

**AGREEMENT FOR
LANDSCAPING SERVICES
(Yamhill County and JB Landscape & Maintenance Services, LLC)**

THIS AGREEMENT ("Agreement"), is made by and between **Yamhill County** ("County"), a political subdivision of the State of Oregon, and **JB Landscape & Maintenance Services, LLC**, an Oregon limited liability company, located at 4261 NE Hawn Creek Rd, PO Box 1551, McMinnville, OR 97128 ("Contractor").

RECITALS:

- A. County, through its Health and Human Services Department, has determined the need for regular landscaping and related services at the County owned property located at 2318 E. Portland Rd, Newberg, OR, 97132, and that is it necessary for County to contract with Contractor to provide landscaping and related services at that location.
- B. County has budgeted funds and County conducted a competitive quote process to select the most qualified vendor to provide the services described herein.
- C. Contractor was the most qualified vendor and is qualified to provide the required landscaping and related services required by County and imposed by this Agreement. County and Contractor desire to enter into this Agreement and County is authorized to enter into this Agreement under ORS 203.010(3).
NOW, THEREFORE

AGREEMENT:

In exchange for the promises and other consideration as set forth below, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, IT IS HEREBY AGREED BETWEEN THE PARTIES AS FOLLOWS:

1. **Services of Contractor.** Contractor agrees to perform the following services (the "Services"), in accordance with Exhibit A, which is attached hereto and incorporated herein by this reference. Any additional work beyond the Services may be negotiated individually at Contractor's hourly rate or at a negotiated project rate. Services under this Agreement will be provided at the request of the County during normal working hours (8 a.m. to 5 p.m., Monday through Friday), or different if specifically stated herein, provided that County will give a minimum of 24 hours' notice of its intention to use Contractor's services, but that the notice requirements may be waived at the sole discretion of Contractor.
2. **Independent Contractor.** Contractor is engaged hereby as an independent contractor, and will be so deemed for purposes of the following:
 - a. Contractor will be solely responsible for payment of any federal or state taxes required as a result of this Agreement. County will not withhold any state or federal income taxes from payments owed Contractor.
 - b. As an independent contractor, Contractor acknowledges and agrees that Contractor is not entitled to any benefits granted to County employees. Without limitation, but by way of illustration, the benefits which are not granted to Contractor include vacation, holiday and sick leave, other leaves with pay, tenure, medical, and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement benefits, except as otherwise required by law.
 - c. Contractor is an independent contractor for purposes of the Oregon Workers' Compensation law (ORS Chapter 656) and is solely liable for any Workers' Compensation coverage under this Agreement. If Contractor has the assistance of other persons in the performance of this Agreement,

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Contractor will qualify and remain qualified for the term of this Agreement as a carrier-insured employer or a self-insured employer under ORS 656.403 et. seq.

3. Compensation; Payment Schedule. Unless previously terminated in accordance with Section 8, Contractor will provide the Services for a monthly fixed fee of \$375.0,0 inclusive of any reimbursable expenses. Any expenses incurred by Contractor in the performance of the Services under the terms and conditions of this Agreement not specifically provided for herein shall be the sole and separate responsibility of Contractor, unless preapproved in writing by County. The only compensation due Contractor is specifically stated in this Agreement. Payment will be made by County check or electronic fund transfer within 30 days after receipt, review and approval of invoices by County.

4. INDEMNIFICATION. CONTRACTOR AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS COUNTY AND EACH OF ITS OFFICERS, AGENTS AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, LOSSES AND EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES, ARISING OUT OF OR RESULTING FROM CONTRACTOR'S PERFORMANCE OF THE SUBJECT WORK AND SERVICES UNDER THIS AGREEMENT OR CREATED BY ANY ACT OR ERROR OF A VENDOR, SUBCONTRACTOR OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THE CONTRACTOR; PROVIDED HOWEVER, NOTHING HEREIN SHALL BE CONSTRUED TO REQUIRE INDEMNIFICATION OF YAMHILL COUNTY FOR LIABILITY ATTRIBUTABLE TO YAMHILL COUNTY'S SOLE NEGLIGENCE.

