

Date: May 26, 2010



**City of Portland, Oregon**

**RFP No. 111471**

**REQUEST FOR PROPOSALS (RFP)  
for**

**RAIN GARDEN CONSTRUCTION ON-CALL SERVICES**

**PROPOSALS DUE: June 23, 2010 by 4:00 p.m.**

**Submit one (1) original and seven (7) complete copies of the Proposal to:**

Denice Henshaw, CPPB  
Procurement Services  
1120 SW Fifth Avenue, Room 750  
Portland, Oregon 97204  
denice.henshaw@portlandoregon.gov

**Refer questions to:**

Denice Henshaw, CPPB  
Senior Procurement Specialist  
Procurement Services  
Phone: (503)823-2299  
Fax: (503)865-2299  
Email: denice.henshaw@portlandoregon.gov

## PROPOSAL TERMS AND CONDITIONS

**CERTIFICATION AS AN EEO AFFIRMATIVE ACTION EMPLOYER** - All respondents must be certified as Equal Employment Opportunity Affirmative Action Employers as prescribed by Chapter 3.100 of the Code of the City of Portland. The required documentation must be filed with Procurement Services, City of Portland, prior to contract execution.

**CITY SUSTAINABILITY OBJECTIVES** - The City has a history of striving to be more sustainable in its operations and planning. Starting with the City's Sustainable City Principles (1994) the City has established a variety of policies to guide its work on sustainability, including: the Sustainable Procurement Policy, Green Building Policy, Local Action Plan on Global Warming, and the Stormwater Management Manual (to view these and related City policies, go to the Portland Policy Documents Website: <http://www.portlandonline.com/auditor/index.cfm?c=26818>). As applicable to City procurement, these policies guide the City to buy products and services that reduce the City's negative environmental and social impacts. While specific goals vary, the City's sustainability objectives tend to focus on: reducing energy use; reducing air, water, and land pollution; building and maintaining high-performance green buildings; reducing the use of materials toxic to the environment and human health; utilizing resources efficiently, including the use of renewable, reusable and recycled materials; utilizing minority-owned, small, and/or local businesses; preserving or enhancing biodiversity; and maintaining fiscal health in the short and long term. As such, the City seeks to do business with firms that will actively contribute to the City's sustainability objectives.

**BUSINESS COMPLIANCE** - Prior to execution of the contract, the Contractor shall provide City of Portland business license number, or shall provide proof of exemption from said license, as issued by the City of Portland Bureau of Revenue. Failure to do so within twenty (20) days after the respondent receives the tender of contract may result in withdrawal of the contract award. Information related to obtaining a business license may be found on the following website:

<http://www.pdxbl.org/BizInfo/blfaq.html#licenses>.

**ADDENDA** - If, in the opinion of the Chief Procurement Officer, additional information or interpretation is needed by the bidders, an addendum will be issued. Any addendum or addenda issued by the Chief Procurement Officer, that may include changes, corrections, additions, interpretations, clarifications, or information, and issued seventy-two (72) hours or more before the scheduled closing time for filing bids, Saturday, Sunday, and legal holidays not included, shall be binding upon the bidder. City shall supply copies of such addenda to all respondents who have obtained copies and are on the plan holder list of the RFP documents for the purpose of responding thereon, but failure of the respondent to receive or obtain such addenda shall not excuse the respondent from compliance therewith if awarded the contract.

**COST OF RESPONDING** - This Request for Proposal does not commit the City to pay any costs incurred by any respondent in the submission of a response, or in making necessary studies or designs for the preparation thereof, or for procuring or contracting for the items to be furnished under the RFP.

**LATE PROPOSALS** - Proposal responses received after the scheduled closing time for filing will be returned to the respondent unopened. Due to heightened security measures in the Portland Building, respondents should allow extra time when delivering bids to Procurement Services. It is the responsibility of the proposer to ensure their proposal is submitted in the proper form and in accordance with the time, date, and location specified in the RFP.

**CANCELLATION** - The City of Portland reserves the right to modify, revise, or cancel this RFP. Receipt and evaluation of proposals or the completion of interviews does not obligate the City to award a contract.

**REJECTION OF PROPOSALS** - The City reserves the right to reject any or all responses to the Request for Proposal if found in the City's best interest to do so.

**GOVERNING LAW** - The provisions of any contract shall be construed in accordance with the provisions of the laws of the State of Oregon without reference to its conflict of law provisions. Any action or suits involving any question arising under this contract must be brought in the appropriate court in Multnomah County Oregon. All statutory, charter and ordinance provisions that are applicable to public contracts in the City of Portland and the State of Oregon shall be followed with respect to this contract. In connection with its activities under this Contract, Contractor shall comply with all applicable federal, state and local laws and regulations including the City's Equal Benefits Ordinance and its administrative rules, all of which are incorporated by this reference. These requirements may be found on the City of Portland's Procurement Services website:

<http://www.portlandonline.com/omf/index.cfm?c=27353&>.

Failure to comply with the Ordinance permits the City to impose sanctions or require remedial actions as stated in Section 13.1 of the rules. All statutory, charter and ordinance provisions applicable to public contracts in the City of Portland and the State of Oregon shall be followed with respect to this Contract. The following additional conditions apply to this solicitation and any resultant purchase order or contract: Appendix A as attached hereto.

**AMERICANS WITH DISABILITIES ACT COMPLIANCE** - Respondents agree that if awarded a contract, the successful Contractor will comply with all applicable provisions of the Americans with Disabilities Act of 1990, 42 USC Section 12101 et seq. If any respondent requires special assistance or auxiliary aids during the proposal, evaluation or award process, please notify Procurement Services, (503) 823-6855, or TDD (503) 823-6868, at least two (2) business days prior to the required assistance.

**SPECIAL CONDITIONS** - Where special conditions are written in the Request for Proposal, these special conditions shall take precedence over any conditions listed under these Proposal Terms and Conditions.

**PUBLIC RECORDS** - All information submitted by Offerors shall be public record and subject to disclosure pursuant to the Oregon Public Records Act (ORS 192.410 et seq.), except such portions of the proposals for which Offeror requests exception from disclosure consistent with Oregon or federal Law. Any portion of a proposal that the proposer admits constitutes a "trade secret" or is "confidential" must meet the requirements of ORS 192.501, ORS 192.502, ORS 646.461 or applicable federal law. If the entire proposal is marked as constituting a "trade secret" or being "confidential," at the City's sole discretion, such a proposal may be rejected as non-responsive.

If a request to inspect the proposal is made, the City will notify the Offeror of the request. If the City refuses to release the records, the Offeror agrees to provide information sufficient to sustain its position to the District Attorney of Multnomah County, who currently considers such appeals. If the District Attorney orders that the record be disclosed, the City will notify the Offeror in order for the Offeror to take all appropriate legal action. The Offeror further agrees to hold harmless, defend, and indemnify the City for all costs, expenses, and attorney fees that may be imposed on the City as a result of appealing any decision regarding the Offeror's records.

**ORAL INSTRUCTIONS** - Oral instructions or information concerning the RFP documents or the project given out by officers, employees, or agents of the City to prospective bidders shall not bind the City. Any changes or revisions to the specifications shall be binding only if issued in writing by the City by addendum. The City reserves the right to officially amend or cancel an RFP after issuance.

**TAXES** - Taxes, whether State or Federal, shall not be included in the offered prices. A tax exemption certificate will be provided by the City upon request.

# PART I

## PROPOSAL REQUIREMENTS

### SECTION A GENERAL INFORMATION

**1. BACKGROUND:** The Tabor to the River (T2R) Program is being implemented by the City of Portland Bureau of Environmental Services. The T2R Program is working to achieve multiple objectives such as reducing sewer back-ups, addressing pipe rehabilitation needs, improving watershed health (hydrology, water quality, habitat, stewardship) and assisting in controlling combined sewer overflows to the Willamette River. Removal of stormwater runoff from the public sewer system is a key element of the T2R Program. To achieve this, the City will partner with property owners to implement private stormwater facilities in those portions of the basin with the greatest sewer capacity problems. Through this program, the City will contract the construction of residential-scale rain garden facilities on private property.

**2. SCOPE OF WORK:** The City of Portland, Procurement Services is seeking proposals, on behalf of the Bureau of Environmental Services (BES), from qualified firms or contractors with demonstrated experience in the implementation of rain gardens.

The work to be performed by the selected contractor(s) will be the construction of rain gardens following design standards and direction provided by the City and the private property owner.

The selected contractor(s) will be expected to perform tasks associated with the following elements of rain garden construction as directed by the City:

- Review project designs and site conditions provided by the City
- Coordinate construction considerations such as scheduling, access, site protection, and aesthetics with both the City and the private property owner
- Coordinate and execute all elements of physical rain garden construction including labor, procurement of materials and equipment, soil excavation and disposal, plant installation, rain drain installation, modification or installation of gutters and downspouts, site clean-up, and other duties assigned by the City. The City may provide materials or assume responsibility for some project elements at the City's discretion.

The selected contractor(s) shall provide, at his/her own risk and cost, all labor, tools, equipment, transportation, and other items needed to perform these tasks as further described in TECHNICAL OR REQUIRED SERVICES.

The City of Portland, Bureau of Environmental Services, intends to contract with one or more qualified firms or teams with a proven track record of constructing rain gardens. There will be a maximum of two (2) contracts awarded. The successful proposer(s) will be expected to enter into a not-to-exceed Services Contract with the City (reference Exhibit A).

**3. PROPOSAL INVITATION:** This document constitutes an invitation for sealed competitive proposals under Portland City Code Chapter 5.33. This RFP is for the City of Portland, Procurement Services as directed by the Bureau of Environmental Services as identified herein in accordance with the requirements and provisions herein.

### SECTION B WORK REQUIREMENTS

**1. TECHNICAL OR REQUIRED SERVICES:** The selected contractor(s) will perform the construction of rain gardens following design standards and direction provided by the City and the private property owner. The selected contractor(s) shall be expected to work closely with designated City of Portland bureau personnel to accomplish the goals and perform the tasks. The selected contractor(s) will be required to provide the following skills:

**Administration:**

- Demonstrate effective project management techniques to execute tasks below according to the following project process:
  - Contractor will review project designs provided by the City
  - Contractor will produce a project cost and schedule estimate to City
  - City will issue a task order to contractor authorizing project construction at that cost and schedule
  - Contractor will execute project as detailed in Construction section below with City oversight and inspection; all changes to approved designs, cost, and schedule must be pre-authorized through a change order approved by the City
  - Contractor will submit invoice to City following final City approval of project construction detailing rates and quantities for project labor, materials, and fees incurred and all applicable receipts; City will issue payment 1 month following date of invoice.

