



**REQUEST FOR PROPOSAL  
No. JD172449P**

**FORESTRY CHEMICAL APPLICATION  
AND  
SEEDLING PLANTING**

**PROPOSAL DUE DATE AND TIME:**  
November 21, 2014 (3:00 PM, PT)

OSU Procurement, Contracts and Materials Management Offices are open Monday through Friday 8:00 am-12:00 noon and 1:00 pm-5:00 pm.  
Offices are closed during the 12:00 noon-1:00 pm lunch hour.

**SUBMITTAL LOCATION:**

Oregon State University  
Procurement, Contracts and Materials Management  
644 SW 13<sup>th</sup> Avenue  
Corvallis, Oregon 97333

*(Updated: July 25, 2014)*

**1.0 GENERAL**

1.01 SCHEDULE OF EVENTS

- Issue Date.....November 5, 2014
- Deadline for Requests for Clarification or Change.....November 13, 2014 (4:00 pm, PT)
- Proposal Due Date and Time.....November 21, 2014 (3:00 pm, PT)

This Schedule of Events is subject to change. Any changes will be made through the issuance of Written Addenda.

1.02 PRE-PROPOSAL CONFERENCE

A Pre-Proposal Conference will not be held.

1.03 ISSUING OFFICE

The Procurement, Contracts and Materials Management (PCMM) department of Oregon State University (“OSU”) is the issuing office and is the sole point of contact for this Request for Proposal. Address all concerns or questions regarding this Request for Proposal to the Administrative Contact identified below.

1.04 ADMINISTRATIVE CONTACT

Name: Joshua Dodson  
Title: Contract Officer  
Telephone: 541-737-3572  
Fax: 541-737-2170  
E-Mail: Joshua.dodson@oregonstate.edu

1.05 DEFINITIONS

As used in this Request for Proposal, the terms set forth below are defined as follows:

- a. "Addenda" means an addition to, deletion from, a material change in, or general interest explanation of the Request for Proposal.
- b. "Exhibits" means those documents which are attached to and incorporated as part of the Request for Proposal.
- c. "Proposal" means an offer, binding on the Proposer and submitted in response to a Request for Proposal.
- d. "Proposer" means an entity that submits a Proposal in response to a Request for Proposal.
- e. "Proposal Due Date and Time" means the date and time specified in the Request for Proposal as the deadline for submitting Proposals.
- f. "Request for Proposal" (RFP) means a Solicitation Document to obtain Written, competitive Proposals to be used as a basis for making an acquisition or entering into a Contract when price will not necessarily be the predominant award criteria.
- g. "Responsible" means an entity that demonstrates their ability to perform satisfactorily under a Contract by meeting the applicable standards of responsibility outlined in OAR 580-061-0130.
- h. "Responsive" means a Proposal that has substantially complied in all material respects with the criteria outlined in the Request for Proposal.
- i. "Written or Writing" means letters, characters, and symbols that are intended to represent or convey particular ideas or meanings and are made in electronic form or inscribed on paper by hand, print, type, or other method of impression.

**2.0 INTRODUCTION AND BACKGROUND**

2.01 INTRODUCTION

Procurement, Contracts and Materials Management is seeking Responsive Responsible Proposers to submit Proposals for Forestry Chemical Application and Seedling Planting. Proposers wanting to visit the 2015 planting sites will need to contact the OSU Departmental Administrator (Brent Klumph) to check out a key for access.

2.02 BACKGROUND

The OSU College Forests are living laboratories where active forest management practices provide teaching, research and demonstration opportunities for students of all ages, forest managers, and Oregonians. OSU contracts for these services will be expiring at the end of 2014. This solicitation will provide new contracts that will allow these services to be

provided past 2014.

### 2.03 OREGON STATE UNIVERSITY

Founded in 1868, Oregon State University is a comprehensive, research-extensive, public university located in Corvallis. OSU is one of only two American universities to hold the Land Grant, Sea Grant, Space Grant and Sun Grant designations. OSU is also the only Oregon institution to hold the Carnegie Foundation's top ranking for research universities, a recognition of the depth and quality of OSU's graduate education and research programs.

Through its centers, institutes, Extension offices and Experiment Stations, OSU has a presence in almost every one of Oregon's 36 counties, including its main campus in Corvallis, the Hatfield Marine Sciences Center in Newport and OSU-Cascades Campus in Bend. OSU offers undergraduate, masters and doctoral degrees through 12 academic colleges enrolling more than 26,000 students from every county in Oregon, every state in the country and more than 90 nations.

## **3.0 STATEMENT OF WORK**

### 3.01 SAMPLE CONTRACT

A sample contract containing a statement of work and contractual terms and conditions is included at Exhibit A.

## **4.0 PROPOSER QUALIFICATIONS**

### 4.01 MINIMUM QUALIFICATIONS

In order to qualify as a Responsive Proposer, the Proposer needs to meet the minimum qualifications below.

- a. Proposer has provided similar services to an organization of similar size and scope as OSU.
- b. Proposer possesses a valid State of Oregon Pesticide Consultant license.
- c. Minimum of five (5) years' experience in providing "turn key" chemical application and planting services.

### 4.02 PREFERRED QUALIFICATIONS

OSU will award additional points for Proposers able to meet the preferred qualifications below.

- a. Ten (10) years' experience with "turn key" aerial and ground chemical applications.
- b. Ten (10) years' experience with "turn key" planting and seedling handling/storage applications.

## **5.0 REQUIRED SUBMITTALS**

### 5.01 QUANTITY OF PROPOSALS

Submit one (1) electronic or hard copy via any of the methods detailed in the section below titled SUBMISSION. If submitting via hard copy, include one (1) electronic copy (PDF format) of Proposal on CD/DVD/flash drive. Proposals should contain original signatures on any pages where a signature is required (in the case of electronic submissions, either electronic signatures or scans of hand-signed pages should be included). Proposals should contain the submittals listed in this section below.

### 5.02 REQUIRED SUBMITTALS

It is the Proposer's sole responsibility to submit information in fulfillment of the requirements of this Request for Proposal. If submittals are not substantially compliant in all material respects with the criteria outlined in the RFP, it will cause the Proposal to be deemed non-Responsive.

Proposers must submit the following information:

- Description of how the goods or services offered specifically satisfy the statement of work described in section 3. At a minimum, the Proposer shall supply:
  - Detailed information demonstrating experience in the following areas:
    - Watershed Protection
    - Safety including spill responsibilities and fire prevention procedures
    - Equipment Capability
    - Chemical Application Management
    - Planting Services Capability

- Years of experience in each of the areas
- Detailed information about how the Proposer meets the minimum qualifications described in section 4.01. At a minimum, the Proposer shall supply:
  - Brief company history listing capabilities and years in service.
  - Copy of valid State of Oregon Pesticide Consultant license.
  - List of previous organization that similar services have been provided for.
- Detailed information about how the Proposer meets the preferred qualifications described in section 4.
- Exhibit B: Certifications, fully completed and signed.
- Exhibit C: References, fully completed.
- Exhibit D: Pricing Sheet, fully completed.

## **6.0 EVALUATION**

### 6.01 EVALUATION

The stages of review and evaluation are as follows:

a. Determination of Responsiveness:

OSU will first review all Proposals to determine Responsiveness. Proposals that do not comply with the instructions, that are materially incomplete, that do not meet the minimum requirements, or that are submitted by Proposers who does not meet minimum qualifications may be deemed non-Responsive. Written notice will be sent to Proposers whose Proposal is deemed non-Responsive identifying the reason. A Proposer has the right to appeal the decision pursuant to OAR 580-061-130(5)(a).

b. First Stage Evaluation:

Those Proposals determined to be Responsive will be evaluated using the required submittals. Proposals will be scored based on the evaluation criteria listed below. Scores will be used to determine Proposers within a competitive range. The competitive range will be made of Proposers whose individual scores, when viewed together, form a group of the highest ranked Proposers above a natural break in the scores.

OSU reserves the right to ask follow-up questions of Proposers during first stage evaluations. The questions will be for the purpose of clarification of information already contained in submittals and not be an opportunity to submit additional documentation or change existing documentation.

OSU may award after the first stage evaluation to the highest ranked Proposer without moving on to the second stage evaluation. If this option is selected, Written notice of intent to award the Contract to the highest ranked Proposer will be provided to all Responsive Proposers, or an award may be made directly without notice of intent in those instances of a single Responsive Proposer.

c. Second Stage Evaluation:

If award is not made after the first stage evaluation, OSU may choose any of the following methods in which to proceed:

- i. Issue a Written invitation to Proposers within the competitive range requesting an interview, presentation, site visit or any other evaluative method that is relevant to the goods or services solicited in the Request for Proposal. Written invitations will contain the evaluation criteria and scoring that will be used by the evaluation committee.
- ii. Engage in oral or Written discussions with and receive best and final Proposals from all Proposers in the Competitive Range or all Proposers submitting Responsive Proposals. Discussions may be conducted for the following purposes:
  - Informing Proposers of deficiencies in their initial Proposals;
  - Notifying Proposers of parts of their Proposals for which OSU would like additional information; or
  - Otherwise allowing Proposers to develop revised Proposals that will allow OSU to obtain the best Proposal based on the requirements set forth in this Request for Proposal.

The conditions, terms, or price of the Proposal may be altered or otherwise changed during the course of

the discussions provided the changes are within the scope of the Request for Proposal. Best and final Proposals will be scored based on the evaluation criteria listed below.

Points awarded in the first stage evaluation will not be carried to the second stage evaluation. If a second stage evaluation of all Proposers does not produce an award that is in OSU’s best interest, OSU may return to the first stage evaluation to advance additional Proposers to a second stage evaluation.

d. Additional Stages of Evaluation:

If after completion of the second stage of evaluation, an award is not made, OSU may add another stage of evaluation using any of the methods outlined in the second stage evaluation above.

**6.02 EVALUATION CRITERIA**

Points will be given in each criteria and a total score will be determined. The maximum points available for each criterion are identified below.

<u>Evaluation Criteria</u>	<u>Points</u>
Proposal relative to the Statement of Work, Exhibit A, Section 2	60
Proposer’s qualifications relative to the preferred qualifications	10
<u>Price of the goods or services</u>	<u>30</u>
<b>Total</b>	<b>100</b>

Pricing Calculation:

The Proposal that contains the lowest price to OSU will receive the maximum number of price points. A Proposal whose price is higher than the lowest submitted price will receive proportionately fewer price points, as demonstrated in the example below.

