errors of computation in the final estimate within a period of one (1) year following the original mailing of the City's final estimate and Certificate of Final Completion to the Contractor's last known address as shown in the records of City. The City's issuance of a revised final estimate pursuant to this subsection does not alter the original final estimate date. If said suit, action or proceeding is not commenced in said one (1) year period, the final estimate and Certificate of Final Completion or revised final estimate and Certificate of Final Completion, if revisions are made, shall be conclusive with respect to the amount earned by the Contractor, and the Contractor expressly waives any and all claims for compensation and any and all causes of suit or action for the enforcement thereof that Contractor might have had.

- e. Upon return of the fully executed Certificate of Final Completion from the Contractor, the City will submit the Certificate of Final Completion and final estimate to the City for approval. Upon approval and acceptance by the City, Contractor will be paid a total payment equal to the amount due under the Contract including retainage within thirty (30) days in accordance with ORS 279C.570. Failure to pay within 30 days shall implicate the interest on final payment/ retainage requirements of ORS 279C.570(8).
- f. Monies earned by the Contractor are not due and payable until the procedures set forth in the contract documents for inspection, approval and acceptance of the work; for determination of the work done and the amount due therefore; for the preparation of the final estimate and Certificate of Final Completion and processing the same for payment; for consideration of the Contractor's claim, or claims, if any; and for the preparing of a revised final estimate and Certificate of Final Completion and processing same for payment all have been carried out.
- g. As a prerequisite to final payment, if Contractor is not domiciled in or registered to do business in the State of Oregon, the Contractor will provide City with evidence that the requirement of ORS 279A.120(3) has been satisfied.
- h. If City declares a default of the Contract, and Surety completes said Contract, all payments made after declaration of default and all retainage held by City shall be paid to Surety and not to Contractor in accordance with the terms of the Contract.
- i. Acceptance by Contractor of final payment shall release City from any and all claims by Contractor whether known or unknown, arising out of and relating to the work. No payment, however, final or otherwise, shall operate to release Contractor or its Sureties from warranties or other obligations required in the performance of the Contract.
- j. Disputes as to compensation resolved in favor of the contractor implicate the interest provisions of ORS 279.570(9).

23. Change Orders / Extra Work

The Contractor agrees to complete this Contract in accordance with the attached specifications and requirements, including any change orders. A change order submitted by the City must be agreed upon by the Contractor and the City, and in the event of failure to so agree, the City may then proceed with any additional work in any manner the City may choose. A decision by the City to proceed to have work done by another party shall in no way relieve either the Contractor or City of this Contract and neither will such action be cause for collection of damages by either party to the contract, one from the other. Only the City designated Contracting Officer or individual with delegated contracting authority can authorize extra (and/or changed) work and compensation. Such authorization must be in writing. The parties expressly recognize that, except when such order is in writing by an individual with delegated authority, City personnel are not authorized to order extra (and/or) changed work or to waive contract requirements or authorize additional compensation. Failure of the Contractor to secure City authorization for extra work shall constitute a waiver of any and all claims or rights to adjustment in the contract price or contract time due to such unauthorized extra work and thereafter Contractor shall be entitled to no compensation whatsoever for the performance of such work. Contractor further expressly waives any and all right or remedy by way of restitution and *quantum meruit* for any and all extra work performed by Contractor without express and prior authorization of the City.

24. Contractor/Subcontractor Payment Obligations

- a. The Contractor is required to include in each subcontract for property or services entered into by the Contractor and a first-tier subcontractor, including a material supplier, for the purpose of performing this contract:

- i. A payment clause that obligates the Contractor to pay the first-tier subcontractor for satisfactory performance under its subcontract within 10 days out of such amounts as are paid to the Contractor by the City under such contract; [279C.580(3)(a)] and
 - ii. An interest penalty clause that obligates the Contractor, if payment is not made within 30 days after receipt of payment from the City, to pay to the first-tier subcontractor an interest penalty on amounts due in the case of each payment not made in accordance with the payment clause included in the subcontract pursuant to paragraph (a)(i) above. A contractor or first-tier subcontractor shall not be obligated to pay an interest penalty if the only reason that the contractor or first-tier subcontractor did not make payment when payment was due is that the contractor or first-tier subcontractor did not receive payment from the City or contractor when payment was due. The interest penalty shall be:
 - A. For the period beginning on the day after the required payment date and ending on the date on which payment of the amount is due made; and
 - B. Computed at the rate specified in ORS 279C.515(2). [279C.580(3)(b)]
- b. The Contractor is further required to include in each of its subcontracts, for the purpose of performance of such contract condition, a provision requiring the first-tier subcontractor to include a payment clause and an interest penalty clause conforming to the standards of section a. above in each of its subcontracts and to require each of its subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor or supplier. [279C.580(4)]
- c. The Contractor shall not request payment of any amount withheld or retained in accordance with ORS 279C.580(5) until such time as the Contractor has determined and certified to the City that the subcontractor is entitled to the payment of such amount. [279C.570(1)].
- d. A dispute between the Contractor and a subcontractor relating to the amount or entitlement of a subcontractor to a payment or a late payment interest penalty under a clause included in the subcontract pursuant to subsections (3) and (4) of ORS 279C.580 does not constitute a dispute to which the City is a party. The City shall not be included as a party in any administrative or judicial proceeding involving such a dispute. [279C.580(2)]
- e. The Contractor shall make payment promptly, as due, to all persons supplying to the Contractor labor or material for the performance of the work provided for in the contract. [ORS 279C.505(1)(a)] The Contractor shall pay all contributions or amounts due the Industrial Accident Fund and the State Unemployment Compensation Fund from the Contractor or Subcontractor incurred in the performance of the contract. [ORS 279C.505(1)(b)] The Contractor shall not permit any claim or lien to be filed or prosecuted against the City and shall be fully responsible for any lien or claim filed against the City on account of any labor or material furnished. [ORS 279C.505(1)(c)] The Contractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. [ORS 279C.505(1)(d)]
- f. Pursuant to ORS 279C.515(1), if Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the Contractor or a subcontractor by any person in connection with the Contract as such claim becomes due, the proper officer(s) representing the City may pay the claim and charge the amount of the payment against funds due or to become due Contractor under this Contract.
- g. Pursuant to ORS 279C.515(2), if the Contractor or a first-tier subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the public improvement contract within 30 days after receipt of payment from the contracting agency or a contractor, the contractor or first-tier subcontractor shall owe the person the amount due plus interest charges commencing at the end of the 10-day period that payment is due under ORS 279C.580 (4) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest charged to the

contractor or first-tier subcontractor on the amount due shall equal three times the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district that includes Oregon on the date that is 30 days after the date when payment was received from the contracting agency or from the contractor, but the rate of interest may not exceed 30 percent. The amount of interest may not be waived.

h. Pursuant to ORS 279C.515(3), if the Contractor or a subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the public improvement contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580.

i. Pursuant to ORS 279C.515(4), the payment of a claim in the manner authorized in this section does not relieve the contractor or the contractor's surety from obligation with respect to any unpaid claims.

j. Living Wage Rates: If the amount of this contract is \$18,703 or more, and Contractor is not paying prevailing wage for the work, Contractor must comply with Chapter 3.12 of the Ashland Municipal Code by paying a living wage, as defined in this chapter, to all employees performing work under this contract and to any subcontractor who performs 50% or more of the work under this contract. Contractor must post the attached Living Wage Notice predominantly in areas where it will be seen by all employees.

25. Inspection and Acceptance

Inspection and acceptance of all Work required under this Contract shall be performed by the City. The Contractor shall be advised of the acceptance or of any deficiencies in the deliverable items.

26. Liquidated Damages

City and Contractor recognize that time is of the essence of this Contract and that City will suffer substantial financial loss if the project work is not completed within the timeframe specified in Section (1) of the Public Improvement Contract. City and Contractor also recognize the delays, expense, and difficulties involved in proving in a legal or other dispute resolution preceding the actual loss suffered by City if the project work is not completed on time. Accordingly, instead of requiring any such proof, City and Contractor agree that as liquidated damages for delay (but not as a penalty) the Contractor shall pay the City *two hundred and Fifty Dollars* per day (\$250.00/day) for each and every day that elapses in excess of the contract time or the final adjusted contract time. This amount is a genuine pre-estimation of the damages expected because of a delay in the completion of this project.

Any sums due as liquidated damages shall be deducted from any money due or which may become due to the Contractor under this Contract. Payment of liquidated damages shall not release the Contractor from obligations in respect to the fulfillment of the entire contract, nor shall the payment of such liquidated damages constitute a waiver of the City's right to collect any additional damages which may be sustained by failure of the Contractor to complete the work on time. Permitting the Contractor to continue and finish the project work or any part thereof after the contract time, or adjusted contract time, has expired shall in no way operate as a waiver on the part of the City or any of its rights under this contract. The City may in its discretion grant the Contractor an extension of time upon a showing made by the Contractor that the work has been unavoidably delayed by conditions beyond the control of the parties.

27. Liability, Indemnity and Hold Harmless

Contractor warrants that all its work will be performed in accordance with generally accepted practices and standards as well as the requirements of applicable federal, state, and local laws, it being understood that acceptance of Contractor's work by City shall not operate as a waiver or release. The Contractor shall hold harmless, indemnify, and defend City, its officers, agents, and employees from any and all liability, actions, claims, losses, damages or other costs of whatsoever nature, including attorney's fees and witness costs (at

both trial and appeal level, whether or not a trial or appeal ever takes place) that may be asserted by any person or entity arising from, during or in connection with the performance of the work, actions or failure to perform actions, and other activities of Contractor or its officers, employees, subcontractors or agents, under this contract, including the professional negligent acts, errors, or omissions of Contractor or its officers, employees, subcontractors, or agents except liability arising out of the sole gross negligence of the City and its employees. The Contractor shall assume all responsibility for the work and shall bear all losses and damages directly or indirectly resulting to the Contractor, to the City, and to their officers, agents, and employees on account of (a) the character or performance of the work, (b) unforeseen difficulties, (c) accidents, or (d) any other cause whatsoever. The Contractor shall assume this responsibility even if (a) fault is the basis of the claim, and (b) any act, omission or conduct of the City connected with the Contract is a condition or contributory cause of the claim, loss, damage or injury. Contractor waives any and all statutory or common law rights of defense and indemnification by the City. Such indemnification shall also cover claims brought against City under state or federal workers compensation laws. Contractor shall also defend and indemnify City from all loss or damage that may result from Contractor's wrongful or unauthorized use of any patented article or process. If any aspect of this indemnity shall be found to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this indemnification. Any specific duty or liability imposed or assumed by the Contractor as may be otherwise set forth in the Contract documents shall not be construed as a limitation or restriction of the general liability or duty imposed upon the Contractor by this section. In the event any such action or claim is brought against the City, the Contractor shall, if the City so elects and upon tender by the City, defend the same at the Contractor's sole cost and expense, promptly satisfy any judgment adverse to the City or to the City and the Contractor jointly, and reimburse the City for any loss, cost, damage, or expense, including attorney fees, suffered or incurred by the City.

28. Insurance

The Contractor shall provide and maintain during the life of this Contract the insurance coverage as described in **Exhibit C**. All costs for such insurance shall be borne by the Contractor and shall be included in the contract price. In case of the breach of any provision of this section, the City may elect to take out and maintain at the expense of the Contractor such insurance as the City may deem proper. The City may deduct the cost of such insurance from any monies that may be due or become due the Contractor under this Contract. Failure to maintain insurance as provided is also cause for immediate termination of the Contract. Contractor shall furnish City certificates of insurance acceptable to City prior to execution by the City and before Contractor or any subcontractor commences work under this Contract. The certificate shall show the name of the insurance carrier, coverage, type, amount (or limits), policy numbers, effective and expiration dates and a description of operations covered.

29. Performance, Payment and Warranty Bonds / Notice of Bond Claims

At the time of execution of the Contract, the Contractor shall furnish: (1) A Performance Bond and (2) A Payment Bond written by a corporate surety or other financial assurance in an amount equal to the amount of the Contract based upon the estimate of quantities or lump sum as set forth in the Contract and in accordance with ORS 279.380. The bonds shall be continuous in effect and shall remain in full force and effect until compliance with and fulfillment of all terms and provisions of the Contract, including the obligations of Sections 27 and 30, all applicable laws and the prompt payment of all persons supplying labor and/or material for prosecution of the work. The bond(s) or other financial assurance is subject to approval by the City.

Contractor shall furnish a separate warranty bond written by a corporate surety or other financial assurance, in an amount equal to 10% of the final amount of the Contract. The City may permit the warranty amount to be included in the initial performance and payment bonds. The warranty bond or other financial assurance shall be in effect for a period of one year from the date of Final Completion. The City may require a separate warranty bond or financial assurance for any repairs done pursuant to the warranty obligation. Such separate warranty bond or financial assurance shall be for a period of one year from the date of completion of such repairs.