5. Insurance. Contractor, at Contractor's own expense, shall obtain the following insurance coverage and keep them in effect during the entire term of this Agreement (except with respect to Professional Liability Insurance, which shall be kept in effect for a period of the term of this Agreement plus two years):

- a. Workers' Compensation Insurance in compliance with statutory requirements;
- b. Commercial General Liability Insurance (including contractual liability and completed operations coverage, and coverage for liability resulting from hazardous substances), on an occurrence basis, with not less than \$1,000,000 per occurrence for bodily injury and property damage liability, with an annual aggregate limit of \$2,000,000;
- c. Commercial Automobile Liability Insurance, with a combined single limit, or the equivalent of not less than \$1,000,000 per occurrence, for bodily injury and property damage with respect to Contractor's vehicles, whether owned, hired, or non-owned, assigned to, or used by Contractor in connection with the Services.

The required insurance coverages shall be (i) with insurance companies admitted to do business in the state of Oregon and rated A or better by Best's Insurance Rating, and (ii) acceptable to County. At County's request, Contractor shall furnish County with certificates of insurance for each of the required insurance coverages. The certificates of insurance shall indicate (a) the types of insurance coverage, (b) the identity of all persons or entities covered, (c) the amounts of insurance coverage, and (d) the period of insurance coverage. Any required insurance coverage shall provide that it may not be canceled except after at least 30 days written notice to County.

The Commercial General Liability and Commercial Automobile Liability shall (i) name County, its directors, officers, and employees, as additional insureds, (ii) provide that it is primary insurance with respect to the interests of County and that any insurance maintained by County is excess and not contributory, and (iii) include a cross-liability and severability of interest clause and a waiver of subrogation clause.

6. Term; Termination; Default.

a. Term. Unless terminated in accordance with subsection 6.b, the term of this Agreement is from October 5, 2021, through September 30, 2022, and supersedes any prior agreements between the parties regarding the subject matter. Upon the expiration of the initial term this Agreement shall automatically renew for additional one-year periods, subject to the right of either party to terminate this Agreement as provided below.

b. Termination. Either party may terminate this Agreement on ten (10) calendar days written notice to the other party. In addition, in the event County no longer receives funds adequate to enable it to continue this Agreement, it will provide written notice of immediate termination of this Agreement to Contractor. Upon issuance of notice, this Agreement is terminated. However, any obligations existing at the time of termination will survive termination. Contractor shall not make expenditures, enter into agreements, or encumber funds in its possession, or to be transferred by County, after notice of termination or termination as set out above, without prior written approval from County. Termination shall not excuse liabilities incurred prior to the termination date.

c. Default. If Contractor defaults in the performance of any of its material obligations under this Agreement for a period of thirty (30) days after the County sends notice of such default to the address on this Agreement, County may, at its option, terminate the Agreement, such termination to be effective immediately upon expiration of the thirty day notice period; provided, however, that in the event Contractor provides written notice to County that the default cannot reasonably be cured by Contractor within said thirty (30) day period and the Contractor provides written certification that it is, in good faith, endeavoring to cure said default, then the thirty (30) day cure period shall be extended for an additional reasonable period to allow for such cure, but any such extended period shall not exceed 30 additional days, unless otherwise mutually agreed in writing by both County and Contractor.

7. Compliance with Applicable Laws; Compliance with Tax Laws. Contractor agrees to comply with the rules and regulations of County, applicable state and federal regulations and all other provisions of state and federal law relating to Contractor's performance of Services under this Agreement. To the extent applicable Contractor certifies it shall comply with all applicable Public Contract Laws to include ORS 279B.200 through 279B.240 and ORS 279C.500 through 279C.545 and 279C.580 (3) and (4). ORS 279B.200 through 279B.240 and ORS 279C.500 through 279C.545 and ORS 279C.580(3) and (4) are incorporated into this Agreement by reference. Contractor will provide Services to County clients without regard for race, color, creed, religion or national origin in compliance with Title IV, Civil Rights Act, 1954. Further, Contractor certifies compliance with the tax laws of the State of Oregon or a political subdivision of the state, including ORS 305.620 and ORS Chapters 316, 317 and 318.