- Proposer A’s price is \$450 (the lowest)
- Proposer A is awarded 30 price points (the maximum)
- Proposer B’s price is \$500
- Proposer B is awarded 27 price points (450/500 x 30)

In the event of a discrepancy between unit prices and extended (arithmetically calculated) prices, unit prices will prevail over extended prices.

**6.03 NEGOTIATIONS**

OSU may commence serial negotiations with the highest ranked Proposer or commence simultaneous negotiations with all Responsive Proposers within the competitive range. OSU may negotiate:

- a. The statement of Work;
- b. The Contract price as it is affected by negotiating the statement of Work; and
- c. Any other terms and conditions as determined by OSU.

**6.04 INVESTIGATION OF REFERENCES**

OSU reserves the right to investigate and to consider the references and the past performance of any Proposer with respect to such things as its performance or provision of similar goods or services, compliance with specifications and contractual obligations, and its lawful payment of suppliers, subcontractors, and workers. OSU may postpone the award or execution of the Contract after the announcement of the notice of intent to award in order to complete its investigation.

**6.03 CONTRACT AWARD**

Contract will be awarded to the Proposer who, in OSU’s opinion, meets the requirements and qualifications of the RFP and whose Proposal is in the best interest of OSU. If a successful Contract cannot be completed after award, OSU may conclude contract negotiations, rescind its award to that Proposer, and return to the most recent RFP evaluation stage to negotiate with another Proposer(s) for award.

**7.0 INSTRUCTIONS TO PROPOSERS**

7.01 APPLICABLE STATUTES AND RULES

This Request for Proposal is subject to the applicable provisions and requirements of the Oregon Revised Statutes, Oregon Administrative Rules, and OSU Policies and Procedures.

7.02 COMMUNICATIONS DURING RFP PROCESS

In order to ensure a fair and competitive environment, direct communication between OSU employees other than the Administrative Contact or other PCMM representative and any party in a position to create an unfair advantage to Proposer or disadvantage to other Proposers with respect to the RFP process or the award of a Contract is strictly prohibited. This restricted period of communication begins on the issue date of the solicitation and for Proposer(s) not selected for award ends with the conclusion of the protest period identified in OAR 580-061-0145(3) and for Proposers(s) selected for award ends with the contract execution. This restriction does not apply to communications to other OSU employees during a Pre-Proposal conference or other situation where the Administrative Contact has expressly authorized direct communications with other staff. A Proposer who intentionally violates this requirement of the RFP process or otherwise deliberately or unintentionally benefits from such a violation by another party may have its Proposal rejected due to failing to comply with all prescribed solicitation procedures. The rules governing rejection of individual solicitation responses and potential appeals of such rejections are at OAR 580-061-0130.

7.03 MANUFACTURER'S NAMES AND APPROVED EQUIVALENTS

Unless qualified by the provision "NO SUBSTITUTE" any manufacturers' names, trade name, brand names, information and/or catalogue numbers listed in a specification are for information and not intended to limit competition. Proposers may offer any brand for which they are an authorized representative, which meets or exceeds the specification for any item(s). If proposals are based on equivalent products, indicate in the proposal form the manufacturers' name and number. Proposers shall submit with their proposal, sketches, and descriptive literature, and/or complete specifications. Reference to literature submitted with a previous proposal will not satisfy this provision. Proposers shall also explain in detail the reason(s) why the proposed equivalent will meet the specifications and not be considered an exception thereto. Proposals that do not comply with these requirements are subject to rejection. Proposals lacking any written indication of intent to provide an alternate brand will be received and considered in complete compliance with the specification as listed in the RFP.

7.04 REQUESTS FOR CLARIFICATION OR CHANGE

Requests for clarification or change of the Request for Proposal must be in Writing and received by the Administrative Contact no later than the Deadline for Request for Clarification or Change as specified in the Schedule of Events. Such requests for clarification or change must include the reason for the Proposer's request. OSU will consider all timely requests and, if acceptable to OSU, amend the Request for Proposal by issuing an Addendum. Envelopes, e-mails or faxes containing requests must be clearly marked as a Request for Clarification or Change and include the RFP Number and Title.

7.05 ADDENDA

Only documents issued as Written Addenda by PCMM serve to change the Request for Proposal in any way. No other direction received by the Proposer, written or verbal, serves to change the Request for Proposal. Addenda will be publicized on the OUS procurement website. Proposers are advised to consult the OUS procurement website prior to submitting a Proposal in order to ensure that all relevant Addenda have been incorporated into the Proposal. Proposers are not required to submit Addenda with their Proposal. However, Proposers are responsible for obtaining and incorporating any changes made by Addenda into their Proposal. Failure to do so may make the Proposal non-Responsive, which in turn may cause the Proposal to be rejected.

7.06 PREPARATION AND SIGNATURE

All Required Submittals must be Written or prepared in ink and signed in ink by an authorized representative with authority to bind the Proposer. Signature certifies that the Proposer has read, fully understands, and agrees to be bound by the Request for Proposal and all Exhibits and Addenda to the Request for Proposal.

7.07 PUBLIC RECORD

Upon completion of the Request for Proposal process, information in all Proposals will become subject records under the Oregon Public Records Law. Only those items considered a "trade secret" under ORS 192.501(2), may be exempt from disclosure. If a Proposal contains what the Proposer considers a "trade secret" the Proposer must mark each sheet of information as such. Only bona fide trade secrets may be exempt and only if public interest does not require disclosure.

#### 7.08 SUBMISSION

Proposals must be received in the PCMM office no later than the Proposal Due Date and Time; it is the Proposer's responsibility to ensure that the Proposal is received prior to the Proposal Due Date and Time indicated in this RFP, regardless of the method used to submit the Proposal. Proposals may be submitted via the following method(s):

- 1) Electronic copy in PDF format included as attachment(s) in an e-mail sent to [bids@oregonstate.edu](mailto:bids@oregonstate.edu). The e-mail subject line should contain the RFP No. and RFP title. Only those Proposals received at this e-mail address by the Due Date and Time will be considered Responsive; do not e-mail a copy of the Proposal to any other e-mail address. Proposals submitted directly to the Administrative Contact e-mail address will NOT be considered Responsive. It is highly recommended that the Proposer confirms receipt of the email with the Administrative Contact noted above or by calling 541-737-4261. The Administrative Contact may open the e-mail to confirm receipt but will NOT verify the integrity of the attachment(s), answer questions related to the content of the Proposal, or address the overall Responsiveness of the Proposal.
- 2) Hard copy in a sealed package or envelope dropped off in person or delivered to the submittal location listed on the Request for Proposal cover sheet. The package or envelope should be addressed to the Administrative Contact. It is highly recommended that the Proposer confirms receipt of the Proposal with the Administrative Contact prior to the Proposal Due Date and Time.

All Proposals, including those submitted through electronic methods (if allowed), must contain Written signatures indicating intent to be bound by the offer. If the Proposer submits multiple versions of the Proposal via different methods and does not explicitly direct OSU as to which version to use, OSU will determine which version of the Proposal will be used for evaluation.

#### 7.09 MODIFICATION

Prior to submittal, Proposers should initial modifications or erasures in ink by the person signing the Proposal. After submittal but prior to the Proposal Due Date and Time, Proposals may be modified by submitting a Written notice indicating the modifications and a statement that the modification amends and supersedes the prior Proposal. After the Proposal Due Date and Time, Proposers may not modify their Proposal.

#### 7.10 WITHDRAWALS

A Proposer may withdraw their Proposal by submitting a Written notice to the Administrative Contact identified in this Request for Proposal prior to the Proposal Due Date and Time. The Written notice must be on the Proposer's letterhead and signed by an authorized representative of the Proposer. The Proposer, or authorized representative of the Proposer, may also withdraw their Proposal in person prior to the Proposal Due Date and Time, upon presentation of appropriate identification and evidence of authority to withdraw the Proposal satisfactory to OSU.

#### 7.11 LATE SUBMITTALS

Proposals and Written notices of modification or withdrawal must be received no later than the Proposal Due Date and Time (in the case of electronic submissions, the time/date stamp of the email received at the PCMM office must be no later than the Proposal Due Date and Time). OSU may not accept or consider late Proposals, modifications, or withdrawals except as permitted in OAR 580-061-0120. Sole responsibility rests with the Proposer to ensure OSU's receipt of its Proposal prior to the Proposal Due Date and Time. OSU shall not be responsible for any delays or misdeliveries caused by common carriers or by transmission errors, malfunctions, or electronic delays. Any risks associated with physical delivery or electronic transmission of the Proposal are borne by the Proposer.

#### 7.12 PROPOSAL OPENING

Proposals will be opened immediately following the Proposal Due Date and Time at the Submittal Location. Proposer may attend the Proposal opening. Only the names of the Proposers submitting Proposals will be announced. No other information regarding the content of the Proposals will be available.

#### 7.13 PROPOSALS ARE OFFERS

The Proposal is the Proposer's offer to enter into a Contract pursuant to the terms and conditions specified in the Request for Proposal, its Exhibits, and Addenda. The offer is binding on the Proposer for one hundred twenty (120) days. OSU's award of the Contract constitutes acceptance of the offer and binds the Proposer. The Proposal must be a complete offer and fully Responsive to the Request for Proposal.

7.14 CONTINGENT PROPOSALS

Proposer shall not make its Proposal contingent upon OSU's acceptance of specifications or contract terms that conflict with or are in addition to those in the Request for Proposal, its Exhibits, or Addenda.

7.15 RIGHT TO REJECT

OSU may reject, in whole or in part, any Proposal not in compliance with the Request for Proposal, Exhibits, or Addenda, if upon OSU's Written finding that it is in the public interest to do so. OSU may reject all Proposals for good cause, if upon OSU's Written finding that it is in the public interest to do so. Notification of rejection of all Proposals, along with the good cause justification and finding of public interest, will be sent to all who submitted a Proposal.

7.16 AWARDS

OSU reserves the right to make award(s) by individual item, group of items, all or none, or any combination thereof. OSU reserves the right to delete any item from the award when deemed to be in the best interest of OSU.

7.17 LEGAL REVIEW

Prior to execution of any Contract resulting from this Request for Proposal, the Contract may be reviewed by a qualified attorney for OSU pursuant to the applicable Oregon Revised Statutes and Oregon Administrative Rules. Legal review may result in changes to the terms and conditions specified in the Request for Proposal, Exhibits, and Addenda.