The notice of claim on a bond required by ORS 279C.600 must be sent by registered or certified mail or hand delivered no later than 120 days after the day the person last provided labor or furnished materials or 120 days after the worker listed in the notice of claim by the Commissioner of the Bureau of Labor and Industries last provided labor. The notice may be sent or delivered to the contractor at any place the contractor maintains an office or conducts business or at the residence of the contractor. Notwithstanding the above, if the claim is for a required contribution to a fund of any employee benefit plan, the notice required by ORS 279C.600 must be sent or delivered within 150 days after the employee last provided labor or materials.

The notice of claim must be in writing substantially as set forth in ORS 279C.605(3)-(5).

30. Two-Year Warranty

In addition to and not in lieu of any other warranties required under the Contract, Contractor shall make all necessary repairs and replacements to remedy, in a manner satisfactory to the City and at no cost to the City, any and all defects, breaks, or failures of the work occurring within two years following the date of completion due to faulty or inadequate materials or workmanship. Repair damage or disturbances to other improvements under, within, or adjacent to the work, whether or not caused by settling, washing, or slipping, when such damage or disturbance is caused, in whole or in part, from activities of the Contractor in performing its duties and obligations under this Contract when such defects or damage occur within the warranty period. The one-year warranty period shall, with relation to such required repair, be extended one year from the date of completion of such repair.

If Contractor, after written notice, fails within ten days to proceed to comply with the terms of this section, City may have the defects corrected, and the Contractor and Contractor's surety shall be liable for all expense incurred. In case of an emergency where, in the opinion of the City, delay would cause serious loss or damage, repairs may be made without notice being given to Contractor and Contractor or Surety shall pay the cost of repairs. Failure of the City to act in case of an emergency shall not relieve Contractor or Surety from liability and payment of all such costs.

31. Nondiscrimination in Labor

No person shall be subject to discrimination in the receipt of the benefits of any services or activities made possible by or resulting from this Agreement on the grounds of sex, race, color, creed, marital status, age, sexual orientation or national origin. Contractor shall comply with provisions of Owner's Equal Opportunity Policy and comply with ORS Chapter 659 and ORS Chapter 659A relating to unlawful employment practices and discrimination by employers against any employee or applicant for employment because of race, religion, color, sex, national origin, marital status or age if the individual is 18 years of age or older. Particular reference is made to ORS 659A.030, which states that it is unlawful employment practice for any employer, because of the race, religion, color, sex, national origin, marital status or age if the individual is 18 years or older or because of the race, religion, color, sex, national origin or age of any other person with whom the individual associates, or because of a juvenile record that has been expunged pursuant to ORS 419A.260 and ORS 419A.262 of any individual, or to refuse to hire or employ or to bar or discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment. Any violation of this provision shall be considered a material violation of the Agreement and shall be grounds for cancellation, termination, or suspension in whole or in part.(q).

32. Construction Debris and Yard Waste

Contractor shall salvage or recycle construction and demolition debris, if feasible and cost effective. If the contract includes lawn and landscaping maintenance, Contractor shall compost or mulch yard waste material at an approved site, if feasible and cost effective. [ORS 279C.510(1)&(2)]

33. Environmental Regulations

Pursuant to ORS 279C.525(1), the following is a list of federal, state and local agencies which have enacted ordinances or regulations dealing with the prevention of environmental pollution and the preservation of natural resources that may affect the performance of the contract.

Federal Agencies:

- Agriculture, Department of
- Forest Service
- Soil Conservation Service
- Commerce Department of

National Oceanic and Atmospheric Administration (NOAA)
National Marine Fisheries Service (NMFS)
Defense, Department of
 Army Corps of Engineers
Energy, Department of
 Federal Energy Regulatory Commission
Environmental Protection Agency
Health and Human Services Department of
 Housing and Urban Development,
 Solar Energy and Energy Conservation Bank
Interior, Department of
 Bureau of Land Management
 Bureau of Indian Affairs
 Bureau of Mines
 Bureau of Reclamation
 Geological Survey
 Minerals Management Service
 U.S. Fish and Wildlife Service
Labor, Department of
 Mine Safety and Health Administration
Occupational Safety and Health Administration
Transportation, Department of
 Coast Guard
 Federal Highway Administration
Water Resources Council

State Agencies:

Administrative Services, Department of
Agriculture, Department of
Consumer & Business Services, Department of
Oregon Occupational Safety & Health Division
Energy, Department of
Environmental Quality, Department of
Fish and Wildlife, Department of
Forestry, Department of
Geology and Mineral Industries, Department of
Human Resources, Department of
Land Conservation and Development Commission
Parks and Recreation, Department of
Soil and Water Conservation Commission
State Engineer
State Land Board (Lands, Division of State)
Water Resources Department

Local Agencies:

CITY of ASHLAND
City Council (Ashland Municipal Code)
County Courts
County Commissioners of Jackson County,
County Service Districts
Sanitary Districts
Water Districts
Fire Protection Districts
Historical Preservation Commissions

Planning Commission

If the Contractor awarded the project is delayed or must undertake additional work by reason of existing ordinances, rules or regulations of agencies not cited above or due to the enactment of new or the amendment of existing statutes, ordinances, rules or regulations relating to the prevention of environmental pollution and the preservation of natural resources occurring after the submission of the successful bid, the City may:

- (a) Terminate the contract;
- (b) Complete the work itself;
- (c) Use non-City forces already under contract with the City;
- (d) Require that the underlying property owner be responsible for cleanup;
- (e) Solicit bids for a new contractor to provide the necessary services; or
- (f) Issue the contractor a change order setting forth the additional work that must be undertaken.

The solicitation documents make specific reference to known conditions at the construction site that may require the successful bidder to comply with the ordinances, rules or regulations identified above. If Contractor encounters a condition not referred to in the solicitation documents, not caused by the successful bidder and not discoverable by a reasonable pre-bid visual site inspection, and the condition requires compliance with the ordinances, rules or regulations enacted by the governmental entities identified above, the successful bidder shall immediately give notice of the condition to the contracting agency. Except in the case of an emergency and except as may otherwise be required by any environmental or natural resource ordinance, rule or regulation, the Contractor shall not commence work nor incur any additional job site costs in regard to the condition encountered and described in subsection (3) of this section without written direction from the contracting agency. Upon request by the City, the Contractor shall estimate the emergency or regulatory compliance costs as well as the anticipated delay and costs resulting from the encountered condition. This cost estimate shall be promptly delivered to the contracting agency for resolution. Within a reasonable period of time following delivery of an estimate of this section, the City may:

- (a) Terminate the contract;
- (b) Complete the work itself;
- (c) Use non-City forces already under contract with the City;
- (d) Require that the underlying property owner be responsible for cleanup;
- (e) Solicit bids for a new contractor to provide the necessary services; or
- (f) Issue the contractor a change order setting forth the additional work that must be undertaken.

If the City chooses to terminate the contract under either subsection (a) of this section, the Contractor shall be entitled to all costs and expenses incurred to the date of termination, including overhead and reasonable profits, on the percentage of the work completed. The City shall have access to the contractor's bid documents when making the contracting agency's determination of the additional compensation due to the contractor. If the contracting agency causes work to be done by another contractor under either subsection (c) or (e) above, the initial contractor may not be held liable for actions or omissions of the other contractor. The change order under either subsection (f) of this section shall include the appropriate extension of contract time and compensate the contractor for all additional costs, including overhead and reasonable profits, reasonably incurred as a result of complying with the applicable statutes, ordinances, rules or regulations. The City shall have access to the contractor's bid documents when making the contracting agency's determination of the additional compensation due to the contractor.

Notwithstanding the above, the City has allocated all or a portion of the known environmental and natural resource risks to a Contractor by listing such environmental and natural resource risks in the solicitation documents.

34. Waiver

The failure of the City to enforce any provision of this Contract shall not constitute a waiver by the City of that or any other provision. City shall not be precluded or estopped by any measurement, estimate or certificate made either before or after completion and acceptance of the Work or payment therefore, from showing the true amount and character of work performed and materials furnished by the Contractor, or from showing that any such measurement, estimate or certificate is untrue or incorrectly made, or that work or materials do not conform in fact to the Contract. City shall not be precluded or estopped, notwithstanding any such measurement, estimate or certificate, or payment in accordance therewith, from recovering from the Contractor and their Sureties such damages as it may sustain by reason of their failure to comply with terms of the Contract, or from enforcing compliance with the Contract. Neither acceptance by City, or by any representative or agent of the City, of the whole or any part of the work, nor any extension of time, nor any possession taken by City, nor any payment for all or any part of the project, shall operate as a waiver of any portion of the Contract or of any power herein reserved, or any right to damages herein provided.

35. Errors

The Contractor shall perform such additional work as may be necessary to correct errors in the Work required under this Contract without undue delays and without additional cost.

36. Severability

If any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular term or provision held invalid.

37. Attorney's Fees

If a suit or action is filed to enforce any of the terms of this Contract, the prevailing party shall be entitled to recover from the other party, in addition to costs and disbursements provided by statute, any sum which a court, including any appellate court, may adjudge reasonable as attorney's fees.

38. Business License

The Contractor shall obtain a City of Ashland business license as required by the Ashland Municipal Code prior to beginning work under this Contract. The Contractor shall provide a business license number in the space provided in this contract.

39. Notices/Bills/Payments

All notices, bills, and payments shall be made in writing and may be given by personal delivery or by mail. Notices, bills, and payments sent by mail should be addressed as follows:

Ashland Parks and Recreation Commission
340 S. Pioneer Street
Ashland, Oregon 97520

and when so addressed, shall be deemed given upon deposit in the United States Mail, postage prepaid. In all other instances, notices, bills, and payments shall be deemed given at the time of actual delivery. Changes may be made in the names and addresses of the person to whom notices, bills, and payments are to be given by giving notice pursuant to this paragraph.

40. Conflict of Interest

Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services. The Contractor further covenants that in the performance of this contract no person having any such interest shall be employed.

41. Merger Clause

THIS CONTRACT AND ATTACHED CONTRACT DOCUMENTS AND EXHIBITS CONSTITUTE THE ENTIRE AGREEMENT BETWEEN THE PARTIES. NO WAIVER, CONSENT, MODIFICATION OR CHANGE OF TERMS OF THIS CONTRACT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH PARTIES. SUCH WAIVER, CONSENT, MODIFICATION OR CHANGE, IF MADE, SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS CONTRACT. BY ITS SIGNATURE, CONTRACTOR ACKNOWLEDGES IT HAS READ AND UNDERSTANDS THIS CONTRACT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

ATTACHMENTS: EXHIBITS B-J

EXHIBIT B	COMPLIANCE WITH APPLICABLE PUBLIC CONTRACT LAW
EXHIBIT C	INSURANCE REQUIREMENTS
EXHIBIT D	INDEPENDENT CONTRACTOR CERTIFICATION
EXHIBIT E	BONDS (BID, PAYMENT AND PERFORMANCE)
EXHIBIT F	CERTIFICATE OF SUBSTANTIAL COMPLETION
EXHIBIT G	CERTIFICATE OF COMPLIANCE
EXHIBIT H	RELEASE OF LIENS AND CLAIMS
EXHIBIT I	CERTIFICATE OF FINAL COMPLETION
EXHIBIT J	INSTRUCTIONS TO BIDDERS

PUBLIC IMPROVEMENT CONTRACT

COMPLIANCE WITH APPLICABLE LAW

This exhibit contains the requirements for public contracting as set forth in ORS Chapter 279C.360 through and including 279C.800 and is available through the City of Ashland, Office at 620 N. Mountain Ave, Ashland, Oregon or online at www.leg.state.or.us/ors

PUBLIC IMPROVEMENT CONTRACT

INSURANCE REQUIREMENTS

To: Insurance Agent. Please provide Certificates and Endorsements of Insurance to the Project Manager. During the term of the Contract, please provide Certificates of Insurance prior to each renewal. Insurance shall be without prejudice to coverage otherwise existing. During the term of this Contract, Contractor shall maintain in force at its own expense all insurance noted below:

Workers Compensation insurance in compliance with ORS 656.017. All employers, including Contractor and any subcontractors, that employ subject workers who work under this Contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its subcontractors complies with these requirements.

Commercial General Liability insurance on an occurrence basis, with a combined single limit of not less than \$2,000,000 (two million dollars) per occurrence of bodily injury, personal injury and property damage. It shall include coverage for broad form contractual liability; broad form property damage; personal and advertising injury; owners and contractor protective; premises/operations; and products/completed operations. Coverage shall not exclude excavation, collapse, underground, or explosion hazards. Aggregate limits shall apply on a per-project basis.

Required by City Not required by City

Commercial Automobile Liability insurance with a combined single limit, or the equivalent of not less than \$2,000,000 (two million dollars) for each accident for Bodily Injury and Property Damage, including coverage for owned, hired and non-owned vehicles. "Symbol One" coverage shall be designated.

Required by City Not required by City

Builders Risk (*Check here if required*) insurance during construction to the extent of 100 percent of the value of the work for the benefit of the parties to the Contract as their interest may appear. Coverage shall also include: (1) formwork in place; (2) form lumber on site; (3) temporary structures; (4) equipment; and (5) supplies related to the work while at the site.

Notice of Cancellation or Change. There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without 30 days written notice from the Contractor or its insurer(s) to the City. This notice provision shall be by endorsement physically attached to the certificate of insurance.

