METRO
600 NE Grand Ave.
Portland, OR 97232-2736
(503) 797-1700

CONTRACT NO. 930416

PUBLIC CONTRACT

This Contract is entered into between Metro, a metropolitan service district organized under the laws of the State of Oregon and the Metro Charter, whose address is 600 NE Grand Avenue, Portland, Oregon 97232-2736, and Aquatic Contracting, LLC., whose address is 8316 N. Lombard #374, Portland, OR 97203, hereinafter referred to as the "Contractor."

THE PARTIES AGREE AS FOLLOWS:

ARTICLE I
SCOPE OF WORK

Contractor shall perform the work described in the Scope of Work attached hereto as Attachment A. All services shall be of good quality and, otherwise, in accordance with the Scope of Work.

ARTICLE II
TERM OF CONTRACT

The initial term of this Contract shall be for two year period commencing January 3, 2011 through and including December 21, 2012.

Metro at its sole discretion may elect to renew this Contract for two additional terms. The first renewal term shall be for a two year period. The second renewal term shall be for a one year period. Upon Metro's renewal, Contractor will sign an amendment to this Contract.

ARTICLE III
CONTRACT SUM AND TERMS OF PAYMENT

Metro shall compensate Contractor for work performed and/or goods supplied in the amount(s), manner and at the time(s) specified in the Scope of Work. Metro shall not be responsible for payment of any materials, expenses or costs other than those which are specifically included in the Scope of Work. Total compensation under this Contract shall not exceed ONE HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS ($150,000.00) during the initial two-year term.

ARTICLE IV
LIABILITY AND INDEMNITY

Contractor is an independent contractor and assumes full responsibility for the content of its work and performance of Contractor's labor, and assumes full responsibility for all liability for bodily injury or physical damage to person or property arising out of or related to this Contract, and shall indemnify, defend and hold harmless Metro, its agents and employees, from any and all claims, demands, damages, actions, losses, and expenses, including attorney's fees, arising out of or in any way connected with its performance of this Contract. Contractor is solely responsible for paying Contractor's subcontractors and nothing contained herein shall create or be construed to create any contractual relationship between any subcontractor(s) and Metro.

ARTICLE V
TERMINATION

Metro may terminate this Contract upon giving Contractor seven (7) days written notice. In the event of termination, Contractor shall be entitled to payment for work performed to the date of termination. Metro shall not be liable for indirect, consequential damages or any other damages. Termination by Metro will not waive any claim or remedies it may have against Contractor.

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ARTICLE VI
INSURANCE & BONDS

Contractor shall purchase and maintain at Contractor's expense, the following types of insurance covering Contractor, its employees and agents.

A. Commercial general liability insurance covering personal injury, property damage, and bodily injury with automatic coverage for premises and operation and product liability shall be a minimum of $1,000,000 per occurrence. Any contractor performing work set forth in Category 4 of the attached Scope of Work, Forest Stand Management services, must provide an endorsement or proof of Loggers Broad Property Damage or equivalent coverage. The policy must be endorsed with contractual liability coverage. **Metro, its elected officials, departments, employees and agents shall be named as an ADDITIONAL INSURED.**

B. Automobile bodily injury and property damage liability insurance. Insurance coverage shall be a minimum of $1,000,000 per occurrence. **Metro, its elected officials, departments, employees, and agents shall be named as an ADDITIONAL INSURED.**

C. Workers' compensation coverage for compliance with ORS 656.017 must cover Contractor's operations under this Contract, whether such operations be by Contractor or by any subcontractor or anyone directly or indirectly employed by either of them.

Neither Contractor nor any subcontractor shall commence work under this Contract until Contractor has obtained all the insurance required herein and submitted a certificate of insurance to Metro. Contractor shall maintain the insurance for the duration of this Contract. The insurance certificate shall provide for thirty days advance written notice to Metro's Project Manager prior to cancellation. Metro's failure to confirm that Contractor has in fact complied with this Section shall not relieve Contractor from its obligation to comply with the terms set forth herein.

In addition, for public works subject to ORS 279C.800 to 279C.870, Contractor and every subcontractor shall have a public works bond required by 2005 Oregon Laws Chapter 360 filed with the Construction Contractors Board before starting work on the project, unless exempt under Section 2 of 2005 Oregon Laws Chapter 360.

ARTICLE VII
PUBLIC CONTRACTS

All applicable provisions of ORS chapters 187 and 279A, 279B, and 279C and all other terms and conditions necessary to be inserted into public contracts in the State of Oregon, are hereby incorporated as if such provision were a part of this Agreement. Specifically, it is a condition of this contract that Contractor and all employers working under this Agreement are subject employers that will comply with ORS 656.017 as required by 1989 Oregon Laws, Chapter 684.

