

State of Oregon Contract for Services

This Contract for Services (this "Contract") is by and between the State of Oregon, acting through its Oregon Landscape Contractors Board, ("Agency") and the Oregon Landscape Contractors Association, an Oregon not-for-profit organization ("Contractor") and is effective as of the Effective Date.

Contractor's Contract Administrator for this Contract is:

Elizabeth Boxall
2111 Front Street NE, Ste 2-101
Salem, OR 97301
Phone: (503) 967-6291 ext 224
Fax: (503) 967-6298
elizabeth.boxall@lcb.state.or.us

Agency's Contract Administrator for this Contract is:

Mike Fisher
Oregon Landscape Contractors Association
147 SE 102nd Ave
Portland, OR 97216
Phone: (503) 253-9091
Fax: (503) 253-9172
mfisher@updatemanagement.com

Either party may change its Contract Administrator by providing the other notice in compliance with this Contract.

Recitals

1. Oregon House Bill 4117 modifies ORS 671.561 requiring the LCB to establish a practical skills test for persons applying for a landscape construction professional license.
2. The LCB desires to obtain the services and OLCA desires to provide the services to conduct and proctor the practical skills test required under ORS 671.561.

Contractor and Agency agree as follows:

1. **Contract Term.** The "Effective Date" of this Contract is the date this Contract has been fully executed by each party. Unless extended or terminated earlier in accordance with its terms, this Contract shall terminate one year after the Effective Date.
2. **Contract Documents.** This Contract consists of the following documents, which are listed in descending order of precedence: this Contract less all exhibits; and Exhibit A (Required Insurance), which is attached hereto and made a part of the Contract by this reference.
3. **Statement of Work.** Contractor shall perform the services (the "Services") as set forth in this Section 3 (the "Statement of Work"). Contractor shall perform the Services in accordance with the terms and conditions of this Contract.
 - 3.1. Contractor shall provide the testing services on behalf of Agency for the practical skills test (the "Test") required under ORS 671.570 in compliance with the law and all regulations. Contractor shall conduct and proctor the Test at least one time in an annual term of the contract. Provision of the first test shall take place on July 22, 2016.
 - 3.2. The Contractor shall use the test material of the National Association of Landscape Professionals ("NALP"). Contractor is responsible for obtaining all rights necessary from the NALP for the test material at no additional cost to Agency.
 - 3.3. Contractor shall update its database software for tracking test results with test applicants. Upon termination of this agreement for any reason, Contractor shall provide to LCB in a format reasonably usable to LCB all information in the database software of applicants obtained by Contractor in the provision of these Services.
 - 3.4. Contractor shall provide the Test at the Clackamas Community College (the "Site"). Contractor is responsible for providing the Site at no additional cost to Agency.

4. Compensation.

4.1. **Compensation.** Agency will pay the fees as set forth below for each participant enrolled in the Test.

4.1.1. **Fees.** The Fees as of the Effective Date of this Contract are set forth below.

Participant Administration Fee: \$120.00

Participant Section Fee: \$60.00 per enrolled section.

4.1.2. **Other Compensation.** The Agency shall pay Contractor for services to update Contractor database in section 3.3 above \$265 upon completion of update.

4.2. **Invoices.** Contractor shall submit an invoice to Agency's Contract Administrator for Services performed within 30 days of Test completion, detailing number of Tests conducted by Contractor. Payments to Contractor shall be subject to ORS 293.462.

5. **Independent Contractor; Responsibility For Taxes And Withholding.** Contractor shall perform all Services as an independent contractor. The Agency may not and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Services. Contractor understands and agrees that it is not an "officer", "employee", or "agent" of the Agency, as those terms are used in ORS 30.265 or otherwise. Contractor shall be responsible for all federal or state taxes applicable to compensation or payments paid to Contractor under this Contract and, unless Contractor is subject to backup withholding, Agency will not withhold from such compensation or payments any amount(s) to cover Contractor's federal or state tax obligations. Contractor is not eligible for any social security, unemployment insurance or workers' compensation benefits from compensation or payments paid to Contractor under this Contract, except as a self-employed individual.

6. Representations and Warranties.

6.1. **Contractor's General Representations and Warranties.** Contractor represents and warrants to Agency that (i) Contractor has the power and authority to enter into and perform this Contract; (ii) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms; and (iii) Contractor shall, at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Services.

6.2. **Contractor's Performance Warranties.** Contractor has the skill and knowledge possessed by well-informed members of its industry, trade or profession and Contractor will apply that skill and knowledge with care and diligence to perform the Services in a professional manner and in accordance with standards prevalent in Contractor's industry, trade or profession.