Additional Insured. For general liability insurance and automobile liability insurance the City, and its agents, officers, and employees will be listed as Additional Insureds, but only with respect to Contractor's services to be provided under this Contract. This coverage shall be by endorsement physically attached to the certificate of insurance.

The Contractor shall defend, indemnify, and hold harmless, the City and the City's officers, agents, and employees against any liability that may be imposed upon them by reason of the Contractor's or subcontractor's failure to provide workers' compensation and employers liability coverage.

Certificates of Insurance. Contractor shall furnish insurance certificates and endorsements acceptable to City prior to commencing the Work under this Contract. The certificate will include the deductible or retention level and required endorsements. Insuring companies or entities are subject to City approval. If requested, copies of insurance policies shall be provided to the City. Contractor shall be responsible for all deductibles, self-insured retention's, and/or self-insurance.

PUBLIC IMPROVEMENT CONTRACT

CERTIFICATION STATEMENT

FOR CORPORATION OR INDEPENDENT CONTRACTOR

A. CONTRACTOR IS A CORPORATION

CORPORATION CERTIFICATION: I am authorized to act on behalf of the entity named below, and certify under penalty of perjury that it is a corporation.

Table with 3 columns: Entity, Signature, Date

B. CONTRACTOR IS INDEPENDENT.

Independent Contractor Standards. As used in various provisions of ORS Chapters including but not limited to 316, 656, 657, and 701, an individual or business entity that performs labor or services for remuneration shall be considered to perform the labor or services as an "independent contractor" if the standards of ORS 670.600 are met.

Contractor and Project Manager certifies that the Contractor meets the following standards:

- 1. Contractor is free from direction and control over the means and manner of providing the labor or services, subject only to the specifications of the desired results.
2. Contractor is responsible for obtaining all assumed business registrations or professional occupation licenses required by state law or local ordinances.
3. Contractor furnishes the tools or equipment necessary for the contracted labor or services.
4. Contractor has the authority to hire and fire employees to perform the labor or services.
5. Payment to the Contractor is made upon completion of the performance or is made on the basis of a periodic retainer.
6. Contractor is registered under ORS chapter 701, if the Contractor provides labor or services for which such registration is required.
7. Contractor has filed federal and state income tax returns in the name of the business or a business Schedule C as part of the personal income tax return, for the previous year, for labor or services performed as an independent contractor in the previous year.
8. Contractor represent to the public that the labor or services are to be provided by an independently established business as four or more of the following circumstances exist.

(Check four or more of the following:)

- A. The labor or services are primarily carried out at a location that is separate from Contractors residence or is primarily carried out in a specific portion of Contractors residence, which is set aside as the location of the business.
B. Commercial advertising or business cards are purchased for the business, or Contractor has a trade association membership.
C. Telephone listing is used for the business that is separate from the personal residence listing.
D. Labor or services are performed only pursuant to written contracts.
E. Labor or services are performed for two or more different persons within a period of one year.

_____ F. Contractor assumes financial responsibility for defective workmanship or for service not provided as evidenced by the ownership of performance bonds, warranties, errors and omission insurance or liability insurance relating to the labor or services to be provided.

If any action is taken by a person or enforcement agency relating to Contractor's independent contractor status in connection with this contract, Contractor shall defend, hold harmless and indemnify the CITY OF ASHLAND , its elected and appointed officials, employees, volunteers and agents from any such action, claim, judgment, fine, penalty, or order to pay. Contractor shall pay any additional costs incurred by the City in defending such action or incurred as a result of such action. This indemnification is in addition to any indemnification otherwise in this agreement.

Contractor Signature Date

Project Manager Signature Date

PUBLIC IMPROVEMENT CONTRACT
CITY OF ASHLAND

BID BOND

We, _____, a corporation or partnership duly organized under the laws of the State of _____, and authorized to transact business in the State of Oregon, as "PRINCIPAL," and,

We, _____, a corporation or partnership duly organized under the laws of the State of _____, and authorized to transact business in the State of Oregon, as "SURETY,"

hereby jointly and severally bind ourselves, our respective heirs, executors, administrators, successors and assigns firmly by these presents to pay unto the CITY OF ASHLAND, Oregon, (OBLIGEE) the sum of (\$ _____) _____ Dollars.

The condition of the obligation of this bond, is that the PRINCIPAL herein has in response to City's Notice to Contractors and Invitation to Bid, submitted its Offer for the Japanese Garden Project, Project No. 000646, which Offer is incorporated herein and made a part hereof by this reference, and Principal is required to furnish bid security in an amount equal to ten (10%) percent of the total amount of the bid pursuant to ORS 279C.365 and the City's public contracting rules and Contract Documents.

NOW THEREFORE, if the Offer, submitted by PRINCIPAL, is accepted, and if the Contract pursuant to the Offer is awarded to the PRINCIPAL, and if the PRINCIPAL executes such contract and furnishes such good and sufficient Performance and Payment Bonds as required by the Bidding and Contract documents within the time specified and fixed by the Documents, then this obligation shall be void; otherwise it shall remain in full force and effect. If the PRINCIPAL shall fail to execute the proposed Contract and to furnish the Performance and Payment Bonds, the SURETY hereby agrees to pay the OBLIGEE the surety bond sum as liquidated damages within ten (10) days of such failure.

IN WITNESS WHEREOF, we have caused this instrument to be executed and sealed by our duly authorized legal representatives this _____ day of _____, 2020.

Surety

Principal

Address

Address

By: _____
Attorney -in-Fact

By: _____

[A certified copy of the Agent's Power of Attorney must be attached hereto.]

IMPORTANT – Surety companies executing BONDS must appear on the Treasury Department’s most current list (Circular 570 as amended) and be authorized to transact business in the State of Oregon.

PERFORMANCE BOND

The undersigned _____, as principal, further referred to in this bond as Contractor, and _____ as surety, further referred to in this bond as Surety, are jointly and severally bound unto CITY OF ASHLAND, as obligee, further referred to in this bond as City, in the sum of _____ United States Dollars (\$ _____).

Contractor and City have entered into a written contract dated _____, for the following project: ***Japanese Garden Project, Project No. 000646.*** This Contract is further referred to in this bond as the Contract and is incorporated into this bond by this reference.

The conditions of this Performance Bond are:

1. If Contractor faithfully performs the Contract in accordance with the plans, specifications and conditions of the contract within the time prescribed by the Contract, as required by ORS 279C. 380 through 279C.385, then this obligation is null and void; otherwise it shall remain in full force and effect.
2. If Contractor is declared by City to be in default under the Contract, the Surety shall promptly remedy the default, perform all of Contractor's obligations under the contract in accordance with its terms and conditions and pay to City all damages that are due under the Contract.
3. This bond is subject to claims under ORS 279C.380 through 279C.390.
4. This obligation jointly and severally binds Contractor and Surety and their respective heirs, executors, administrators, successors.
5. Surety waives notice of modification of the Contract or extension of the Contract Time.
6. Nonpayment of the bond premium shall not invalidate this bond.
7. The bond number and the name, address, and telephone number of the agent authorized to receive notices concerning this bond are as follows.

Bond Number: _____

Bond Agent: _____

Address: _____

Telephone: _____

SIGNED this _____ day of _____, 2020.

WITNESS:

(Corporate Seal)

CONTRACTOR:

By:

Title:

Legal Address:

Attest:

Corporate Secretary

WITNESS:

(Corporate Seal)

SURETY:

By:

Title:

Legal Address:

Attest:

Corporate Secretary

PAYMENT BOND

The undersigned _____, as principal,
further referred to in this bond as Contractor, and _____
_____, as surety, further referred to in this bond as Surety, are jointly and severally bound unto CITY OF
ASHLAND, as obligee, further referred to in this bond as City, in the sum of _____
Dollars (\$ _____).

Contractor and City have entered into a written contract dated _____
_____, for the following project: **North Mountain Park Nature Play Area Construction Project.**
This contract is further referred to in this bond as the Contract and is incorporated into this bond by this reference.

The conditions of this bond are:

1. If Contractor faithfully performs the Contract within the time prescribed by the Contract, and promptly makes payment to all claimants, as defined in ORS 279C.600 through 279C.620, then this obligation is null and void; otherwise it shall remain in full force and effect.
2. If Contractor is declared by City to be in default under the Contract, the Surety shall promptly remedy the default, perform all of Contractor's obligations under the contract in accordance with its terms and conditions and pay to City all damages that are due under the Contract.
3. This bond is subject to claims under ORS 279C.600 through 279C.620.
4. This obligation jointly and severally binds Contractor and Surety and their respective heirs, executors, administrators, successors.
5. Surety waives notice of modification of the Contract or extension of the Contract time.
6. Nonpayment of the bond premium shall not invalidate this bond.
7. The bond number and the name, address, and telephone number of the agent authorized to receive notices concerning this bond are as follows:

Bond Number: _____

Bond Agent: _____

Address: _____

Telephone: _____

SIGNED this _____ day of _____, 2020.

WITNESS:

(Corporate Seal)

CONTRACTOR:

By: _____

Title: _____

Legal Address: _____

Attest: _____

Corporate Secretary

WITNESS:

(Corporate Seal)

SURETY: _____

By: _____

Title: _____

Legal Address: _____

Attest: _____

Corporate Secretary

CERTIFICATE OF SUBSTANTIAL COMPLETION

CITY'S Project No. #000646 Project No. N/A

Project: North Mountain Park Nature Play Area Construction Project

CONTRACTOR

Contract For Contract Date

This Certificate of Substantial Completion applies to:

- checkbox All Work under the Contract Documents, or
checkbox To the following specified parts thereof:

The Work to which this Certificate applies has been inspected by authorized representatives of CITY, CONTRACTOR and CITY, and that Work is hereby declared to be substantially complete in accordance with the Contract Documents on

DATE OF SUBSTANTIAL COMPLETION

A tentative list of items to be completed or corrected is attached hereto. This list may not be all inclusive, and the failure to include an item in it does not alter the responsibility of CONTRACTOR to complete all the Work in accordance with the Contract Documents. The items in the tentative list shall be completed or corrected by CONTRACTOR within Days of the above date of Substantial Completion.

The following documents are attached to and made a part of this Certificate:

[Blank lines for listing documents]

Effective as of the last date set forth below, the responsibilities between CITY and CONTRACTOR shall be as follows:

- Security checkbox City checkbox Contractor
Operation checkbox City checkbox Contractor
Safety checkbox City checkbox Contractor
Maintenance checkbox City checkbox Contractor
Heat checkbox City checkbox Contractor
Utilities checkbox City checkbox Contractor
Insurance checkbox City checkbox Contractor
Warranties checkbox City checkbox Contractor

Other Responsibilities:

City		Contractor

This Certificate does not constitute an acceptance of Work not in accordance with the Contract Documents, nor is it a release of CONTRACTOR'S obligation to complete the Work in accordance with the Contract Documents.

CONTRACTOR accepts this Certificate of Substantial Completion on: _____ , _____ .

By: _____

CITY accepts this Certificate of Substantial Completion on: _____ , _____ .

By: _____
CITY OF ASHLAND

File:

CERTIFICATE OF COMPLIANCE

CIP Number: _____
Contractor: _____

I, (We) hereby certify that all work has been performed and materials supplied in accordance with the plans, specifications and contract documents for the above work, and that:

1. If required by law, not less than the prevailing rates of wages have been paid to laborers, workmen and mechanics employed on this work.
2. There have been no unauthorized substitutions of materials; substitutions or assignment of subcontractors; nor have any subcontracts been entered into without the names of the subcontractors having been submitted to the City prior to the start of such subcontracted work.
3. All claims and indebtedness for material and labor and other service performed in connection with these specifications have been paid.
4. All moneys due the State Industrial Accident Fund, the State Unemployment Compensation Trust Fund, the State Department of Revenue (ORS 316.162 to 316.212) hospital associations and/or others (ORS 279C.530) have been paid.
5. All private property and easement areas have been satisfactorily restored in accordance with the contract.
6. If Contractor is not domiciled in or registered to business in the State of Oregon, Contractor has reported to the Oregon Department of Revenue such information and in the manner as required by ORS 279A.120(3).

Contractor: _____

By: _____ **Date:** _____

Title: _____

Attachment A
Nondiscrimination and Equal Opportunity Policy for Contractors
CITY OF ASHLAND

1. *GENERAL POLICY OF NON-DISCRIMINATION*

It is the policy of the CITY OF ASHLAND to promote equal opportunity to all persons regardless of race, religion, color, national origin, sex, age, marital status, handicap, or political affiliation, in respect to employment, public services, facilities and accommodations. This policy is reinforced by obligations assumed by the City as a condition of receipt of federal and state funds. This policy thus becomes an obligation which must be assumed by the Contractor as well. Because in some cases religion, sex, age, or disability may properly be the basis for denial or restriction of privileges with respect to employment, public services, facilities or accommodations, the following more specific obligations, terms, or conditions shall apply.

2. *DISCRIMINATION BECAUSE OF RELIGIOUS BELIEF*

With respect to terms and conditions of employment and hiring only, the Contractor shall be deemed to have complied with the general obligation of according equal opportunity without regard to religion if every reasonable effort has been made to accommodate the particular religious beliefs or practices of an employee or applicant for employment, but such accommodation cannot be made without undue hardship to the employer.

