

MOWING SERVICES CONTRACT

THIS SERVICES CONTRACT is made by and between **XXXX**, (“Contractor”) and the Port of Columbia County, a municipal corporation and Port district of Oregon, (“Port”), on this day, October 1, 2023 (the “Effective Date”), for Services as described below, and considering the following findings of fact:

WHEREAS, the Port wishes to contract for general mowing and landscaping/maintenance services at its Columbia City Industrial Park, and Scappoose Airport as specified in **Exhibit 1** (“Request for Proposals, Port of Columbia County Properties” with depictions); and

WHEREAS, the Port and Contractor wish to enter into this Mowing Services Contract (“Contract”) and the Contractor, whose proposal, attached here as **Exhibit 2** (“XXXX, Proposal”), was selected based on cost, services provided, references, and experience; and

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, and other good and valuable consideration, the sufficiency of which the parties hereby acknowledge, the following:

Section 1. Scope of Services to be Performed. Commencing on October 1, 2023, Contractor agrees to perform the Services, as defined herein and in the manner so defined. “Services”, as used herein, shall mean all items described as General and Specific Tasks in **Exhibit 1**, attached hereto and incorporated herein, which may be amended from time to time pursuant to this Contract.

Section 2. Payment. In consideration of performing these Services, the Port will pay Contractor the following sums, as defined in **Exhibit 1** and **Exhibit 2**: \$XXXX per month on a level payment basis for all required Services.

Section 3. Term. This Contract shall be for three (3) years.

Section 4. Compliance with Laws.

(A) Contractor agrees to observe all federal, state, and local laws, including regulations of the Port, as they may be adopted or amended from time to time, in performing the Services defined above. All records created when performing the services must be maintained and easily accessible by the Port for at least six (6) years.

(B) The Port’s performance under this Contract is conditioned upon Contractor’s compliance with the obligations intended for contractors under ORS 279B.220, 279B.225 (if applicable to this Contract), 279B.230 and 279B.235 (if applicable to this Contract),

which are incorporated by reference herein. Contractor shall, to the maximum extent economically feasible in the performance of this Contract, use recycled paper (as defined in ORS 279A.010(1)(ee)), recycled PETE products (as defined in ORS 279A.010(1)(ff)), and other recycled plastic resin products and recycled products (as "recycled product" is defined in ORS 279A.010(1)(gg)).

Section 5. Independent Contractor Status; Responsibility for Taxes.

(A) Contractor shall perform all Services as an independent Contractor. Although the Port may (a) determine and modify the delivery schedule for Services to be performed and (b) evaluate the quality of the completed performance, the Port cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing any Services required under this Contract. Contractor certifies, represents, and warrants that Contractor is an independent contractor of the Port under all applicable State and federal law. Contractor is not an "officer", "employee", or "agent" of the Port as those terms are used in ORS 30.265.

(B) If Contractor is currently performing work for a State or the federal government, Contractor by signature to this Contract represents and warrants: Contractor's performance of this Contract creates no potential or actual conflict of interest as defined by ORS 244 and that no rules or regulations of Contractor's employing agency (state or federal) would prohibit Contractor's performance of this Contract.

(C) Contractor is responsible for all federal and state taxes applicable to compensation or payments paid to Contractor under this Contract, and unless required by prevailing federal law or regulations, the Port will not withhold from compensation or payments to Contractor any amount(s) to cover Contractor's federal or state tax obligations unless Contractor is subject to backup withholding. Contractor is not eligible for any social security, unemployment insurance or workers' compensation benefits from compensation or payments paid to Contractor under this Contract.

Section 6. INDEMNIFICATION.

A. Contractor agrees to indemnify, hold harmless, and defend the Port, including its Commissioners, officers, volunteers, agents and employees, (using legal counsel acceptable and approved by Port) for, from and against any and all costs, claims, actions, liabilities or expenses (including, without limitation, all costs, demands, charges, suits, judgments, fines, penalties, liabilities, debts, attorneys' fees and causes of action), of whatsoever nature of character, including without limitation, claims, losses and expenses for property damage, bodily injury or death, which may be imposed upon or claimed against or incurred by the Port and which arise from any of the following, except and to the extent resulting from the Port's gross negligence or willful misconduct: (a) any act,

omission or negligence of the Contractor or the Contractor's partners, officers, directors, agents, employees, invitees or Subcontractors; (b) any use, occupation, management or control of Port property by the Contractor or the Contractor's employees, agents, subcontractors, or suppliers, whether or not due to the Contractor's own act or omission and whether or not occurring on Port property; (c) any condition created on Port property by the Contractor or the Contractor's employees, agents, Subcontractors, or suppliers, and any accident, injury or damage arising from the condition; (d) any breach, violation or nonperformance of any of the Contractor's obligations under this Contract; or (e) any damage caused by the Contractor or the Contractor's employees, agents, subcontractors, or suppliers on or to Port property.