6.3. **Warranties cumulative.** The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

7. Confidential Information.

7.1. Contractor acknowledges that it and its employees or agents may, in the course of performing the Services under this Contract, be exposed to or acquire information that is confidential to Agency or Agency's clients, specifically the registration information and test results of Agency clients ("Confidential Information"). Confidential Information does not include information that (i) is or becomes (other than by disclosure by Contractor) publicly known; (ii) is furnished by Agency to others without restrictions similar to those imposed by this Contract; (iii) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Contract; (iv) is obtained from a source other than Agency without the obligation of confidentiality, (v) is disclosed with the written consent of Agency, or; (vi) is independently developed by employees, agents or subcontractors of Contractor who can be shown to have had no access to the Confidential Information.

7.2. **Non-Disclosure.** Contractor shall not disclose Confidential Information to third parties, or use Confidential Information for any purposes whatsoever other than the provision of Services to Agency hereunder, and shall advise each of its employees and agents of their obligations to keep Confidential Information confidential. Contractor shall advise Agency immediately in the event Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Contract.

8. Indemnity.

- 8.1. Each party shall indemnify and hold harmless the other party and their officers, employees and agents from and against all third party claims, suits, actions, losses, damages, liabilities, costs and expenses (collectively, "Claims") of any nature whatsoever resulting from, arising out of, or relating to any personal injury, death or property damage caused by any alleged act, omission, error, fault, mistake or negligence of indemnifying party, its employees, agents, or representatives in connection with or incident to indemnifying party's performance under or related to the Contract.
- 8.2. To the extent Agency is required to indemnify or hold Contractor harmless against claims brought by third parties against Contractor under this Contract, Agency's obligation to indemnify is subject to the limitations of Article XI, section 7 of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300.
- 8.3. **Defense of Claims.** To the extent Contractor is required under this Contract to defend Agency against claims asserted by third parties, Agency shall reasonably cooperate in good faith, at Contractor's reasonable expense, in the defense of the claim and Contractor shall select counsel reasonably acceptable to the Oregon Attorney General to defend the claim and shall bear all costs of counsel. The Oregon Attorney General's acceptance of counsel may not be unreasonably withheld, conditioned or delayed. Counsel must accept appointment as a Special Assistant Attorney General under ORS Chapter 180 before counsel may act in the name of, or represent the interests of, the State of Oregon, Licensee, its officers, employees or agents. Agency may elect to assume its own defense with an attorney of its own choice and its own expense at any time Agency determines important governmental interests are at stake. Agency shall promptly provide notice to Contractor of any claim that may result in an obligation on the part of Contractor to defend. Subject to these limitations, Contractor may defend a claim with counsel of its own choosing, on the condition that no settlement or compromise of any claim may occur without the consent of Agency, which consent must not be unreasonably withheld, conditioned or delayed.

9. Limitation of Liabilities.

- 9.1. EXCEPT FOR LIABILITY ARISING OUT OF OR RELATED TO SECTION 8, OR SECTION 9, CONTRACTOR'S LIABILITY FOR DAMAGES TO THE STATE FOR ANY CAUSE WHATSOEVER IS BE LIMITED TO THE MAXIMUM ANNUAL VALUE OF THE CONTRACT.
- 9.2. NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR ANY LOST PROFITS, LOST SAVINGS, OR PUNITIVE, INDIRECT, EXEMPLARY, CONSEQUENTIAL, OR INCIDENTAL DAMAGES.

10. **Insurance.** Contractor shall maintain insurance as set forth in Exhibit A, which is attached hereto.

11. Default; Remedies; Termination.

- 11.1. **Default.** Either party shall be in default under this Contract if the party commits any material breach or default of any covenant, warranty, obligation or agreement under this Contract, fails to perform the Services or make payment under this Contract within the time specified herein or any extension thereof, and such breach, default or failure is not cured within fourteen (14) calendar days after notice, or such longer period as may be specified in such notice.
- 11.2. **Agency's Remedies for Contractor's Default.** In the event a party is in default, the other party may, at its option, pursue any or all of the remedies available to it under this Contract and at law or in equity.
- 11.3. **Termination.** Either party may terminate this Contract for its convenience upon thirty (30) days' prior written notice.

12. Compliance with Law.

- 12.1. **Compliance with Law Generally.** Either party shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Contract.
- 12.2. **Compliance with Oregon Tax Laws.** Contractor must, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. For the purposes of this Section, "tax laws" means a state tax imposed by ORS 401.792 to 401.816 (Tax For Emergency Communications), chapters 118 (Inheritance Tax), 314 (Income Tax), 316 (Personal Income Tax), 317 (Corporation Excise Tax), 318 (Corporation Income Tax), and 323 (Cigarettes And Tobacco Products Tax), and the elderly rental assistance program under ORS 310.630 to 310.706; and any local taxes administered by the Department of Revenue under ORS 305.620.8.1.5.4

13. Governing Law; Venue and Jurisdiction.

13.1. **Governing Law.** This Contract shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law.