3. *DISCRIMINATION BECAUSE OF SEX*

With respect to terms and conditions of employment and hiring only, the Contractor shall be deemed to have complied with the general obligation of according equal opportunity notwithstanding any rule, standard, practice, or decision which accords an employee or applicant different treatment because of sex, if such rule, standard, practice, or decision is based upon a bona fide occupational qualification which the employer cannot, without undue hardship, modify or waive to accommodate the employee or applicant.

With respect to public services, facilities, and accommodations the Contractor shall be deemed to have complied with the general obligation of according equal opportunity notwithstanding any rule, standard, practice, or decision which restricts or limits access to such on a basis of sex where:

- A. Physical facilities such as restrooms, bathing facilities, dressing rooms, etc. must be segregated on the basis of sex to accord personal privacy or comply with local, state, or federal law, or ordinance, or administrative regulation; or
- B. The content or subject matter of a program or service is clearly of benefit to persons of a particular sex only because it deals with medical, psychological, or sociological factors inherently linked to the characteristics of one sex only, or its effectiveness in providing benefit to persons of one sex would be unreasonably and adversely affected by the participation of persons of the opposite sex.

4. *DISCRIMINATION BECAUSE OF DISABILITY*

With respect to terms and conditions of employment and hiring only, the Contractor shall be deemed to have complied with the general obligation of according equal opportunity to persons who are physically or mentally disabled if every reasonable effort has been made to accommodate any physical or mental disabilities of an employee or applicant, but such accommodations cannot be made without undue hardship to the employer; or where, because of such disability, the employee or applicant cannot meet a bona fide occupational qualification that cannot be waived or modified without undue hardship to the employer.

With respect to public services, facilities and accommodations only, the Contractor shall be deemed to have complied with the general obligation of according equal opportunity to persons who are physically or mentally disabled where:

- A. Architectural barriers limiting access to facilities owned or occupied by the Contractor cannot be eliminated without structural alterations, and are permitted to remain under the provisions of the Oregon State Structural Specialty Code; or

- B. A program or activity, viewed in its entirety, is readily accessible to and usable by persons who are physically or mentally disabled.
- C. The purpose of the program, service, or facility is to provide a special benefit to persons characterized by a particular handicap in some respect specially related to the educational, medical, psychological, mobility, social or economic needs of persons so disabled.

5. *DISCRIMINATION BECAUSE OF AGE*

With respect to terms and conditions of employment and hiring only, the Contractor shall be deemed to have complied with the general obligation of according equal opportunity regardless of age where:

- A. Certain positions include duties which must, by law or ordinance, be performed by persons over a certain age, and the employer cannot accommodate the employment of a person under that minimum age without undue hardship;
- B. The employee or applicant has passed any applicable age established by the Congress of the United States beyond which an employer may reject an employment application or mandate an employee's retirement.

With respect to public services, facilities, and accommodations only, the Contractor shall be deemed to have complied with the general obligation of according equal opportunity without regard to age where:

- A. The purpose of the service, facility, or accommodation is to benefit or serve persons under 18 years of age or their adult custodians in some respect specially related to the needs of such persons; or
- B. The purpose of the service, facility, or accommodation is to benefit or serve persons 65 years of age or older in some respect specially related to the educational, medical, psychological, mobility, social, or economic needs common to persons of that age group.

6. *DEFINITIONS*

As used in this Policy, there are several terms specifically defined in various federal, state, and local laws, ordinances, and administrative regulations applicable either because of the City's receipt of federal or state funds, or because they are general laws and ordinances prohibiting discrimination. In addition, judicial and administrative decisions have created an additional body of law further defining these terms in their application. Because of the magnitude and complexity of these various legal definitions and interpretations, it is not possible to provide exhaustive definitions herein. The Contractor should be guided by the following general rules:

- A. Where two separate legal definitions or interpretations may apply in a given situation, the one according the greatest degree of protection to the person entitled to their protection shall govern.
- B. "Disability" and "handicap" are intended to be synonymous.
- C. The Contractor is not entitled to advisory opinions or advice from City representatives as regards the specific application of this policy. It is up to the Contractor, and their own legal counsel to ascertain compliance with this policy, federal, state and local law. The City expressly disclaims any responsibility for the Contractor's reliance on advice or opinions given by City representatives.
- D. The Contractor is cautioned that restrictions in deeds, leases, collective bargaining agreements, and other contracts may not in every case justify an otherwise discriminatory act, policy, or practice. The Contractor must, at his own risk and expense, comply with this Policy regardless of contractual restrictions which do not justify Contractor's acts, policies, or practices.

7. *ADVERTISING AND PROMOTIONAL MATERIAL*

- A. In all advertising, postings, and promotional material relating to hiring, the Contractor shall include the following statement:

" (name of contractor) is an equal opportunity employer and does not discriminate in hiring, promotion, layoff, discipline, transfer, compensation, or other terms of employment because of a person's race, religion, color, national origin, sex, age, marital status, handicap, or political affiliation."

EXCEPTION: In "classified" advertising the Contractor need only include the statement "An Equal Opportunity Employer".

- B. In all advertising, postings, and promotional material relating to programs and services funded in whole or in part under a contract with the CITY OF ASHLAND, the Contractor shall include the following statement:

"This (program or service as applicable) is open to all persons without regard to race, religion, color, national origin, sex, age, marital status, handicap or political affiliation. For further information about this equal opportunity policy, contact (name of contractor's representative) at (phone number) ."

8. *RETALIATION*

The Contractor shall not, in any manner, accord different or unequal treatment to or in any way discriminate against any person because of such person's filing of or participation in any grievance or complaint of discrimination contrary to its policy, whether such grievance or complaint is logged with the CITY OF ASHLAND, or any state or federal court or agency.

9. *GRIEVANCE PROCEDURE*

During the term of this Contract, and for at least six months thereafter, the Contractor shall conspicuously display the attached "Notice: Your Rights to Have Discrimination Complaints Heard" in locations accessible to the public at its principal office and all other premises within the CITY OF ASHLAND where it conducts any operations. Likewise the Contractor shall fully cooperate with the designated representative of the CITY OF ASHLAND and state and federal civil rights compliance agencies in investigating, mediating, and otherwise handling complaints or grievances concerning this Policy.

10. *VIOLATIONS*

Violation by the Contractor of any provision of this Policy may, in addition to any remedy accorded an aggrieved person, be cause for termination of the Contract, debarment from participation in future CITY OF ASHLAND contracts, or both.

11. *CONTRACTS DIRECTLY FUNDED BY FEDERAL OR STATE AGENCIES*

If this Contract is funded in whole or in part by federal or state grants, there may be imposed on the Contractor the additional obligation of "affirmative action" to ensure equal opportunity, and specific standards and reporting requirements to be met. "Affirmative action", in general, means taking positive and affirmative steps to involve historically disadvantaged classes of persons in the performance of the work or participation in the benefits of this Contract. These steps may include special recruitment efforts, specific goals as to percentages of such persons employed in certain jobs, specific goals as to percentages of such persons employed in certain jobs, specific standards for the amount of work to be subcontracted to minority-owned businesses, etc.

If there are such additional requirements beyond this policy, the Invitation to Bid will state:

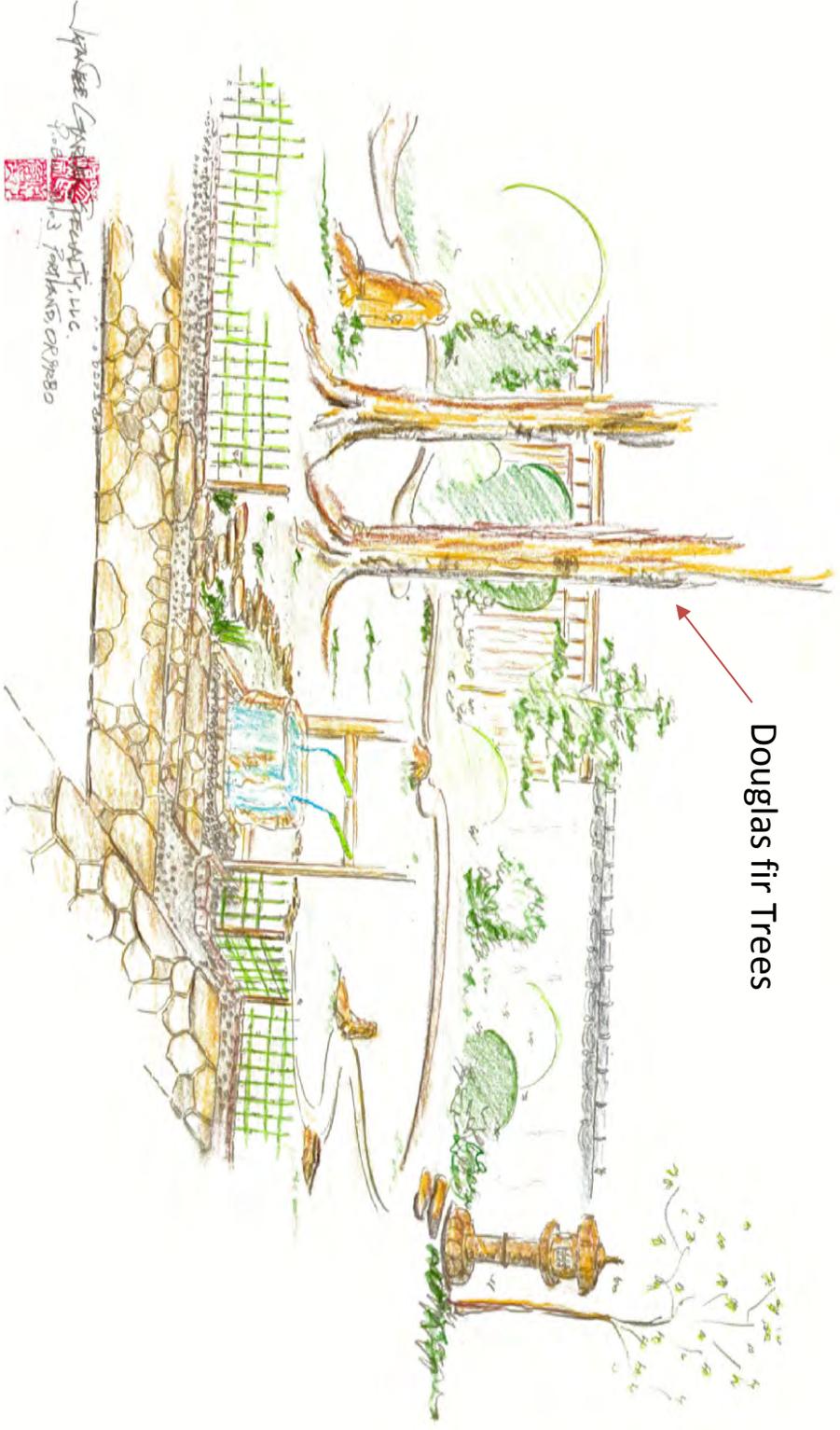
"This project is funded in whole or in part through the City of Ashland. Special equal opportunity requirements imposed by that agency are contained in the bid documents, and bidders are cautioned to examine them carefully in preparing their bids."

Arden D. Miller Park - Jennifer Clark

For Design - INTER-DISCIPLINARY
2001-2019



Douglas fir Trees



Arden D. Miller Park
Jennifer Clark
2001-2019
CREATIVITY, LLC.
113 FOOTMAN'S, OR 97080