**Site Assessment and Design:**

- Possess technical expertise related to site assessment, stormwater drainage, and rain garden design specifications (as detailed in the Rain Garden Program Guide located in Attachments to this document)
- Review and interpret project designs and site conditions as directed by the City

**Construction:**

- **Labor** tasks for which the contractor may be required to manage and procure per City direction may include but are not limited to:
  - Excavation of existing materials such as vegetation, sod, concrete, and soil to create rain garden basins, generally less than 10 cubic yards
  - Installation of ABS or cast iron rain drains conveying stormwater from downspout standpipes to rain garden basins
  - Finish grading and amendment of native soil with compost, generally 1 to 4 cubic yards
  - Installation of rock ranging from gravel to small boulders, generally 1 to 4 cubic yards
  - Installation of plants ranging from plug to 5-gallon size
  - Site protection tasks as necessary for existing features such as utilities, structures, and existing vegetation
  - Erosion and Sediment control measures as necessary
  - Purchasing and hauling of construction materials and equipment
  - Hauling and disposal of excavated material, generally less than 10 yards
- **Materials** for which the contractor may be required to manage and procure per project designs and City direction may include but are not limited to:
  - Compost, generally 1 to 4 cubic yards
  - Round gravel and cobbles, and small boulders, generally 1 to 4 cubic yards
  - 3" or 4" ABS or cast iron pipe and fittings for rain drains
  - Plants ranging from plug to 5-gallon size
- **Equipment and fees** for which the contractor may be required to manage and procure per City direction may include but are not limited to:
  - Excavation machinery such as mini-excavators, concrete saw, and sod cutters
  - Disposal fees for excavated material, generally less than 10 cubic yards
  - Hand tools such as shovels, rakes, buckets, pick axes, levels, tape measures, brooms, hoses, wheelbarrows
  - Site protection and erosion control equipment such as tarps and filter bags
  - Vehicles and trailers capable of hauling necessary materials and equipment

**Customer Services:**

- Demonstrate timely and effective communication and documentation skills
- Begin and complete project as scheduled and complete project as quickly as possible (generally expected to be 2 – 7 days, weather dependent). The contractor may be terminated for default if satisfactory progress is not attained within three (3) working days after receipt of a notice of deficient

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- performance.
- Demonstrate effective cost management techniques and systems to reduce City costs and ensure project stays within budget
  - The Contractor shall inspect work and record results to assure that it meets the specifications and standards of this contract and the City's design standards. The contractor will be required to coordinate with City for inspection and approval of project tasks as directed by the City.
  - Minimize disruption to private property and owners as well as the adjacent public right-of-way, neighbors, and the general public.
  - Demonstrate respectfulness for the project site and in interactions with property owners, residents, and the public.
  - Provide design and project coordination input as requested
  - Coordinate construction considerations such as scheduling, access, site protection, and aesthetics effectively with both City and the private property owner
  - Inspect work and record results to assure that it meets the specification and standards of this contract and the City's design standards.
  - Provide all necessary measures to ensure no sediment is delivered to any public or private systems during construction or as a result of the final project conditions. Erosion Control and Site Clean-Up may include, but are not limited to the following:
    - Temporary and permanent sediment control measures to prevent sediment from leaving construction area and property
    - Gravel or wood ramp construction access entrances
    - Pollution prevention activities during construction
    - Soil stabilization, including exposed piles of soil or construction materials
    - Soil disposal, either by onsite re-use in construction or offsite as directed
    - Preventing sediment from reaching storm drain and sewer systems
  - Coordinate with the City for inspection and approval of each project task as directed by the City. Inspection stages include, but may not be limited to excavation and grading, plumbing and rain drains, plant purchase, plant installation, and final inspection.

**2. WORK PERFORMED BY THE CITY:** Bureau staff shall make available sufficient hours of staff personnel as is required to meet with the contractor and provide such information as required. For each project executed under this contract, the City of Portland Bureau of Environmental Services will assign a Project Manager who will oversee the work and provide support as needed. The Project Manager will serve as the contractor's point-of-contact for coordination of all tasks associated with the execution of this contract. Responsibilities currently expected to be assumed by the Project Manager include:

- Outreach coordination with property owners to establish project authorization
- Development of project designs
- Issuance of project construction task order
- Facilitation of communications between the contractor and property owner regarding construction elements such as site access, site protection, and scheduling
- Procurement of project permits as necessary
- Construction oversight, inspections, and approvals
- Issuing of Notice of Deficient Performance if warranted
- Processing of contractor invoices

The City, at its discretion, may elect to provide some project materials or assume responsibility for some project elements.

Prior to the execution of a contract, the selected contractor and the City shall agree upon and approve the final list of City responsibilities and a schedule for completion. This listing will represent the City's limit of responsibilities for the project, and unless otherwise notified by the Contractor, it shall be understood that the City shall have met all obligations under the contract.

**3. DELIVERABLES AND SCHEDULE:** Deliverables shall be considered those tangible resulting work products which are to be delivered to the Bureau of Environmental Services such as reports, draft documents, data, interim findings, drawings, schematics, training, meeting presentations, final drawings and reports. Deliverables and schedule for this project shall include:

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- a. Project cost and schedule estimates following review of project design.
- b. Project cost and schedule update reports during construction, as requested by the City.
- c. Invoice detailing rates and quantities for labor, materials, and fees with receipts
- d. Final inspection report.

All deliverables and resulting work products from this contract will become the property of the City of Portland.

**4. PLACE OF PERFORMANCE:** Performance of the work necessary to complete deliverables for this project will be performed throughout the City of Portland at specified locations. On-going status reviews and meetings with the City may occur either at the City facilities or project sites.

**5. PERIOD OF PERFORMANCE:** The Contract shall begin August 1, 2010 or as soon thereafter as possible, and expire July 31, 2011. The term of this contract may be extended for additional periods in single or multiple year increments upon mutual agreement between the City and selected contractor. Total contract term, including extensions, shall not exceed five (5) years.

**6. INSURANCE – PROOF OF COVERAGE:** Work shall not commence until all insurance requirements have been met and certificates thereof have been filed with the Chief Procurement Officer or the Auditor.

**COMMERCIAL GENERAL LIABILITY INSURANCE, PUBLIC LIABILITY, AND PROPERTY DAMAGE -** The contractor shall provide and maintain public liability and property damage insurance in the minimum amount of \$1,000,000 per occurrence that protects the contractor and the City and its officers, agents and employees from any and all claims, demands, actions and suits for damage to property or personal injury arising from the contractor's work under this contract

The insurance shall be without prejudice to coverage otherwise existing, and shall name as additional insureds the City and its officers, agents and employees. Notwithstanding the naming of additional insureds, the insurance shall protect each additional insured in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured.

The coverage shall apply as to claims between insureds on the policy. The insurance shall provide that the insurance shall not terminate or be canceled without thirty (30) days written notice first being given to the City Auditor. If the insurance is canceled or terminated prior to completion of the contract, the contractor shall provide a new policy with the same terms. The contractor agrees to maintain continuous, uninterrupted coverage for the duration of the contract.

**AUTOMOBILE LIABILITY -** Automobile liability insurance with a combined single limit of not less than \$1,000,000 each occurrence for bodily injury and property damage. The insurance shall include coverage for any damages or injuries arising out of the use of automobiles or other motor vehicles by the contractor. The insurance shall include coverage for any damages or injuries arising out of the use of automobiles or other motor vehicles by the Contractor.

**WORKERS' COMPENSATION -** Prior to the performance of any work under a contract awarded by the City, the contractor shall comply with the workers' compensation law, ORS Chapter 656, as it may be amended, and if workers' compensation insurance is required by ORS Chapter 656, the contractor shall maintain coverage for all subject workers as defined by ORS Chapter 656 and shall maintain a current, valid certificate of workers' compensation insurance on file with the City Auditor for the entire period during which work is performed under the contract.

**CERTIFICATE OF INSURANCE -** As evidence of the required insurance coverage, contractor shall furnish acceptable insurance certificates to the City with the return of the signed contract. The certificates shall specify the City of Portland as additional insured and shall include a 30-day notice of cancellation clause.

Notwithstanding the naming of additional insured, said policy will protect each insured in the same manner as though a separate policy has been issued to each; but nothing herein will operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured.

The Contractor shall file with the City of Portland Auditor a certificate evidencing such insurance, together with the proper endorsement, which will be subject to the approval of the City Attorney as to the adequacy of protection.

**7. SAFETY AND ACCIDENT PREVENTION:** In accordance with generally accepted safety practices, the contractor will be solely and completely responsible for conditions of the job site, including safety of all persons and property during the performance of the work. This requirement will apply continuously and will not be limited to normal working hours. All workers are expected to be wearing appropriate clothing and safety gear as applicable per task.

**8. PUBLIC SAFETY:** Construction of these stormwater facilities will take place on private property. Contract employees shall at all times create a safe work environment and conduct themselves professionally during interactions with other employees, citizens, the media and other City contractors. The Contractor will be responsible for taking reasonable precautions to ensure that portions of the property or ROW used during construction are safe for residents, guests, or passersby, even during non-working hours. This includes but is not limited to steps such as removing hazardous or dangerous materials when not in use and supervised, covering or roping off unsafe conditions, and providing signage, cone, or barriers as necessary. Safety hazards may not be created in the public right-of-way.

## **SECTION C ATTACHMENTS**

1. **Exhibit A - SAMPLE SERVICES CONTRACT:** The sample services contract, shown as Exhibit A is the City's standard contract for these services and will be used as a result of this selection process. Any deviations from this contract shall be clearly identified in the proposal.
2. **Exhibit B – PROGRAM GUIDE**
3. **Exhibit C – EXAMPLE SITE PLAN**
4. **Exhibit D – DESIGN: STANDARD DS-1**
5. **Exhibit E – CONVEYANCE: BURIED PIPE CV-1**
6. **Exhibit F – PLANTING PLAN PP-1**

## PART II PROPOSAL DEVELOPMENT

### SECTION A PROPOSAL PREPARATION

- 1. PRE-PROPOSAL MEETING:** There will be no pre-proposal meeting or site visit scheduled for this project.
- 2. INVESTIGATION:** The Offeror shall make all investigations necessary to inform itself regarding the work or services to be furnished
- 3. QUESTIONS OR CLARIFICATIONS:** It shall be the respondent's responsibility to ask questions, request changes or clarifications, or otherwise advise the City of Portland, Procurement Services if any language, specifications or requirements of an RFP appear to be ambiguous, contradictory, or appear to inadvertently restrict or limit the requirements stated in the RFP to a single source.

Every attempt shall be made to ensure that the proposer receives an adequate and prompt response. However, in order to maintain a fair and equitable RFP process, all respondents will be advised, via the issuance of an addendum to the RFP, of any relevant or pertinent information related to the procurement. Questions and requests for clarification regarding this Request for Proposal must be directed in writing, via email or fax, to the person listed below at least ten (10) calendar days prior to the proposal due date. Therefore, respondents are advised that any questions received less than ten (10) calendar days prior to the RFP opening date may not be answered.

Denice Henshaw, CPPB  
Procurement Services  
1120 SW Fifth Avenue, Room 750  
Portland, Oregon 97204  
denice.henshaw@portlandoregon.gov

Phone: (503) 823-2299  
Fax: (503) 865-3403

If, in the opinion of the Chief Procurement Officer, additional information or interpretation is needed by the respondents, an addendum will be issued. Any addendum or addenda issued by the Chief Procurement Officer, that may include changes, corrections, additions, interpretations, clarifications, or information, and issued seventy-two (72) hours or more before the scheduled closing time for submitting the proposal, Saturday, Sunday, and legal holidays not included, shall be binding upon the respondent. The City shall supply copies of such addenda to all respondents who have obtained copies and are on the plan holder list of the RFP documents for the purpose of responding thereon, but failure of the respondent to receive or obtain such addenda shall not excuse the respondent from compliance therewith if awarded the contract.

- 4. CONTRACT REVIEW:** The Services Contract as attached hereto contains the terms and conditions that will govern this Contract between the City of Portland and the successful proposer. The City of Portland is not inclined to negotiate any portion of this contract, however, if a proposer believes any of the terms and conditions contained in the City's contract are unnecessarily restrictive, limit competition, or would like to request that specific terms and conditions contained in the contract document be considered for negotiation, they shall submit a written request for negotiation to the City at least seven (7) working days prior to the proposal due date as indicated above.

The request shall identify the specific provision the proposer would like to negotiate, an explanation of why the proposer believes the provision should be a negotiable provision, and the suggested revised language. Requests that are not submitted in this format may not be considered. **Requests that state the entire contract be negotiated will not be considered.** If the City decides that a contract term can be changed, or is willing to consider negotiation of a term, an addendum will be issued. If no addendum is issued, the City will not consider negotiation of its standard contract terms.

THIS WILL BE THE OFFEROR'S ONLY OPPORTUNITY TO TAKE EXCEPTION TO ANY OF THE TERMS AND CONDITIONS CONTAINED WITHIN THE CONTRACT AND TO REQUEST THE NEGOTIATION OF PROVISIONS CONTAINED IN THE CONTRACT. **ANY PROPOSAL WHICH TAKES EXCEPTION TO TERMS**



**AND CONDITIONS OF THE SAMPLE CONTRACT THAT HAVE NOT BE IDENTIFIED BY ADDENDUM AS SUBJECT TO NEGOTIATION OR WHICH MAKES THE PROPOSAL CONTINGENT UPON ACCEPTANCE OR NEGOTIATION OF OTHER TERMS AND CONDITIONS SHALL BE DEEMED NON-RESPONSIVE AND THE PROPOSAL SHALL BE REJECTED.**

**5. ORAL INSTRUCTIONS:** Oral instructions or information concerning the RFP documents or the project given out by officers, employees, or agents of the City to prospective respondents shall not bind the City. Any changes or revisions to the specifications shall only be binding if issued in writing by the City by addendum. The City reserves the right to officially amend or cancel an RFP after issuance.