8. Subcontracts; Assignment. Contractor shall not enter into any subcontracts for any of the Services required under this Agreement without County's prior written consent. Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld).

9. Governing Law; Jurisdiction; Venue. This Agreement, and any disputes arising out of or related hereto, shall be governed exclusively by the internal laws of the State of Oregon without regard to its conflicts of laws rules. Any claim, action, suit or proceeding between County and Contractor that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Oregon for Yamhill County. CONTRACTOR HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF THESE COURTS AND WAIVES ANY OBJECTION TO VENUE IN THESE COURTS AND ANY CLAIM THAT THIS FORUM IS AN INCONVENIENT FORUM.

10. Counterparts. This Agreement may be executed by facsimile and in counterparts, which taken together shall form one legal instrument.

11. Waiver and Cumulative Remedies. No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

12. Attorney Fees. In the event of legal suit or action, including any appeals therefrom, brought by either party against the other to enforce any of the obligations hereunder or arising out of any dispute concerning the terms and conditions under this Agreement, each party shall pay their own attorney's fees and costs incurred in the suit or action, including investigation costs, expert witness fees and all costs of depositions.

13. Severability. If any term of this Agreement is held to be invalid or unenforceable, it shall be severed from this Agreement and the balance of the Agreement shall be reasonably construed to carry out the intent of the parties as evidenced by the terms of this Agreement.

14. No Third-Party Beneficiaries. Except as expressly provided herein, nothing contained in this Agreement is intended, nor shall it be construed to create rights for the benefit of third parties.

15. Certification of reading and understanding of documents; Precedence. The Contractor hereby certifies it has read and fully understands and this Agreement and Contractor accepts this Agreement and its terms and conditions, including solicitation documents. The Contractor understands and acknowledges that in signing this Agreement the Contractor waives all rights to plead any misunderstandings regarding the same. **In the event of a discrepancy or inconsistency between Contractor's proposed Services in Exhibit A or any other contract document, including this Agreement, this Agreement shall take precedence.**

16. Exhibits and Recitals. All exhibits and schedules referenced herein are incorporated herein. The recitals set forth above are incorporated into this Agreement as a material and substantive part of this Agreement.

17. Time is of the Essence. Time is of the essence in the performance of this Agreement. However, if the Contractor is delayed by causes outside its control, any governing schedule shall be extended by a reasonable time.

18. Status of the Project Supervisor. Jason Henness is the Project Supervisor (the "Supervisor"). The Supervisor or his designee shall perform inspections of Services and shall have authority to stop the Services whenever such stoppage shall be necessary to insure proper execution of the Agreement. The Supervisor or his designee may reject all Services and materials that do not conform to the Agreement and shall decide questions that arise in the execution of the Project Services. The Supervisor has authority to reject or accept the Project Services.

19. Prohibition of Discrimination. In hiring employees or subcontractors for performance of Services under this Agreement neither Contractor, any subcontractor or any other person acting on their behalf shall by reason of race, religion, age, color, creed, physical handicap or sex discriminate against a person who is qualified and available to perform Services to which employment relates.

20. Integration. This Agreement, along with its Exhibits, constitutes the entire agreement between and among the parties, integrates all the terms and conditions mentioned herein or incidental hereto and supersedes all prior written or oral discussions or agreements between the parties or their predecessors-in-interest with respect to all or any part of the subject matter hereof.

THIS AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES. NO WAIVER, CONSENT, MODIFICATION OR CHANGE IN TERMS OF THIS AGREEMENT SHALL

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

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth adjacent to their signatures below.