B. Waiver of Subrogation. Each party waives any right of action that it and/or its insurance carrier(s) might have against the other party (or its commissioners, employees and agents) for any loss, cost, damage, or expense (collectively, "Loss") covered by any property insurance policy or policies maintained or required to be maintained pursuant to this Agreement. If any party's applicable insurance policies do not allow the insured to waive the insurer's rights of recovery prior to a Loss, such party shall cause such policies to be endorsed to allow the waivers of subrogation required by this Section.

Section 7. Insurance.

Contractor shall carry Worker's Compensation Insurance as required by applicable law and Commercial General Liability and Automobile Liability Insurance for bodily injury and property damages. Contractor shall procure, and continuously maintain during the term of this Agreement, Commercial General Liability and Automobile Liability Insurance with combined single limits, or their equivalent, of not less than \$2,000,000.00 for each occurrence and a \$4,000,000.00 aggregate for bodily injury and/or property damage. It shall also include contractual liability coverage for the indemnity provided under this Agreement, shall name the Port as an Additional Insured under the liability provisions, and shall be in sufficient form to protect both Contractor and Port against claims of third persons for personal injury, death or property damage arising from the service performed by Contractor pursuant to this Agreement. Contractor is to provide proof of such insurance in the form of a Certificate or similar instrument prior to contract execution. The Port requires and shall be entitled to any broader coverage and/or higher policy limits maintained by the Contractor. Any and all available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Contractor.

Section 8. Subcontracts; Assignment; Successors.

(A) Contractor shall not enter into any subcontracts for any Services required under this Contract without the Port's prior written consent.

(B) Contractor shall not assign, delegate or transfer any of its rights or obligations under this Contract without the Port's prior written consent. The Port's written consent does not relieve Contractor of any obligations under this Contract, and any assignee, transferee, or delegate is considered Contractor's agent.

(C) The provisions of this Contract are binding upon and inure to the benefit of the parties and their respective successors and permitted assigns, if any.

Section 9. Events of Breach.

(A) Breach by Contractor. Contractor breaches this Contract if:

(i) Contractor institutes or has instituted against it insolvency, receivership or bankruptcy proceedings, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis; or

(ii) Contractor commits any material breach of any covenant, warranty, obligation or certification under this Contract, fails to perform its obligations under this Contract within the time specified or any extension of that time, and Contractor fails to cure the breach within the time and pursuant to the conditions of a Default and Collections ordinance approved by the Port, should one exist, or otherwise, within fourteen (14) calendar days after the Port delivers notice of breach to Contractor or a longer period as the Port may specify in the notice.

(B) Breach by the Port. The Port breaches this Contract if:

(i) The Port fails to pay Contractor any explicit amount pursuant to the terms of this Contract, and the Port fails to cure its failure to pay within fourteen (14) calendar days after Contractor delivers notice of breach to the Port or a longer period as Contractor may specify in the notice; or

(ii) The Port commits any material breach of any covenant, warranty, or obligation under this Contract, fails to perform its obligations hereunder within the time specified or any extension thereof, and the Port fails to cure the breach within fourteen (14) calendar days after Contractor delivers notice of breach to the Port or a longer period as Contractor may specify in the notice.

Section 10. REMEDIES.

(A) The Port's Remedies. If Contractor is in breach under Section 9(A), then in addition to the remedies afforded elsewhere in this Contract, the Port shall be entitled to recover for any and all damages suffered as the result of Contractor's breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages, including costs, such as attorney's fees, in pursuing legal remedies. The Port may, at its

option, pursue any or all of the remedies available under this Contract and at law or in equity, including, but not limited to:

(i) Termination of this Contract under Section 11;

(ii) Withholding payment of all amounts in Contractor's invoices for Services that Contractor is obligated to but has failed to deliver or perform within any scheduled completion dates or has performed inadequately or defectively;

(iii) Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief; or

(iv) Exercise of the right of setoff and withholding of amounts otherwise due and owing to Contractor in an amount equal to the Port's setoff right, without penalty.

These remedies are cumulative to the extent the remedies are not inconsistent, and the Port may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever. If it is determined for any reason that Contractor was not in breach under Section 9(A), the rights and obligations of the parties shall be the same as if this Contract was terminated pursuant to Section 11(B).

(B) Contractor's Remedies. If the Port terminates this Contract for convenience under Section 11(B), or if the Port is in breach under Section 9(B) and whether or not Contractor elects to exercise its right to terminate this Contract under Section 11(C), Contractor's sole remedy is a claim against the Port for unpaid Services completed and accepted by the Port, as prorated on a daily basis, less any claims the Port has against Contractor.

As applicable, if previous amounts paid to Contractor for Services exceed the amount due to Contractor under this Section 10(B), Contractor shall pay the excess amount to the Port immediately upon written demand.

Section 11. Termination.

(A) Mutual Consent. This Contract may be terminated at any time by mutual written consent of the parties.

(B) The Port:

(i) The Port may, at its sole discretion, terminate this Contract for its convenience upon 30 days written notice by the Port to Contractor.