**6. COST OF RESPONDING:** This Request for Proposal does not commit the City to pay any costs incurred by any respondent in the submission of a response, or in making necessary studies or designs for the preparation thereof, or for procuring or contracting for the items to be furnished under the RFP.

**7. INTERGOVERNMENTAL CO-OPERATIVE PURCHASING:** The respondent agrees to extend identical prices and services under the same terms and conditions to all public agencies. Requirements stated herein reflect the City of Portland usage only.

A public agency wishing to utilize like services will execute its own contract with the awarded contractor for its requirements. The successful contractor shall provide quarterly usage reporting of the City of Portland as well as that of other public agencies to the City of Portland, Procurement Services. Any respondent by written notification included with their proposal, may decline to extend the services, prices and terms of this RFP to any and/or all other public agencies.

**8. CHANGES TO THIS RFP:** The City reserves the right to modify, revise or cancel this RFP. Receipt and evaluation of proposals or the completion of interviews do not obligate the City to award a contract.

<b>SECTION B</b>	<b>PROPOSAL SUBMISSION</b>
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**1. PROPOSALS DUE:** By submitting a proposal, the respondent agrees to provide all services specified within the RFP, at the times and prices indicated, pursuant to all requirements and specifications as contained therein.

Sealed proposals must be received in this office no later than the date shown on the cover of this solicitation. The outside of the envelope shall plainly identify the subject of the proposal, the RFP number and the name and address of the proposer. Responses received after time or date listed herein shall not be considered. Proposals received after the scheduled closing time for filing will be returned to the proposer unopened.

**2. PROPOSAL:** Proposals must be clear, succinct and not exceed ten (10) pages, excluding required Attachment materials. Proposers who submit more than the pages indicated may not have the additional pages of the proposal read or considered. Section dividers, title page, resumes, references, and table of contents do not count in the overall page count of the proposal.

For purposes of review and in the interest of the City's Sustainable Paper Use Policy and sustainable business practices in general, the City encourages the use of submittal materials (i.e. paper, dividers, binders, brochures, etc.) that contain post-consumer recycled content and are readily recyclable. The City discourages the use of materials that cannot be readily recycled such as PVC (vinyl) binders, spiral bindings, and plastic or glossy covers or dividers. Firms are encouraged to print/copy on both sides of a single sheet of paper wherever applicable (if sheets are printed on both sides, it is considered to be two pages). Color is acceptable, but content should not be lost by black-and-white printing or copying.

All submittals will be evaluated on the completeness and quality of the content. Only those firms providing complete information as required will be considered for evaluation. The ability to follow these instructions demonstrates attention to detail.

**3. PROPOSAL SUBMISSION:** Security and confidentiality of the transmitted data: For purposes of this proposal submission, one (1) complete original printed copy of the proposal shall be submitted along with seven (7) copies. The entire proposal shall be received at the place and on or before the time and date specified on the first page of the proposal document.

**4. CONFLICT OF INTEREST:** A respondent submitting a proposals thereby certifies that no officer, agent or employee of the City who has a pecuniary interest in this RFP, has participated in the contract negotiations on the part of the City, that the proposal is made in good faith without fraud, collusion, or connection of any kind with any other respondent of the same request for proposal, and that the respondent is competing solely in its own behalf without connection with, or obligation to, any undisclosed person or firm.

**5. PROPOSAL ORGANIZATION:** The respondents must provide all information as requested in this Request for Proposal (RFP). Responses must follow the format outlined in this RFP. Additional materials in other formats, or pages beyond the stated page limit(s) may not be considered. The City may reject as non-responsive at its sole discretion any proposal or any part thereof, which is incomplete, inadequate in its response, or departs in any substantive way from the required format. Proposal responses shall be organized in the following manner:

As part of the proposal response, the respondent will provide the number of proposal copies as requested on the cover page of this proposal and the following:

- a. Cover Letter (2 pages not included in page count)
- b. Firm's Experience and Capabilities
- c. Proposed Process
- d. Diversity in Employment and Contracting Requirements
- e. Customer Service
- f. Proposed Cost
- g. Sustainable Procurement

**5.a. COVER LETTER:** By submitting a response, the proposer is accepting the General Instructions and Conditions of this Request for Proposal (reference second page of the proposal).

The Cover Letter must state the name(s) of the person(s) authorized to represent the contractor in any negotiations, the name(s) of the person(s) authorized to sign any contract that may result, the contact person's name, mailing or street addresses, phone and fax numbers and email addresses. A legally authorized representative of the successful firm, authorized to bind the firm in contractual matters must sign the Cover Letter and the Proposal. In addition, the cover letter shall introduce the proposed team, naming the key players and highlighting the firm's qualifications and other relevant information as desired. If your firm currently has a business license and is EEO certified, include in the Cover Letter your firm's City of Portland Business License number as well as the Equal Employment Opportunity (EEO) expiration date. Failure to provide such information will be grounds for finding the contractor non-responsive and the entire proposal may be disqualified.

**5.b FIRM'S EXPERIENCE AND CAPABILITIES:** Proposals must include the name of firm, year established, nature of services performed and size of technical staff. Provide the background of the owner or director of the organization and the experience and background of the individual(s) who will fulfill the tasks detailed in Part 1, Section B, TECHNICAL OR REQUIRED SERVICES above. Any subcontractor to be used in the work should be listed with name, address, phone number for the firm or individual involved and an attached list of references for the firm.

The Proposer must describe stormwater management projects performed within the last five years, including the partners and/or agencies involved. Describe and enumerate relevant projects, clients, partners and dates of employment. Describe experience relevant to rain garden projects.

The Contractor shall possess a strong track-record in implementing stormwater retrofits and community partnership projects. Describe contractors experience in assessment, planning, design, construction, and oversight. Describe contractors experience with a diversity of project types with multiple partners—including the City of Portland and private landowners.

**5.c PROPOSED PROCESS:** Proposer must provide a specific approach to this project explaining how required services detailed in Part 1, Section B, TECHNICAL OR REQUIRED SERVICES above will be provided. Proposal must detail method of necessary communication, documentation, construction tasks. Proposer must define any limits on ability to meet the proposed staffing requirements and time schedule.

**5.d DIVERSITY IN EMPLOYMENT AND CONTRACTING REQUIREMENTS:** The City values diversity in its workforce and in the workforce of those with whom the City contracts and has a significant interest in extending contracting opportunities to Minority, Women, and Emerging Small Businesses (M/W/ESB) at both a prime and subcontracting level. The City is committed to ensuring that such firms receive opportunities and equal consideration to be awarded City contracts.

The City recognizes that there are several ways to show diversity in employment and contracting. The list below is provided as a catalyst to generate ideas on how proposers may meet this goal both internal and external to the Offeror's organization:

PAST: Point to a long-term history of strategic alliances and partnership with M/W/ESBs that will be used to perform a commercially useful function on this project;

PRESENT: Internal work force, Equal Employment Opportunity, technical training and mentoring and supply chain management;

FUTURE: Carving out a meaningful scope of work based on the expertise of their M/W/ESB partner firm(s).

PROJECT SPECIFIC: Emphasize the way this project will provide developmental opportunities and sustainable business growth for certified M/W/ESB; placing a particular emphasis on a project-specific partnership with M/W/ESBs; and

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1. All proposers responding to this solicitation shall address the following factors:
  - a. Indicate if your firm is currently certified through the State of Oregon as an MBE, WBE or ESB. If not, what percentage of the project will be subcontracted out to M/W/ESBs?
  - b. Identify the diversity in your firm's present workforce.
  - c. EEO and Workforce Diversity
    1. Describe how your firm has historically provided opportunities for minorities and women to receive training and work within your firm.
    2. Describe your firm's existing relationships with M/W/ESB firms; provide a description of your supplier diversity program including how long it has been in existence and what the driving factors were for establishing such a program.
    3. Are there other outreach (through local schools or community-based organizations) that you consider to be viable in light of the size and scope of this project?
    4. What resources might your firm address to meet such needs?
    5. Who is the individual responsible for your company's M/W/ESB initiative?
    6. What results has your firm experienced in this regard?
2. The City expects thoughtful consideration be given to which EEO/Diversity and M/W/ESB program components make sense to individual proposers on this particular project.

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- a. Provide a narrative description of the company's experience in promoting participation on the part of Minority-owned, Women-owned and Emerging Small Business (M/W/ESB) enterprises as partners, consultants or suppliers on previous projects.
- b. Discuss any innovative or particularly successful measures that your firm has undertaken to work with M/W/ESB firms on other projects; consider supplier diversity as one component.
- c. Include a list of those certified M/W/ESB firms with which your firm has had a contractual relationship during the last twelve (12) months.
- d. Describe your diversity solution where you, as the prime contractor, sub-contract services in a partnering relationship with a certified M/W/ESB firm:

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- 3. Describe your outreach plan to M/W/ESBs for this project.
- 4. If your firm is not utilizing existing relationships as described above or is able to undertake additional outreach to improve opportunities for minority, women, and emerging small business, describe your outreach program or plan for obtaining maximum utilization of M/W/ESB firms on this project. Proposers not drawing on existing relationships with M/W/ESB firms should describe what outreach efforts will be pursued in order to make contracting opportunities available to M/W/ESBs.

**5.e CUSTOMER SERVICE:** The proposal should identify the Proposer's approach to providing a high level of customer service to both the property owner and the City. Customer service expectations are identified in Part 1, Section B, TECHNICAL OR REQUIRED SERVICES above. Please attach names and phone numbers of property owners and City representatives for which similar work has been performed, along with a description of the project. These references may be contacted by the City.

**5.f PROPOSED COST:** The Contract will identify set labor rate(s) for the tasks performed under this contract. The contract will not identify set rates for materials or fees. Following final City approval of the designated work, the Contractor will submit an invoice for appropriate labor, materials, and fees incurred. Following City approval of the invoice, the City will reimburse the contractors for approved invoice.

To allow for cost evaluation, all proposals should include complete pricing for the example rain garden project included in Exhibits B through F attached to this document. The pricing should include the following information:

1) **Labor:** The example project pricing should detail invoice rates and total hours for personnel hours associated with project implementation tasks. This may be divided into multiple rates associated with different project duties if applicable. Tasks expected to be included in project implementation which may generate labor costs are detailed in Part 1, Section B, TECHNICAL OR REQUIRED SERVICES above. All personnel-based costs such as construction labor, consultation time, administrative time, sub-contracted work, or hauling and delivery time associate with project implementation should be included in labor rates rather than identified as fees.

2) **Materials:** The example project pricing should detail all expected materials including specifications, rates, units, and vendors for each.

Materials for which costs may be incurred in project implementation which are detailed in Part 1, Section B, TECHNICAL OR REQUIRED SERVICES above.

3) **Fee:** The example project pricing should detail all expected fees including specifications, rates, units, and vendors for each.

Fees for which costs may be incurred in project implementation which are detailed in Part 1, Section B, TECHNICAL OR REQUIRED SERVICES above. These include fees such as equipment rentals and disposal fees, but not labor-based fees.

4) **Schedule:** Total number of days expected to elapse from beginning to end of construction.