For public work subject to ORS 279C.800 to 279C.870, Contractor shall pay prevailing wages. If such public work is subject both to ORS 279C.800 to 279C.870 and to 40 U.S.C. 276a, Contractor and every subcontractor on such public work shall pay at least the higher prevailing wage. The Contractor and each subcontractor shall pay workers not less than the specified minimum hourly rate of wage in accordance with Section 7 of 2005 Oregon Laws Chapter 360. In addition, Contractor shall pay an administrative fee as provided in ORS 279C.825(1) to the Bureau of Labor and Industries pursuant to the administrative rules established by the Commissioner of Labor and Industries. Contractor must promptly pay, as due, all persons supplying to such contractor labor or material used in this contract. If the contractor or first-tier subcontractor fails, neglects, or refuses to make payment to a person furnishing labor or materials in connection with the public contract for a public improvement within 30 days after receipt of payment from the public contracting agency or a contractor, the contractor or first-tier subcontractor shall owe the person the amount due plus shall pay interest in accordance with ORS 279C.515. If the contractor or first-tier subcontractor fails, neglects, or refuses to make payment, to a person furnishing labor or materials in connection with the public 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.

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Contractor must pay any and all contributions and amounts due to the Industrial Accident Fund from contractor or subcontractor and incurred in the performance of the contract. No liens or claims are permitted to be filed against Metro on account of any labor or material furnished. Contractor is required to pay the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

For public improvement work all contractors must demonstrate that an employee drug-testing program is in place.

ARTICLE VIII
QUALITY OF SERVICES

Contractor's services shall be performed with the same degree of care, skill, diligence, competency, and knowledge which is ordinarily exhibited and possessed by other professionals in good standing in the same or similar field and community as Contractor.

ARTICLE IX
OWNERSHIP OF DOCUMENTS

Unless otherwise provided herein, all documents, instruments and media of any nature produced by Contractor pursuant to this agreement are Work Products and are the property of Metro, including but not limited to: drawings, specifications, reports, scientific or theoretical modeling, electronic media, computer software created or altered specifically for the purpose of completing the Scope of Work, works of art and photographs. Unless otherwise provided herein, upon Metro request, Contractor shall promptly provide Metro with an electronic version of all Work Products that have been produced or recorded in electronic media. Metro and Contractor agree that all work Products are works made for hire and Contractor hereby conveys, transfers, and grants to Metro all rights of reproduction and the copyright to all such Work Products.

A. Contractor and subcontractors shall maintain all fiscal records relating to such contracts in accordance with generally accepted accounting principles. In addition, Contractor and subcontractors shall maintain any other records necessary to clearly document:

1. The performance of the contractor, including but not limited to the contractor's compliance with contract plans and specifications, compliance with fair contracting and employment programs, compliance with Oregon law on the payment of wages and accelerated payment provisions; and compliance with any and all requirements imposed on the contractor or subcontractor under the terms of the contract or subcontract;
2. Any claims arising from or relating to the performance of the contractor or subcontractor under a public contract;
3. Any cost and pricing data relating to the contract; and
4. Payments made to all suppliers and subcontractors.

B. Contractor and subcontractors shall maintain records for the longer period of (a.) six years from the date of final completion of the contract to which the records relate or (b.) until the conclusion of any audit, controversy or litigation arising out of or related to the contract.

C. Contractor and subcontractors shall make records available to Metro and its authorized representatives, including but not limited to the staff of any Metro department and the staff of the Metro Auditor, within the boundaries of the Metro region, at reasonable times and places regardless of whether litigation has been filed on any claims. If the records are not made available within the boundaries of Metro, Contractor or subcontractor agrees to bear all of the costs for Metro employees, and any necessary consultants hired by Metro, including but not limited to the costs of travel, per diem sums, salary, and any other expenses that Metro incurs, in sending its employees or consultants to examine, audit, inspect, and copy those records. If Contractor elects to have such records outside these boundaries, the costs paid by Contractor to Metro for inspection, auditing, examining and copying those records shall not be recoverable costs in any legal proceeding.

D. Contractor and subcontractors authorize and permit Metro and its authorized representatives, including but not limited to the staff of any Metro department and the staff of the Metro Auditor, to inspect, examine, copy and audit the books and records of Contractor or subcontractor, including tax returns, financial statements, other financial documents

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and any documents that may be placed in escrow according to any contract requirements. Metro shall keep any such documents confidential to the extent permitted by Oregon law, subject to the provisions of section E.

E. Contractor and subcontractors agree to disclose the records requested by Metro and agree to the admission of such records as evidence in any proceeding between Metro and Contractor or subcontractor, including, but not limited to, a court proceeding, arbitration, mediation or other alternative dispute resolution process.

F. Contractor and subcontractors agree that in the event such records disclose that Metro is owed any sum of money or establish that any portion of any claim made against Metro is not warranted, Contractor or subcontractor shall pay all costs incurred by Metro in conducting the audit and inspection. Such costs may be withheld from any sum that is due or that becomes due from Metro.

G. Failure of Contractor or subcontractor to keep or disclose records as required by this document or any solicitation document may result in disqualification as a bidder or proposer for future Metro contracts as provided in ORS 279B.130 and Metro Code Section 2.04.070(c), or may result in a finding that Contractor or subcontractor is not a responsible bidder or proposer as provided in ORS 279B.110 and Metro Code Section 2.04.052.

ARTICLE X
SUBCONTRACTORS

Contractor shall notify Metro prior to negotiating any subcontracts for the performance of any of the services and/or supply of any of the goods covered by this Contract. Metro reserves the right to reasonably reject any subcontractor or supplier and no increase in Contractor's compensation shall result thereby. All subcontracts related to this Contract shall include the terms and conditions of this agreement. Contractor shall be fully responsible for all of its subcontractors as provided in Article IV.