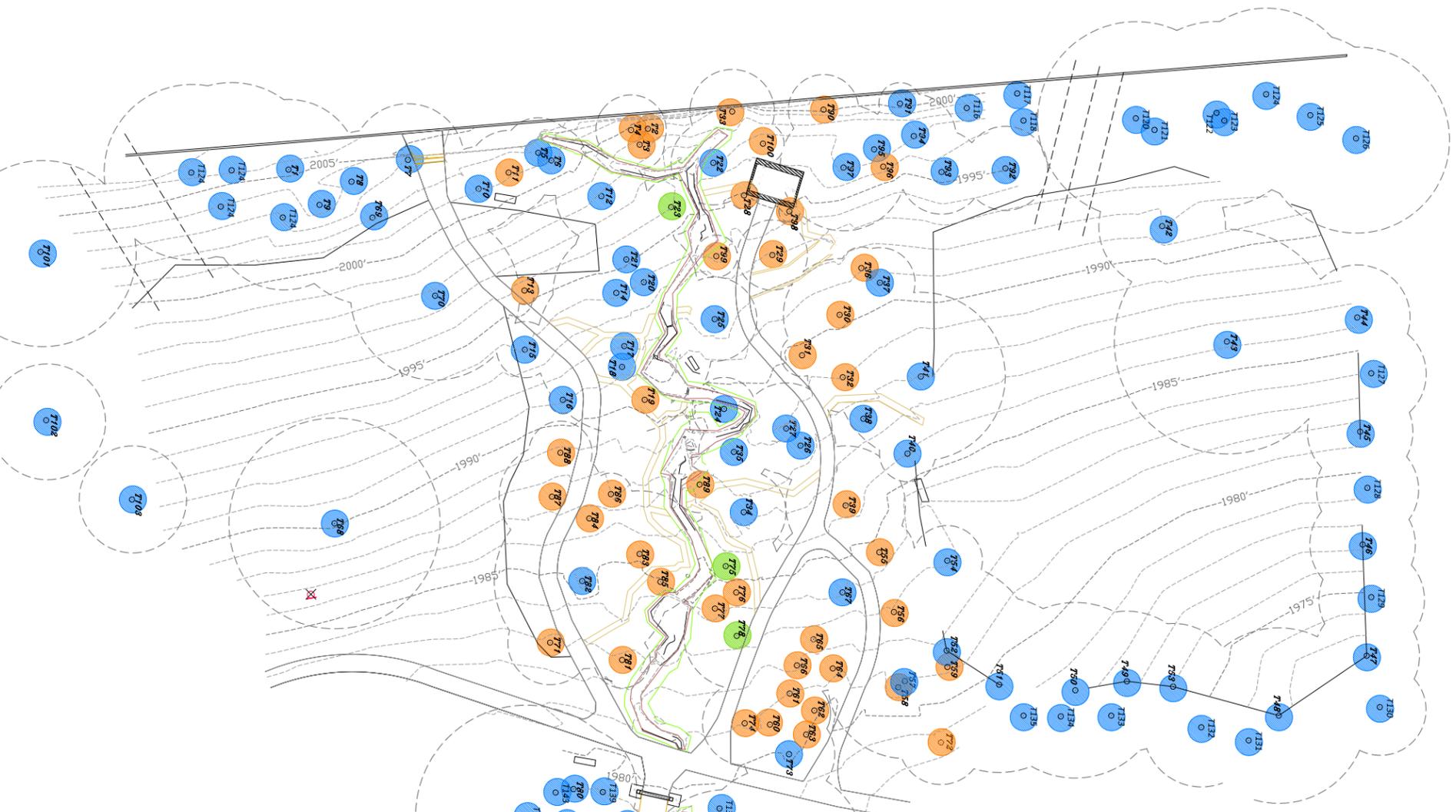
TREE TABLE

NUMBER	SPECIES	DBH "	CRZ'	ACTION
1	PSEUM	27	41	PRESERVE
2	PHOT	6	9	REMOVE
3	PHOT	8	12	REMOVE
4	PHOT	12	18	REMOVE
5	PRUL	12	18	PRESERVE
6	PRUL	12	18	PRESERVE
7	ACER	22	33	PRESERVE
8	PSEUM	30	45	PRESERVE
9	PSEUM	39	59	PRESERVE
10	GINK	14	21	PRESERVE
11	GINK	14	21	PRESERVE
12	PAUL	14	21	REMOVE
13	ACER	4	6	PRESERVE
14	GINK	20	30	PRESERVE
15	ACER	9	14	PRESERVE
16	PADO	0	0	PRESERVE
17	CALO	36	54	PRESERVE
18	MAGS	4	6	REMOVE
19	TSUGA	4	6	PRESERVE
20	GINK	16	24	PRESERVE
21	GINK	17	26	PRESERVE
22	CUPR	15	23	TRANSP
23	HAMM	9	14	PRESERVE
24	CUPR	7	10	PRESERVE
25	ACER	9	14	PRESERVE
26	ACER	8	12	PRESERVE
27	SHRUB	4	6	REMOVE
28	GINK	12	18	REMOVE
29	ACER	10	15	REMOVE
30	CRAT	17	26	REMOVE
31	ACER	4	6	REMOVE
32	CEDR	6	9	REMOVE
33	JUGL	11	17	REMOVE
34	PNUS	12	18	PRESERVE
35	ACER	6	9	PRESERVE
36	CUPR	3	5	REMOVE
37	DEC	6	9	PRESERVE
38	CUPR	11	17	PRESERVE
39	PRUN	16	24	REMOVE
40	ACER	6	9	PRESERVE
41	TILE	23	35	PRESERVE
42	LIRIO	24	36	PRESERVE
43	CEDR	35	53	PRESERVE
44	PLAT	19	29	PRESERVE
45	PLAT	17	26	PRESERVE
46	PLAT	20	30	PRESERVE
47	PLAT	15	23	PRESERVE
48	PSEU	48	72	PRESERVE
49	PSEU	38	57	PRESERVE
50	PSEU	37	56	PRESERVE
51	PSEU	33	49	PRESERVE
52	PSEU	43	65	PRESERVE
53	PSEU	28	42	MISSING
54	ACER	7	11	PRESERVE
55	DEAD	0	0	DEAD
56	ACER	7	11	REMOVE
57	PSEU	47	71	PRESERVE
58	DEAD	0	0	DEAD
59	DEAD	0	0	DEAD
60	BUXUS	0	0	REMOVE
61	BUXUS	0	0	REMOVE
62	BUXUS	0	0	REMOVE
63	BUXUS	0	0	REMOVE
64	TSUGA	4	6	REMOVE
65	ACER	7	11	REMOVE
66	ACER	7	11	REMOVE
67	ACER	10	15	PRESERVE
68	CALO	69	104	PRESERVE
69	CALO	27	41	PRESERVE
70	CEDR	19	29	PRESERVE
71	JUNI	24	36	PRESERVE
72	DEC	10	15	REMOVE
73	ACER	10	15	PRESERVE
74	ACER	8	12	REMOVE
75	ACER	12	18	TRANSP
76	CEDR	8	12	REMOVE
77	ACER	4	6	REMOVE
78	ACER	10	15	TRANSP

TREE TABLE

NUMBER	SPECIES	DBH "	CRZ'	ACTION
79	ACER	4	6	REMOVE
80	ACER	0	0	GONE
81	CARY	5	8	REMOVE
82	ACER	37	56	PRESERVE
83	ACER	15	23	REMOVE
84	MALU	0	0	GONE
85	ACER	4	6	REMOVE
86	ACER	3	5	REMOVE
87	ACER	18	27	REMOVE
88	MAGN	7	11	REMOVE
89	CUPR	6	9	REMOVE
90	ACER	11	17	REMOVE
91	JUGL	6	9	PRESERVE
92	CALO	29	44	PRESERVE
93	PICEA	24	36	PRESERVE
94	ABIES	34	51	PRESERVE
95	PSEU	28	42	PRESERVE
96	CALO	9	14	REMOVE
97	ACER	40	60	PRESERVE
98	CALO	4	6	REMOVE
99	TSUGA	4	6	REMOVE
100	CEDR	0	0	GONE
101	ACER	35	53	PRESERVE
102	CALO	22	33	PRESERVE
103	ACER	24	36	PRESERVE
104	ACER	24	36	PRESERVE
105	JUNI	15	23	PRESERVE
106	ACER	8	12	PRESERVE
107	ACER	11	17	PRESERVE
108	PRUN	5	8	PRESERVE
109	ACER	19	29	PRESERVE
110	ACER	9	14	PRESERVE
111	ARBU	12	18	PRESERVE
112	ARBU	13	20	PRESERVE
113	QUER	5	8	PRESERVE
114	QUER	20	30	PRESERVE
115	CARY	10	15	PRESERVE
116	ARBO	5	8	PRESERVE
117	CALO	9	14	PRESERVE
118	JUGL	15	23	PRESERVE
119	PICE	9	14	PRESERVE
120	QUER	37	56	PRESERVE
121	CALO	33	50	PRESERVE
122	PSEU	35	53	PRESERVE
123	CALO	6	9	PRESERVE
124	ACER	33	50	PRESERVE
125	PSEU	31	47	PRESERVE
126	PSEU	35	53	PRESERVE
127	PSEU	19	29	PRESERVE
128	PLAT	19	29	PRESERVE
129	PLAT	20	30	PRESERVE
130	PLAT	17	26	PRESERVE
131	PLAT	32	48	PRESERVE
132	PSEU	32	48	PRESERVE
133	PSEU	27	41	PRESERVE
134	PSEU	29	44	PRESERVE
135	PSEU	29	44	PRESERVE
136	PSEU	32	48	PRESERVE
137	CHAM	33	50	PRESERVE
138	PICE	3	5	REMOVE
139	TAXU	12	18	PRESERVE
140	CHAM	33	50	PRESERVE
141	PICE	5	8	PRESERVE
142	TAXU	14	21	PRESERVE
143	ACER	10	15	PRESERVE
144	CEDR	42	63	PRESERVE

ROOT PRUNE



- TREE LEGEND**
- TRANSPLANT
 - REMOVE
 - PRESERVE



545 A ST. STE 3, ASHLAND, OR 97520
541-488-3184



Drawn By: **INITIALS**

SCALE
1" = 40'

JAPANESE GARDEN
LITHIA PARK
Ashland, Oregon, 97520

JOB NO.: 1809
REVISION DATE

TREE INVENTORY SAVE AND REMOVAL

ISSUE DATE:
01.29.20

T 1.0



Drawn By:
INITIALS

SCALE

JAPANESE GARDEN
LITHIA PARK
Ashland, Oregon, 97520

JOB NO. 1898
REVISION DATE

TREE PROTECTION PLAN

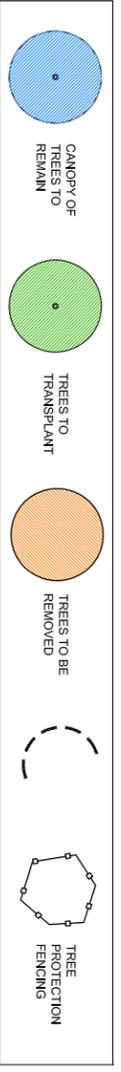
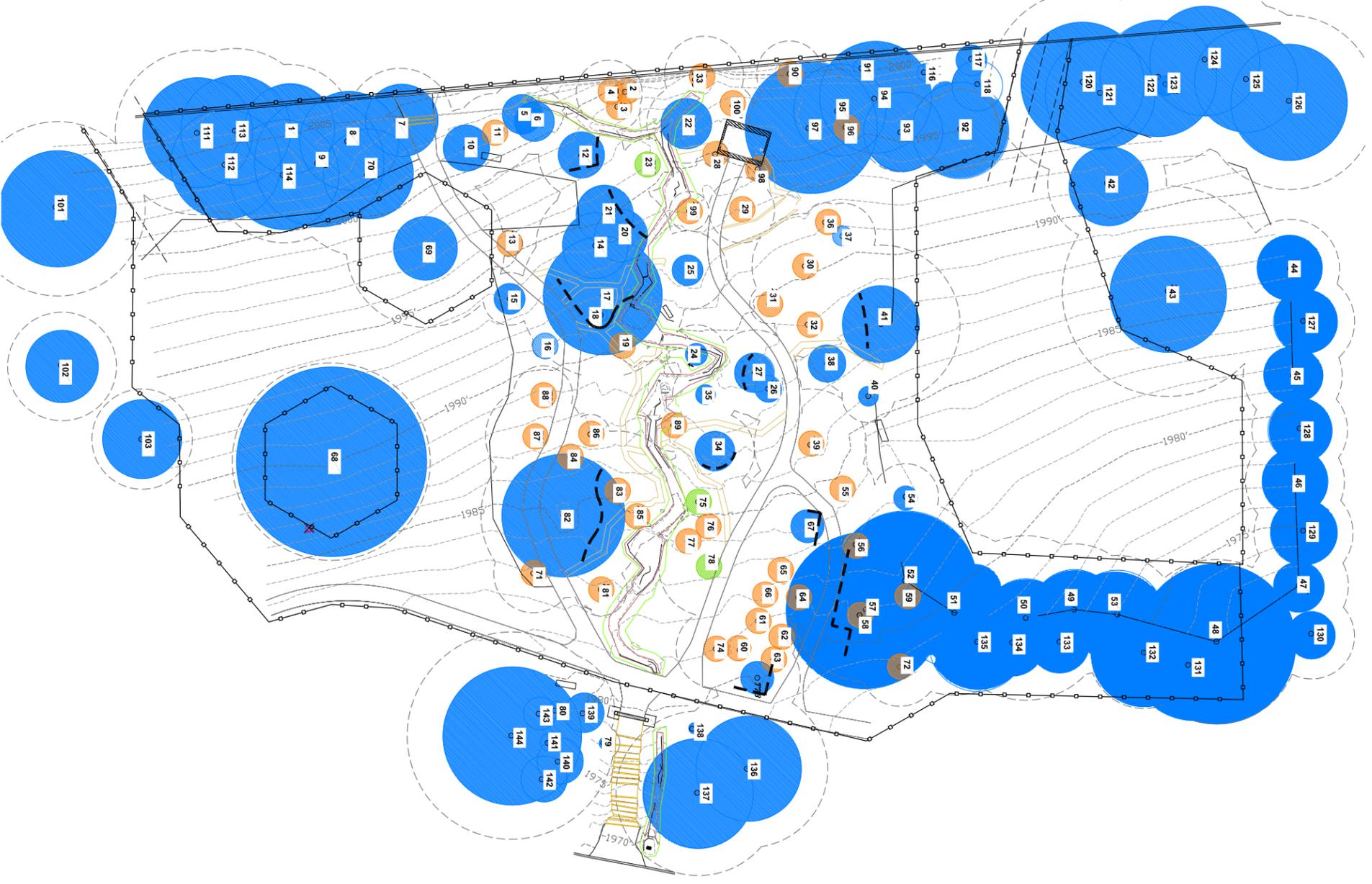
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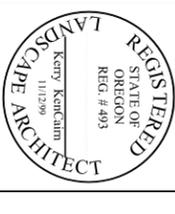