## 5.g SUSTAINABLE PROCUREMENT

**CONSTRUCTION WASTE RECYCLING:** As part of the City's sustainability objectives, it is the policy of the City of Portland to reduce the amount of solid waste, both generated and disposed of, by promoting aggressive waste prevention and recycling activities. In 2007, the City adopted the Portland Recycles! Plan, which established a recycling rate goal of 85% for all City operations including Construction, Remodeling, and Demolition. The City seeks to do business with firms that will contribute to the City's recycling goal while recognizing that individual projects may not be able to meet this requirement due to site constraints, materials generated or availability of recycling facilities. Proposers shall address the following in their response:

1. Describe the different types of waste materials anticipated on typical rain garden projects and your proposed methods for reuse, recycling and disposal. Examples of materials may include soil, sod, vegetation, concrete, rock or gravels, asphalt, or rain drain material. Include in your response references to how waste will be identified for reuse and recycling, typical methods of disposal by type of material, and recycling and waste management facilities that will be receiving the materials.
2. Describe how you plan to communicate the waste management and recycling goals to the project team, including any documentation or established management practices as appropriate.

**VEHICLE AND EQUIPMENT EMISSIONS REDUCTION:** As part of the City's sustainability objectives, the City is interested in reducing vehicle and equipment emissions. As such, the City is interested in working with contractors that are taking steps to reduce their project related emissions through a variety of best practices. Describe other steps your firm takes to actively reduce project-related vehicle and equipment emissions, such as:

1. Reducing idling
2. Promoting alternative transportation options for staff
3. Use of alternative "low carbon" fuel
4. Non-motorized transportation/hauling (e.g. bikes/trikes)
5. Electric-powered equipment (instead of gas powered)
6. Sourcing materials from vendors close to project site and seek locally produced materials

**6. WITHDRAWAL, MODIFICATION OR ALTERATION OF PROPOSAL:** Prior to the RFP opening, changes may be made provided the change is initiated by the respondent or authorized agent. Also, a proposal may be withdrawn upon written request of the respondent prior to the scheduled closing time for accepting proposals. Negligence on the part of the respondent in preparing their proposal confers no right to withdraw their response after the scheduled closing time for filing proposals.

As a result of any of these actions, if the intent of the respondent is not clearly identifiable, the interpretation most advantageous to the City will prevail.

**6. LATE PROPOSALS:** Proposals received after the scheduled closing time for filing will be returned to the respondent unopened. Due to heightened security measures in the Portland Building, respondents should allow extra time when delivering bids to the Procurement Services. It is the responsibility of the proposer to ensure their proposal is submitted in the proper form and in accordance with the time, date, and location specified in the RFP.

**7. CANCELLATION:** The City of Portland reserves the right to modify, revise or cancel this RFP. Receipt and evaluation of proposals or the completion of interviews do not obligate the City to award a contract.

## PART III PROPOSAL EVALUATION

<b>SECTION A      PROPOSAL REVIEW AND SELECTION</b>
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1. Each proposal shall be evaluated on the following evaluation criteria, weighting, and maximum points, as follows:

Criteria	Maximum Score
a. Cover Letter	Ø
b. Firm's Experience and Capabilities	35
c. Proposed Process	5
d. Diversity in Employment and Contracting Requirements	15
e. Customer Service	20
f. Proposed Cost	20
g. Sustainable Procurement	5
TOTAL	100

2. **PROPOSAL REVIEW:** A selection review committee will be appointed to evaluate the proposals received. For the purpose of scoring proposals each of the Committee members will evaluate each proposal based upon the criteria listed above. In order to assist the evaluation committee, they may seek outside expertise, including but not limited to technical advisors. The City has the right to reject any or all proposals for good cause, in the public interest.

The Contractor shall be selected by the following process:

- a. A contractor evaluation committee will be appointed to evaluate submitted proposals.
- b. The committee will score the proposals according to the criteria, based on the information submitted.
- c. The committee will require a minimum of fifteen (15) working days to evaluate and rank the proposals.
- d. A short list of proposers may be selected for oral interviews if deemed necessary.
- e. If oral interviews are determined to be necessary, the initial scoring will be considered preliminary. Final scores, based on the same evaluation criteria, will be determined following the interviews.
- f. Negotiations will follow with the selected contractor, and if successful, the contractor and the City will enter into a services contract for the work.

3. **CLARIFYING PROPOSAL DURING EVALUATION PERIOD:** During the evaluation process, the City has the right to require any clarification or change it needs in order to understand the respondent's view and approach to the project and scope of the work. Any changes to the proposal will be made before executing the contract and will become part of the Contractor's contract.

4. **PROPOSALS ARE PUBLIC RECORDS:** All information submitted by proposers shall be public record and subject to disclosure pursuant to the Oregon Public Records Act (ORS 192.410 et seq.), except such portions of the proposals for which proposer requests exception from disclosure consistent with Oregon Law. Any portion of a proposal that the proposer claims constitutes a "trade secret" or is "confidential" must meet the requirements of ORS 192.501(2) and ORS 192.502(4).

If a request to inspect the proposal is made, the City will notify the proposer of the request. If the City refuses to release the records, the proposer agrees to provide information sufficient to sustain its position to the District Attorney of Multnomah County, who currently considers such appeals. If the District Attorney orders that the records be disclosed, the City will notify the proposer in order for the proposer to take all appropriate legal action. The proposer further agrees to hold harmless, defend and indemnify the City for all costs, expenses and attorney fees that may be imposed on the City as a result of appealing any decision regarding the proposers records.

**5. LOCAL CONTRACTING:** The City: prefers services that have been manufactured or produced by a local business if price, fitness, availability and quality are otherwise equal; desires to employ local businesses in the purchase, lease, or sale of any personal property, public improvements or services; and wants the residents of the State of Oregon and SW Washington to benefit from optimizing local businesses and services, and the local employment opportunities they generate.

**6. REVIEW:** Following the Notice of Intent to Award, the public may view proposal documents, but the City is entitled to withhold from disclosure any materials defined as exempt or conditionally exempt from disclosure pursuant to the Oregon Public Records Act. Proposers shall designate information they consider exempt or conditionally exempt from disclosure by stamping the word "Confidential" on such documents or by otherwise indicating the documents are considered to be confidential. Materials so designated and meeting the requirements for exempt or conditionally exempt information will not be disclosed unless the Multnomah County District Attorney determines that disclosure is required after appeal. The City reserves the right to disclose materials inappropriately marked as exempt or conditionally exempt and to withhold from disclosure materials that meet standard but which were inadvertently not marked as confidential.

Proposers not awarded the contract may seek additional clarification or debriefing, request time to review the selection procedures or discuss the scoring methods utilized by the Evaluation Committee, subject to the City's authority to withhold documents, as stated above.

<b>SECTION B</b>	<b>CONTRACT AWARD</b>
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**1. CONTRACTOR SELECTION:** The City will award a contract to the contractor(s) whose proposal is considered and evaluated as being the most advantageous to the City. The contractor selection process will be carried out under Portland City Code, Chapter 5.33.

**2. CONTRACT DEVELOPMENT:** The proposal and all responses provided by the contractor may become a part of the final contract. The form of contract shall be the City's Contract for Services.

**3. NOTICE OF INTENT TO AWARD:** A notice of intent to award does not constitute a directive to proceed with services. Before providing any services, the contractor must receive a properly authorized purchase order or contract.

**4. FAILURE TO EXECUTE CONTRACT:** Failure on the part of the respondent to whom a contract is awarded to execute the contract and deliver the Contract and required documents with the required bonding and insurance certificates within twenty (20) calendar days shall be just cause for cancellation of the award and withdrawal of the Contract. Award may then be made to the next scored proposer, or the work may be re-advertised, or otherwise as the City may decide.

## EXHIBIT A – SERVICES CONTRACT

**CONTRACT NO.** \_\_\_\_\_

for

**XXXXX**

This Contract, made and entered into this 1st day of August, 2010, by and between **XXXXX** a **XXXXX (state)** **XXXXX** Corporation, hereinafter called Contractor, and the City of Portland, a municipal corporation of the State of Oregon, by and through its duly authorized representatives, hereinafter called City,

### **WITNESSETH:**

**ARTICLE I.** The parties hereto mutually covenant and agree to and with each other as follows:

**1. SCOPE OF WORK:** The City of Portland, Procurement Services is seeking proposals, on behalf of the Bureau of Environmental Services (BES), from qualified firms or contractors with demonstrated experience in the implementation of rain gardens.

To provide construction of rain gardens following design standards and direction provided by the City of Portland and the private property owner.

Contractor shall perform tasks associated with the following elements of rain garden construction as directed by the City:

- Review project designs and site conditions provided by the City and provide a bid of project cost and duration
- Coordinate construction considerations such as scheduling, access, site protection, and aesthetics with both City and the private property owner
- Coordinate and execute all elements of physical rain garden construction including labor, procurement of materials and equipment, soil excavation and disposal, plant installation, rain drain installation, site clean-up, and other duties assigned by the City. The City may provide materials or assume responsibility for some project elements at the City's discretion.

Contractor shall provide, at his/her own risk and cost, all labor, tools, equipment, transportation, and other items needed to perform these tasks in accordance with Attachment A.

**2. EFFECTIVE DATE AND DURATION:** The initial term of this Contract shall begin on August 1, 2010 and shall expire on July 31, 2011 unless terminated sooner as provided herein. The parties may agree, by mutual consent, to extend this Contract for an additional four (4) year period, taken individually or in multiple years. At least thirty (30) days prior to the expiration of the initial term, or extension, the parties shall commence discussions if they desire to extend the Contract. The Contractor shall provide a written extension proposal within fifteen (15) calendar days following the City's request for such a proposal. However, nothing binds or requires either party to extend this Contract. The total term of this Contract shall not exceed five (5) years.

**3. CONSIDERATION:** The City agrees to pay Contractor a sum not to exceed \$70,000 for completion of the work or receipt and acceptance of the services. Interim payments shall be made to the Contractor according to the schedule identified in Attachment B.

**4. INVOICING:** The City of Portland is a tax-exempt governmental agency. Prices shall not include federal, state, local, or other taxes designated now or hereafter, unless the City is responsible therefore. The Contractor shall submit billings in a timely fashion. Invoices shall be sent to:



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City of Portland  
Bureau of Environmental Services  
Attn: Amber Clayton  
1120 SW 5<sup>th</sup> Avenue, Suite 1000  
Portland, OR 97204

Contractor is at all times solely responsible for billing accuracy and timeliness; Contractor shall provide invoices for the services to the City in paper form. Invoices will not be processed for payment until receipt of a properly completed invoice and until all invoice items are received and satisfactory performance of Contractor has been attained. Invoice payment terms including any offered prompt payment discounts shall start on the date of the invoice.

**5. INVOICE PAYMENT:** Invoices submitted for payment shall identify the name of individual performing work, labor category, hourly rate, hours worked, extended price, list of tasks performed and which ones were completed, order number, contract number, and invoice total. If reimbursable expenses are to be claimed on invoice, they shall be listed and photocopies of receipts attached to invoice in order to receive payment for them. Additional billing details may be agreed upon between the parties. Invoicing for services shall at all times be in arrears. Invoices for payment shall be provided to the City within ninety (90) days of successful delivery of services. The City will issue payment approximately 1 month from the date of the invoice.

Revised invoices or billing adjustments shall apply only to services that can be verified by the City. Requests for such adjustments shall be submitted in writing to the City within six (6) months of acceptance of the services, shall reference the original invoice in which the error was made, and contain the level of detail defined in billing detail above. Billing adjustments shall not be submitted to the City in any form other than a paper document. The City shall pay undisputed portions of disputed or incorrect invoices where the City can easily identify the undisputed portion. Failure by the City to pay any portion of or the entire invoiced amount based on Contractor billing errors, services that fail to comply with this Contract, or disputed charges shall not constitute default under this Contract. Payment of an amount less than the total amount due on all unpaid invoices shall be any particular amount or item, which is subject to any claim of error or dispute between the parties, without prior written City approval.

**ARTICLE II.** Performing of services shall not commence until all insurance requirements have been met and certificates thereof have been filed with the Chief Procurement Officer or the Auditor. The insurance requirements are as follows:

**6. INSURANCE – PROOF OF COVERAGE:** Work shall not commence until all insurance requirements have been met and certificates thereof have been filed with the Chief Procurement Officer or the Auditor.