JB LANDSCAPE & MAINTENANCE SERVICES, LLC

Print Name/Title *Christian Boenisch*

Date: 10/07/21

SS# /Tax ID#: 56-2579770

CCB#: LCB 9510

APPROVED AS TO FORM

By: *Christian Boenisch*

CHRISTIAN BOENISCH

~~County Counsel~~

YAMHILL COUNTY, OREGON

Kenneth Huefer

KENNETH HUEFER,

County Administrator

Date: 10/22/21

Lindsey Manfrin

Digitally signed by Lindsey Manfrin
DN: dc=us, dc=or, dc=yamhill, dc=co, ou=County,
ou=HHS, ou=Public Health, cn=Lindsey Manfrin,
email=manfrin@co.yamhill.or.us
Date: 2021.10.15 06:40:15 -0700

LINDSEY MANFRIN, HHS Director

Date: _____

Accepted by Yamhill County
Board of Commissioners on
10/21/21 by Board Order
21-426

Exhibit A

JB LANDSCAPE & MAINTENANCE SERVICES L.L.C

♣GENERAL INFORMATION♣

JB Landscape & Maintenance Services L.L.C understands the importance of been insured for the safety of the contractor and property owner. Below are types and amounts of insurance coverage we carry. Property owner has the right to ask for a proof of insurance certificate.

Minimum of,

<i>Comprehensive General Liability</i>	<i>1, 000,000</i>
<i>Bodily Injury/ Property Damage Liability</i>	<i>1, 000,000</i>

- *JB Landscape & Maintenance Services L.L.C makes sure in a daily basis that the equipment used on the property works in proper order by: checking for gas and oil leaks, sharpening all mower blades for a nice and fresh cut, making sure that the tires have good traction to prevent tearing the turf or getting stuck.*
- *Personnel - Personnel working on site will be uniformed and trained to be responsible for their appearance and proper conduct.*
- *Communication - JB Landscape & Maintenance Services L.L.C provided you with the main phone number for the best and quick connection in case of an Emergency. Emergency calls during business hours will be responded as soon as possible. Non-Emergency calls will be responded within 24 hours.*
- *Debris - All debris produced on each visit will be picked up and hauled away by the crew unless other arrangements have been made.*
- *All equipment, materials, supplies and labor needed to get the work done at the property will be provided by JB Landscape & Maintenance Services L.L.C*

♣ Turf mowing management ♣

Beginning in March, all turf will be mowed weekly until October. For the months, November through February turf will be mowed twice a month depending on the weather conditions. December and January the turf slows it's growing. It will be mowed as needed.

♣ Winterizing Program ♣

In the fall turf will be mowed shorter preparing it for the upcoming weather condition as part of the winterizing program. Backflow and Irrigation system will be turned off and drained.

♣ Fertilizing ♣

Fertilizer will be applied according to season every two months to provide the proper nutrient levels to maintain a healthy turf throughout the year.

Exhibit A

♣ Edging ♣

Edging is performed around the turf, sidewalks, curbs, flower beds, tree circles and patios.

♣ Blowing ♣

The leaf blower will be used to clean the property after mowing, trimming, edging, and pruning and specially after fertilizing, to prevent fertilizer marks (orange spots), on sidewalks or any concrete areas.

♣ Trimming/ Pruning ♣

JB Landscape & Maintenance Services L.L.C has spent quite of time to learn the perfect and professional way of trimming and pruning, using best techniques and proper tools for cuts to prevent diseases, to have a nice healthy-looking shrubs and trees.

Pruning will be based on making sure we remove all weak, dead and dying branches.

Any tree, shrub with any disease or damage will be reported for treatment and cost.

Any incidental damage caused by JB Landscape & Maintenance Services L.L.C on any plant will be repaired with adequate method or replaced if no solution is found.

JB Landscape & Maintenance Services L.L.C will be enforcing all pruning on trees and shrubs up to 15' feet tall.

♣ Weed and Pest Control ♣

JB Landscape & Maintenance Services L.L.C will be taking all precautions on all chemical applications by following the directions on manufacture's labels and understanding OSHA regulations and Material Safety Data Sheet (MSDS). Hand weeding will be done as need it but won't be replacing chemical spraying.

♣ Irrigation ♣

As spring arrives and if the site has an irrigation system, we are in charge to turn the system ON, check for leaks and not properly functioning equipment, make a list of all that and get approval for fixing and replacement of any or all.