ARTICLE XI
RIGHT TO WITHHOLD PAYMENTS

Metro shall have the right to withhold from payments due Contractor such sums as necessary, in Metro's sole opinion, to protect Metro against any loss, damage or claim which may result from Contractor's performance or failure to perform under this agreement or the failure of Contractor to make proper payment to any suppliers or subcontractors. In addition for public improvement work, if a Contractor is required to file certified statements under ORS 279C.845, Metro shall retain 25 percent of any amount earned by Contractor on the public works until the contractor has filed all required certified statements with Metro.

If a liquidated damages provision is contained in the Scope of Work and if Contractor has, in Metro's opinion, violated that provision, Metro shall have the right to withhold from payments due Contractor such sums as shall satisfy that provision. All sums withheld by Metro under this Article shall become the property of Metro and Contractor shall have no right to such sums to the extent that Contractor has breached this Contract.

ARTICLE XII
SAFETY

If services of any nature are to be performed pursuant to this agreement, Contractor shall take all necessary precautions for the safety of employees and others in the vicinity of the services being performed and shall comply with all applicable provisions of federal, state and local safety laws and building codes, including the acquisition of any required permits.

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ARTICLE XIII
INTEGRATION OF CONTRACT DOCUMENTS

All of the provisions of any procurement documents including, but not limited to, the Advertisement for Bids, Proposals or responses, General and Special Instructions to Bidders, Proposal, Scope of Work, and Specifications which were utilized in conjunction with the bidding of this Contract are hereby expressly incorporated by reference. Otherwise, this Contract represents the entire and integrated agreement between Metro and Contractor and supersedes all prior negotiations, representations or agreements, either written or oral. This Contract may be amended only by written instrument signed by both Metro and Contractor. The law of the state of Oregon shall govern the construction and interpretation of this Contract.

ARTICLE XIV
INDEPENDENT Contractor STATUS; COMPLIANCE

Contractor is an independent contractor for all purposes and shall be entitled only to the compensation provided for in this Contract and attached Scope of Work. Under no circumstances shall Contractor be considered an employee of Metro. Contractor shall provide all tools or equipment necessary to carry out this Contract, and shall exercise complete control in achieving the results specified in the Scope of Work. Contractor is solely responsible for its performance under this Contract and the quality of its work; for obtaining and maintaining all licenses and certifications necessary to carry out this Agreement; for payment of any fees, taxes, royalties, or other expenses necessary to complete the work except as otherwise specified in the Scope of Work; and for complying with federal, state, and local laws, statutes, and ordinances relative to the execution of the work set forth on the Scope of Work (including, without limitation, non-discrimination, safety and health, environmental protection, waste reduction and recycling, fire protection, permits, fees and similar subjects). Contractor shall identify and certify tax status and identification number through execution of IRS form W-9 prior to submitting any request for payment to Metro

ARTICLE XV
INTERGOVERNMENTAL COOPERATIVE AGREEMENT

Pursuant to ORS 279A.215, other public agencies may use this Contract to purchase services that are identical to those described in this Contract for the price stated in this Contract. The conditions of such use by other public agencies shall be 1) that such agencies must establish contact with Contractor and must enter into a separate contract with Contractor that contains negotiated delivery requirements and other contractual terms and conditions; and 2) that such agencies must enter into the separate contract during the term of this Contract and 3) that Metro accepts no responsibility for performance by either Contractor or other public agencies using this Contract. With such conditions, Metro consents to such use by another public agency.

ARTICLE XVI
ASSIGNMENT

Contractor shall not assign any rights or obligations under or arising from this Contract without prior written consent from Metro.

ARTICLE XVII
JURISDICTION

The Contract was entered into in the State of Oregon. This Contract will be interpreted, construed and enforced in accordance with the laws of the State of Oregon. Both parties agree that exclusive jurisdiction for any claim under this Contract will be in Multnomah County, Oregon.

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ARTICLE XVIII
SEVERABILITY

The parties agree that any provision of this Contract that is held to be illegal, invalid, or unenforceable under present or future laws shall be fully severable. The parties further agree that this Contract shall be construed and enforced as if the illegal, invalid, or unenforceable provision had never been a part of them and the remaining provisions of the Contract shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Contract. Furthermore, a provision as similar to the illegal, invalid, or unenforceable provision as is possible and legal, valid, and enforceable shall be automatically added to this Contract in lieu of the illegal, invalid or unenforceable provision. Any failure by Metro to enforce a provision of the Contract is not to be construed as a waiver by Metro of this right to do so.

ARTICLE XIX
COUNTERPARTS

This Contract may be executed in counterparts or multiples, any one of which will have the full force of an original.

AQUATIC CONTRACTING LLC

By _____

Date 2/11/11

METRO

By _____

Date 2/16/11

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ATTACHMENT A

SCOPE OF WORK

VEGETATION MANAGEMENT PUBLIC CONTRACT

1. General

Contractor has entered into a Contract with Metro that will govern the parties' relationship in the event Metro selects Contractor to provide services. A contract award does not guarantee that Metro will expend funds from the contract. The Contract entered into between Metro and Contractor is non-exclusive, and is for on-call work. No amount of work is guaranteed to Contractor. Metro reserves the right to award project work to other contractors that may or may not have executed a contract with Metro under this solicitation.