**COMMERCIAL GENERAL LIABILITY INSURANCE – PUBLIC LIABILITY AND PROPERTY DAMAGE -** The contractor shall provide and maintain public liability and property damage insurance in the minimum amount of \$1,000,000 per occurrence that protects the contractor and the City and its officers, agents and employees from any and all claims, demands, actions and suits for damage to property or personal injury arising from the contractor's work under this contract

The insurance shall be without prejudice to coverage otherwise existing, and shall name as additional insureds the City and its officers, agents and employees. Notwithstanding the naming of additional insureds, the insurance shall protect each additional insured in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured.

The coverage shall apply as to claims between insureds on the policy. The insurance shall provide that the insurance shall not terminate or be canceled without thirty (30) days written notice first being given to the City Auditor. If the insurance is canceled or terminated prior to completion of the contract, the contractor shall provide

a new policy with the same terms. The contractor agrees to maintain continuous, uninterrupted coverage for the duration of the contract.

**AUTOMOBILE LIABILITY** - Automobile liability insurance with a combined single limit of not less than \$1,000,000 each occurrence for bodily injury and property damage. The insurance shall include coverage for any damages or injuries arising out of the use of automobiles or other motor vehicles by the contractor. The insurance shall include coverage for any damages or injuries arising out of the use of automobiles or other motor vehicles by the Contractor.

**WORKERS' COMPENSATION** - Prior to the performance of any work under a contract awarded by the City, the contractor shall comply with the workers' compensation law, ORS Chapter 656, as it may be amended, and if workers' compensation insurance is required by ORS Chapter 656, the contractor shall maintain coverage for all subject workers as defined by ORS Chapter 656 and shall maintain a current, valid certificate of workers' compensation insurance on file with the City Auditor for the entire period during which work is performed under the contract.

**CERTIFICATE OF INSURANCE** - As evidence of the required insurance coverage, contractor shall furnish acceptable insurance certificates to the City with the return of the signed contract. The certificates shall specify the City of Portland as additional insured and shall include a 30-day notice of cancellation clause.

Notwithstanding the naming of additional insured, said policy will protect each insured in the same manner as though a separate policy has been issued to each; but nothing herein will operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured.

The Contractor shall file with the City of Portland Auditor a certificate evidencing such insurance, together with the proper endorsement, which will be subject to the approval of the City Attorney as to the adequacy of protection.

**ARTICLE III.** In consideration of the premises, and in accordance with the provisions for acceptance and payment for work set forth in these Standard Terms and Conditions and Special Terms and Conditions, the City and Contractor hereby agrees as follows:

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## STANDARD TERMS AND CONDITIONS

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**7. INDEPENDENT CONTRACTOR STATUS:** The Contractor is engaged as an independent contractor and shall be responsible for any federal, state, and local taxes and fees applicable to payments hereunder. The Contractor, its subcontractors, and their employees are not employees of the City and are not eligible for any benefits through the City including, without limitation, federal social security, health benefits, workers' compensation, unemployment compensation, and retirement benefits.

**8. NO THIRD PARTY BENEFICIARIES:** Contractor and City are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, assigns or provides any benefit or right, whether directly, indirectly, or otherwise, to third persons.

**9. SUCCESSORS IN INTEREST:** The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and approved assigns.

**10. SURVIVAL:** The terms, conditions, representations, and all warranties contained in this Contract shall survive the termination or expiration of this Contract.

**11. COMPLIANCE WITH APPLICABLE LAW:** In connection with its activities under this Contract, Contractor shall comply with all applicable federal, state and local laws and regulations. All statutory, charter and

ordinance provisions applicable to public contracts in the City of Portland and the State of Oregon shall be followed with respect to this Contract. The following additional conditions apply to this solicitation and any resultant purchase order or contract: Appendix A as attached hereto.

The Contractor must be in compliance with the laws regarding conducting business in the City of Portland before an award may be made and shall be responsible for the following:

**Certification as an EEO Affirmative Action Employer:** The Contractor is certified as an Equal Employment Opportunity Employer as prescribed by Chapter 3.100 of the Code of the City of Portland through XXXXX. The certification will be maintained throughout the duration of the contract.

**Business License:** The Contractor license # XXXXX is in compliance with the City of Portland Business License requirements as prescribed by Chapter 7.02 of the Code of the City of Portland and will be maintained throughout the duration of this contract.

**Prevailing Wage Rates:** The City has determined this Contract is not subject to Prevailing Wage Rates, however a landscaper licensed by the Oregon Landscape Contractors Board is required to perform the services.

**12. GOVERNING LAW / VENUE:** The provisions of this Contract shall be construed in accordance with the provisions of the laws of the State of Oregon without reference to its conflict of laws provisions. Any action or suits involving any question arising under this Contract shall be brought in the appropriate court in Multnomah County, Oregon. By executing this Contract the Contractor agrees to in personam jurisdiction of the Oregon courts.

**13. NONDISCRIMINATION:** Contractor agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor also shall comply with the Americans With Disabilities Act of 1990 (Pub L. No. 101-336) including Title II of that Act, ORS Chapter 659.425, and all regulations and administrative rules established pursuant to those laws.

**14. INDEMNITY:** Contractor shall hold harmless, defend, and indemnify the City of Portland, its officers, employees, and agents, from all claims, demands, suits, actions, losses, damages, liabilities, costs and expenses of whatsoever nature, including all attorney's fees and costs, resulting from or arising out of the activities of Contractor or its officers, employees, subcontractors, or agents including intentional acts, or of its subcontractors, agents or employees under this Contract. Contractor is not responsible for any damages caused by the actions of the City, its officers, employees and agents.

**15. SEVERABILITY:** In the event that a court, government agency, or regulatory agency with proper jurisdiction determines that this Contract, or any provision of this Contract, is unlawful, this Contract, or that provision of the Contract to the extent it is unlawful, shall terminate. If a provision of this Contract is terminated but the parties can legally, commercially, and practicably continue without the terminated provision, the remainder of this Contract shall continue in effect.

**16. FUNDING:** In the event the City, during the adoption of the City's annual budget, reduces, changes, eliminates, or otherwise modifies the funding for any of the projects identified herein, the Contractor agrees to abide by any such decision including revision or termination of services.

**17. ASSIGNMENT AND SUBCONTRACTING:** This Contract or any interest therein shall not be assigned or subcontracted to any other person or entity without the prior written consent of the City of Portland. In the event of transfer without prior written consent, the purported transfer is void and the Contractor remains liable for performance of the Contract. The Contractor shall not subcontract its work under this Contract, in whole or in part, without the prior written approval of the City. Notwithstanding City approval of a subcontractor, the Contractor shall remain obligated for full performance hereunder, and the City shall incur no obligation other than its obligations to the Contractor hereunder. The Contractor agrees that if subcontractors are employed in the performance of this Contract, the Contractor and its subcontractors are subject to the requirements and sanctions of ORS Chapter 656, Workers' Compensation.

**18. LIENS:** Contractor shall not permit any claim to be filed or prosecuted against the City or any lien against the property purchased in connection with this Contract and agrees to assume responsibility should such lien or claim be filed.

**19. SUSTAINABLE PROCUREMENT:** Pursuant to the City's [Sustainable City Principles](#), which direct City Bureaus to pursue long-term social equity, environmental quality, and economic vitality through innovative and traditional mechanisms, the Contractor is encouraged to incorporate these Principles into their scope of work with the City wherever possible. Therefore in accordance with the Principles and the City's [Sustainable Procurement Policy](#), it is the policy of the City of Portland to encourage the use of products or services that help to minimize the human health and environmental impacts of City operations. "Environmentally preferable" means products or services that have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product or service.

Packaging should be minimized to the maximum extent possible without compromising product quality. The City encourages packaging that is reusable, recyclable in local recycling programs, is made from recycled materials, and/or is collected by the vendor for reuse/recycling.

**20. FORCE MAJEURE:** Neither City nor Contractor shall be held responsible for performance if its performance is prevented by unforeseeable acts or events beyond the party's reasonable control including, but not limited to: acts of God; fire, flood, earthquakes or other catastrophes; strikes or other labor unrest; power failures, electrical power surges or current fluctuations; nuclear or other civil or military emergencies; or acts of legislative, judicial, executive, or administrative authorities; or any other circumstances that are not within its reasonable control.

**21. AMENDMENTS:** All changes to this Contract, including changes to the scope of work and Contract amount, must be made by written amendment and approved by the Chief Procurement Officer to be valid. The City's Chief Procurement Officer is authorized to execute amendments to this Contract without the City's further approval, provided such amendments are in writing, signed by both parties, and approved by the City Attorney's Office. Contractor understands that City employees have no actual or apparent authority to enter into amendments, except as may be specifically granted by the City Council to the Chief Procurement Officer, or to waive the approval of the City Attorney's office.

**22. NON-WAIVER:** No waiver, consent, modification, or change of terms of this Contract shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change if made, shall be effective only in specific instances and for the specific purposes given. The failure of the City to enforce any provision of this Contract shall not constitute a waiver of that or any other provision.

**23. COORDINATION WITH OTHER CONTRACTORS AND OTHER SERVICES:** The Contractor shall cooperate fully with other contractors and City employees providing systems or support to the City during installation, operation, or maintenance of the services. This includes planning for and integration of the services provided under this Contract with those provided by others. Further, Contractor shall make every reasonable effort to cooperate with the City to minimize and/or prevent any degradation of the other computer and telecommunications systems, equipment, or services of the City by the installation, operation, or maintenance of the services. Contractor's failure to cooperate with the City and other contractors may be grounds for termination as provided herein.

**24. ACCESS TO RECORDS:** The Contractor shall maintain professional accounting standards and on a current basis, and the City and its duly authorized representatives shall have access to, the books, documents, papers, and records of the Contractor which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts for a period of three (3) years after final payment. Copies of applicable records shall be made available upon request.

**25. AUDITS:** The City, either directly or through a designated representative, may conduct financial and performance audits of the billings and services specified in this Contract at any time in the course of the Contract

and during the three (3) year period established by ACCESS TO RECORDS. Audits shall be conducted in accordance with generally accepted auditing standards.

If an audit discloses that payments to the Contractor were in excess of the amount to which the Contractor was entitled, then the Contractor shall repay the amount of the excess to the City. Under no circumstances will the payment of previous invoices constitute an acceptance of the charges associated with those invoices. If any audit shows performance of services is not efficient in accordance with Government Auditing Standards, or that the program is not effective in accordance with Government Auditing Standards, the City may pursue remedies as provided under EARLY TERMINATION OF CONTRACT and REMEDIES. In addition, the Contractor agrees to abide by the standards of the Office of the Comptroller set forth in May, 2002 Office of Justice Programs (OJP) Financial Guide, including without limitation in accordance with Office of Management and Budget (OMB) Circulars A87, A-102, A-122, A-128, A-133. All financial records, supporting documents, statistical records and all other records pertinent to this Contract shall be retained by the Contractor for a minimum of five (5) years for purposes of State of Oregon or the OJP Financial Guide from the Office of the Controller and apprise itself of all rules and regulations set forth.

**26. EMPLOYEES NOT TO BENEFIT:** No City employee or elected official of the City shall be admitted to any share or part of this Contract or to any benefit that may arise there from; but, this provision shall not be construed to extend to this Contract if made with a corporation for its general benefit.

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**SPECIAL TERMS AND CONDITIONS**

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**27. CITY FURNISHED PROPERTY:** No materials, labor or facilities will be furnished by the City unless otherwise provided for within this Contract.

**28. ADDITIONAL PURCHASES:** The City reserves the right to purchase additional materials] beyond the quantities stated in the bid documents at the same prices submitted by the offeror. Such additional purchases are not guaranteed and will be made at the City's sole discretion. Contractor agrees to extend identical prices and services under the same terms and conditions to all regional public agencies. Each participating agency will execute its own Contract with the Contractor for its requirements.

Following any initial purchase(s) by the City of Portland, additional quantities of the materials listed herein may be purchased to replace or supplement existing supplies and will be funded by various general funding sources of the various agencies.