TREE PROTECTION AND REMOVAL NOTES

1. PRIOR TO DELIVERING EXCAVATION EQUIPMENT OR COMMENCING ANY CONSTRUCTION ACTIVITIES ON THE SITE, THE GENERAL CONTRACTOR SHALL CONTACT THE LANDSCAPE ARCHITECT FOR A PRE-CONSTRUCTION MEETING WITH THE LANDSCAPE ARCHITECT AND EXCAVATION SUPERVISOR. PRIOR TO COMMENCING ANY WORK ON THE SITE, THE LANDSCAPE ARCHITECT SHALL BE NOTIFIED BY THE CONTRACTOR 48 HRS. IN ADVANCE FOR ALL SITE VISITS REQUESTED. CONTRACTOR SHALL OBTAIN WRITTEN APPROVAL FROM THE OWNER'S REPRESENTATIVE THAT CONSTRUCTION MAY BEGIN AFTER ALL OF THE DESCRIBED FENCING IS IN PLACE. FENCING SHALL REMAIN IN PLACE UNTIL THE PROJECT IS COMPLETED.
2. FENCES MUST BE ERECTED TO PROTECT TREES TO BE PRESERVED AS SHOWN IN DIAGRAM. FENCING SHALL BE 6' TALL TEMPORARY CHAIN LINK FENCES INSTALLED WITH METAL CONNECTIONS TO ALL PANELS AND INSTALLED THESE FENCES SHALL BE INSTALLED SUCH THAT IT DOES NOT PROTECT ZONE FOR EACH TREE OR GROUP OF TREES. FENCES ARE TO REMAIN UNTIL ALL SITE WORK HAS BEEN COMPLETED. FENCES MAY NOT BE RELOCATED OR REMOVED WITHOUT THE PERMISSION OF THE LANDSCAPE ARCHITECT.
3. CONSTRUCTION TRAILERS, TRAFFIC AND STORAGE AREAS MUST REMAIN OUTSIDE FENCED TREE PROTECTION ZONES AT ALL TIMES.
4. ALL PROPOSED UNDERGROUND UTILITIES AND DRAIN OR IRRIGATION LINES SHALL BE ROUTED OUTSIDE THE TREE PROTECTION ZONE. IF LINES MUST TRANSVERSE THE PROTECTION AREA, THEY SHALL BE TUNNELED OR BORED UNDER THE TREE ROOTS. NOTIFY THE LANDSCAPE ARCHITECT IMMEDIATELY IF ANY PROJECT PLANS CONFLICT WITH THIS REQUIREMENT.
5. NO MATERIALS, EQUIPMENT, SPOIL, OR WASTE OR WASHOUT WATER MAY BE DEPOSITED, STORED, OR PARKED WITHIN THE TREE PROTECTION ZONE (FENCED AREA).
6. NOTIFY THE LANDSCAPE ARCHITECT IF TREE PRUNING IS REQUIRED CONSTRUCTION CLEARANCE.
7. ANY HERBICIDES PLACED UNDER PAVING MATERIALS MUST BE SAFE FOR USE AROUND TREES AND LABELED FOR THAT USE.
8. IF INJURY SHOULD OCCUR TO ANY TREE DURING CONSTRUCTION, NOTIFY THE LANDSCAPE ARCHITECT IMMEDIATELY. ALL DAMAGE CAUSED BY CONSTRUCTION TO EXISTING TREES SHALL BE COMPENSATED FOR BY THE OFFENDING PARTY, BEFORE THE PROJECT WILL BE CONSIDERED COMPLETE.
9. WATERING SCHEDULE: WATERING PROTECTED TREES SHALL FOLLOW THESE STANDARDS, HOWEVER PERIODS OF EXTREME HEAT, WIND, RAIN, FALL OR DROUGHT MAY REQUIRE MORE OR LESS WATER THAN RECOMMENDED IN THESE NOTES.
 - A. MOST SPECIES: 1 TIME PER MONTH DURING IRRIGATION SEASON (USUALLY MARCH THROUGH SEPTEMBER).
 - B. QUERCUS/OAK: DEEP WATER IN MAY AND SEPTEMBER. DO NOT WATER DURING OTHER MONTHS. FOR OAKS ALREADY IN THE VICINITY OF IRRIGATED CONDITIONS, AUTOMATIC SPRINKLERS OR REGULAR WATERING SHALL NOT BE ALLOWED TO SPRAY ON OR WITHIN 3 FEET OF THE TRUNK. THE WATER SHALL NOT BE ALLOWED TO POOL OR DRAIN TOWARDS THE TRUNK.
 - C. WATERING METHOD: HAND WATERING SYSTEMS, RECOMMENDED FOR TREES THAT ARE PART OF A DEVELOPMENT PROJECT THAT MUST BE WATERED TO INSURE TREE SURVIVAL DURING THE COURSE OF CONSTRUCTION UNTIL AUTOMATIC IRRIGATION IS INSTALLED.
10. WATERING SCHEDULE: WATERING PROTECTED TREES SHALL FOLLOW THESE STANDARDS, HOWEVER PERIODS OF EXTREME HEAT, WIND, RAIN, FALL OR DROUGHT MAY REQUIRE MORE OR LESS WATER THAN RECOMMENDED IN THESE NOTES.
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11. EROSION CONTROL DEVICES SUCH AS SILT FENCING, DEBRIS BASINS, AND WATER DIVERSION STRUCTURES SHALL BE INSTALLED ON THE UPHILL SIDE OF THE TREE PROTECTION ZONE TO PREVENT SILTATION AND/OR EROSION WITHIN THE TREE PROTECTION ZONE.
12. BEFORE GRADING, PAD PREPARATION, OR EXCAVATION FOR THE FOUNDATIONS, FOOTINGS, WALLS, FOOT OR TRENCHING, ANY TREES WITHIN THE SPECIFIC CONSTRUCTION ZONE SHALL BE ROOT PRUNED 1 FOOT OUTSIDE THE TREE PROTECTION ZONE BY CUTTING ALL ROOTS CLEANLY AT A 90 DEGREE ANGLE TO A DEPTH OF 24 INCHES. ROOTS SHALL BE CUT BY MANUALLY DIGGING A TRENCH AND CUTTING EXPOSED ROOTS WITH A SAW, VIBRATING KNIFE, ROCK SAW, NARROW TRENCHER WITH SHARP BLADES OR OTHER APPROVED ROOT-PRUNING EQUIPMENT.
13. ANY ROOTS DAMAGED DURING GRADING OR CONSTRUCTION SHALL BE EXPOSED TO SOUND TISSUE AND CUT AT AN ANGLE AT A 90 DEGREE ANGLE TO THE ROOT WITH A SAW. PLACE DAMP SOIL AROUND ALL CUT ROOTS TO A DEPTH EQUALING THE EXISTING FINISH GRADE WITHIN 4 HOURS OF CUTS BEING MADE.
14. IF TEMPORARY HALL, OR ACCESS ROADS MUST PASS OVER THE ROOT AREA OF TREES TO BE RETAINED, A ROAD BED OF 6 INCHES OF MULCH OR GRAVEL SHALL BE CREATED TO PROTECT THE SOIL. THE ROAD BED MATERIAL SHALL BE REPLISHED AS NECESSARY TO MAINTAIN A 6 INCH DEPTH.
15. SPOIL FROM TRENCHES, BASEMENTS, OR OTHER EXCAVATIONS SHALL NOT BE PLACED WITHIN THE TREE PROTECTION ZONE, EITHER TEMPORARILY OR PERMANENTLY.
16. NO BURN PILES OR DEBRIS PILES SHALL BE PLACED WITHIN THE TREE PROTECTION ZONE. NO ASHES, DEBRIS, OR GARBAGE MAY BE DUMPED OR BURIED WITHIN THE TREE PROTECTION ZONE.
17. MAINTAIN FIRE-SAFE AREAS AROUND FENCED AREA. ALSO, NO HEAT SOURCES, FLAMES, IGNITION SOURCES, OR SMOKING IS ALLOWED NEAR MULCH OR TREES.
18. DO NOT RAISE THE SOIL LEVEL WITHIN THE DRIP LINES TO ACHIEVE POSITIVE DRAINAGE. EXCEPT TO MATCH GRADES WITH SIDEWALKS AND CURBS, AND IN THOSE AREAS, FEATHER THE ADDED TOPSOIL BACK TO EXISTING GRADE AT APPROXIMATELY 2:1 SLOPE.
19. REMOVE THE ROOT WAD FOR EACH TREE THAT IS INDICATED ON THE PLAN AS BEING REMOVED.
20. EXCEPTIONS TO THE TREE PROTECTION SPECIFICATIONS MAY ONLY BE GRANTED IN EXTRAORDINARY CIRCUMSTANCES WITH WRITTEN APPROVAL FROM THE LANDSCAPE ARCHITECT PRIOR TO ANY WORK COMMENCING.
21. AS A PROTECTIVE MEASURE TO COMPENSATE FOR CONSTRUCTION IMPACTS, TWO TO SIX WEEKS PRIOR TO CONSTRUCTION, ALL RETAINED TREES SHOWN ON THIS PLAN SHALL RECEIVE AN APPLICATION OF MYCOCAPPLY. ALL PURPOSE SOLUTIONS PER MANUFACTURER'S INSTRUCTIONS. THIS MYCORRHIZAL PRODUCT IS A SPECIALLY FORMULATED NATURAL ROOT BIOSTIMULANT WHICH ENHANCES THE ASSORPTIVE SURFACE AREA OF THE TREES' ROOT SYSTEMS. THIS PROMOTES AND IMPROVES NUTRIENT AND WATER UPTAKE CAPABILITIES OF THE REMAINING ROOT STRUCTURE. DISTRIBUTE MYCOCAPPLY EVENLY WITHIN THE ACTIVE ROOT ZONE OF RETAINED TREES. APPLY 30 GALS. OF SOLUTION PER TREE 6" DBH AND GREATER, A MINIMUM OF 4" BELOW SOIL SURFACE IN QUANTITIES OF 1/2 GALLON AT EACH POINT OF APPLICATION. LOCATE THE ACTIVE ROOT ZONES WITH LANDSCAPE ARCHITECT PRESENT. MYCOCAPPLY IS AVAILABLE FROM MYCORRHIZAL APPLICATION, INC., PHONE (541) 476-3985.



THE TREE PROTECTION ZONE FOR EACH TREE IS BASED ON THE GUIDELINES ESTABLISHED BY: Matheny, N. & Clark, J. 1998. *Trees and Development: A Technical Guide to Preservation of Trees During Land Development*. p. 72.



Drawn By:
INITIALS
SCALE
1" = 40'