Metro will notify Contractor periodically throughout the term of the Contract (and any renewal period) as projects are ready for work. Unless otherwise agreed upon by the parties, Contractor shall begin work on sites within four (4) days of notification and shall proceed with work without delay or interruption until all sites specified by Metro are completed. Notwithstanding the forgoing, Contractor will not proceed with work until a written assignment (Work Order), properly executed by Metro, has been received.

2. Subject Matter of Work

All properties are accessible by all-weather roads, however, Contractor may need to drive or walk equipment into project sites. Contractor is responsible for all labor, materials, tools equipment, transportation, and other items necessary to supply Metro with the specified vegetation management services.

Contractor agrees to perform all associated work described in Section 6 of this Scope of Work. Herbicide application work requires Contractor to provide proof of compliance with all Oregon Department of Agriculture license requirements.

Contractor seeks to provide the following services:

□ **Category 4: Forest Stand Management**

For work in categories 1, 2, 3 and 4 listed above, unless specifically exempted under Oregon law, Contractor is required to have a Farm and Forest Labor Contractor License (F/FLC License) from the State of Oregon prior to signing the Contract. For work in category 4 listed above, Contractor is also required to have a Construction Contractor License with the Construction Contractors Board (CCB License) of Oregon. Contractor shall have provided both its copy of its F/FLC and CCB License to Metro upon execution of the Contract.

3. Work Order

A. If Contractor is asked to work on a project, a Metro project manager will provide Contractor a written Work Order with detailed work instructions. Instructions will include at a minimum: the work site location, a description of the tasks, an estimated project cost, any special instructions,

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and work completion deadlines. Metro may require Contractor to attend a pre-work meeting at the project site to determine the prescription and anticipated cost.

B. Project-specific contractor selection will promote efficient use of public resources and encourage competition. Metro may consider factors that include but are not limited to Contractor's unique skills, experience or equipment, familiarity with a site, capacity compared to the size or complexity of a project, past performance on Metro projects, unit rate costs and availability when making its selection. Metro may also consider Contractor's ranking in the initial selection process and the amount of work previously performed on other Metro projects.

4. Unit Prices and Hourly Rates

A. Contractor shall complete work at the unit prices or hourly rates contained in the Unit Price list, attached hereto as Exhibit 1 and incorporated herein, unless otherwise agreed upon. For projects that rely on unit prices, estimated quantities will be multiplied by the unit prices, resulting in a total estimated price for each line item. The total unit prices will then be added together, resulting in a total project cost estimate. Hourly rates are included for certain activities. Under any project specific instructions, Metro may elect to pay Contractor for work on an hourly basis. Contractor shall not be entitled to reimbursement for expenses incurred in providing the services unless specified in this Scope of Work.

B. Metro will calculate project acreage to the closest tenth of an acre using a horizontal plane and without regard to slope. The minimum project size for unit pricing payment purposes will be one acre.

C. Contractor's fees shall remain fixed for the duration of the Contract term. At the beginning of any renewal period, Contractor may adjust Contractor's unit prices and labor rates ("adjusted price") by an amount equal to three quarters (75%) of the rate of inflation between the two previous calendar years ('price adjustment factor"). The adjusted price shall be equal to the price in effect on the date the contract or contract amendment is signed ("current price") multiplied by the quantity: one plus the price adjustment factor.

Adjusted Price = Current Price x (1+ Price Adjustment Factor)

Where:

Price Adjustment Factor = $0.75 \times ((CPI_{t-1} / CPI_{t-2}) - 1)$

T = Year in which the new adjusted price takes effect
CPI_{t-1} = Consumer Price Index for the previous calendar year
CPI_{t-2} = Consumer Price Index for the next previous calendar year

The Consumer Price Index set forth herein shall be based on the annual Consumer Price Index for all urban consumers, "West-Size Class A" series, published by the U.S. Department of Labor, Bureau of Labor Statistics ('BLS"). If such BLS is discontinued, a replacement index shall be agreed upon by the contracting parties. If the BLS designates an index with a new title and/or code number or table number as being the continuation of the index cited above, the new index shall be used. If the specific index "West Size Class A" is discontinued, the "West Urban All Items" index shall be used. If both indices are discontinued, the parties shall agree on an appropriate substitute.

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No increases in fees shall be effective until Contractor provides Metro with the revised fee schedule and evidence supporting the calculation of the increased fees based on the formula set forth herein. Metro will amend the Public Contract upon acceptance of the revised fee schedule.

5. Items Provided by Metro

Metro will dispense all plants, plant protection materials, mulch, seed, straw and other project materials from Metro's Borland Road Field Station located at 2661 SW Borland Road, Stafford, Oregon (Stafford Location) or The City of Portland Bureau of Environmental Services bare root cooler located at 2615 NW Industrial Way, Portland Oregon (Portland Location).

Contractor shall be responsible for the plant materials from the time it is picked up until the time it is planted or installed in the ground. Additional specific requirements applicable to Contractor's work are set forth below in Section 6 of this Scope of Work.

Metro reserves the right to designate additional locations within the Portland Metropolitan area as a pick up location.

6. Work Task Descriptions

Category 4: Forest Stand Management

Maintenance - Tree Cutting
Contractor shall provide a qualified faller to cut and fall trees marked by the Metro project manager. Unless directed otherwise the following specs shall apply.