**29. RIGHT TO CHANGE:** The City reserves the right to order changes to the services outlined herein. The City and the Contractor shall determine a fair and equitable cost and if required, additional time for such changes. All such changes shall be ordered in writing and agreed to by the parties.

**30. NOTICE:** Except as otherwise stated in this Contract, any notice or demand to be given under this Contract shall be delivered in person or deposited in United States Certified Mail, Return Receipt Requested. Any notices or other communications shall be addressed as follows:

**CONTRACTOR:**

XXXXX  
XXXXX  
XXXXX

**CITY:**

City of Portland  
Bureau of Environmental Services  
1120 SW 5<sup>th</sup> Avenue, Suite 1000  
Portland OR 97204

Attn:

XXXXX

Amber Clayton

If either party changes its address or if a party's representative changes, the other party shall be advised of such a change in writing, in accordance with this section.

**31. EARLY TERMINATION OF CONTRACT:** The City and the Contractor, by mutual written agreement, may terminate the Contract at any time. The City, on thirty (30) days written notice to the Contractor, may terminate this Contract for any reason deemed appropriate in its sole discretion. Either the City or the Contractor may terminate this Contract in the event of a material breach of the Contract by the other. Prior to such termination, however, the party seeking the termination shall give to the other party written notice of the breach and the party's intent to terminate. If the party has not entirely cured the breach within thirty (30) days of the notice, then the party giving the notice may terminate the Contract at any time thereafter by giving a written notice of termination.

**32. SUSPENSION OF THE WORK:** The City may at any time give notice in writing, by electronic mail, or by facsimile to the Contractor to suspend this Contract. The notice of suspension shall specify the date of suspension and the estimated duration of the suspension. In no event shall the Contractor be entitled to any lost or prospective profits or any incidental or consequential damages because of suspension.

**33. PAYMENT ON EARLY TERMINATION:** In the event of termination under EARLY TERMINATION OF CONTRACT hereof, the City shall pay the Contractor for services in accordance with the Contract prior to the termination date and delivered to the City provided that such services conform to Contract specifications and are of use to the City. In the event of termination under EARLY TERMINATION OF CONTRACT hereof, by the City due to a breach by the Contractor, then the City shall pay the Contractor for services performed in accordance with the Contract prior to the termination date subject to set off of excess costs, as provided for in Remedies. In the event of early termination all of the Contractor's work product shall become and remain property of the City. Under no circumstances shall the City be subject to early termination penalties for recurring charges for services that the City cancels during the term of this Contract.

**34. REMEDIES:** In the event of termination under EARLY TERMINATION OF CONTRACT by the City due to a breach by the Contractor, then the City may purchase services outstanding from another contractor and the Contractor shall be liable for additional re-procurement costs incurred by the City. The City also shall be entitled to any other equitable and legal remedies that are available. Except as expressly contained in this Contract, the remedies for a breach of this Contract shall not be exclusive, or construed as a limitation on any other equitable and legal remedies that are available or may become available.

**35. PERMITS AND LICENSES:** The Contractor shall be required to have or obtain, at their expense, any and all permits and licenses required by the City and/or County, state and Federal (except FCC radio licenses), pertaining to the materials and services to be provided.

**36. INTELLECTUAL PROPERTY:** The City requires the following regarding copyrighting and patent pending on work products pertaining to this Contract:

A. Copyright: All work products of the Contractor which result from this Contract are the exclusive property of the City. If this Contract results in a copyright, the City of Portland reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for governmental purposes, the work or the copyright to any work developed under this Contract and any rights of copyright to which the Contractor or its sub-vendor, purchases ownership with grant support.

B. Patent: If this Contract results in the production of patentable items, patent rights, processes, or inventions, the Contractor or any of its sub-vendors shall immediately notify the City. The City will provide the Contractor with further instruction on whether protection on the item will be sought and how the rights in the item will be allocated and administered in order to protect the public interest, in accordance with federal guidelines.

**37. SPECIFICATIONS:** This Contract authorizes the Contractor to provide and the City to procure those services, and establishes the terms and conditions for the City to obtain said services from the Contractor. Services to be provided under this Contract are described in the Attachments hereto. The Contractor shall provide to the City those services described in the attachments in accordance with the prices shown herein. Payment shall be made only in accordance with the payment schedule identified herein.

**38. WARRANTY:** The Contractor shall guarantee its products to be free from defects in materials and workmanship, given normal use and care, over the period of the manufacturer warranty. The Contractor shall agree to repair and/or immediately replace without charge (including freight inbound and outbound) to City Users any product or part thereof, which proves to be defective or fails within the warranty period as specified.

**39. RELEASE OF PROPRIETARY INFORMATION:** All information submitted by Contractor shall be public record and subject to disclosure pursuant to the Oregon Public Records Act (ORS 192.410 et seq.), except such portions for which Contractor requests exemption from disclosure consistent with federal or Oregon law. Any portion that the Contractor claims constitutes a "trade secret" or is "confidential" must meet the requirements of ORS 192.501, 192.502, 646.461 or other state or federal law. Documents with Copyright must be clearly marked.

**40. NEWS RELEASES AND PUBLIC ANNOUNCEMENTS:** The Contractor shall not use in its external advertising, marketing programs, or other promotional efforts, any data, pictures or other representatives of the City, except with prior specific written authorization from the City.

Contractor shall not issue any news release or public announcement pertaining to this Contract or the project without prior written approval of the City, which may be withheld in the City's sole discretion. A minimum of three (3) business days notice is required for a response to a request for such approval. If approval is not issued within the three (3) business day period, the request shall be deemed denied.

**41. INTERGOVERNMENTAL CO-OPERATIVE PURCHASING:** The Contractor having submitted a bid agrees to extend identical prices and services under the same terms and conditions to all public agencies. Quantities stated in this bid reflect the City of Portland usage only.

A public agency wishing to purchase items will execute its own contract with the awarded Contractor for its requirements. The Contractor shall provide quarterly usage reporting of the City of Portland and that of other public agencies. Any Contractor, by written notification, may decline to extend the prices and terms of this Contract to any and/or all other public agencies.

**42. OREGON HAZARD COMMUNICATION RULES:** The Contractor must comply with all provisions of OAR 437, Subsection H: Hazardous Materials. Inquiries concerning compliance should be directed to any office of the Accident Prevention Division or the Workers' Compensation Department central office in Salem

Material Safety Data Sheets (MSDS) shall be provided along with delivery of the product to each Bureau or Division that receives merchandise. The City does not have a centralized Hazard Communication Rules program and supplying MSDS's to one location does not qualify as compliance.

The City reserves the right to refuse and withhold payment for shipments that are not properly labeled or for which an MSDS has not been provided. Noncompliance with OAR 437 is violation of this Contract and justifiable cause for cancellation.

**43. ENTIRE CONTRACT:** This Contract and its Attachments represent the entire Contract between the parties. This Contract is a final, complete exclusive statement of the terms thereof, and supersedes and terminates any prior Contract, understanding, or representation between the parties with respect thereto, whether written or oral.

**ARTICLE IV.** This Contract may be signed in two (2) or more counterparts, each of which shall be deemed an original, and which, when taken together, shall constitute one and the same agreement. It is understood and agreed by the parties hereto that:

1. Any reference in this Contract to the scope of work or specifications is intended as a convenience to the parties in administration of the Contract. Therefore, in the absence of an express statement to the contrary herein, any restatement or partial restatement in this Contract of any provision of the scope of work or specifications is not intended, nor shall be construed to change, alter, modify, amend, or delete the requirements of the scope of work or specifications.

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2. All statutory, charter and ordinance provisions applicable to public contracts in the City of Portland and State of Oregon shall be followed with respect to this Contract.

3. The Contractor certifies that no officer, agent or employee of the City who has a pecuniary interest in this Agreement has participated in preparation of the proposal or resulting Agreement, that the proposal was made in good faith without fraud, collusion, or connection of any kind with any other Offeror of the same proposals, and that the Offeror is competing solely in its own behalf without connection with, or obligation to any undisclosed person or firm

IN WITNESS WHEREOF, Contractor and City have caused this Contract to be executed by their duly authorized representative(s), all on the day and year first above written.

XXXXX

by \_\_\_\_\_  
Name and Title

Approved as to form:

Address: XXXXX  
XXXXX

\_\_\_\_\_  
City Attorney

Telephone No: XXXXX  
Fax No: XXXXX

CITY OF PORTLAND

by \_\_\_\_\_  
Christine Moody, Chief Procurement Officer

INITIALS: XXXXX

DATE: XXXXX



## ATTACHMENT A

**1. BACKGROUND:** The Tabor to the River (T2R) Program is being implemented by the City of Portland Bureau of Environmental Services. The T2R Program is working to achieve multiple objectives such as reducing sewer back-ups, addressing pipe rehabilitation needs, improving watershed health (hydrology, water quality, habitat, stewardship) and assisting in controlling combined sewer overflows to the Willamette River. Removal of stormwater runoff from the public sewer system is a key element of the T2R Program. To achieve this, the City will partner with property owners to implement private stormwater facilities in those portions of the basin with the greatest sewer capacity problems. Through this program, the City will contract the construction of residential-scale rain garden facilities on private property.

**2. SCOPE OF WORK:** The City of Portland, Procurement Services is seeking proposals, on behalf of the Bureau of Environmental Services (BES), from qualified firms or contractors with demonstrated experience in the implementation of rain gardens.

To provide construction of rain gardens following design standards and direction provided by the City of Portland and the private property owner.

Contractor shall perform tasks associated with the following elements of rain garden construction as directed by the City:

- Review project designs and site conditions provided by the City
- Coordinate construction considerations such as scheduling, access, site protection, and aesthetics with both the City and the private property owner
- Coordinate and execute all elements of physical rain garden construction including labor, procurement of materials and equipment, soil excavation and disposal, plant installation, rain drain installation, site clean-up, and other duties assigned by the City. The City may provide materials or assume responsibility for some project elements at the City's discretion.

Contractor shall provide, at his/her own risk and cost, all labor, tools, equipment, transportation, and other items needed to perform these tasks in accordance with this Attachment A.

**3. TECHNICAL OR REQUIRED SERVICES:** The selected contractor(s) will perform the construction of rain gardens following design standards and direction provided by the City and the private property owner. The selected contractor(s) shall be expected to work closely with designated City of Portland bureau personnel to accomplish the goals and perform the tasks. The selected contractor(s) will be required to provide the following skills:

**Administration:**

- Demonstrate effective project management techniques to execute tasks below according to the following project process:
  - Contractor will review project designs provided by the City
  - Contractor will produce a project cost and schedule estimate to City
  - City will issue a task order to contractor authorizing project construction at that cost and schedule
  - Contractor will execute project as detailed in Construction section below with City oversight and inspection; all changes to approved designs, cost, and schedule must be pre-authorized through a change order approved by the City
  - Contractor will submit invoice to City following final City approval of project construction detailing rates and quantities for project labor, materials, and fees incurred and all applicable receipts; City will issue payment 1 month following date of invoice.