JAPANESE GARDEN
LITHIA PARK
Ashland, Oregon, 97520

JOB NO. 1809
REVISION DATE

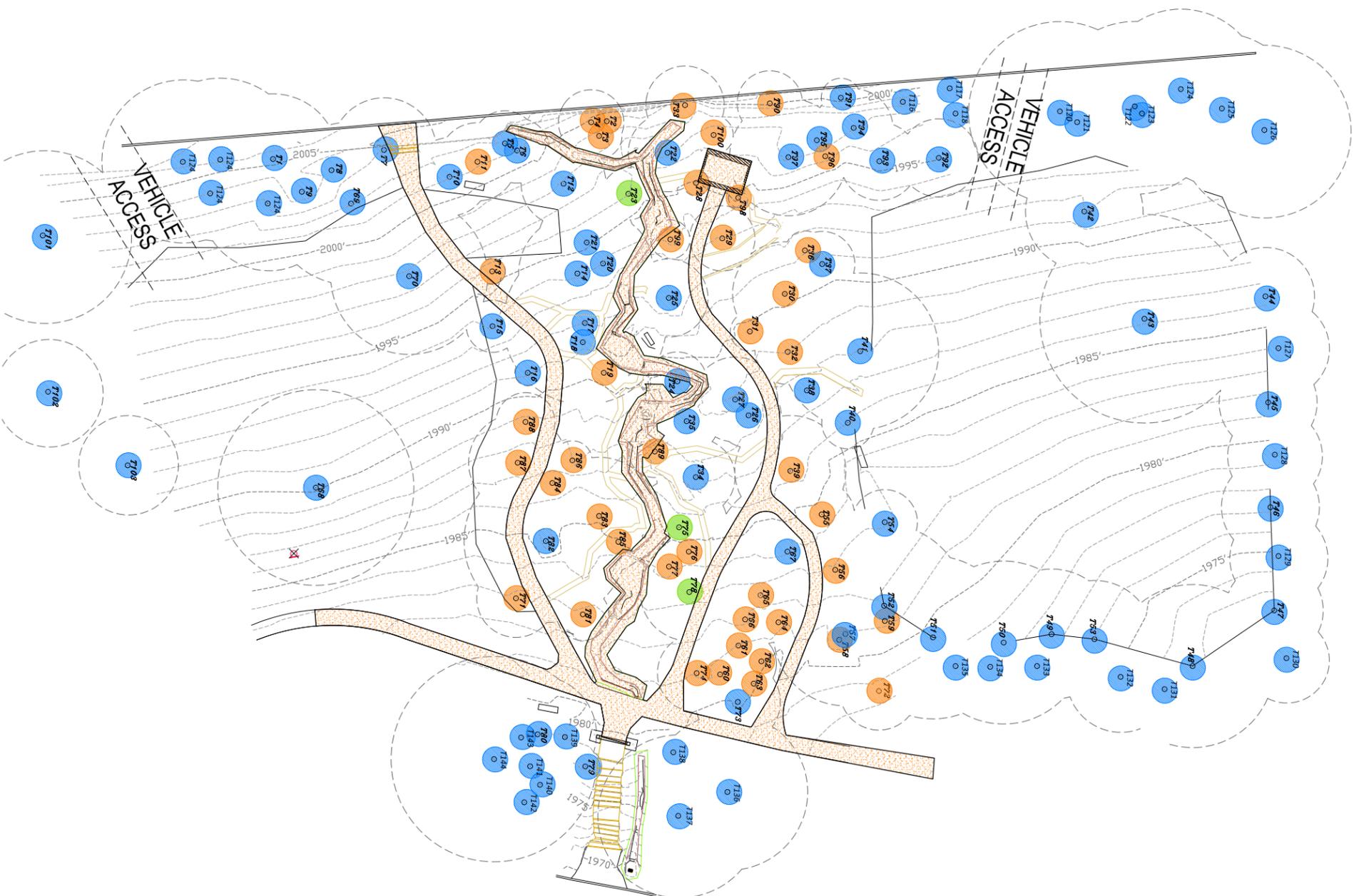
**DEMOLITION
PLAN**

ISSUE DATE:
01.23.20

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- TREE LEGEND**
-  REMOVE HARDSCAPE
 -  TRANSPLANT
 -  REMOVE
 -  PRESERVE
- ALL WORK WITHIN PROTECTION ZONE OR TREES TO BE PRESERVED MUST FOLLOW TREE CARE NOTES ON SHET T.2.0



ASHLAND PARKS & RECREATION COMMISSION

340 S PIONEER STREET • ASHLAND, OREGON 97520

COMMISSIONERS:

Mike Gardiner
Joel Heller
Rick Landt
Jim Lewis
Julian Bell



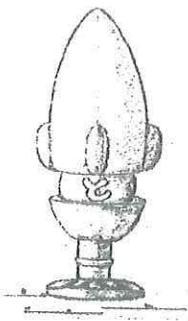
Michael A. Black, AICP
Director

541.488.5340
AshlandParksandRec.org
parksinfo@ashland.or.us

Amendment to Tree Protection Notes

1. Prior to delivering excavation equipment or commencing any construction activities on the site, the general contractor shall contact the landscape architect for a pre-construction meeting with the landscape architect and excavation supervisor prior to commencing any work on the site. The landscape architect shall be notified by the contractor 48 hrs. In advance for all site visits requested. Contractor shall obtain written approval from the owner's representative that construction may begin after all of the described fencing AND WOOD CHIPS ARE in place. Fencing shall remain in place until the project is completed.
2. Fences must be erected to protect trees to be preserved as shown in diagram. Fencing shall be 6' tall temporary chain link panels installed with metal connections to all panels area integrated, these fences shall be installed so that it does not allow passage of pedestrians and/ or vehicles through it. Fences define a specific protection zone for each tree or group of trees. Fences are to remain until all site work has been completed. Fences may not be relocated or removed without the permission of the landscape architect.
3. Construction trailers, traffic and storage areas must remain outside fenced tree protection zones at all times.
4. All proposed underground utilities and drain or irrigation lines shall be routed outside the tree protection zone. If lines must transverse the protection area, they shall be tunneled or bored under the tree roots. Notify the landscape architect immediately if any project plans conflict with this requirement.
5. No materials, equipment, spoil, or waste or washout water may be deposited, stored, or parked within the tree protection zone (fenced area).
6. Notify the landscape architect if tree pruning is required TO OBTAIN construction clearance . ALL TREE PRUNING TO BE DONE BY A CERTIFIED ARBORIST.
7. LITHIA PARK AND ALL APRC PROPERTIES ARE HERBICIDE FREE, NO HERBICIDES ARE ALLOWED ON THE PROJECT SITE. ~~Any herbicides placed under paving materials must be safe for use around trees and labeled for that use.~~
8. If injury should occur to any tree during construction, notify the landscape architect immediately. All damage caused by construction to existing trees shall be compensated for by the offending party, before the project will be considered complete. IF DAMAGE OCCURS TO A TREE IDENTIFIED TO BE SAVED CONTACT PROJECT AGENT AND LANDSCAPE ARCHITECT IMMEDIATELY TO DISCUSS PROTOCOL. DAMAGE TO TREES THAT HAS NOT BEEN IDENTIFIED AND DISCUSSED AT THE END OF THE PROJECT WILL BE THE RESPONSIBILITY OF THE CONTRACTOR AND ADEQUATE REPLACEMENT WILL BE REQUIRED.
9. All tree pruning and root pruning to be done by a certified arborist.
10. Watering schedule: watering protected trees shall follow these standards, however periods of extreme heat, wind, rainfall or drought may require more or less water than recommended in these notes.
 - A. Most species: 1 time per month during irrigation season (usually march through September)
 - B. Quercus/oak: deep water in may and September, do not water during other months. For oaks already in the vicinity of irrigated conditions, automatic sprinklers or regular watering shall not be allowed to spray on or within 3 feet of the trunk. The water shall not be allowed to pool or drain towards the trunk.
 - C. Watering method: hand watering systems, recommended for trees that are part of a development project that must be watered to insure tree survival during the course of construction until automatic irrigation is installed.
11. Erosion control devices such as silt fencing, debris basins, and water diversion structures shall be installed on the uphill side of the tree protection zone to prevent siltation and/ or erosion within the tree protection zone.
12. Before grading, pad preparation, or excavation for the foundations, footings, walls, or trenching, any trees within the specific construction zone shall be root pruned 1 foot outside the tree protection zone by cutting all roots cleanly at a 90 degree angle to a depth of 24 inches. Roots shall be cut by manually digging a trench and cutting exposed roots with a saw, vibrating knife, rock saw, narrow trencher with sharp blades, or other approved root-pruning equipment.

13. Any roots damaged during grading, ~~or~~ construction or root pruning shall be exposed to sound tissue and cut cleanly at a 90 degree angle to the root with a saw. ALL ROOT TWO INCHES IN DIAMETER OR LARGER SHALL HAVE MUD IMMEDIATELY PLACED AGAINST THE CUT END OF THE ROOT. ADDITIONALLY, FOUR CUBIC FEET OR MORE OF MUD OR SOIL WATERED TO THE CONSISTENCY OF MUD SHALL BE PLACED IN THE HOLE AT THE SURGICAL CUT SITE WITHIN ONE HOUR OF ROOT PRUNING.
14. If temporary haul or access roads must pass over the root area of trees to be retained, a road bed of 6 inches of MULCH shall be created to protect the soil. The road bed material shall be replenished as necessary to maintain a 6 inch depth.
15. Spoil from trenches, basements, or other excavations shall not be placed within the tree protection zone, either temporarily or permanently.
16. No burn piles or debris piles shall be placed within the tree protection zone. No ashes, debris, or garbage may be dumped or buried within the tree protection zone.
17. Maintain fire-safe areas around fenced area. Also, no heat sources, flames, ignition sources, or smoking is allowed near mulch or trees.
18. Do not raise the soil level within the drip lines to achieve positive drainage, except to match grades with sidewalks and curbs, and in those areas, feather the added topsoil back to existing grade at approximately 3:1 slope.
19. Remove the root wad for each tree that is indicated on the plan as being removed.
20. Exceptions to the tree protection specifications may only be granted in extraordinary circumstances with written approval from the landscape architect prior to any work commencing.
21. As a protective measure to compensate for construction impacts, two to six weeks prior to construction, all retained trees shown on this plan shall receive an application of mycoapply all-purpose soluble per manufacturer's instructions. This mycorrhizae product is a specially formulated natural root bio-stimulant which enhances the absorptive surface area of the trees' root systems. This promotes and improves nutrient and water uptake capabilities of the remaining root structure. Distribute mycoapply evenly within the active root zone of retained trees. Apply 30 gals. Of solution per tree 6" dbh and greater, a minimum of 4" below soil surface in quantities of 1/2 gallon at each point of application. Locate the active root zones with landscape architect present. mycoapply is available from mycorrhizal application, inc., phone (541) 476-3985.
22. Apply minimum 4 inches of wood chips in tree protection zone within the construction staging/TREE PROTECTION area.



PROPOSAL

August 17, 2020

Jeff Mangin
Director of Ashland Parks Foundations
340 S Pioneer Street
Ashland, Oregon 97520

Project Name: Ashland Japanese Garden Project

Project Location: LITHIA Park Windburn Way, Ashland Oregon 97520

This estimate are based on drawing by Japanese Garden Specialty, LLC
Dated Oct 2018, Aug.2020.

Description:

Site Preparations: \$4,250.00

Design lay out on site
Consult / instruct sub-contractor each task
Elevation set-up

Slate Installation: \$75,610.00

Main path way by the entry gates area
After concrete foundation cure
MICA slate mortal set in
Approximately 1,049.50.sq/ft
Acid wash and seal after distilled

Slate Works \$2,250.00

Set in with concrete exposed aggregate path way
Locations at wood deck areas
Before poor concrete set in MICA slate
Approximately 32.0sq/ft

Japanese Roof Tile Built On the Concrete Wall \$65 150.00

Set Japanese roof tiles on concrete wall
265' total length
Sub wood structure under the roof tile include

Bamboo Fence \$13,750.00

YOTSUME style
KINKAKUJI style
And another style choice by Designer
Total 198' length average 3' height
Tea garden, both side of entry path way
Build location and style are
Behind of BONSAI stand installed MISU-GAKI style
Decoration, separations, divides purpose

Japanese Roof Tile Drain Edging: \$3550.00

Between concrete patio and Sand & stone garden
Decoration edging 80' length
Black pebble rocks full in the drain ditch

Main Slate Path way Drainage Systems: \$7,800.00

Stone edge and 8'-with black pebble rock filled
Two catch basins install and connect to drainpipe

Ornamental Stone Lanterns and Stone Basins \$54,000.00

Import from Japan
Purchases trip require to Japan
9 stories stone tower included
7 types lanterns 8' to 2' height and variety of styles
Designer will chose high and style and setting locations
2 Water basin, one is future Tea garden and by entry path
Lanterns set on the foundation / concrete base include

Pond Decoration: \$48,550.00

Help locate / set large rock/ boulders for SGL, Inc.
Detail pond edging decorations
Small, medium stones and burned log edge
Black mortal w/ aquarium sand finish
One pond two different depths space
Build bog garden and stand for water lily pots
Two water fall
TSURU and KAME Island
Hiding place for KOI-fish
Pebble beach
Rocks and stone provide SGL, Inc.

Water fall and Creek Decorations: \$34,250.00

Help locate / set in large rock/ boulders for SGL, Inc.
 Water fall 6'plus high
 Detail creek edge decorations
 Small, medium size rocks, burned logs edges
 Black color mortal w/ aquarium sand finish
 Stepping stone bridge and 2 rectangular stone bridge
 YUKIMI style stone lantern set inside of creek
 Same aqua plants planted for the water quality
 Rock, stone provide from SGL, Inc.