(ii) The Port may, at its sole discretion, terminate this Contract, immediately upon notice to Contractor, or at a later date as the Port may establish in the notice, upon the occurrence of any of the following events:

(1) The Port fails to receive funding, appropriations, limitations, allotments or other expenditure authority at levels sufficient to pay for Services;

(2) Federal or state laws, regulations, or guidelines are modified or interpreted in a way that either the purchase of Services by the Port under this Contract is prohibited, or the Port is prohibited from paying for Services from the planned funding source; or

(3) Contractor is in breach under Section 9(A).

Contractor shall stop performance under this Contract as directed by the Port in any written notice of termination delivered to Contractor under this Section 11(B).

(C) Contractor: Contractor may terminate this Contract immediately upon written notice to the Port, or at a later date as Contractor may establish in the notice, if the Port is in breach pursuant to Section 9(B).

Section 12. Notices and Key Persons. Notices under this Contract must be in writing and addressed to Key Persons. For the Port, the Key Person shall be the Operations Manager, P.O. Box 190, Columbia City, OR 97018. For the Contractor, the Key Person shall be **(Name, Title, Company, Address)**.

Section 13. Survival. In addition to all provisions which by their nature extend beyond Contract termination or full performance, the provisions regarding indemnification and damages for breach or other liability of Contractor provided herein shall remain in effect beyond any Contract termination or full performance.

Section 14. Governing Law. The Contract is governed by and construed in accordance with the laws of the State of Oregon, without regard to principles of conflicts of laws.

Section 15. Third Party Beneficiaries. The Port and Contractor are the only parties to this Contract and are the only parties entitled to enforce the terms of this Contract. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right not held by or made generally available to the public, whether directly, indirectly or otherwise, to third persons unless the third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract. The Port is an intended beneficiary of the terms of this Contract.

Section 16. Safety. It is the responsibility of the Contractor to furnish safety devices and safeguards to its employees as well as any other workers under its direct supervision. Furthermore, the Contractor shall adopt and use safe practices, methods, operations and processes while performing the Services under this contract. The Contractor is liable for all fines, including fines and costs incurred by the Port due to labor and industry violations directly attributable to the Contractor.

Section 17. Severability. If any provision of this Contract is declared by a court of competent jurisdiction to be illegal or otherwise invalid, 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 this Contract did not contain the particular provision held to be invalid.

Section 18. Governing Law. This agreement shall be governed by, interpreted under and construed and enforced in accordance with the laws of the State of Oregon. Any litigation arising out of this agreement shall be brought in Columbia County, Oregon, with the substantially prevailing party entitled to its legal fees and costs including but not limited to those incurred in negotiation, mediation, arbitration, litigation and appeal.

Section 19. Force Majeure. Neither party shall be liable for any delay or inability to perform caused by: act of God; extremely adverse weather conditions, strikes or labor troubles, hostilities, war or government action; act of terrorism; riot or civil commotion; fire or explosion; and/or any other similar or dissimilar circumstances which arises and is not within the direct control of a party.

Section 20. Counterparts. This agreement may be executed in counterparts, each of which shall be deemed an original, and all of which, taken together, shall constitute but one and the same instrument. A facsimile or PDF electronically sent signature hereto shall be deemed equivalent to an original.

Section 21. Liens. The Contractor agrees that if any lien is filed or if a claim of any nature is asserted against the Port on account of any obligation of the Contractor, the Contractor shall, within five (5) days thereafter, at its own cost and expense, cause such lien or claim to be satisfied or discharged. The Contractor's failure to do so shall constitute a default hereunder.

Section 22. Attorneys' Fees. If any suit, action, or arbitration is instituted to interpret or enforce the terms of this Agreement, the prevailing party shall be entitled to recover from the other party such sums as a court may adjudge reasonable as attorneys' fees at trial, on appeal, or on any petition for review, and in any proceedings in bankruptcy or arbitration, in addition to all other sums provided by law.

Section 23. Entire Agreement. This Agreement, with its Exhibits, constitutes the entire Agreement between Contractor and the Port for the Services as defined in section 1, above. All understandings and agreements between Contractor and Port and representations by either party concerning this Agreement are contained within this Agreement. No waiver, consent, modification, amendment or change in the terms of this Agreement shall bind either party unless in writing and signed by both parties. Any written waiver, consent, modification, amendment or change only in the specific instance and for the specific purpose given.

Section 24. Choice Of Law. This Agreement is governed by and subject to interpretation pursuant to the laws of the State of Oregon with venue in Columbia County Circuit Court, St. Helens, Oregon

IN WITNESS hereof, Contractor and the Port, having caused their respective duly authorized representatives to sign this Agreement, do hereby acknowledge that they have read this Agreement, understand it, and agree to be bound by its terms and conditions as of the Effective Date listed above.

PORT OF COLUMBIA COUNTY

CONTRACTOR

By: _____

By: _____

Name: Sean P. Clark

Name: _____

Title: Executive Director

Title: _____

SAMPLE