**Site Assessment and Design:**

- Possess technical expertise related to site assessment, stormwater drainage, and rain garden design specifications (as detailed in the Rain Garden Program Guide located in Attachments to this document)

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- Review and interpret project designs and site conditions as directed by the City

### **Construction**

- **Labor** tasks for which the contractor may be required to manage and procure per City direction may include but are not limited to:
  - Excavation of existing materials such as vegetation, sod, concrete, and soil to create rain garden basins, generally less than 10 cubic yards
  - Installation of ABS or cast iron rain drains conveying stormwater from downspout standpipes to rain garden basins
  - Finish grading and amendment of native soil with compost, generally 1 to 4 cubic yards
  - Installation of rock ranging from gravel to small boulders, generally 1 to 4 cubic yards
  - Installation of plants ranging from plug to 5-gallon size
  - Site protection tasks as necessary for existing features such as utilities, structures, and existing vegetation
  - Erosion and sediment control measures as necessary
  - Purchasing and hauling of construction materials and equipment
  - Hauling and disposal of excavated material, generally less than 10 yards
- **Materials** for which the contractor may be required to manage and procure per project designs and City direction may include but are not limited to:
  - Compost, generally 1 to 4 cubic yards
  - Round gravel and cobbles, and small boulders, generally 1 to 4 cubic yards
  - 3" or 4" ABS or cast iron pipe and fittings for rain drains
  - Plants ranging from plug to 5-gallon size
- **Equipment and fees** for which the contractor may be required to manage and procure per City direction may include but are not limited to:
  - Excavation machinery such as mini-excavators, concrete saw, sod cutters
  - Disposal fees for excavated material, generally less than 10 cubic yards
  - Hand tools such as shovels, rakes, buckets, pick axes, levels, tape measures, brooms, hoses, wheelbarrows
  - Site protection and erosion control equipment such as tarps and filter bags
  - Vehicles and trailers capable of hauling necessary materials and equipment

### **Customer Services**

- Demonstrate timely and effective communication and documentation skills
- Begin and complete project as scheduled and complete project as quickly as possible (generally expected to be 2 – 7 days). The contractor may be terminated for default if satisfactory progress is not attained within three (3) working days after receipt of a notice of deficient performance.
- Demonstrate effective cost management techniques and systems to reduce City costs and ensure project stays within budget
- The Contractor shall inspect work and record results to assure that it meets the specifications and standards of this contract and the City's design standards. The contractor will be required to coordinate with the City for inspection and approval of project tasks as directed by the City.
- Minimize disruption to private property and owners as well as the adjacent public right-of-way, neighbors, and the general public.
- Demonstrate respectfulness for the project site and in interactions with property owners, residents, and the public.
- Provide design and project coordination input as requested
- Coordinate construction considerations such as scheduling, access, site protection, and aesthetics effectively with both the City and the private property owner
- Inspect work and record results to assure that it meets the specification and standards of this contract and the City's design standards.
- Provide a progress plan to the City upon request. The plan will be a written work progress plan that details schedule and plan for the completion of work. The progress plan must be acceptable to the City. The schedule shall reflect the work progress rate greater than or equal to minimum

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requirements of the Contract. The City will determine the sequence of project areas to be completed. The sequence may change due to weather conditions or other factors. The work shall progress in accordance with the established progress plan. If the contractor falls 20% behind the progress plan, the contractor may be terminated for default if satisfactory progress is not attained within three (3) working days after receipt of a notice of deficient performance.

- Provide all necessary measures to ensure no sediment is delivered to any public or private systems during construction or as a result of the final project conditions. Erosion Control and Site Clean-Up may include, but are not limited to the following:
  - Temporary and permanent sediment control measures to prevent sediment from leaving construction area and project site
  - Gravel or wood ramp construction access entrances
  - Pollution prevention activities during construction
  - Soil stabilization, including exposed piles of soil or construction materials
  - Preventing sediment from reaching storm drain and sewer systems
- Coordinate with the City for inspection and approval of each project task as directed by the City. Inspection stages include, but are not limited to, excavation and grading, plumbing and rain drains, plant purchase, installation, and final inspection.

**4. WORK PERFORMED BY THE CITY:** Bureau staff shall make available sufficient hours of staff personnel as is required to meet with the contractor and provide such information as required. For each project executed under this contract, the City of Portland Bureau of Environmental Services, will assign a Project Manager who will oversee the work and provide support as needed. The Project Manager will serve as the contractor's point-of-contact for coordination of all tasks associated with the execution of this contract. Responsibilities currently expected to be assumed by the Project Manager include:

- Outreach coordination with property owners to establish project authorization
- Development of project designs
- Issuance of project construction task order
- Facilitation of communications between the contractor and property owner regarding construction elements such as site access, site protection, and scheduling
- Procurement of project permits as necessary
- Construction oversight, inspections, and approvals
- Issuing of Notice of Deficient Performance if warranted
- Processing of contractor invoices

The City, at its discretion, may elect to provide some project materials or assume responsibility for some project elements.

Prior to the execution of a contract, the selected contractor and the City shall agree upon and approve the final list of City responsibilities and a schedule for completion. This listing will represent the City's limit of responsibilities for the project, and unless otherwise notified by the Contractor, it shall be understood that the City shall have met all obligations under the contract.

**5. TIME IS OF THE ESSENCE:** Contractor shall make every reasonable effort to meet established delivery dates and other deadlines. Circumstances that may delay the delivery of services from established delivery dates and other deadlines, including excusable delays and force majeure events, shall be reported to the City immediately upon discovery. The City and Contractor shall mutually agree upon any schedule or pricing change due to excusable delays or force majeure events in writing. In the event Contractor does not meet the established delivery dates or other deadlines and Contractor has failed to cure such breach within seven(7) days of written notice by the City, the City may obtain the non-performed service from another source, and no recurring charges, one-time charges, or termination charges or other penalties shall be due the Contractor. In addition, the City will be entitled to reasonable compensation as stated under REMEDIES.

**6. CONSIDERATION:** Unit price payments shall be made to the Contractor by the City on a monthly basis for the total services performed for the City and accepted by the City. Acceptance occurs when the City authorizes payment of the invoice. Unit prices shall be exclusive of any sales, purchaser, or consumer tax. Tax exemption certificates will be furnished to the Contractor upon request. Product payments shall be in accordance with Attachment B.

**7. DELIVERY :** Delivery of all services shall be per frequency schedule agreed upon by the Contractor and the City. The Contractor must be prepared to furnish the services as required per information provided by the City. Contractor must have adequate supplies and equipment available to perform all tasks as scheduled. Repetitive breaks in services shall not be acceptable. Services that cannot be delivered as per frequency schedule may be contracted from other sources and the Contractor shall be liable for any excess costs incurred. Repeated non-delivery may be cause for Contract cancellation.

The Contractor shall immediately notify the City, in writing, email, or fax if work cannot be completed as required. Notice should be sent to the City's assigned Project Manager for each rain garden project.

Acceptance shall not be made until all discrepancies have been corrected. Services not meeting Contract specifications may be re-performed at the Contractor's expense. Contractor shall replace and/or re-perform work within 24 hours of a re-performance request. Acceptance occurs when the City authorizes payment of the invoice.

**8. PRICES AND PRICE CHANGES:** Initial Contract prices shall be as established herein. Unit prices shall remain firm through the first year of the Contract. At the end of the one-year period following the date of acceptance, price changes may be allowed herein. Contractor agrees to provide pricing for all products for which Contractor is an authorized distributor for the duration of this Contract if and when requested by the City. Following the end of the one year period referenced above, City and Contractor acknowledge that prices for services furnished by Contractor under this Contract may need to be adjusted during the term of the Contract due to changes in Contractor's prices, rate plans, or product offerings. Such price changes shall be documented in writing between Contractor and City's Chief Procurement Officer as amendments.

Contractor shall submit any proposed pricing revisions in writing to the Project Manager for consideration at least thirty (30) days before the proposed effective date. All proposed price adjustments shall be calculated consistent with the methodology used to calculate the prices set forth in the Contractor's original proposal, the Contractor shall certify this in its request for price adjustments. Price adjustments shall become effective thirty (30) days from the date of last signature on the Contract amendment document or as otherwise stated therein. Except that no increase in price adjustments shall become effective prior to a date one year following the date of acceptance. Price adjustments will only become effective by fully executed amendments, following receipt by the Project Manager of the requested price adjustment.

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## **ATTACHMENT B**

***INSERT BID PRICING, CONTRACTOR'S QUOTE OR PROPOSAL***

## APPENDIX A

Contractor shall observe all applicable state and local laws pertaining to public contracts including the City's Equal Benefits Ordinance and its administrative rules, all of which are incorporated by this reference. Failure to comply with the Ordinance permits the City to impose sanctions or require remedial actions as stated in Section 13.1 of the rules, ORS Chapters 279A, 279B and 279C require every public contract to contain certain provisions. Pursuant to those chapters, the following provisions shall be a part of this contract, as applicable.

- Pursuant to ORS 279B.220, on every public contract, the contractor shall make payment promptly, as due, to all persons supplying to the contractor labor or material for the performance of the work provided for in the contract; shall pay all contributions or amounts due the Industrial Accident Fund from the contractor or subcontractor incurred in the performance of the contract; not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished, and; pay to the Department of Revenue all sums withheld from employees under ORS 316.167.
- Pursuant to ORS 279C.505, on public improvement contracts, the contractor shall make payments promptly, as due, to all persons supplying to such contractor labor or material for the prosecution of the work provided for in such contract. The contractor shall pay all contributions or amounts due the Industrial Accident Fund from such contractor or subcontractor incurred in the performance of the contract. The contractor shall not permit any lien or claim to be filed or prosecuted against the state, county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished. The contractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. Contractor shall demonstrate that an employee drug-testing program is in place.
- Pursuant to ORS 279C.510 (1), in every public contract for demolition the contractor shall salvage or recycle construction and demolition debris, if feasible and cost-effective. Pursuant to ORS 279B.225 and 279C.510 (3) in every public contract and every public improvement contract for lawn and landscape maintenance, the contractor shall compost or mulch yard waste material at an approved site, if feasible and cost-effective.
- Pursuant to ORS 279B.230(1), in every public contract, the contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the contractor, of all sums that the contractor agrees to pay for the services and all moneys and sums that the contractor collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services.
- Pursuant to ORS 279B.230(2), in every public contract, all subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.
- Pursuant to ORS 279B.235(1), persons may not be employed for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency or when the public policy absolutely requires it. In such cases, the employee shall be paid a) at least time and half pay for all overtime in excess of 8 hours in any one day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or b) for all overtime in excess of 10 hours in any one day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and c) for all work performed on Saturday and on any legal holiday specified in ORS 279B.020.
- Pursuant to ORS 279C.515(1), on public improvement contracts, if the contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the contractor or a subcontractor by any person in connection with the public contract as such claim becomes due, the proper officer or officers representing the state, county, school district, municipality, municipal corporation or subdivision thereof, as the case may be, may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the contractor by reason of such contract. The payment of a claim in the manner authorized by ORS 279C.515 shall not relieve the contractor or the contractor's surety from obligation with respect to any unpaid claims.
- Pursuant to ORS 279C.515(2), on public improvement contracts, if the contractor or a first-tier subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the public improvement contract within 30 days after receipt of payment from the contract agency or a contractor, the contractor or first-tier subcontractor shall owe the person the amount due plus interest charges commencing at the end of the 10-day period that payment is due under ORS 279C.580(4) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest charged to the contractor or first-tier subcontractor on the amount due shall equal three times the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district that includes Oregon on the date that is 30 days after the date when payment was received from the contracting agency or from the contractor, but the rate of interest may not exceed 30 percent. The amount of interest may not be waived.
- Pursuant to ORS 279C.515 (3), in every public improvement contract and every contract related to the public improvement contractor, if the contractor or subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the public improvement contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580.