Stump height. Stumps of all felled trees shall be cut to a height of no more than one foot from the ground on the uphill side or cut flush to the ground in areas designated by the Metro project manager. To minimize soil disturbance, tree stumps shall not be grubbed or otherwise removed. Metro typically requires stumps to be flush cut.

Leave trees. No felling, girdling, or topping of, or other damage to leave trees shall be allowed. In the event that a leave tree is damaged during the course of project operations, Contractor shall notify the Metro project manager. Damage to leave trees shall result in a suspension of operations until adequate precautions are taken to prevent additional damage to these and other trees

Limbing. Metro project manager shall direct the contractor to limb branches on fallen trees to prepare the material for slash piling.

Maintenance - Loading and Hauling of Slash with a Skid Steer Grapple
Contractor shall move slash and pile at designated landings. If directed Contractor shall load slash into a dumpster, truck or tractor trailer at the landing. The skid steer grapple shall be subject to the equipment cleaning requirements in Section 19 of this Scope of Work. Equipment contracted under this agreement shall be subject to the fueling and equipment repair restrictions described in Section 21 of this Scope of Work.

Maintenance – Tree Shearing
Contractor shall shear trees with a mechanized tree shearer. Equipment shall be able to shear at ground level. Metro project manager shall indicate pile locations. Contractor shall treat stumps immediately with a Metro approved herbicide and concentration.

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Maintenance - Loading and Hauling of Slash and Logs with an Excavator
Contractor shall move slash and logs from areas of tree removal and pile at designated landings. As directed by Metro, Contractor shall load slash into a dumpster, truck or tractor trailer at the landing. Excavator shall be equipped with a mechanical thumb and bucket or equipped with a grapple capable of picking up logs and slash. The excavator shall be subject to the equipment cleaning requirements in Section 19 of this Scope of Work. Equipment contracted under this agreement shall be subject to the fueling and equipment repair restrictions described in Section 21 of this Scope of Work.

Maintenance - Tree and Brush Chipping with Portable Chipper
As directed by Metro a portable chipper shall be temporarily housed on-site to chip felled trees or to mulch slash for removal from the site. The chipper must be capable of blowing chipped material directly into a dumpster or trailer for hauling. The chipper shall be subject to the equipment cleaning requirements in Section 19 of this Scope of Work. Temporary siting of the portable chipper must be approved by the Metro project manager. Equipment contracted under this agreement shall be subject to the fueling and equipment repair restrictions described in Section 21 of this Scope of Work.

Maintenance - Hand Hauling or Piling of Slash for Burning
Contractor shall haul slash to a location specified by Metro. As directed by Metro project manager, Contractor shall construct burn piles free of dirt and non-combustible material to ensure a clean safe burn. Piles shall be located away from stumps, power lines, tree crowns, and sufficient distance away from remaining trees or other vegetation to reduce scorch. Slash shall not be piled or placed in roadways, trails or drainage ditches or within any stream.

Pile Height. Piles will be constructed with a height of 1.5 times higher than their width (at base). However, pile height shall not exceed 6 feet unless there are limited openings for piles to avoid residual tree scorch, due to the amount of material to be disposed and by approval of the Metro project manager.

Compactness. Each pile containing material protruding greater than 3 feet will be trimmed back and placed on pile. Slash that causes large air spaces in piles shall be cut to eliminate air spaces.

Minimum Piece Size. Piled woody material should be no smaller than 1 inch diameter x 3 foot length, except that each pile shall include an area of small slash to provide fine material ("kindling") for prompt ignition and to aid in combustion of larger slash. These fine fuels shall be placed in the center of the pile.

Covering piles. Covering piles is required and all piles shall be covered with material provided by the Contractor. Each pile will have either 4-mil polyethylene plastic or slash pile wax paper placed (preferably during its construction) on at least 50% of pile surface. All piles shall be covered with a minimum of 3 foot by 3 foot pieces with all four corners and the middle anchored with slash or other debris. Care shall be taken not to puncture the slash pile wax paper or plastic paper as it is secured over the pile. If slash pile wax paper is used, a double layer must be placed over the pile.

Maintenance - Slash Burning
As directed by Metro Project manager, Contractor shall burn slash piles in a safe and efficient manner.

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Burn Permit. When necessary, Contractor shall obtain the necessary burn permit from the Oregon Department of Forestry.

Burn Prescription. In order to achieve an efficient and safe burn, contractor shall allow for sufficient wet conditions before ignition and thus decrease the degree of burn creep and/or escape. Contractor shall exhibit sufficient man-power to ignite and manage the burning of piles.

Contacts: Contractor shall notify Metro project manager each day of burning including

Pile Covering Removal. If plastic is used to cover the piles, it must be removed from the pile before ignition. Contractor shall remove all plastic and other non-degradable material from the project area and the site and shall properly dispose of or recycle such material.

Fuel Consumption. Piles shall be managed to burn clean and level to the ground. Chunking in at least one time will be necessary after the piles have had time to burn down and more may be required for satisfactory consumption. Chunking will include not only unburned pile material, but any burning fuel which is creeping from a pile to prevent further creep.
Tree scorch. Piles shall cease to be lit if excessive scorching of the remaining leave trees occurs. A deduction will be made from payment to contractor in the amount of 10% for every increment of 10% of the remaining leave stand destroyed by careless burning.