7.18 PROPOSAL RESULTS

A Written notice of intent to award will be issued to all Proposers. The Proposal file will be available for Proposer's review during the protest period at the PCMM Department. Proposers must make an appointment with the Administrative Contact to view the Proposal file. After the protest period, the file will be available by making a Public Records Request to OSU Office of General Counsel.

7.19 PROPOSAL PREPARATION COST

OSU is not liable for costs incurred by the Proposer during the Request for Proposal process.

7.20 PROPOSAL CANCELLATION

If a Request for Proposal is cancelled prior to the Proposal Due Date and Time, all Proposals that may have already been received will be returned to the Proposers. If a Request for Proposal is cancelled after the Proposal Due Date and Time or all Proposals are rejected, the Proposals received will be retained and become part of OSU's permanent Proposal file.

7.21 PROTEST OF CONTRACTOR SELECTION, CONTRACT AWARD

Any Proposer who feels adversely affected or aggrieved may submit a protest within three (3) business days after OSU issues a notice of intent to award a Contract. The protest must be clearly identified as a protest, identify the type and nature of the protest, and include the Request for Proposal number and title. The rules governing protests are at OAR 580-061-0145.



**EXHIBIT A**  
**TERMS AND CONDITIONS / SAMPLE CONTRACT**

This Contract is between the State of Oregon acting by and through the State Board of Higher Education on behalf of Oregon State University and its College Forests ("OSU"), and (Insert Contractor) ("Contractor").

WHEREAS, OSU competitively solicited for the services outlined in this Contract under Request for Proposal number JD172449P entitled Forestry Chemical Application and Seedling Planting and was selected as the Proposer best able to provide this service; and

WHEREAS, Contractor understands the requirements for the services outlined in this Contract, and is willing and able to provide, in accordance with the terms of this Contract, the services;

NOW, THEREFORE, OSU and Contractor agree as follows:

**1. CONTRACT TERM AND TERMINATION:**

**A. CONTRACT TERM.**

This Contract is effective on the date of last signature and expires twelve (12) months from that date. This Contract may be renewed, upon mutual agreement of the parties through written amendment, for nine (9) additional one (1) year terms based on the current terms and conditions provided that the total Contract Term does not extend beyond December 2024.

Exact areas for chemical application and planting will vary per year. These areas will be identified annually by the OSU Departmental Administrator. If OSU opts to renew this contract for subsequent years, a revised Attachment A will be negotiated to cover all areas for the new Contract Term. All revisions will not be valid until an Amendment to the Contract has been finalized.

**B. TERMINATION.**

This Contract may be terminated at any time by mutual consent of both parties or by OSU upon thirty (30) days' written notice. In addition, OSU may terminate this Contract at any time by written notice to Contractor if (a) Federal or state statutes, regulations or guidelines are modified or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Contract; (b) any license or certificate required by law or regulation to be held by the Contractor to provide the services required by this Contract is for any reason denied, revoked, or not renewed; or (c) OSU fails to receive funding, appropriations, allocations or other expenditure authority as contemplated by OSU's budget and OSU determines, in its assessment and ranking of the policy objectives explicit or implicit in OSU's budget, that it is necessary to terminate the Contract, or (d) if the OSU program for which this Contract was executed is abolished.

OSU may also terminate this Contract at any time by written notice for default (including breach of contract) if (a) Contractor fails to timely provide services or materials called for by this Contract; or (b) Contractor fails to perform any of the other provisions of this Contract, or so fails to pursue the work as to endanger performance of this Contract in accordance with its terms and conditions, and after receipt of written notice from OSU, fails to correct such failures within ten (10) days. Termination of this Contract under this Section or any other section is without prejudice to OSU's other rights and remedies.

C. REMEDIES FOR CONTRACTOR'S DEFAULT.

In the event Contractor is in default (which includes without limitation, incomplete services), OSU may, at its option, pursue any or all of the remedies available to it under this Contract and at law or in equity, including, but not limited to: (a) rejection of the services, (b) requiring Contractor to correct any defects without charge, (c) negotiation with Contractor to sell the services to OSU at a reduced price, (d) termination of the Contract, (e) withholding all moneys due for the services Contractor has failed to deliver within any scheduled completion dates or has performed inadequately or defectively, (f) initiation of an action or proceedings for damages, specific performance, or declaratory or injunctive relief, or (g) exercise of its right of set off. These remedies are cumulative to the extent the remedies are not inconsistent, and OSU may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever..

2. STATEMENT OF WORK:

A. REQUIRED SERVICES, DELIVERABLES AND DELIVERY SCHEDULE.

Contractor shall provide OSU with the following services during the Term of this Contract:

Contractor shall provide chemical application and seedling planting services on any forest owned or managed by OSU. These forests are located in the counties of Columbia, Benton, Polk, Clackamas, and Washington, Oregon.

I. GENERAL CONTRACT REQUIREMENTS

- i. Pre-work Meeting: Prior to commencement of any work, OSU will hold an operational meeting with the Contractor to schedule work and review the Contract requirements. The Contractor shall do no work before said meeting. The purpose of this meeting will be to clarify any questions regarding the Contract specifications.
- ii. Watershed Protection: Contractor shall take all precautions necessary to protect the watersheds from damage and to prevent pollution to the water supply. Precautions shall include, but not be limited to the following regulations.
  1. Laws, Rules and Regulations: Comply with Oregon Forest Practice Act rules and regulations relative to protection of watersheds.
  2. General Sanitary Conditions: Do not create any conditions which may permit breeding of flies or mosquitoes. Machinery, equipment, soil, and fuel storage shall not be located near streams, as approved by OSU Departmental Administrator.
  3. Personnel. Persons with a history of typhoid fever, amoebic dysentery, or infections hepatitis shall not be employed on the watershed. Contractor shall verbally instruct all personnel employed on the watershed in the required sanitary precautions.
  4. Overnight Camping Prohibited. No person shall remain on the watershed overnight, unless authorized in writing by OSU.
- iii. Safety. Contractor shall be solely responsible for the safety of all equipment used and all personnel employed by or working under the direct supervision and control of the Contractor.
- iv. Fire Prevention. Contractor shall take adequate measures for the prevention and suppression of fire in conformance with the requirements of the Oregon statutes and the State Forester's regulations.
- v. Cleanliness. Contractor shall be responsible for maintaining a clean work area at all times. All containers, debris and other associated materials shall be cleaned up at the end of each operating day. This shall include any personal litter that may result from Contractors activities.

- vi. Spill Responsibility. Contractor will be held responsible for any and all releases of environmental pollution during performance of the Contract which occur as a result of, or are contributed to by, actions of its employees, agents, personnel, or sub-contractors. Contractor agrees to promptly dispose of such spills or leaks to the satisfaction of OSU and proper regulatory agencies in a manner that complies with applicable federal, state, and local laws and regulations. Cleanup shall be at no cost to OSU.

## II. CHEMICAL APPLICATION

### Chemical Application Management:

Contractor shall provide management of the chemical application. This includes, but is not limited to the following:

- i. Perform project unit layout work, prepare treatment prescriptions and obtain all applicable permits.
- ii. Provide a written Drift Control plan for each work area.
- iii. Supply weather information and application data to include:
  - a. Date
  - b. Tract name
  - c. Herbicide and rate applied
  - d. Wind information
  - e. Temperature
  - f. Sky condition
- iv. Furnish, at Contractor's sole expense,
  - a. All equipment necessary to tank mix and agitate all herbicide rates.
  - b. All equipment, to be of a type approved by the Federal and State agencies governing the work to be performed necessary to apply required treatment prescriptions.
  - c. All equipment necessary to insure the work performed is done in a safe efficient manner.
  - d. Personnel to operate all required equipment. Personnel will hold any and all Federal or State certifications as required by all Federal and State agencies governing the work to be performed.
  - e. Furnish all chemicals and oils necessary for treatment of specified acreage.
  - f. Supervision of project(s) to completion
  - g. Proper container preparation and disposal of all herbicide and fertilizer containers as prescribed by applicable local, State and Federal laws.
- v. Maintain an untreated buffer along residential property lines, untreated buffer along agricultural property lines and untreated buffer along property lines, public roads and any other features to ensure no off site application, unless specified otherwise by OSU.
- vi. Maintain adequate buffers to all other features within the treatment area which should be excluded from treatment including, but not limited to, Public Roads and Right-of-Ways. If at any time the Contractor is unsure of the areas to be treated, it shall cease application immediately and seek clarification from OSU.
- vii. Shall be solely responsible to ensure that 100% of the products applied to the application area do not exceed the boundaries of the designated area, are not applied on flowing or open water or specified buffer zones in any fashion.
- viii. Shall be solely responsible to ensure that applications are done according to the guidelines of

current Forest Practices, accepted Forest Practices Notification and any applicable injunctive buffer restrictions.

- ix. Shall make the final determination, based on wind speed or other weather conditions if any application operations will be conducted. In the event operations are presented with adverse weather conditions, Contractor will have no liability for direct, indirect or consequential damages as a result of the termination.
- x. Any portion of an area found by the Contractor not treatable due to legal, environmental, operational or adjacent land liability problems will not be treated until the issues can be resolved by OSU. If the issues cannot be resolved, that section of the area will be removed from the area to be serviced.

Specifics for Aerial Chemical Application:

Contractor shall provide the additional requirements for aerial application to include, but not be limited to, the following:

- i. All necessary helicopter or aircraft with an appropriate airworthiness certificate.
- ii. A fully qualified, experienced and licensed pilot to pilot the aircraft
- iii. All additional personnel, ground equipment, fuel for the aircraft, supplies, equipment and labor incidental to the supervision of the work, operation and maintenance of the aircraft and other equipment to insure proper performance and application of the work requested.
- iv. Pre-application flights to ensure applicators identification of treatment area and its features is properly identified.
- v. Review of current weather, environmental and site conditions to ensure that absolutely none of the applications occur outside the unit boundaries, upon any flowing or open water, including any designated buffers.

