



PROJECT TERMS & CONDITIONS

NOW THEREFORE both parties bind themselves and agree as follows:

1. PAYMENT & FEES

1.1 ESTIMATE: CLIENT acknowledges that the work is being performed subject to an Estimate provided by LANDSCAPER, which is neither a fixed bid nor a guaranteed maximum price, and that the actual cost to the CLIENT for the Work may differ from the Estimate.

1.2 DEPOSIT & PAYMENT THROUGH PROJECT: Fifty (50%) deposit due to LANDSCAPER before work will commence. Monthly invoices will be provided to CLIENT until project completion. Payment is due fifteen (15) days from invoice date. If full payment is not received, work on the project will cease and final payment terms will be placed in effect (see section 2).

2. FINAL PAYMENT

Final Payment will be due and demandable fifteen (15) days after the completion of the project and receipt of final invoice. If full payment is not received, a twenty-four percent (24%) per annum charge will be added to the outstanding balance. If full payment is not received thirty (30) days after project completion a lien will be placed against CLIENT's property and necessary legal action will be taken at CLIENT's expense to recover payment, interest and attorney's fees.

3. COPYRIGHT

Copyright for the Drawings and Specifications provided by the LANDSCAPER belong to the LANDSCAPER and shall not be used on any other project. The CLIENT may retain copies of the Drawings and Specifications for information and reference, provided LANDSCAPER has been paid in full for services rendered under this Agreement.

4. PROPERTY LINES & UTILITIES

Prior to the commencement of the Work the CLIENT will provide LANDSCAPER with information as to the location of property lines and all subsurface utility and service lines, including but not limited to electrical, telephone and gas lines and water and irrigation pipe-lines and conduits. LANDSCAPER may rely on the accuracy and completeness of all such information and shall not be liable for damages or costs resulting from any errors or omissions in that regard. Unless otherwise provided for herein, the CLIENT will be responsible for obtaining any municipal building permits required in relation to the performance of the Work.

5. BUILDING MATERIALS

Unless otherwise specified, all building materials provided shall be new. LANDSCAPER shall have total control of the Work and shall be solely responsible for the construction means, methods, techniques, sequences, and procedures. LANDSCAPER shall comply with all laws, rules, regulations and building and fire codes which relate to the Work including applicable health and safety legislation and shall obtain any permits or licenses necessary for its performance as at the date hereof. LANDSCAPER will also be responsible for and shall restore at its expense all damage to the property of the CLIENT caused by LANDSCAPER in the performance of the Work. LANDSCAPER agrees to remove all debris and leave the premises in clean condition.

6. SCHEDULE OF WORK

LANDSCAPER shall submit an estimated schedule of work to the CLIENT prior to the commencement of work. If LANDSCAPER is delayed in the performance of the Work by an action or omission of the CLIENT or by circumstances beyond the control of LANDSCAPER, then the schedule shall be extended for such reasonable period as is required to accommodate for the delay.

7. CONCEALED PHYSICAL CONDITIONS

If subsurface or otherwise concealed physical conditions at the Premises differ materially from those indicated in this Agreement or from those ordinarily found to exist in the vicinity of the Premises, including subsurface utilities, boulders, tree stumps or construction debris, then the Contract Price will be adjusted to account for any changes required to this Agreement or in the materials or method of work required to carry out the Work.

8. LANDSCAPER COMPLIANCE

Should LANDSCAPER fail to comply with the requirements of the Agreement to a substantial degree, the CLIENT may notify LANDSCAPER in writing that LANDSCAPER is in default of its contractual obligations and instruct LANDSCAPER to correct the default within five (5) business days. If LANDSCAPER fails to correct the default in the time specified or subsequently agreed upon, the CLIENT may correct the default and deduct the cost thereof from any payment due to LANDSCAPER or terminate the Agreement. If the CLIENT so terminates the Agreement, LANDSCAPER shall be entitled to be paid for the value of all Work performed to the date of the termination.