Burn Patrol. Contractor shall provide adequate patrol on site until burn piles are consumed and pose no threat for additional creep.

Fire Suppression Equipment & Fire Cache. Contractor shall furnish fire fighting tools on project site at all times during burn.

Maintenance – Hauling Trees, Slash or Chips
As directed by Metro, Contractor shall provide a vehicle to transport logs, slash, or chips generated from forest stand management activities. Vehicles may include dump trucks, self loading log trucks, trucks with dumpsters, or similar equipment. Vehicles shall only operate on haul roads marked by the Metro project manager and speed shall not exceed 15 miles per hour on any gravel access drives or private drives. Equipment contracted under this agreement shall be subject to the fueling and equipment repair restrictions described in Section 21 of this Scope of Work.

7. Use of Herbicide

The specific amount of herbicide used will be in accordance with the label requirements. Unless otherwise directed by Metro, herbicides shall not be applied when wind speed is greater than five (5) mph or when the National Weather Service forecast calls for precipitation within 24 hours. There shall be no over-spray of herbicides onto native vegetation. Where necessary, Contractor shall manually or mechanically clear target vegetation away from native vegetation to protect native vegetation during spraying. In all cases, the spray mixture shall contain a colorant in the amount of one (1) percent or greater of the mixture. Contractor shall post Metro approved public notice signs with legal re-entry periods at all public access points prior to spraying and leave signs on-site until re-entry periods are satisfied. Contract shall remove signs when re-entry periods are satisfied.

Metro shall reimburse Contractor for the cost of all herbicide, surfactants and indicator dye used in herbicide application work tasks under Section 6 of Scope of Work. Terms of payment for herbicides are more fully detailed below in Section 13 of this Scope of Work. Contractor shall submit copies of herbicide application records for all Herbicide work with each invoice to Metro.

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Contractor shall maintain appropriate licensing and shall present copies of operator, applicator and trainee licenses at Metro's request. Metro is not responsible for payment to Contractor in the event that Contractor fails to provide documentation upon request.

8. Disposal of Waste Material

At the conclusion of work each day, Contractor shall gather and lawfully dispose of all empty boxes, bags, damaged containers and plug trays, garbage and other waste material in a manner acceptable to Metro. Contractor shall return plant containers in acceptable working condition to the designated Metro location.

9. The Role of the Metro Project manager

Metro and Contractor acknowledge that certain elements of site work in the environmental restoration field are not easily addressed in written plans or designs, and are better addressed in the field while work is underway.

Accordingly, Metro shall appoint a Project Manager to make decisions concerning plant placement, planting technique, employment of specific site preparation and maintenance techniques, the timing of haying, locations for slash piles and other issues. The parties anticipate that most decisions made by the Project Manager will not affect Contractor's costs or the terms of the work in this Contract or Work Orders that addresses the project.

Metro's use of a Project Manager to identify work elements on the project site and monitor field work will not relieve Contractor of responsibility for complying with the terms of this Contract or any amendment to this Contract.

10. Inspection of Work/Acceptance

Metro's Project Manager or designated representative will perform inspection surveys for compliance with all specifications on all work items as a basis for acceptance, payment, and recommendations for adjustment in work quality. Inspected units of work must comply with all applicable specifications.

Inspections shall identify any deviations from the specifications. Any such deviation shall be corrected immediately. Inspections shall primarily be visual. When the site does not appear to meet contract specifications, inspection data shall be gathered from well-distributed, randomly selected plots of various sizes with a total sample size of at least one (1) percent of each item in every project area.

Metro's Project Manager or designated representative will also inspect project sites up to 21 days (up to 42 days – 6 weeks for certain winter treatments) following herbicide application to check for effectiveness and damage to non-target vegetation. Metro's Project Manager or designated representative may, at their discretion, inspect project areas as a whole after they are completed. Contractor is encouraged to observe these inspections while they are underway.

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A. Satisfactory Work Quality

For all items on each project area, Metro or its representatives will assess a work quality percentage by dividing acceptable units inspected by total work units inspected. A minimum work quality standard of 90 percent is required for all work items.

B. Unsatisfactory Work Quality

Work quality below 90 percent will be considered unsatisfactory. Based on inspection results, if work quality is determined to be unsatisfactory, Contractor shall be required to rework the unit of work until satisfactory work quality is achieved. Once 90 percent work quality is attained, full payment will be made in accordance with Section 13 of this Scope of Work.

Based on inspection results, if the work quality percentage falls below 90 percent, Metro will immediately notify Contractor in writing and instruct Contractor to improve the quality of the work. If the quality of the work is not raised to a satisfactory and acceptable level within two (2) consecutive workdays after written notification, Metro may cancel the Work Order. If the work is seriously or chronically deficient, Contractor recognizes that Metro may elect to terminate the Contract in accordance with Article V.

11. Notification of Subcontracting

Contractor shall notify the Metro upon entering into any subcontracting arrangement. This notification shall include at a minimum:

i. Name, address, telephone number of subcontractor;
ii. Date upon which the subcontract was established and its duration;
iii. List of tasks from the Scope of Work that will be subcontracted;
iv. Copies of subcontractor's representative authority (i.e. Oregon Farm/Forestry/Landscape Contractor's License, Farm Labor Contractor Certificate of Registration) and liability insurance certificate(s); and
v. Copies of Oregon Commercial Operator License, Oregon Commercial Applicator License, and Trainee Licenses, if applicable.