OSU Responsibilities:

OSU will provide the following materials and services:

- i. Maps, drawings and/or photographs as may be necessary to clearly and properly identify the acreage to be treated.
- ii. Approval of unit layout work, treatment prescriptions and preoperational cost estimates.
- iii. Assistance for on ground marking on projects having excessive stream buffer requirements or road access characteristics.
- iv. Adequate access to each tract for the purpose of motor vehicles to travel to and from each tract.
- v. Landing areas for use by the Contractor to be located near the areas to be treated. Landing areas will be at a location within one-half mile from the application area, at a location prescribed or designated by State herbicide regulations or at a distance that is mutually agreed to by OSU and Contractor.
- vi. Preparation and Maintenance of landing areas to be at OSU's expense.
- vii. Additional support personnel needed to control access points to units during application. This will include providing traffic control on units adjacent to or including public roads.
- viii. OSU shall provide assistance for on ground marking on projects having excessive stream buffer

requirements or road access characteristics.

### III. PLANTING SERVICES

Contractor shall provide the service of seedling planting in forests owned or managed by OSU as outlined below.

#### Contractor Responsibilities:

The Contractor will be required to provide the following service, personnel, materials and equipment:

- i. Identify a primary and secondary person responsible for all work and Contract oversight for the Contract Term. Contractor shall provide to OSU the names, addresses, and telephone numbers of such person(s) and shall keep this information current at all times.
- ii. Assign non-planting foreman to provide regular monitoring of planting quality and spacing
- iii. Obtain and pay for required state and/or local permits as necessary.
- iv. Maintain a six (6) person crew, at minimum with a maximum crew size of twelve (12).
- v. Delivery of seedling from the contracted seedling grower location utilizing a container that allows air circulation but does not damage seedlings. Growers will vary per planting year. Specific seedling growers will be identified in Attachment A for each Contract Term.
- vi. Store seedlings in suitable facilities for keeping seedlings out of sun and wind in a refrigerated van until planted.
- vii. Read and comprehend the planting maps detailing the location of the planting units and spacing of the seedlings.
- viii. Maintain a copy of the current contract specifications at the job site(s) at all times.
- ix. Keep a tally of seedlings planted for each day by job site, species, and nursery lot number.
- x. Provide all equipment necessary to complete the work specified in the contract (i.e., planting shovels, planting bags, tubing bags)
- xi. Provide all required safety equipment and training for employees to complete the work specified in a safe and efficient manner.
- xii. Planting of seedlings as outlined in Planting Specifications in Attachment B.

#### OSU Responsibilities:

OSU will provide the following materials and services:

- i. Maps of the planting units.
- ii. The Departmental Administrator or a designated representative to work with the Contractor to identify the areas and access roads for planting of each identified area.
- iii. Inspect work for compliance with the contract.

**B. CONTRACTOR GUARANTEE**

Contractor guarantees the results of the projects including chemical prescriptions and application. If the post application / project audit does not meet the preoperational management goals, a retreatment (or replant) will be offered. Contractor will cover the cost of the herbicide / adjuvants / plantings and management for the project

**C. ACCEPTANCE OF SERVICES.**

Services furnished under this Contract are subject to acceptance by OSU. If OSU finds services furnished to be incomplete or not in compliance with the Contract, OSU, at its sole discretion, may either reject the services, require Contractor to correct any defects without charge, or negotiate with Contractor to reduce the price, whichever OSU deems appropriate under the circumstances. If Contractor is unable or refuses to cure any defects within a time deemed reasonable by OSU, OSU may pursue any of the remedies for Contractor's default detailed in that Section above.

**D. BUSINESS REVIEWS.**

Contractor will participate in Business Reviews as requested by OSU Procurement, Contracts, and Materials Management. Business Reviews will be scheduled by the Contract Administrator in OSU Procurement, Contracts, and Materials Management and will include attendance by OSU representatives, and Contractor's Regional Representatives. The reviews may include discussion of Contract terms and conditions, work performed under the Contract, financial data, proposal of Contract improvements for increased service or lower costs, and any potential changes to the Contract.

**3. COMPENSATION:**

**A. METHOD OF PAYMENT FOR SERVICES.**

OSU shall pay Contractor the amounts specified for on invoices for each deliverable OSU has accepted.

**B. BASIS OF PAYMENT FOR SERVICES.**

OSU shall pay Contractor all amounts due for services completed and accepted by OSU based on acreage treated or planted per rates as outlined in Attachment A. Invoiced amount will not exceed preoperational estimates that are provided and accepted by OSU prior to each area to be treated or planted.

**C. EXPENSE REIMBURSEMENT.**

OSU will not reimburse Contractor for any expenses under this Contract.

**D. GENERAL PAYMENT PROVISIONS.**

Contractor shall send invoices to OSU for services completed and accepted by OSU. Contractor shall include in each invoice:

- a. The Contract number;
- b. A description of services performed, including the dates services were performed, all deliverables delivered during the period of the invoices, the rate or rates for services performed, and the total cost of services;
- c. Itemization and explanation of all expenses for which Contractor claims reimbursement authorized under this Contract;
- d. The total amount due and the payment remittance address.

Contractor shall send all invoices to OSU's Department Administrator or to the Department to which the services were provided if a Department Administrator is not specified.

OSU shall pay Contractor for services performed at the prices and rates specified herein. Contractor shall look solely to OSU for payment of all amounts OSU owes to Contractor. Payment of OSU contracts is normally made within 30-45 days following the date the invoice is received. After 45 days, Contractor may assess overdue account charges up to a maximum of two-thirds of one percent (2/3 of 1%) per month or eight percent (8%) per annum on the outstanding balance (ORS 293.462).

PRICE ESCALATION CLAUSE

Contractor shall keep the pricing specified in Attachment A the same throughout the Initial Term of the Contract. Contractor may negotiate unit costs after the initial Term for subsequent renewals. Contractor shall submit any proposed increase in the unit costs in writing to PCMM for consideration at least sixty (60) days before the renewal period. Contractor must provide supporting documentation to back up the request. Accepted increases, by PCMM, in the pricing will remain the same for the full term of the renewal period.

**4. INSURANCE AND INDEMNIFICATION:**

**A. GENERAL LIABILITY INSURANCE.**

Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this Contract, Commercial General Liability Insurance, including Products and Completed Operations coverage, with minimum limits of \$2 Million per occurrence and \$4 Million aggregate. Such insurance policy is to be issued by an insurance company authorized to do business in the State of Oregon with an A.M. Best rating of at least A-VII, or such other insurance carrier approved in writing, in advance, by OSU. OSU and the Oregon University System, their officers, employees and agents shall be included as additional insured in said insurance policy.

**B. PROFESSIONAL LIABILITY INSURANCE.**

Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this contract, Professional Liability Insurance. Coverage limits shall not be less than \$2,000,000 per occurrence.

**C. AUTOMOBILE LIABILITY INSURANCE.**

Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this contract, Automobile Liability Insurance. This coverage can be provided by combining the Automobile Liability Insurance with the General Liability Insurance. Coverage limits shall not be less than \$2,000,000 combined single limit per occurrence.

**D. PROPERTY INSURANCE.**

The Contractor must maintain Property Insurance during the term of the Contract that covers all property used for Contract work and all Contractor-owned property that is stored at OSU.

**E. PRIMARY COVERAGE.**

Insurance carried by Contractor under this Contract shall be the primary coverage and OSU's insurance is excess and solely for damages or losses for which OSU is responsible.

**F. WORKERS' COMPENSATION.**

The Contractor, its subcontractors, if any, and all employers providing work, labor or materials under this Contract are subject employers under the Oregon Workers' Compensation law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage that satisfies Oregon law for all their subject workers, unless such employees are exempt under ORS 656.126.

**G. CERTIFICATES OF INSURANCE.**

As evidence of the insurance coverages required by this Contract, the Contractor shall furnish Certificate(s) of Insurance to the OSU Contract Administrator, upon request. The Certificate(s) will specify all of the parties who are Additional Insureds (or Loss Payees). Insurance coverages required under this Contract shall be obtained from acceptable insurance companies or entities. Contractor shall be financially responsible for all deductibles, self-insured retentions and/or self-insurance included hereunder.

**H. NOTICE OF CANCELLATION OR CHANGE.**

Contractor shall not cause or permit any cancellation, material change, potential exhaustion of aggregate limits or notice of intent not to renew insurance coverage(s) without 30 days' written notice from the Contractor or its insurer(s) to OSU's Contract Administrator. Any failure to comply with the reporting

provisions of this insurance, except for the potential exhaustion of aggregate limits, shall not affect the coverage(s) provided to OSU.

**5. INDEMNIFICATION:**

**A. INDEMNITY.**

- a. Contractor shall indemnify and hold harmless OSU, the Oregon State Board of Higher Education and their respective officers, board members, employees, agents and other representatives against claims, expenses, or losses: (i) that result from Contractor's negligence, wrongful acts or willful misconduct, or (ii) alleging Contractor's services, information or materials supplied by Contractor to OSU under this Contract, or OSU's use of any of the foregoing infringes on any patent, copyright, trade secret, trademark, or other proprietary right of a third party.
- b. OSU's right to receive indemnification under this Section is conditioned upon OSU giving reasonably prompt notice and assistance of any claim; provided however, that OSU's failure to provide notice and assistance does not limit OSU's right to indemnification except to the extent such failure or assistance materially affects Contractor's ability to defend the claim.
- c. Contractor's indemnification obligation under this Section includes but is not limited to all of OSU's expenses of litigation, court costs and reasonable attorney fees.

**B. DEFENSE.**

- a. Contractor shall have control of the defense with counsel reasonably acceptable to OSU, except that: (i) OSU may join the defense with its own counsel and at its own expense if OSU determines there is a conflict of interest or there is an important government principle at issue, and (ii) OSU'S consent is required for any settlement that requires OSU to pay any money, does not release OSU from all liability from the claim, or adversely affects OSU's interest.

**6. LAWS AND POLICIES:**

**A. APPLICABLE LAW; JURISDICTION AND VENUE.**

- a. The laws of the State of Oregon (without giving effect to its conflict of laws principles or laws) govern all matters arising out of or relating to the Contract, including, without limitation, its validity, interpretation, construction, performance or enforcement. Any party bringing a legal action or proceeding against the other party arising out of or relating to this Contract shall bring the legal action or proceeding in the Circuit Court of Oregon for Benton County.
- b. Notwithstanding paragraph (a), if a legal action or proceeding must be brought in a federal forum, the party shall bring the legal action or proceeding in the United States District Court for the District of Oregon. This paragraph does not authorize Contractor to bring a legal action or proceeding against OSU in a federal forum except to the extent Congress has validly abrogated OSU's sovereign immunity. This paragraph is also not a waiver by OSU of any form of immunity, including without limitation sovereign immunity and immunity based on the Eleventh Amendment to the United States Constitution.
- c. Except as set forth in paragraph (b), the parties consent to in personam jurisdiction in the above courts and waive any objection to venue and any objection that the forum is inconvenient.