Decoration Boulder, stone Placements: \$25,500.00

Material / equipment / labor provide by SGL, Inc
 Setting placement in highlight of the gardens
 All new landscaped area include main path (Bose side of path way edgings) and retaining wall

Plants materials: \$89,150.00

Specimens Trees

Quantity	Common Name	Size	Note
9	Japanese Black Pine	10"-D 12'-H	Sculpture pine
25	Japanese giant timber bamboo	3'~5"-C 25'+- -H	

General Trees, Shrubs, Ground cover plants

Quantity	Common Name	Size	Note
45	Camellia sasanqua.	5-Gal	pink or rose
55	Hickii Yew	5-G	for Hedge
45	Japanese Box wood	3-G	for Hedge
4	Wisteria	5-G	Chinese
10	Japanese UME Apricot	10-G	red, pink, white
15	YOSHINO Cherry	1.5"-C	
1	KATSURA Tree	1.5"- C	
9	Japanese Maple	1.5"~2.0"-C	Mix Variety
30	Azalea Hino C	1-G	
5	Camellia japonica	5-G	Mix color
6	Hinoki Tree	3~5-H	
2	Dog wood	1.5"-C	Pink, white

3	Cryptomeria Japonica	5-G	
6	Daphne	1-G	
8	Burning Bushes	5-G	
1	Asian pear	15-G	20 centuries
1	Persimmon	15-G	FUYU
6	Hydrangea	3-G	3-G Mix
6	Magnolia stellata	5-G	Pink, White
1	Magnolia soulangiana	15-G	Red, Yellow
5	Malus	5-G	
6	Nandina	5-G	common
6	Osmanthus	5-G	Mix Variety
20	Pieris Japonica	2-G	
2	Tanyosho Pine	3'-H	
6	Mugo Pine	2-G	
10	Otto Luyken laurel	24"+-W	B & B
10	Portugal Laurel	3'-H	B & B
12	Rhododendron	3~5-G	Mix color
24	Sarcococca	1-G	
6	Viburnum T.	5-G	
12	Perennial Flower	1-G	Mix Variety
24	Aqua-Plants	3-G	Mix Variety

Provide all above plants only

Designer will guide planting spots or locations

Designer will substitute plants, size and quantity

General Construction Management and Designer Works \$156,000.00

Supervise site construction works

Provide MISC. design detail

Site work and helping with SGL, Inc

Weekly 2.5day work for Ashland Japanese Garden

Example schedule for week (Depending work schedules)

Monday AM- travel PM-site works

Tuesday all day site works

Wednesday AM- travel

Accommodations,

Travel Expenses

Per-Dime

Until construction competed

Construction will start October 19, 2020

26 month estimate duration months (until compete)

White Granite Chip installations \$15,580.00
Sand and stone garden, Flat / Moss Garden area
Fine grading
3/8"~ 5/8" white granite chips over the filter cloth
Approximately 3,700.00 sq/ft 1.5"depth

General Contract Amount:

Japanese Garden Specialty, LLC \$595,390.00

Sub Contractors

Solid Ground Landscape Inc. \$584,725.00
General landscape works, concrete works and other contract works

Carpentry sub contractor

Total budget amount w/ material, labor \$98,870.00
Build Main Gate strictures with out Japanese roof tile setting in
With out Japanese roof tile installations
2 garden gate attached cedar fence

Optional Works Not include original proposal

Ticketing house
Garden Light Systems
Tea Garden
Bonsai-Stands
Pruning of Existing Trees

TOTAL PROPOSAL AMOUNT \$1,278,985.00

Proposal Amount: \$1,278,985.00

Clarification: Site to be clean and ready for landscape

Exclusions: Bond, Fee, Approvals, Permits and/or OR state tax
Clean up other trade
Warranty of transplanting materials
Ticket house
Bench
Tea Garden

Warranty: One year against any defect in materials and labor

Payment terms: Down payment due upon signing contract of \$200,000.00
Within month from the issuance of monthly invoice
Balance due upon completion of works

Duration of contract: Estimated duration of 26.0 working months
Depend on the weather, and other conditions

Acceptance of agreement:

The above price, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified.

Payments will be as one million two hundred seventy eight thousand nine hundred eighty five dollars and 00/100.

Owner's acceptance signature _____ date _____

Japanese Garden Specialty, LLC

Toru Tanaka principal

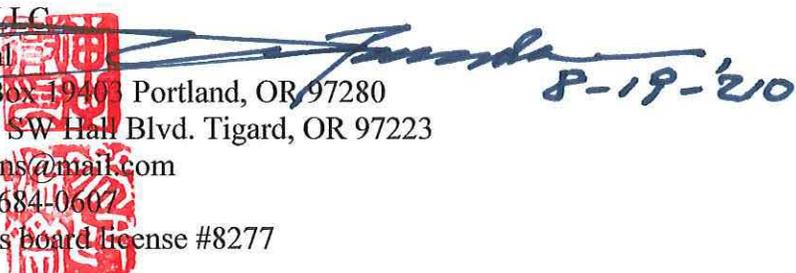
Mailing Address P.O. Box 19403 Portland, OR 97280

Office: 13635 SW Hall Blvd. Tigard, OR 97223

E-mail: jgardens@mail.com

Phone: (503) 684-0607

Oregon landscape contractors board license #8277



8-19-'20

If you have any question or clarification, Please contact me at (503) 317-2970
Thank you

**MEMORANDUM OF UNDERSTANDING
ASHLAND PARKS FOUNDATION AND ASHLAND PARK AND RECREATION COMMISSION**

Agreement made this 29 day of 9, 2020, between the Ashland Parks Foundation and the Ashland Park and Recreation Commission and is effective upon signing by the Foundation and Parks.

RECITALS

A. The Ashland Parks Commission has approved the construction of the redesigned Japanese Garden in Lithia Park contingent upon a grant provided by the Foundation.

B. The Foundation and Parks wish to clearly define the planning and financial components of each entity in regard to the Project and to memorialize these responsibilities in this memorandum of understanding.

C. For purposes of this agreement, "Foundation" means the Ashland Parks Foundation and Board Member Jeffrey Mangin to whom the Ashland Parks Foundation Board has delegated coordination responsibility on the project, as well as any other individuals to whom the Foundation Board has delegated specific responsibilities as contained herein. "Parks" means the Ashland Parks and Recreation Commission and the Parks and Recreation Director, to whom the Commission has delegated management responsibility on the project, as well as any other individuals to whom the Parks and Recreation Director has delegated specific responsibilities as contained herein. "Project" means the redesign and construction of the Japanese Garden.

Now, therefore, the Foundation and Parks agree as follows:

1. Planning.

A. Parks responsibilities:

- 1) Parks will provide construction plan requirements to the Foundation

B. Foundation responsibilities:

- 1) The Foundation will secure detailed construction plans based on the conceptual design that was approved by Parks on October 28, 2019
- 2) The plans will be prepared by a licensed landscape architect
- 3) The Foundation will transfer the plans to Parks once they have been declared mutually acceptable by both parties

2. Project Management

A. Parks responsibilities:

- 1) Parks will act as the project manager and issue contracts for construction services to outside organizations
- 2) Parks has identified this project as a public good which would not be possible without the donation from the Foundation, to support this project Parks will provide project management services, labor and equipment as an in-kind contribution to the project

B. Foundation responsibilities:

- 1) The Foundation and the designer contracted by the Foundation will provide clarification on any issues that arise with the design plan during the construction phase

3. Budgeting and Financial Management

A. Planning Phase:

- 1) The Foundation will directly pay for the landscape architect as outlined above for services provided

B. Construction Phase:

- 1) Parks will approve expenditures, pay invoices and manage the budget of the project
- 2) Parks will provide monthly budget reports to the Foundation for all costs associated with the project
- 3) The current budget for the entire project is \$1,380,000. If costs for the project exceed the budget, the Foundation is not responsible for providing additional funds necessary to complete the project. Additionally, if the project cannot be completed for the budgeted amount, Parks will have the ability to complete the plan in phases contingent upon a funding source

C. Fund Transfers:

- 1) Construction can begin once the plan has been provided to Parks and is estimated to be completed in 26 months or less.
- 2) The Foundation will provide grant funds to Parks intermittently throughout the construction phase of the project to facilitate the payment for materials and services by Parks to contractors and vendors. The grant schedule is as follows:

a. First Installment

- i. \$250,000
- ii. Provided upon signing of this agreement
- iii. Estimated Timeframe: August 2020

b. Second Installment

- i. \$300,000
- ii. Provided upon contract award for construction
- iii. Estimated Timeframe: September 2020

c. Third Installment

- i. \$250,000
- ii. Provided when transferred funds have been depleted to \$50,000 or when a significant expense that will exceed transferred funds is known to occur
- iii. Estimated Timeframe: Winter 2020

d. Fourth Installment

- i. \$250,000
- ii. Provided when transferred funds have been depleted to \$50,000 or when a significant expense that will exceed transferred funds is known to occur
- iii. Estimated Timeframe: Spring 2021

e. Final Installments

- i. Grants provided as expenses are incurred
- ii. Provided on an ongoing basis once the project has reached substantial completion
- iii. Estimated Timeframe: Fall 2021

- 3) If the project is completed under budget, the remaining funds will be reserved by the

Foundation to offset the 10-year maintenance commitment of the main donor.

Ashland Parks and Recreation
Commission

By: 

Title: Director

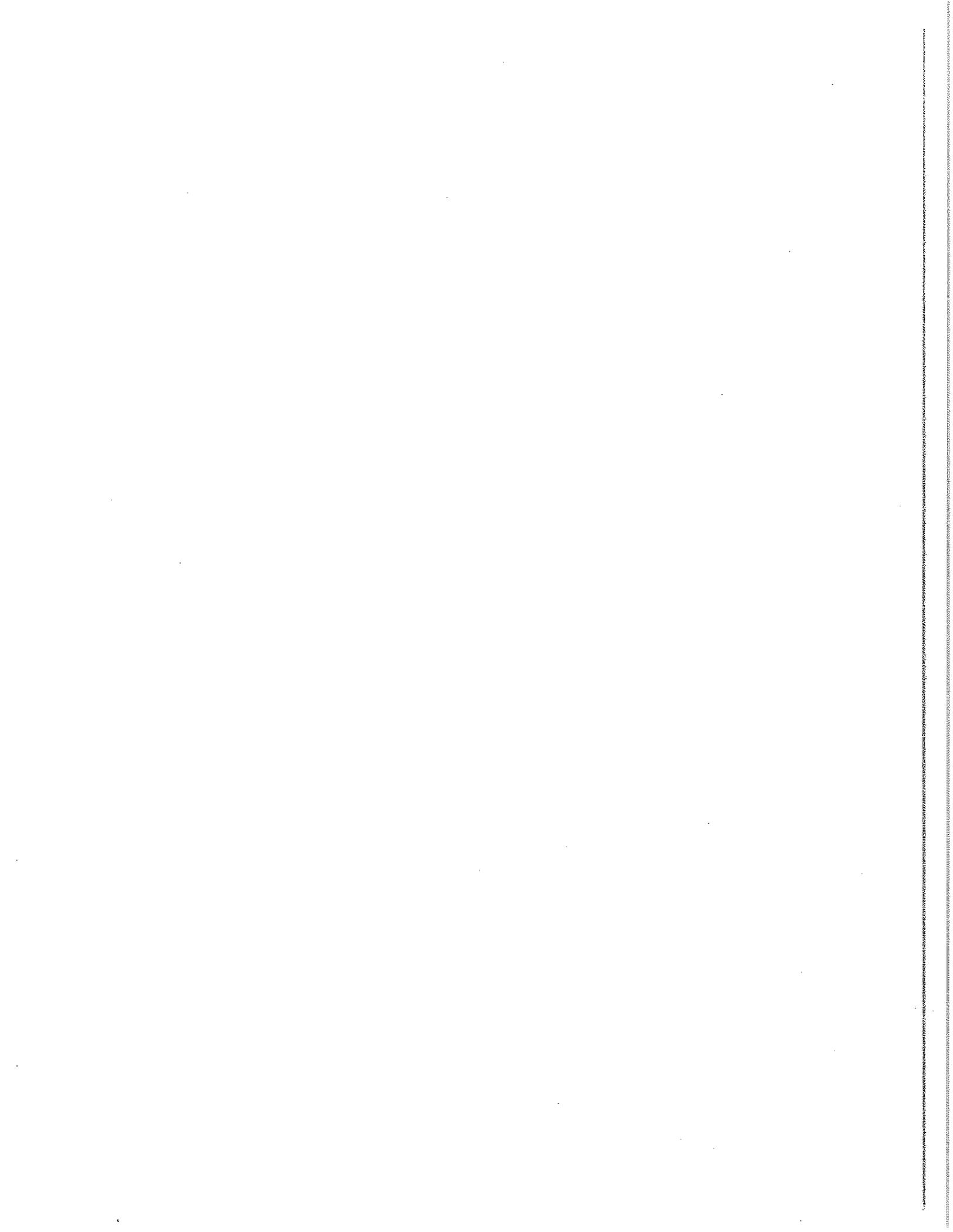
Date: 9/29/20

Ashland Parks Foundation

By: 

Title: President

Date: 9/2/20



**DONATION AGREEMENT FOR THE MAINTENANCE OF
THE JAPANESE GARDEN**

WHEREAS, Ashland Parks and Recreation Commission (hereinafter, "APRC") will construct a Japanese Garden using funds provided by the Ashland Parks Foundation;

WHEREAS, Thomas Jeffrey Mangin (hereinafter, "DONOR") would like to donate funds for the maintenance of the Japanese Garden once construction is complete;

WHEREAS, **APRC** and the **DONOR** acknowledge that the maintenance costs for the Japanese Garden will increase from \$20,000 to as much as \$80,000 once construction is complete;

NOW, THEREFORE, the **DONOR** agrees to the following donation schedule:

- Each year a donation of up to \$60,000 will be made by DONOR;
- Donations will be made to the Ashland Parks Foundation on an annual basis for ten (10) consecutive years;
- The Ashland Parks Foundation will distribute the funds to APCR on an annual basis for Japanese Garden maintenance;
- APCR will use the donated funds exclusively for the ongoing maintenance of the Japanese Garden, which could include material and personnel expenses; and,
- Any funds generated through the operation of the Japanese Garden, whether they be donations or fees for services, will offset and reduce DONOR's \$60,000 annual gift accordingly.

IN WITNESS WHEREOF, both DONOR and APCR have caused this instrument to be executed on its behalf by officials duly authorized therefore.

ASHLAND PARKS AND RECREATION COMMISSION, as APCR

Signature: 

Printed name: Michael A. Black

Date: 7/24/20

THOMAS JEFFREY MANGIN, as DONOR

Signature: 

Printed name: T. Jeffrey Mangin

Date: 7/24/20