12. Work Acceptance and Invoices

Contractor shall invoice Metro for completed work following Metro Project manager's acceptance of work. For a given work site, Metro shall determine whether to accept work after each treatment or a series of treatments. Metro shall not be obligated to accept and pay for work that contains material deficiencies as defined in Section 10 of this Scope of Work.

Contractor invoices shall be based on work units completed and accepted and shall include the following information:

- Contractor Name,
- Invoice Number,
- Invoice Date,
- Project Name (if applicable),
- Site Name,
- Contract Number,
- Work Order Number,
- Work Description with Work Tasks Matching the description contained in section 6 of this Scope of Work,

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- Completion Date,
- Unit Price,
- Number of Units,
- Extended Price,
- Herbicide Expenses with Mark Up, and
- Invoice Total.

All completed work should be invoiced to Metro within fourteen (14) days of completion. Contractor's failure to (a) invoice Metro within such 14-day period or (b) include all required information will be just cause for Metro withholding payment. Invoices not received within sixty (60) days of work completion will be deemed waived by Contractor, time-barred, and will not be considered for payment by Metro.

Metro may require the contractor to submit invoices by e-mail. Upon notification from Metro, Contractor agrees to submit all invoices using Metro's updated process.

13. Payment

Metro's payment for Contractor's work shall be based on work units completed, inspected and accepted. Payment shall be made at the unit prices as set forth on Exhibit 1 to Attachment A - Scope of Work, unless otherwise provided for in a specific Work Order.

Metro shall reimburse Contractor at cost plus 10% for herbicide, surfactants and indicator dye that Contractor uses while performing herbicide application services on Metro projects. Contractors shall add a separate line item on each invoice for herbicide reimbursement. Invoices for herbicide application without accompanying Pesticide Application Record will not be paid until the records are provided. At Metro's request, Contractor shall submit purchase receipts documenting cost incurred for purchase of herbicide, surfactants and indicator dye.

Contractor shall perform the work for a maximum price not to exceed ONE HUNDRED FIFTY THOUSAND ($150,000.00).

The maximum price includes all fees, costs and expenses of whatever nature. Each of Metro's payments to Contractor shall equal the percentage of the work Contractor accomplished during the billing period. Contractor's billing statements will include an itemized statement of work done and expenses incurred during the billing period, and will be sent to Metro, Attention: Accounts Payable, 600 NE Grand Avenue, Portland, OR 97232-2736. Metro will pay Contractor within 30 days after invoice date or within 15 days after invoice approval.

14. Damages to Native Vegetation

Contractor acknowledges that Metro incurs damages when native vegetation is damaged or destroyed by Contractor. Such damage includes the cost of plant material, additional Contract administration by Metro employees, and the loss of plant growth that would enhance resource values. As the extent of these damages is often difficult to determine, Contractor hereby agrees to pay fixed, agreed, and liquidated damages at the rate of $5.75 per plant for every native plant destroyed by Contractor in excess of five (5) percent of the native plants within the project area plots inspected under Section 10 of this Scope of Work.

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15. Damage to Real Property

In accordance with Article IV of the Contract, in the event Contractor causes damage to Metro property or neighboring properties while engaging in activities allowed under this Scope of Work, Contractor shall be responsible for correcting the situation and incur all costs associated with such corrective actions.

16. Work Hours

All field work shall be performed Monday through Friday during daylight hours unless Metro project manager grants permission to do otherwise. Contractor shall obey all applicable noise ordinances in completion of work.

17. Native Plant Material Collection

Contractor shall not collect plant materials from the project site unless contracted to under this Contract or written permission has been granted by Metro's Project manager or representative. All plant materials collected under this Contract are the property of Metro.

18. Equipment Cleaning

Metro may require mechanized equipment to be cleaned (pressure washed or blown with pressurized air) and inspected before moving into the natural area to reduce the risk of spreading noxious weed seeds onto disturbed areas. Equipment inspection will be arranged with the Metro project manager and conducted at a location not on the project area that is mutually agreed to by the Metro project manager and the Contractor.

19. Ownership of Woody Biomass

All woody biomass accumulated from woody vegetation removal operations is the property of Metro.

20. Fueling and Equipment Repair

No fuel, motor oil, hydraulic fluid, grease, or any other petroleum- or chemically-based compounds associated with operating motor vehicles or mechanized equipment shall be stored on-site. These materials shall be transported to the site on an as-needed basis and contained on the bed of a truck or utility trailer. For any refueling that must be done over open ground, a spill pan or sorbent pad shall be placed below the fueling location.

No refueling or maintenance shall take place in or near on-site wetlands, wet prairie, intermittent stream channels, or open water. All used sorbent pads or spill pans must be removed from the site at the end of each day. Maintenance shall only occur within the staging areas designated by the Metro Project manager. Equipment furnished shall be inspected for any leakage of petroleum products. Excessive leakage shall be a basis for issuing an immediate shutdown of the operation.