**B. COMPLIANCE WITH APPLICABLE LAWS AND POLICIES.**

- a. The parties shall at all times comply with all applicable federal, state and local laws, regulations, executive orders and ordinances pertaining to their respective businesses, products or services, employment obligations, and the subject matter of this Contract. The parties shall at all times comply with all applicable policies of the Oregon University System and OSU, including without limitation any such laws or regulations regarding employment discrimination. If this Contract is being funded with federal funds, Contractor agrees to comply with all applicable federal contracting statutes, regulations and policies.
- b. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with the



following laws, regulations and executive orders to the extent they are applicable to the Contract: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Paragraphs 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) Executive Order 11246, as amended; (v) the Health Insurance Portability and Accountability Act of 1996; (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (viii) ORS Chapter 659, as amended; (ix) the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g; (x) the Health Insurance Portability and Accountability Act requirements noted in OAR 125-055-0115; (xi) the Oregon Consumer Identity Theft Protection Act, ORS 646A.600-646A.628; (xii) all regulations and administrative rules established pursuant to the foregoing laws; and (xiii) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Contract and required by law to be so incorporated.

**C. FEDERALLY REQUIRED PROVISIONS.**

- a. Equal Employment Opportunity – Contractor shall comply with E.O. 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."
- b. Rights to Inventions Made Under a Contract or Agreement – If this Contract is for the performance of experimental, developmental, or research work, the Federal Government and OSU have rights in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.
- c. Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended – If this Contract provides for payments in excess of \$100,000, Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- d. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) – Contractors who apply or bid for an contract of more than \$100,000 shall file a certification that it will not and has not used Federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Contractor shall require any subcontractor who applies or bids for subcontract in excess of \$100,000 to provide a similar certification to the next higher tier (Contractor or subcontractor as applicable). Each tier shall also disclose any lobbying with non-Federal funds in connection with obtaining any Federal award. Contractor or subcontractor must forward any disclosures from tier to tier up to OSU.
- e. Debarment and Suspension (E.O.s 12549 and 12689) - No contract shall be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with E.O.s 12549 and 12689, "Debarment and Suspension." This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. If this Contract is in excess of the small purchase threshold, Contractor hereby certifies they are not listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs.

**D. PUBLIC RECORDS LAW NOTICE.**

OSU advises Contractor that information OSU receives may be subject to public inspection under Oregon Public Records Law (ORS 192.410-192.505).

**E. SAFETY AND HEALTH REQUIREMENTS/HAZARD COMMUNICATION.**

Services supplied under this Contract shall comply with all federal Occupational Safety and Health Administration (OSHA) requirements and with all Oregon safety and health requirements, including those of the State of Oregon Workers' Compensation Division. Contractor shall notify OSU prior to using products containing hazardous chemicals to which OSU employees may be exposed. Products containing hazardous chemicals are those products defined by Oregon Administrative Rules, Chapter 437. Upon OSU's request, Contractor shall immediately provide Material Safety Data Sheets, as required by OAR 437-155-025, for the products subject to this provision.

**F. FIREARMS POLICY.**

The State Board of Higher Education has adopted a policy that prohibits Contractor and Contractor's employees, agents, and subcontractors from possessing firearms on Board-owned or Board-controlled property.

**G. PARKING.**

Contractors doing business on the OSU campus may be required to have a permit to park if utilizing restricted street parking or parking lots. Contractor parking permits may be obtained through OSU's Office of Transit & Parking Services.

**H. SEXUAL HARASSMENT POLICY.**

The State Board of Higher Education has adopted policies that prohibit sexual harassment of members of the OSU community and in keeping with those policies Contractor and Contractor's employees, agents, and subcontractors are prohibited from engaging in sexual harassment of members of the OSU community.

**I. SMOKING POLICY.**

OSU has adopted a policy that prohibits Contractor and Contractor's employees, agents, subcontractors from smoking on the OSU campus or other OSU owned property. The smoking prohibition includes all indoor and outdoor spaces.

**J. WEBSITE ACCESSIBILITY.**

If Contractor is designing or developing web page(s) for OSU under this Contract, Contractor shall design and develop (as applicable) the web page(s) in conformance with OSU's Policy on Information Technology Accessibility available at <http://oregonstate.edu/accessibility/ITpolicy>.

**7. GENERAL TERMS AND CONDITIONS:**

**A. ORDER OF PRECEDENCE.**

In the event of a conflict, all the terms and conditions of this Contract, its exhibits, and any amendments thereto supersede all terms and conditions on any forms used by the Contractor.

**B. NO THIRD PARTY BENEFICIARY.**

OSU and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly, or otherwise, to third parties

**C. ASSIGNMENT/SUBCONTRACT/DELEGATION.**

Contractor shall not assign, subcontract, delegate or otherwise transfer any of its rights or obligations under this Contract, without the prior written approval of OSU. Any assignment of rights or delegation of duties is prohibited under this Section, whether by merger, consolidation, dissolution, operation of law or any other manner. Any purported assignment of rights or delegation of duties in violation of this Section is void. OSU's consent to delegation does not relieve Contractor of any of its performance obligations.

**D. WAIVER.**

No waiver of an obligation under this Contract is effective unless it is in writing and signed by the party

granting the waiver. No failure or delay in exercising any right or remedy, or in requiring the satisfaction of any condition under this Contract operates as a waiver or estoppel of any right, remedy or condition.

E. ACCESS TO RECORDS AND AUDIT.

Contractor shall maintain accurate books, records, documents, and other evidence (collectively, "Records") following accounting procedures and practices sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this Contract. Contractor shall permit OSU, the Oregon State Board of Higher Education, Oregon Secretary of State, the federal government, and their duly authorized representatives to have access to the Records that are directly pertinent to this Contract for the purpose of conducting an audit, or other examination, or for creating excerpts or transcripts. Contractor shall maintain Records for OSU's review for at least six years beyond the term of the Contract. Contractor shall promptly remedy any discrepancies involving deviation from the terms of this Contract and shall promptly reimburse OSU for any commitments or expenditures found by OSU to have been in excess of amounts authorized by OSU under this Contract.

OSU shall have the right to an independent third-party audit of the Contractor's records associated with or related to the goods or services provided for under this Contract. OSU may request an independent third-party audit no more than one time per calendar year. OSU will determine the time-period that will be the subject of the audit. However, the entire term of the Contract, including the original term and any subsequent renewals or extensions, may be the subject of the independent third-party audit at any time. Contractor shall bear the full cost of such independent third-party audit.

F. GOVERNMENT EMPLOYMENT STATUS.

Contractor certifies that either (a) it is not currently employed by OSU, Oregon University System, or the federal government; or (b) if Contractor is so employed, Contractor has fully disclosed to OSU in writing such employment status, is in full compliance with any statutes, regulation, and OSU, Oregon University System, or the federal government policies regarding employee contracting, and agrees to indemnify and hold harmless OSU for any failure by Contractor to comply with such statutes, regulations, or policies.

G. INDEPENDENT CONTRACTOR STATUS.

The services to be rendered under this Contract are those of an independent contractor. OSU reserves the right (a) to determine and modify the delivery schedule for the services and (b) to evaluate the quality of the services; however, OSU 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 is not an officer, employee or agent of OSU as those terms are used in ORS 30.265. Contractor has no authority to act on behalf of OSU and shall not purport to make any representation, contract, or commitment on behalf of OSU.

H. NOTICE.

- a. A party giving or making any notice, request, demand or other communication (each a "Notice") pursuant to this Contract shall give the Notice in writing and use one of the following methods of delivery: personal delivery, United States Postal Service Registered or Certified Mail (return receipt requested and postage prepaid), overnight courier (with all fees prepaid), facsimile or e-mail to the other party's address as listed on the signature page of this Contract. Notice to OSU is to be delivered to the Contract Administrator and Departmental Administrator except where this Contract expressly directs or permits delivery of Notice to a different Department.
- b. Notice is effective: (i) if given by facsimile, upon receipt by the sending party of an appropriate facsimile confirmation; (ii) if given by e-mail, by confirmation of receipt by return e-mail, which is not satisfied by an automatically-generated message that the recipient is out of the office or otherwise unavailable; or (iii) if given by any other means, when delivered at the address specified in this Section.

OSU Contract Administrator  
OSU PCMM  
ATTN: JD172449P, Contract Administrator  
644 SW 13<sup>th</sup> Street

and: OSU Departmental Administrator  
Brent Klumph  
Forest Manager  
8692 Peavy Arboretum Road

Corvallis, OR 97333  
Telephone: (541) 737-4261  
Fax: (541) 737-2170  
E-mail: [pacs@oregonstate.edu](mailto:pacs@oregonstate.edu)

Corvallis, Oregon 97330  
Telephone: 541-737-6594  
E-mail: [Brent.klumph@oregonstate.edu](mailto:Brent.klumph@oregonstate.edu)

CONTRACTOR Contract Administrator

[Name]  
[Title]  
[Address]  
[City, State, Zip]  
Telephone: [Phone Number]  
Fax: [Fax Number]  
E-mail: [E-Mail Address]

I. OSU NAME AND TRADEMARK.

Contractor shall not identify this Contract, nor use OSU's names, trademarks, service marks, or other proprietary marks in any of Contractor's marketing material, advertising, press releases, publicity matters or other promotional materials without the prior written consent of OSU, which consent may be withheld in OSU's sole discretion.

J. RECYCLABLE PRODUCTS.

Contractors will use recyclable products to the maximum extent economically feasible in the performance of the Contract.

K. SALES AND USE TAXES.

OSU shall pay all applicable sales, excise, or use taxes in connection with this Contract. Invoices shall separately identify all such taxes and shall include either Contractor's sales tax or use tax permit number. Contractor shall be responsible for all other taxes, including taxes based upon Contractor's income. Contractor shall indemnify, defend, and hold harmless OSU from and against any interest, penalties, or other charges resulting from the non-payment or late payment of taxes or other charges for which Contractor failed to invoice OSU or which Contractor otherwise failed to pay in a timely manner.