9. LIABILITY INSURANCE

LANDSCAPER shall maintain at its own expense Comprehensive General Liability Insurance in the minimum amount of \$1,000,000 per occurrence for bodily injury, death and property damage and Automobile insurance with respect to all licensed vehicles owned or leased by LANDSCAPER and used by LANDSCAPER in the performance of the Work. Evidence of this insurance shall be provided to the CLIENT upon the request.

10. CHANGES IN THE WORK

Changes in the Work must be requested by the CLIENT in writing. The price for a change in the Work must also be agreed to in writing. If the CLIENT and LANDSCAPER cannot agree to a price for the change in the Work the parties may agree in writing that the proposed change in the Work be performed on a time and materials basis where all required labor will be charged per the attached *RATE SHEET* and all materials will be charged at cost plus twenty percent (20%).

11. PAYMENT FOR CHANGE(S) WORK

Payment for change/s in the Work will be invoiced every two weeks during the project or will be added to the final project invoice. If because of climatic or other conditions reasonably beyond the control of LANDSCAPER the Work cannot be completed, payment in full for that portion of the Work which has been performed shall be made by the CLIENT and the CLIENT may withhold, until the remaining portion of the Work is completed such an amount sufficient and reasonable to cover the cost of performing such remaining work.

12. PAYMENT METHOD

All of the prices quoted are based on cash payments.

12.1 Payment by Credit Card will be subject to a service charge of four percent (4%) per the amount of transaction.

13. CLIENT'S INSOLVENCY

Should the CLIENT be insolvent, be adjudged bankrupt or default in any payment described in Articles 1, 2 or 11, above, LANDSCAPER may give notice of said default to the CLIENT and should said default remain uncorrected for a period of five (5) days thereafter LANDSCAPER without further notice to the CLIENT may stop performance of the Work or terminate this Agreement such that LANDSCAPER'S obligations hereunder will be suspended or terminated without limitation, the CLIENT will have the sole responsibility to monitor and manage the safety and condition of the Premises and LANDSCAPER shall be entitled to be paid for the value of all Work performed to the date of the termination.

14. WARRANTIES

14.1 LANDSCAPER warrants the Work against defects in workmanship and materials for a period of one (1) year for all Softscape and Hardscape installations, plant material and trees are warranted from defect for a period of (1) year.

14.2 The warranty takes effect from the date LANDSCAPER submits the invoice for final payment, provided the CLIENT has paid LANDSCAPER in full for all Work performed under this Agreement and subject to the following.

14.3 The warranty does not apply if the CLIENT is in default of this Agreement or to the effects of normal corrosion, erosion or wear and tear or against damage or deficiencies caused by the faulty operations or maintenance of the CLIENT, including the failure to properly maintain water or protect planting material. Warranty does not apply to plants that have been damaged or eaten by wildlife.

14.4 The warranty of plant material is limited to a one-time (1) replacement per item within the warranty period and will not apply if salt or calcium chloride is used by the CLIENT on the premises.

14.5 The warranty of plant material also does not apply to roses, annuals or bulbs.

14.6 The warranty for all low voltage bulbs endures a period of ninety (90) days.

14.7 Upon the CLIENT providing LANDSCAPER with notice of a proper warranty claim under this Agreement, LANDSCAPER will have thirty (30) days to respond to the warranty, or such other reasonable period of time as is required for the circumstances.

15. ACCESS FOR PROMOTION

LANDSCAPER shall have the right to access the site for the purposes of taking photographs in relation to the Work both prior to during and after completion of the Work and shall have and retain all copyright in said photographs which may be used in LANDSCAPER'S references and promotional materials, portfolios and/or publications.

LANDSCAPER warrants that photographs will be used solely for the purpose of reference and promotional materials, portfolios and/or publications as described in this section 15 and not for any other use or distribution.

16. This Agreement constitutes the whole of the agreement between the parties and supersedes all prior negotiations, representations or agreements. Neither party shall assign any part of this Agreement without the written consent of the other. No act or failure to act shall constitute a waiver of any right or duty under this Agreement nor constitute an approval of or acquiescence in any breach of this Agreement unless expressly agreed to in writing by the Parties.