We will be inspecting the property as many times as needed it until the irrigation system is working correctly by adjusting water budget to prevent over watering or dried turf spots.

The property owner will be responsible for any repairs, additions, damage or malfunctioning that may happen on the irrigation system, unless, the damage was mistakenly caused by JB Landscape & Maintenance Services L.L.C equipment or employees.

At the end of the season JB Landscape & Maintenance Services L.L.C will turn irrigation system OFF and drain backflow to prevent freezing pipes or any other damage on the system caused by this factor.

♣ Winter & Snowstorm ♣

During winter season JB Landscape & Maintenance Services L.L.C will continue with weekly services. Any major disaster caused by Mother Nature will be charged at regular hourly rate and will require a signed agreement and must be scheduled to be done as soon as possible with contract signed.

Exhibit A

♣ Additional Services NOT included in the monthly services ♣

The following list is considered special work and JB Landscape & Maintenance Services L.L.C will not do anything of the following unless there is a separate contract signed by property owner, business owner or legal agent.

Bark Dust Application.

Rodent control

Gutters cleaned.

Special treatment for trees and grass (out of what is included in the contract)

Trimming trees over the limit 15'.

Clean or repair acts of vandalism, by natural disorder, Mother Nature (freezing, fire, wind etc.)

Lawn Aeration & Thatching

Seasonal Flower –delivered and planted

Spring – Last week of May. **Fall** – last week of October.

JB Landscape & Maintenance Services L.L.C will provide a list of flowers or names to the client can choose from. Invoice for seasonal flowers is send after job is done to be paid upon received.

♣ SNOW PLOWING AND ICE MELTING ♣

Snow Plowing: During winter season, we provided these services for parking lot and walking areas. These services will be scheduled and charged according to the demand and accumulation; price will also depend of equipment/machinery needed, clients have priority for these services, as we are here to give you the best service experience ever. JB Landscape and personal have taking the proper training and knowledge to snowplow and shovel and take responsibility for damage cause to any of the properties, sidewalks, landscape, structure and signage that might happen during the process.

Snow shoveling \$45/hour per man.

Snow plowing Parking lot \$ 185/hour, minimum 1 hour.

Ice Melting: These services are charged at the regular hourly rate, plus quantity of ice melting needed.

\$45/hr. per man labor

\$ 1.25 per pound of de-ice.

JB LANDSCAPE & MAINTENANCE SERVICES L.L.C
YEARLY SCHEDULE
FOR THE PROPERTY

2318 Portland Rd. Newberg, OR 97132

<i>Turf Maintenance</i>	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	TOTAL
<i>Mowing</i>	*	*	*	*	*	*	*	*	*	*	*	*	40
<i>String & hard Edge.</i>	*	*	*	*	*	*	*	*	*	*	*	*	40
<i>Fertilizer</i>		*		*		*		*		*		*	6
<i>Herbicide cassoron</i>	*	*									*	*	4
<i>Blowing</i>	*	*	*	*	*	*	*	*	*	*	*	*	40
<i>Shrubs Bed Maintenance</i>	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	TOTAL
<i>Inspect & hand weed/Rack</i>	*	*	*	*	*	*	*	*	*	*	*	*	12
<i>Spray</i>	*	*	*	*	*	*	*	*	*	*	*	*	12
<i>Fertilize shrubs</i>		*				*				*			3
<i>Prune/Trim</i>			*		*		*		*		*		6
<i>Leaf Removal</i>										*	*	*	3
<i>Hanging baskets Maintenance</i>	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	TOTAL
<i>Care & fertilizer</i>					*	*	*	*	*				0
<i>Other services</i>	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Month
<i>Irrigation System</i>			*	*	*	*	*	*	*	*			8

NOTE: WHEN PROPERTY HAS IRRIGATION SYSTEM.

* = Yes, for services Blank = As Needed & under inspection to be performed too.

The irrigation box, shown in BLUE represents when the irrigation will be ON. Please keep in mind this is just an estimate it all is depending on the weather condition

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 Exhibit "A"
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