L. FORCE MAJEURE.

Neither party is responsible for delay caused by an act or event that prevents the party from performing its obligations under this Contract where such cause is beyond the party's reasonable control and the nonperforming party has been unable to avoid or overcome the act or event by the exercise of due diligence. Such acts or events include without limitation fire, riot, acts of nature, terrorist acts, or other acts of political sabotage or war. Contractor shall make all reasonable efforts to remove or eliminate such a cause of delay and shall, upon cessation of the cause, diligently pursue performance of its obligations under this Contract. However, if delay due to a force majeure event continues for an unreasonable time, as determined by OSU, then OSU is entitled to terminate the Contract.

M. MWESB REPORTING LANGUAGE PROVISION.

Upon request by OSU, Contractor is required to provide a report on the dollar volume of products provided under the Contract which are purchased by the Contractor from firms which are defined as follows:

**Disabled Veteran Enterprise** means a business that is at least 51% owned by one or more disabled veterans. A disabled veteran is a veteran of the military, naval, or air service of the United States with a service connected disability who is a resident of the State of Oregon. To qualify as a veteran with a service connected disability, the person must be currently declared by the United States Veterans Administration to be 10% or more disabled as a result of service in the armed forces. The business must be licensed and registered in the state of Oregon.

**Disadvantaged Business Enterprise (DBE)** is a small business with average annual gross receipts less than \$17,420,000. The business must be owned and controlled by one or more socially and economically disadvantaged individual(s). The one or more socially and economically disadvantaged individual(s) must have made a contribution of capital to the business, which is commensurate with their ownership interest.

Socially and economically disadvantaged individual(s) are people who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as members of a group without regard to their individual qualities. The business must be independent. The business must be licensed and registered in the state of Oregon.

**Emerging Small Business**, (defined in ORS 200.005), is a licensed and registered business located in Oregon for which the average annual gross receipts for the three previous tax years do not exceed \$3,266,219 for construction and \$1,088,740 for non-construction businesses. The business must have fewer than 29 employees.

**Minority Business Enterprise**, (defined in ORS 200.005), is a business which is at least 51% owned by one or more minority individuals or, in the case of any publicly owned business, at least 51% of the stock of which is owned by minority individuals. Minority individuals are Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, and Asian-Indian Americans. The business must be licensed and registered in the state of Oregon.

**Women Business Enterprise**, (defined in ORS 200.005), is a business which is at least 51% owned by one or more women. The woman or women must have managerial and operational control over all aspects of the business. The one or more women owner(s) must have made a real and substantial contribution of capital or expertise to the business, which is commensurate with their ownership interest. The business must be licensed and registered in the state of Oregon.

This report shall be in consolidated form showing all such purchases under the Contract. This report will be provided on an annual basis to OSU. This report will provide a cumulative figure that shows year to date amounts for each supplier ownership category.

N. *(OPTIONAL CLAUSE: Include the following only if Contractor agrees in Attachment B - Certifications, Section IV. Permissive Cooperative Procurements.)* **PERMISSIVE COOPERATIVE PROCUREMENTS.**

Contractor agrees to make prices offered under this Contract available to other Oregon public agencies upon the same terms and conditions set forth in this Contract. The prices offered to other public agencies shall be at the same rate as offered to OSU. OSU does not guarantee purchases from any other public agencies. Any purchases pursuant to this Contract by a public agency other than OSU are directly between the Contractor and the public agency and the obligations and rights of OSU under this Contract, except for the Administrative Fee (which shall be paid to OSU and not to the other public agency), are that of the other public agency. Contractor shall provide written notification to OSU when a new public agency begins utilizing this Contract. The total expenditures of other public entities shall be included in the volumes reported to OSU and included in the calculation of the Contract Administrative Fee. Should the total purchases by OSU and other public entities collectively trigger any volume discounts, Contractor shall apply such discounts to fees charged to OSU.

O. **EXECUTION AND COUNTERPARTS.**

This Contract may be executed by facsimile or PDF and in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

P. **SURVIVAL.**

The terms and conditions of this Contract that by their sense and context are intended to survive termination or expiration hereof shall so survive.

Q. **SEVERABILITY.**

If any provision of this Contract is determined to be invalid, illegal or unenforceable, the remaining provisions of this Contract remain in full force and effect if the essential terms and conditions of this Contract for both parties remain valid, legal and enforceable.

R. **MERGER.**

This Contract, including all documents referred to herein and attached hereto, constitutes the entire agreement between the parties and supersedes all prior representations, understanding and agreements between the parties. It is the complete and exclusive expression of the parties' agreement on the matters contained in this

Contract. No amendment, consent, or waiver of terms of this Contract shall bind either party unless it is in writing and signed by authorized representatives of each of the parties. Any such amendment, consent, or waiver is effective only in the specific instance and for the specific purpose given.

**8. CERTIFICATIONS AND SIGNATURES:**

This Contract must be signed in ink by an authorized representative of Contractor. The undersigned certifies under penalty of perjury both individually and on behalf of Contractor that:

- A. The undersigned is a duly authorized representative of Contractor, has been authorized by Contractor to make all representations, attestations, and certifications contained in this Contract and to execute this Contract on behalf of Contractor and that this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms;
- B. Contractor is not a contributing member of the Public Employees’ Retirement System and will be responsible for any federal or state taxes applicable to payment under this Contract. Contractor will not, by virtue of this Contract, be eligible for federal Social Security, employment insurance, workers’ compensation or the Public Employees’ Retirement System, except as a self-employed individual.
- C. Pursuant to OAR 580-061-0030, Contractor has not discriminated against Minority, Women or Emerging Small Business Enterprises in obtaining any required subcontracts;
- D. Pursuant to ORS 305.385(6), Contractor, to the best of the person’s knowledge, is not in violation of any tax laws described in 305.380(4).

Each of the parties has caused its duly authorized representative to execute this Contract on the date set forth in its respective signature block below.

**CONTRACTOR:**

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

**OSU:**

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

**ATTACHMENT A**

(Insert Pricing Sheet)

## ATTACHMENT B

### SEEDLING PLANTING SPECIFICATIONS

#### 1. PLANTING

##### A. PLANTING SPOTS

- A planting spot is defined as a location where a seedling can be planted with reasonable and safe effort and where there is enough soil for the seedling to survive and grow satisfactorily.
- Planting spots shall be selected to take advantage of stumps, logs, dead brush, and terrain features which provide partial protection from sun, wind, animals, loose debris, and other agents detrimental to survival and growth. (See Planting Diagrams and Examples, Attachment C)
- Examples of unacceptable planting areas include, but are not limited to, game trails, mountain beaver holes, cut banks, rock outcroppings, dense slash piles, swampy ground and fills. Extra effort will be necessary to locate suitable planting spots in areas covered by slash or brush.
- No seedlings will be planted within ten (10) feet of a road. Planting diagrams and examples will be provided by the OSU Departmental Administrator upon request.

##### B. SCALPING

- All debris, including compacted slash, duff, ashes, rotten wood, and loose rock must be removed from the planting area for a minimum distance of six inches radius from the planted seedling, provided such material is no more than one foot in depth.

##### C. PLANTING TOOLS

- A planting hoe or shovel is required to plant seedlings. The tool shall be capable of opening a hole of sufficient width and depth to fully accommodate the roots of the seedlings to be planted.
- Contractor will provide a container or planting bag (referred to as planting bag throughout the balance of this Attachment) that is windproof, of a size sufficient to keep the roots and 50% of body of the seedlings out of the sun and wind and free of holes.
- OSU retains the right to require the use of specific planting tools to produce the proper planting of the seedling if problems arise with the tools being used by the contractor.

#### 2. SEEDLING HANDLING SPECIFICATIONS:

- Original seedling containers (bags and/or boxes) will be opened only as needed. Partial containers will be closed securely. All partial containers will be utilized first each planting day.
- All seedlings placed in planting bags must be planted before lunch or breaks are taken and before completing the day's work.
- The volume of seedlings in each planting bag must not cause damage to the root or stem cambial layers of the seedling. OSU has the right to require fewer seedlings per bag if the OSU observes damage occurring.
- Seedlings are fragile. Planting bags will not be thrown or sat upon and will be handled with care.
- Only the seedling to be planted at the spot will be removed from the planting bag, and only after the hole is prepared for it.
- No seedling roots will be pruned in the field. Seedling roots will not be hit on the ground. Seedlings will not be shaken excessively to remove mud or stripped to straighten.



- Contractor will cull obviously diseased or damaged seedlings. Culled seedlings will be given to the OSU Departmental Administrator or authorized representative for inspection.
- When weather is marginal, OSU retains the right to require fewer than the normal number of seedlings be put into the planting bag to reduce exposure.
- In the event that handling specifications are violated, OSU can shut down the planting operation until the Contractor can demonstrate that the handling problems have been corrected.

**3. SEEDLING PLANTING SPECIFICATIONS:**

- Each seedling will be suspended near the center of the hole with the roots in a natural arrangement (i.e., no "J" or "L" roots) and at a depth so that after filling, packing and leveling, the soil comes to a point midway between the root collar and the lower branches or needles. No portion of the roots will be doubled up, twisted, tangled or bunched. No slit planting or palming will be allowed. See Planting Diagrams and Examples, Attachment C for rooting examples.
- Each seedling will stand erect and perpendicular to the horizontal plane, not the slope of the ground. When transplanting seedlings with bent stems, the roots shall be placed vertically, disregarding the stem position.
- Moist mineral soil (No organic matter) will be filled in and firmed around the roots. Care will be taken not to strip the bark from the seedling with the boot or tool when firming the soil. The soil must be smoothed to the level of the surrounding soil surface with no depression. The seedling must be firm enough so that it will not pull loose with a tug strong enough to detach a group of needles.
- Seedlings will **NOT** be planted under the following weather conditions:
  - i. The soil is frozen to a depth of one-half inch or greater.
  - ii. Snow or ice cannot be kept out of the planting hole, or if there is more than one inch of snow on the ground.
  - iii. Air temperature is less than 32 degrees, or greater than 65 degrees or as follows:

Air Temperature (Degrees F)	Relative Humidity (Percent)
35-40	35
41-45	40
46-50	45
51-55	50
56-60	55
61-65	60

- iv. Average wind velocity is greater than 20 mph (disregard if it is raining).
- Planting quality will be deemed unacceptable if the following are found:
  - i. Seedlings are planted under weather conditions as described in the previous paragraph.
  - ii. Seedlings are planted so that there is vertical or horizontal movement without pulling needles free.
  - iii. The stem or roots are not in a vertical position.
  - iv. The root collar is above the ground level of a firmly planted seedling.
  - v. Roots are exposed, in a "J" or "L", twisted, stuffed, stripped, or in other than a near natural position.
  - vi. Bark is scraped off the seedling.
  - vii. Seedlings planted in an unsuitable location.
  - viii. Discarded, dropped, or hidden seedlings.
  - ix. More than one seedling in an acceptable planting spot (too close to a natural or planted seedling, more than one seedling in the same hole.)
  - x. Each seedling above or below the desired species ratio.
  - xi. Improper handling of seedlings resulting in seedling damage.
  - xii. Occurrence of root stripping or root pruning.
  - xiii. Seedling roots are not kept adequately moist in the planting bag.