13.2. **Venue and Jurisdiction.** Any claim, action, suit or proceeding (collectively, "Claim") between Agency (and/or any other agency or department of the State of Oregon) and Contractor that arises from or relates to this Contract shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon. CONTRACTOR, BY EXECUTION OF THIS CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS. In no event shall this section be construed as (i) a waiver by the State of Oregon of any form of defense or immunity, whether it is sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any Claim or (ii) consent to the jurisdiction of any court.

14. Miscellaneous Provisions

14.1. **Force Majeure.** Neither Agency nor Contractor shall be held responsible for delay or default caused by fire, riot, acts of God, terrorist acts, other acts of political sabotage, or war where such cause was beyond the reasonable control of Agency or Contractor, respectively. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.

14.2. **Survival.** All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations and declarations which expressly or by their nature survive termination of the Contract.

14.3. **Notice.** Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing by email, personal delivery, facsimile, or mailing the same, postage prepaid, to Contractor or Agency at the address, number or email address set forth in this Contract.

14.4. **No Third Party Beneficiaries.** Agency 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 such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

14.5. **Severability.** The parties agree that if any term or 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 the Contract did not contain the particular term or provision held to be invalid.

14.6. **Merger Clause; Waiver.** This Contract and attached exhibits constitute the entire agreement between parties on subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Contract. No waiver, consent, modification or change of terms of this Contract shall bind all parties unless in writing and signed by both parties and all necessary State approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of Agency to enforce any provision of this Contract shall not constitute a waiver by Agency of that or any other provision.

14.7. **Counterparts.** This Contract may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of the Contract so executed shall constitute an original.

CONTRACTOR, BY EXECUTION OF THIS CONTRACT, HEREBY ACKNOWLEDGES THAT CONTRACTOR HAS READ THIS CONTRACT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

CONTRACTOR:

Oregon Landscape Contractors Association

By: _____

As: _____

AGENCY:

The State of Oregon, acting through its Landscape Contractors Board

By: _____

As: _____

Exhibit A

INSURANCE

Contractor shall obtain at Contractor's expense the insurance specified in this Exhibit prior to performing under this Contract, and shall maintain it in full force and at its own expense throughout the duration of this Contract, and as required by any extended reporting period or tail coverage requirements, and all Warranty Periods that apply. Contractor shall obtain the following insurance from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to Agency. Coverage must be primary and non-contributory with any other insurance and self-insurance. Contractor shall pay for all deductibles, self-insured retention and self-insurance, if any.

1. INSURANCE REQUIRED.

1.1 Workers' Compensation & Employers' Liability.

All employers, including Contractor, shall provide workers' compensation insurance as required by applicable workers' compensation laws for persons performing work under this Contract, including Employers' Liability Insurance with limits not less than \$500,000 each accident. Contractor shall require and ensure that each of its subcontractors complies with these requirements.

1.2 Commercial General Liability.

Contractor shall provide Commercial General Liability Insurance covering bodily injury, death and property damage in a form and with coverage that are satisfactory to the State. This insurance must include personal injury liability, products and completed operations, and contractual liability coverage, in each case arising out of Contractor's negligence. Coverage must be written on an occurrence basis in an amount of not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate.

2. ADDITIONAL INSURED.

The Commercial General Liability insurance required under this Contract must include the State of Oregon, its officers, employees and agents as Additional Insureds but only with respect to Contractor's activities to be performed under this Contract.

3. TAIL COVERAGE.

If any of the required insurance is on a claims-made basis and does not include an extended reporting period of at least 24 (twenty-four) months, Contractor shall maintain either tail coverage or continuous claims made liability coverage, provided the effective date of the continuous claims made coverage is on or before the Effective Date of this Contract, for a minimum of 24 (twenty-four) months following the later of (i) Contractor's completion and Agency's acceptance of all Services required under this Contract, or, (ii) The expiration of all Warranty Periods provided under this Contract.

4. CERTIFICATE(S) AND PROOF OF INSURANCE.

Contractor shall provide to Agency Certificate(s) of Insurance for all required insurance before delivering any goods or performing any Services required under this Contract. The Certificate(s) must list the State of Oregon, its officers, employees and agents as a Certificate holder and as Additional Insured, specify that Contractor will pay for all deductibles, self-insured retention and self-insurance, if any, that all coverage will be primary and non-contributory with any other insurance and self-insurance, and confirm that either an extended reporting period of at least 24 (twenty-four) months is provided on all claims made policies or that tail coverage is provided. As proof of insurance Agency has the right to request copies of insurance policies relating to the insurance requirements in this Contract.

5. NOTICE OF CHANGE OR CANCELLATION.

Contractor or its insurer must endeavor to provide at least 30 (thirty) Calendar Days' written notice to Agency before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).