21. Fire Protection Requirements

During the closed fire season, Contractor completing work tasks under this Contract shall adhere to all Oregon Forest Law (ORS) and Oregon Administrative Rules (OAR) for fire protection. In the event a Fire Watch is required Contractor shall be limited to invoicing for one person at an hourly labor rate, for the hours required for the fire watch.

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If a fire occurs, the Contractor shall promptly report the fire to 911 and cooperate in the control and suppression of the fire.

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EXHIBIT 1

UNIT PRICES

VEGETATION MANAGEMENT PUBLIC CONTRACT

Category 4: Forest Stand Management

Work Task	Unit	Unit Price
Maintenance - Tree Cutting	Hr	$65.00
Maintenance - Hand Hauling of Slash	Hr	$40.00
Maintenance - Loading and Hauling of Slash with Bobcat Grapple		
Equipment Type # 1: Cat 246/248 skid steer w/grapple	Hr	$80.00
Mobilization	Each	$500.00
Maintenance - Tree Shearing		
Equipment Type # 1: Cat 246/248 skid steer w/shears	Hr	$120.00
Mobilization	Each	$500.00
Maintenance - Loading and Hauling of Slash and Logs with Excavator		
Equipment Type # 1: Cat 312/314 w/muck & dig buckets, thumb	Hr	$125.00
Equipment Type # 2: Cat 320 w/muck & dig buckets, thumb	Hr	$130.00
Equipment Type # 3: Mini-excavator	Hr	$75.00
Equipment Type # 4: Cat 325 excavator	Hr	$140.00
Mobilization	Each	$800.00
Maintenance - Tree and Brush Chipping with portable Chipper		
Equipment Type # 1: Vermeer BC600 (6 in. capacity)	Hr	$35.00
Equipment Type # 2: Vermeer BC1000 (12 in. capacity)	Hr	$50.00
Mobilization	Each	$250.00
Maintenance - Hand Hauling or Piling of Slash for Burning	Hr	$40.00
Maintenance - Slash Burning	Hr	$45.00
Maintenance - Hauling of Trees, Slash or Chips		
Equipment Type # 1: Log truck/self-loading log truck	Hr	$115.00
Equipment Type # 2: Skidder w/grapple	Hr	$100.00
Equipment Type # 3: Large skidder w/grapple & winch	Hr	$115.00

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Maintenance - Hauling of Trees, Slash or Chips (Continued)		
Mobilization	Each	$600.00
Mobilization for Large skidder w/grapple & winch	Each	$1000.00

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EXHIBIT 2

TARGET SPECIES LIST

Plant Type	Species Code	Latin Name	Common Name
Forb	ALPE	Alliaria petiolata	Garlic Mustard
Forb	ARMI	Arctium minus	Burdock
Forb	BRCAM	Brassica campestris	Field Mustard
Forb	CEDI	Centaurea diffusa	Diffuse Knapweed
Forb	CEMA	Centaurea maculosa	Spotted Knapweed
Forb	CENI	Centaurea nigra	Black Knapweed
Forb	CIAR	Cirsium arvense	Canada Thistle
Forb	CIVU	Cirsium vulgare	Common Thistle
Forb	CLVI	Clematis vitalba	Traveler's Joy
Forb	COMA2	Conium maculatum	Poison Hemlock
Forb	COAR	Convolvulus arvensis	Field Morning Glory
Forb	DISY	Dipsacus sylvestris	Teasel
Forb	GAVE	Galium aparine	Clevers Bedstraw
Forb	GERO	Geranium robertianum	Herb Robert
Forb	HEHE	Hedera helix	English Ivy
Forb	HEMA	Heracleum mantegazzianum	Giant Hogweed
Forb	IRPS	Iris pseudoacorus	Yellow Flag Iris
Forb	LOCO1	Lotus corniculatus	Birdsfoot Trefoil
Forb	LYSA	Lythrum salicaria	Purple Loosestrife
Forb	POCU	Polygonum cuspidatum	Japanese Knotweed
Forb	POSA	Polygonum sachalinense	Giant Knotweed
Forb	SEJA	Senecio jacobaea	Tansy Ragwort
Forb	SODU	Solanum dulcamara	Bittersweet Nightshade
Grass	ALPR	Alopecurus pratensis	Meadow Foxtail
Grass	BAMB	Bamboo	Bamboo
Grass	BRSY	Brachypodium sylvaticum	False Brome
Grass	FEAR	Festuca arundinacea	Tall Fescue
Grass	PAST	Pasture Grass	Pasture Grass
Grass	PHAR	Phalaris arundinacea	Reed Canarygrass
Grass	TURF	Turf Grass	Turf Grass
Shrub	CYSC	Cytisus scoparius	Scot's Broom
Shrub	DALA	Daphne laureola	Spurge Laurel
Shrub	ILAQ	Ilex aquifolium	English Holly
Shrub	PRLA	Prunus laurocerasus	Laurel
Shrub	ROSP	Rosa ssp	Non-native Roses
Shrub	RULA	Rubus laciniatus	Evergreen Blackberry
Shrub	RUDI	Rubus armenicus	Himalayan Blackberry
Tree	CRMO	Crataegus monogyna	European Hawthorn
Tree	CROX	Crataegus oxycantha	English Hawthorn
Tree	PRSP	Prunus ssp.	Non-native Cherries

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