**4. INSPECTION AND QUALITY SPECIFICATIONS:**

**A. Unit inspections:**

- Each unit will be inspected individually at time of planting
- Inspection plots, as defined in section 4.B., will be utilized to sample all planting and conditions in the unit.
- Inspection will be done jointly by the Contractor and OSU.

**B. Plot inspection:**

- Plots will be variable radius plots based on the desired seedlings per acre (See below). A minimum of two plots per acre will be evaluated. One plot will be a seedling count only plot. This plot will determine the number of well-spaced seedlings. The second plot will be a seedling quality plot. On this plot all planted seedlings will be dug to evaluate the quality of planting and determine the number of well-planted seedlings.

Spacing (Feet)	Plot Radius (Feet)
7 x 7	7.9
8 x 8	9.0
9 x 9	10.2
10 x 10	11.3
11 x 11	12.4
12 x 12	13.5

- The following information will be recorded from each seedling count plot:
  - i. Total number of seedlings planted.
  - ii. Target number of well-spaced planted seedlings for that plot based on spacing specifications, plantable spots, and existing naturals.
  - iii. Actual number of well-spaced planted seedlings that meet spacing requirements.
  - iv. Number of natural seedlings present.
- The following information will be recorded from each seedling quality plot:
  - i. All count plot information
  - ii. Number of planted seedlings that meet all applicable above and below ground quality specifications.
  - iii. Reasons for each seedling that receives an unsatisfactory rating.

**C. Quality Specifications:**

- A 10% overrun and 5% under-run in the number of planted and natural seedlings is allowed for the selection of the best planting spots.
- A distribution percentage will be determined in the following manner:

$$\% \text{ Distribution} = \frac{\text{Actual number of planted and/or natural seedlings} \times 100}{\text{Target well-spaced planted seedlings}}$$

For example, on 10 plots the desired number of seedlings will be 40. Minus 5% of the seedlings will be 38, and plus 10 percent of the seedlings will be 44. Every seedling over 44 or under 38 will be an unacceptable seedling.

- A quality percentage will be determined in the following manner:

$$\% \text{ Quality} = \frac{\text{Satisfactorily planted seedlings} - \text{number of seedlings under or over the distribution} \times 100}{\text{Satisfactory} + \text{unsatisfactory}}$$

- **Seedling planting quality must be 90% or higher or planting will stop.**

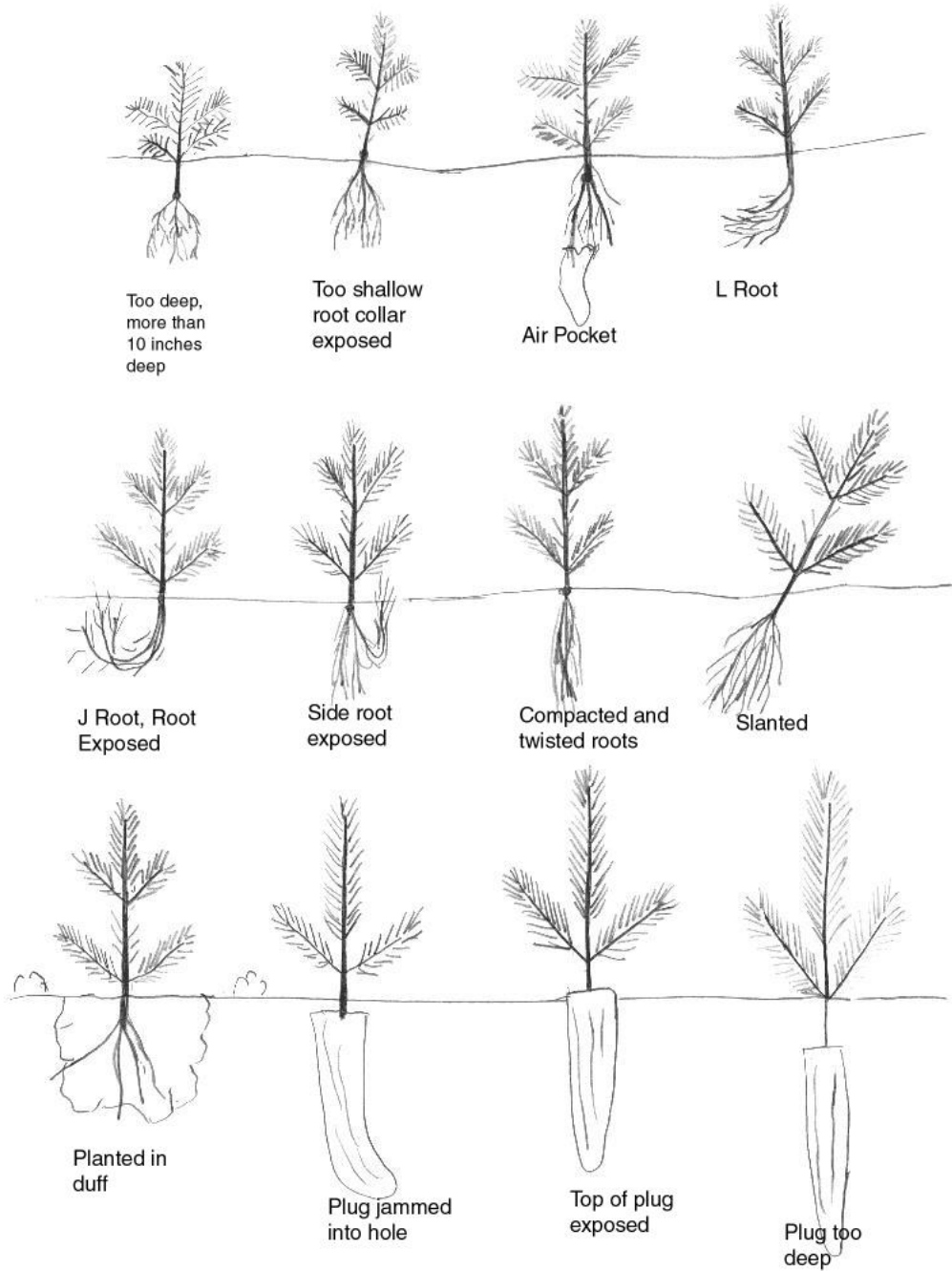
## 5. PLANTING CORRECTIVE ACTIONS:

### A. Procedure in unsatisfactory planting occurs:

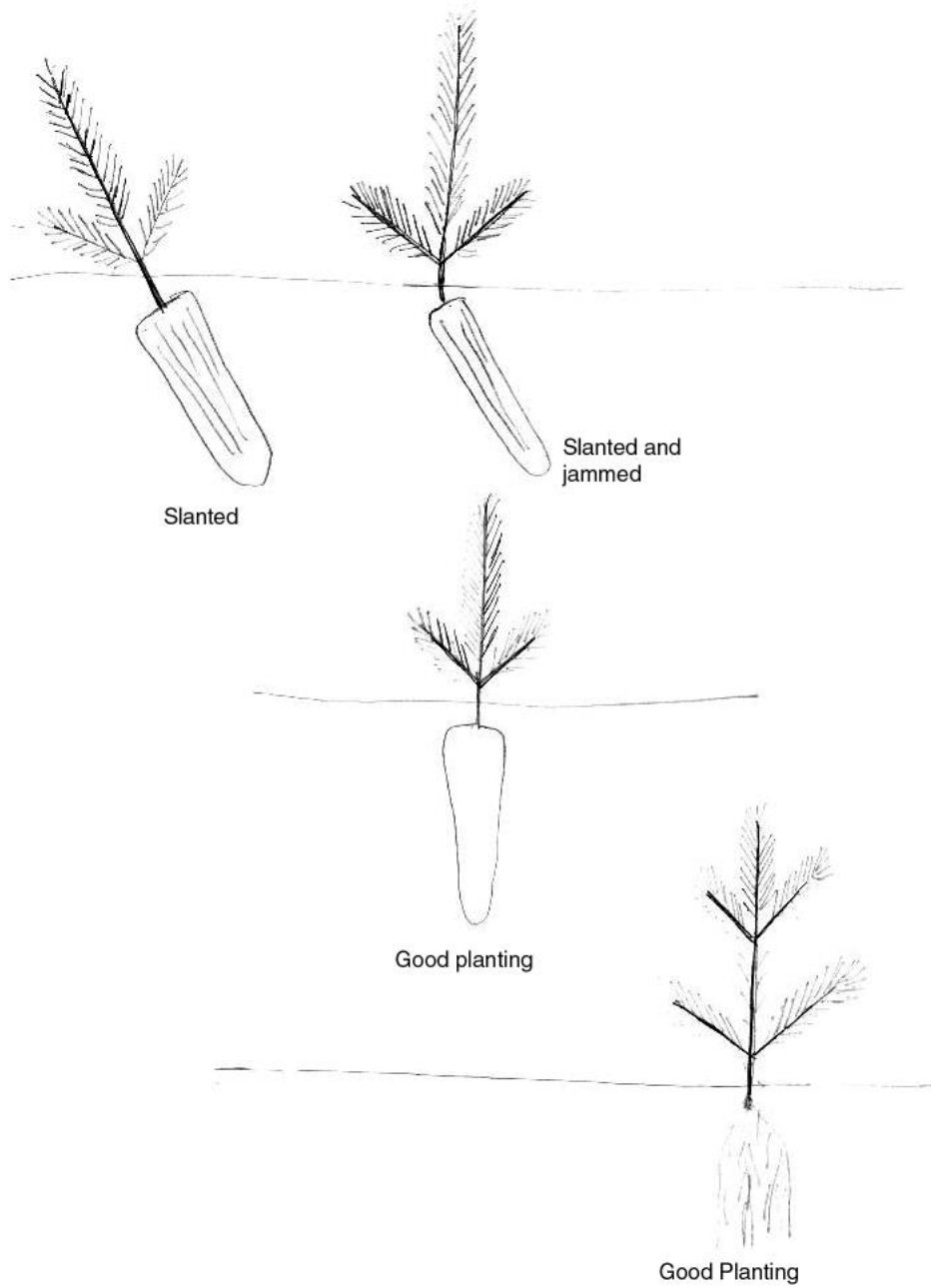
- **Distribution**
  - i. If the percentage of distribution is found to be below 90 percent at any time, OSU will immediately notify the Contractor.
  - ii. Contractor shall replant any area which has a less than 90 percent distribution. Supplemental seedlings will be evenly distributed as far from previously planted seedlings as possible.
  - iii. No payment for the unit will occur until the corrections are complete and verified with a re-inspection.
  - iv. Failure to raise subsequent plot inspections of current plantings or new plantings to 90 percent or greater may constitute a default under this contract
  