17. UNLAWFUL ACTIVITIES

The LANDSCAPER will comply with all the laws of the United States of America and the State of Idaho, all municipal ordinances and all lawful orders of police and fire departments, and will not do anything on the premises in violation of any laws, ordinances, rules or orders. If any unlawful activities by the CLIENT should occur on the premises, and the Work is cancelled, there will be no refund of any kind from LANDSCAPER to CLIENT.

18. AMENDMENT AND SUPPLEMENT

Any amendment and supplement to this Agreement shall come into force only after a written agreement is signed by both parties prior to the start of Work. The amendment and supplement duly executed by both parties shall be part of this Agreement and shall have the same legal effect as this Agreement.

19. TERMINATION

19.1 This Agreement may be terminated by CLIENT only if LANDSCAPER fails to substantially complete the Work consistent with the terms of this Agreement or otherwise materially breaches the terms of This Agreement, and further fails to correct or cure any alleged material defects, deficiencies or breaches within thirty (30) days after LANDSCAPER'S receipt of written notice from CLIENT specifying the alleged breaches, defects or deficiencies. If the defect, deficiency or breach cannot be cured within thirty (30) days, LANDSCAPER shall commence to cure the same within said thirty (30) day period, and shall proceed diligently until such cure is completed. If LANDSCAPER fails to correct or cure as aforesaid, CLIENT shall provide LANDSCAPER with a final notice of termination; and, CLIENT shall pay LANDSCAPER for the portion of the Work which has been completed by LANDSCAPER in substantial conformity with the terms of this Agreement through the date of termination, less payments previously received by LANDSCAPER.

19.2 Such final payment shall be made to LANDSCAPER within ten (10) days after LANDSCAPER'S submittal to Owner of a final billing, itemizing the labor and materials for which payment is owed by CLIENT.

19.3 This Agreement may be terminated by LANDSCAPER only if CLIENT materially breaches the terms of this Agreement and fails to cure said material breach within ten (10) days after CLIENT'S receipt of written notice from LANDSCAPER specifying the nature of the breach. In such case LANDSCAPER shall be entitled to terminate the Work and shall be entitled to final payment from CLIENT within ten (10) days of billing for the portion of the Work which has been completed by LANDSCAPER in substantial conformity with the terms of this Agreement through the date of termination, less payments previously received by LANDSCAPER, plus all other damages proximately resulting from CLIENT'S breach. The termination remedies specified herein shall be non-exclusive of any other remedies available to either party for the other's breach.

20. OTHER TERMS:

20.1 This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Idaho. Venue for any action filed regarding this Agreement shall be in Valley County, Idaho.

20.2 In the event that any action is filed or pursued in relation to or stemming from this Agreement, or the Work, the prevailing party in the action shall be entitled to recover its attorney's fees and costs incurred, including fees incurred on appeal "Action" for purposes of this section shall include arbitration between the parties.

20.3 This Agreement shall constitute the entire agreement between the parties and any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding upon either party except to the extent incorporated in this Agreement.

20.4 Any modification of this Agreement or additional obligation assumed by either party in connection with this Agreement shall be binding only if evidenced, in writing, signed by each party or an authorized representative of each party.

20.5 Any notice provided for or concerning this Agreement or the Work shall be in writing and be deemed sufficiently given when sent by certified or registered mail if sent to the respective address of each party as set forth at the beginning of this Agreement, or at such address as either party shall subsequently supply to the other in writing.

20.6 The terms of This Agreement shall be binding and shall inure to the benefit of the parties hereto, together with their heirs, personal representatives and successors-in-interest.

20.7 In the event that CLIENT is a corporation, partnership or limited liability company, the following person(s) shall have authority to act on behalf of such entity and shall guaranty all payments which are due and owing to LANDSCAPER under the terms of this Agreement:

20.8 In the event that CLIENT is a husband and wife, then either shall have authority to act on behalf and to bind the other.