- **Quality**
  - i. If the percentage of quality is found to be below 90 percent at any time, OSU will immediately notify the Contractor.
  - ii. Payment will be based on planting quality, by unit.
    - a. 95-100% quality=100% payment; 90-94% quality = a 2% decrease in payment, per each 1% decrease in planting quality down to 90%.
    - b. If planting quality drops below 90 percent, planting will stop.**
    - c. Percent rating is done on a per unit basis. For example if Unit 1 planting quality is 96%, payment is 100%. If Unit 2 planting quality is 93%, payment is 96%.
  - iii. If OSU requires a replant due to poor quality, the contractor will assume all costs.
  - iv. Failure to raise subsequent planting to 90 percent or greater may constitute a default under this agreement.

Attachment C

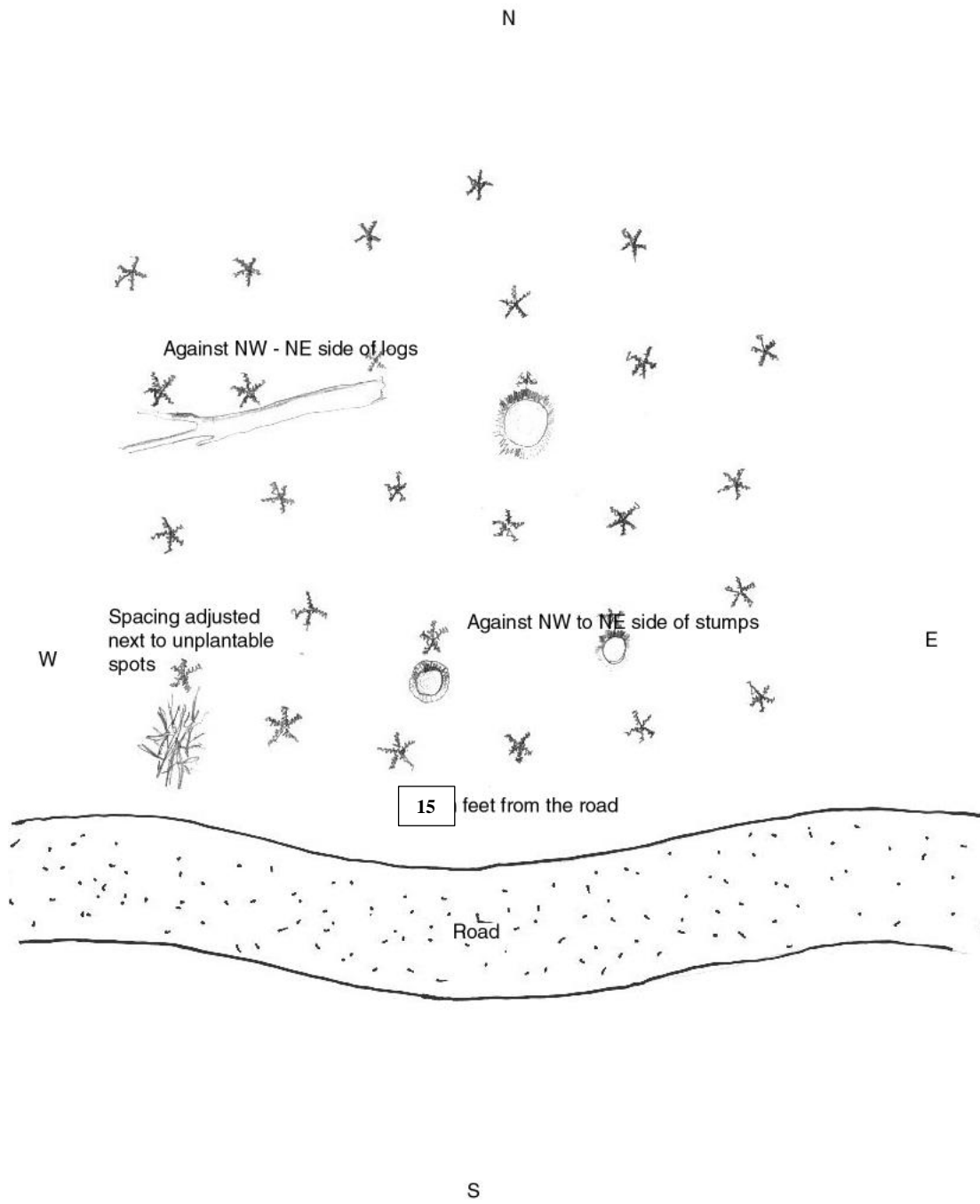
Planting Examples



Planting examples continued



Spacing Examples



**EXHIBIT B  
CERTIFICATIONS**

By signature on this certification the undersigned certifies that they are authorized to act on behalf of the Proposer and that under penalty of perjury the undersigned will comply with the following:

**SECTION I. OREGON TAX LAWS**

The undersigned hereby certifies under penalty of perjury that the Proposer, to the best of the undersigned's knowledge, is not in violation of any tax laws described in ORS 305.380(4).

**SECTION II. AFFIRMATIVE ACTION**

The undersigned hereby certifies that they have not discriminated against Minority, Women or Emerging Small Business Enterprises in obtaining any required subcontracts, pursuant to OAR 580-061-0030 (3).

**SECTION III. COMPLIANCE WITH SOLICITATION**

The undersigned agrees and certifies that they:

1. Have read, fully understands and agrees to be bound by the Request for Proposal and all Exhibits and Addenda to the Request for Proposal; and
2. Are an authorized representative of the Proposer, that the information provided is true and accurate, and that providing incorrect or incomplete information may be cause for rejection of the Proposal or Contract termination; and
3. Will furnish the designated item(s) and/or service(s) in accordance with the Request for Proposal and the Contract; and
4. Has provided a correct Federal Employer Identification Number or Social Security Number with the Proposal.

**SECTION IV. PERMISSIVE COOPERATIVE PROCUREMENTS**

If Proposer is awarded a contract from this Request for Proposal, Proposer hereby (check one)

- agrees
- disagrees

to offer the resulting contractual terms and prices to other Oregon public institutions.

Authorized Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Name (Type or Print): \_\_\_\_\_ Telephone: (\_\_\_\_) \_\_\_\_\_

Title: \_\_\_\_\_ Fax: (\_\_\_\_) \_\_\_\_\_

FEIN ID# or SSN# (required): \_\_\_\_\_ Email: \_\_\_\_\_

Company: \_\_\_\_\_

Address, City, State, Zip: \_\_\_\_\_

Construction Contractors Board (CCB) License Number (if applicable): \_\_\_\_\_

Business Designation (check one):

- Corporation
- Partnership
- LLC
- Sole Proprietorship
- Non-Profit

**EXHIBIT C  
REFERENCES**

**REFERENCE 1**

COMPANY: \_\_\_\_\_ CONTACT NAME: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_ PHONE NUMBER: \_\_\_\_\_  
CITY, STATE ZIP: \_\_\_\_\_ FAX NUMBER: \_\_\_\_\_  
WEBSITE: \_\_\_\_\_ E-MAIL: \_\_\_\_\_  
GOODS OR SERVICES PROVIDED: \_\_\_\_\_

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**REFERENCE 2**

COMPANY: \_\_\_\_\_ CONTACT NAME: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_ PHONE NUMBER: \_\_\_\_\_  
CITY, STATE ZIP: \_\_\_\_\_ FAX NUMBER: \_\_\_\_\_  
WEBSITE: \_\_\_\_\_ E-MAIL: \_\_\_\_\_  
GOODS OR SERVICES PROVIDED: \_\_\_\_\_

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**REFERENCE 3**

COMPANY: \_\_\_\_\_ CONTACT NAME: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_ PHONE NUMBER: \_\_\_\_\_  
CITY, STATE ZIP: \_\_\_\_\_ FAX NUMBER: \_\_\_\_\_  
WEBSITE: \_\_\_\_\_ E-MAIL: \_\_\_\_\_  
GOODS OR SERVICES PROVIDED: \_\_\_\_\_

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**EXHIBIT D  
PRICING SHEET**

2015 Planting Pricing			
Tract	Unit	Acres	Price/1000
Units Planted on a 10 X 10 spacing			
McDonald-Dunn	Bean	24	\$ _____
McDonald-Dunn	Koller 14	6	\$ _____
McDonald-Dunn	*Rehab 2013	26	\$ _____
McDonald-Dunn	*Bolt	74	\$ _____
McDonald-Dunn	*Tween	5	\$ _____
McDonald-Dunn	*Koller 13	14	\$ _____
McDonald-Dunn	*Ag 2012	63	\$ _____

\* Indicates interplanting units.

\*Contracted Seedling Producers for planting year:  
2015 IFA Nursery, Elkton, OR

2015 Chemical Application Pricing		
County	Ground Herbicide Application Per/Acre	Aerial Herbicide Application Per/Acre
Benton	\$ _____	\$ _____
Columbia	\$ _____	\$ _____
Clackamas	\$ _____	\$ _____
Polk	\$ _____	\$ _____
Washington	\$ _____	\$ _____

\*Chemical bids will include application fee only and will not include chemical fee. Additional chemical costs will be negotiated with OSU once a prescription has been determined.