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- Pursuant to ORS 279C.520, no person shall be employed for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or where the public policy absolutely requires it, and in such cases, except in cases of contracts for personal services as defined in ORS 279C.100, the employee shall be paid at least time and a half pay for all overtime in excess of eight hours a day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or for all overtime in excess of 10 hours a day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and for all work performed on Saturday and on any legal holiday specified in ORS 279C.540. The contractor shall give notice to employees who work on a public contract in writing, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work. In the case of contracts for personal services as defined in ORS 279C.100, an employee shall be paid at least time and a half for all overtime worked in excess of 40 hours in any one week, except for individuals under these contracts who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. sections 201 to 209 from receiving overtime. Persons employed under contracts for services shall receive at least time and a half pay for work performed on the legal holidays specified in a collective bargaining agreement or in ORS 279C.540 (1) (b)(B) to (G) and for all time worked in excess of 10 hours a day or in excess of 40 hours in a week, whichever is greater. The contractor shall give notice to employees who work on a contract for services in writing, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.
- Pursuant to ORS 279C.530(1), in every public improvement contract, the contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to the employees of such contractor, of all sums which the contractor agrees to pay for such services and all monies and sums which the contractor collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service. In every public contract, subject to ORS 279C, all employers working under the contract are subject employers that shall comply with ORS 656.017.
- Pursuant to ORS 279C.580(3)(a), the contractor shall include in each public improvement subcontract for property or services entered into by the contractor and a subcontractor, including a material supplier, for the purpose of performing a construction contract, a payment clause that obligates the contractor to pay the subcontractor for satisfactory performance under its subcontract within 10 days out of such amounts as are paid to the contractor by the public contracting agency under such contract, and an interest penalty clause that obligates the contractor to pay to the subcontractor an interest penalty on amounts due in the case of each payment not made in accordance with the payment clause included in the subcontract pursuant to ORS 279C.580 (3), for the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made, and computed at the rate specified in ORS 279C.515 (2).
- Pursuant to ORS 279C.580(4), the contractor shall include in each of its subcontracts for a public improvement, for the purpose of performance of such contract condition, a provision requiring the subcontractor to include a payment clause and an interest penalty clause conforming to the standards of ORS 279C.580 (B) (4) in each of its subcontracts and to require each of its subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor or supplier.
- Pursuant to ORS 279C.830(1)(a) workers shall be paid not less than the specified minimum hourly rate of wage in accordance with ORS 279C.838 and 279C.840.

July 25, 2008

**EXHIBIT B – PROGRAM GUIDE**

**Bureau of Development Services Program Guide:  
Rain Gardens for Existing Impervious Area Located in Eastside Combined  
Sewer Basins**

found online at:

**<http://www.portlandonline.com/bds/index.cfm?c=36814&a=269103>**



**EXHIBIT C – EXAMPLE SITE PLAN**

**Private Property  
Retrofit Program**

**Example Rain  
Garden Design**

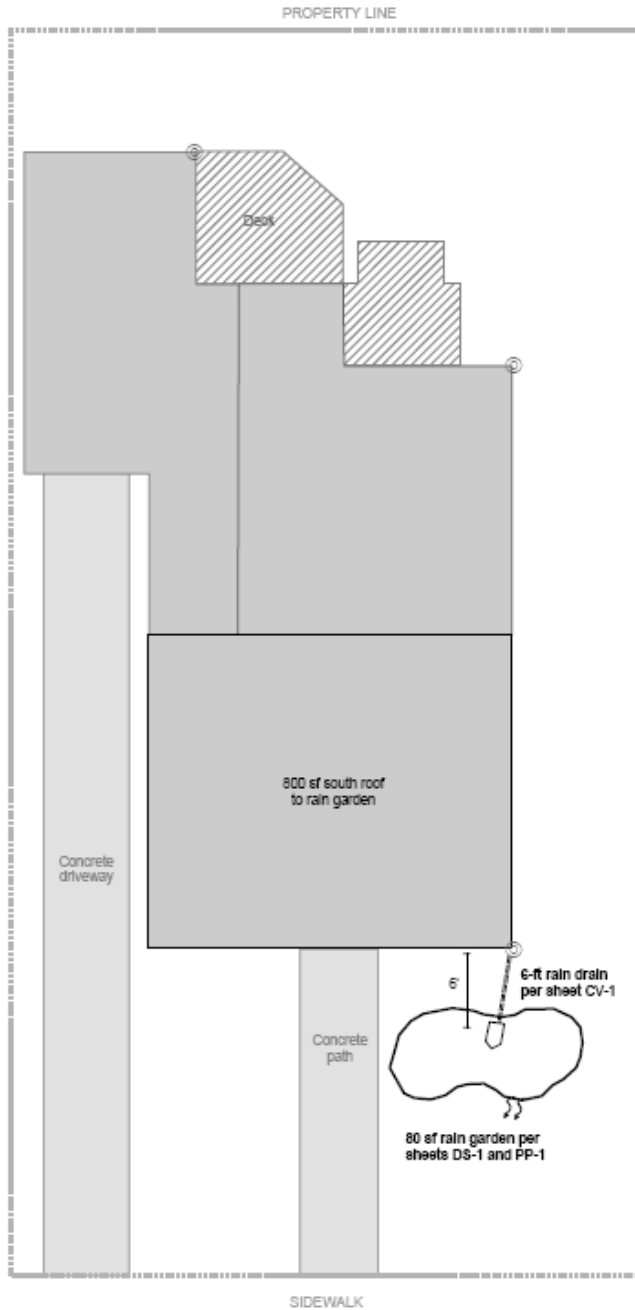
**Facility Info:**

Facility: Rain Garden  
 Area Managed: 800 sf  
 Facility Size: 80 sf



1 inch equals 8 feet

Drawn by: Alan Robben 5/6/2010



**Legend** Items in grey are existing, items in black are new or modified

- Roof Area
- Pavement Area
- Property Line
- Dimensions
- Discharge point
- Area managed
- Buried rain drain pipe
- Flow Direction
- Rain garden
- Escape route

**Design/Construction Notes**

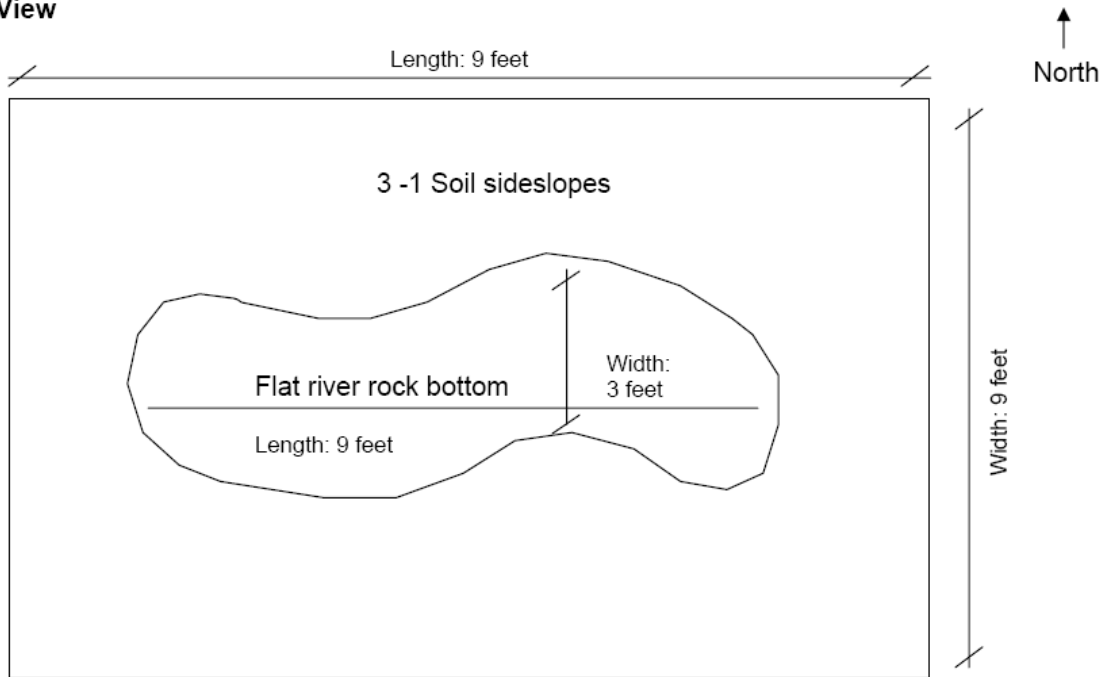
- Project will include 1 hour of contractor consultation during design and construction
- Current site conditions include a combination of grass sod & bare packed soil
- Rain garden designed per specification sheets DS-2 and PP-1
- All rain drains installed per conveyance specification sheet CV-1
- All gutter and downspout work to be performed by BES
- All excavated soil to be disposed of property of site

**EXHIBIT D – DESIGN: STANDARD DS-1**

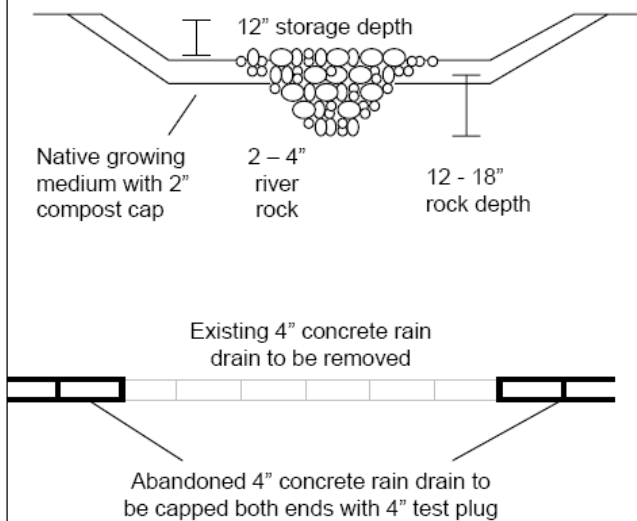
**Design: River Rock**

**DS-1**

**Plan View**



**Cross-section View**



**Materials**

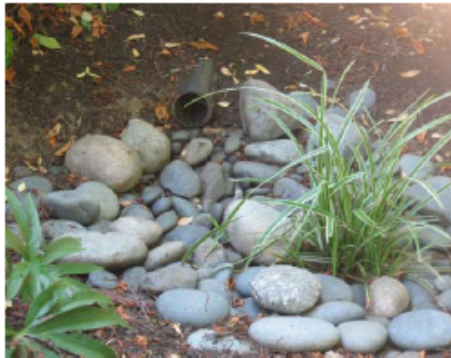
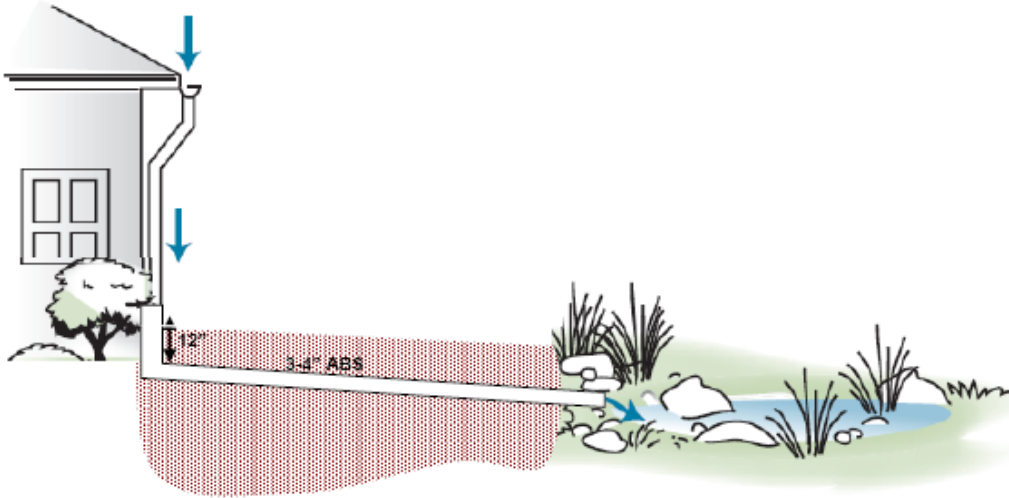
Material	Size	Amount

Disposal	Size	Amount

**EXHIBIT E – CONVEYANCE: BURIED PIPE CV-1**

**Conveyance: Buried Pipe**

**CV-1**


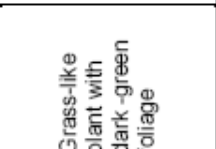



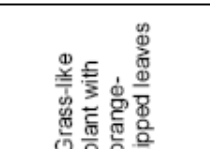

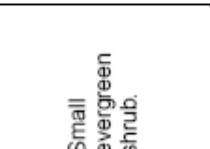




**Specifications**

- Conveys runoff from downspout to rain garden beneath lawn, pathways, landscaping, etc.
- Material must be 3-4" ABS with glued joints
- Pipe must be buried 12" below grade except for vertical standpipe and outlet
- Vertical standpipe must extend at least 10" above ground surface
- Standpipe must have capped cleanout Y
- Pipe should drop 1" for every 10 feet of pipe length

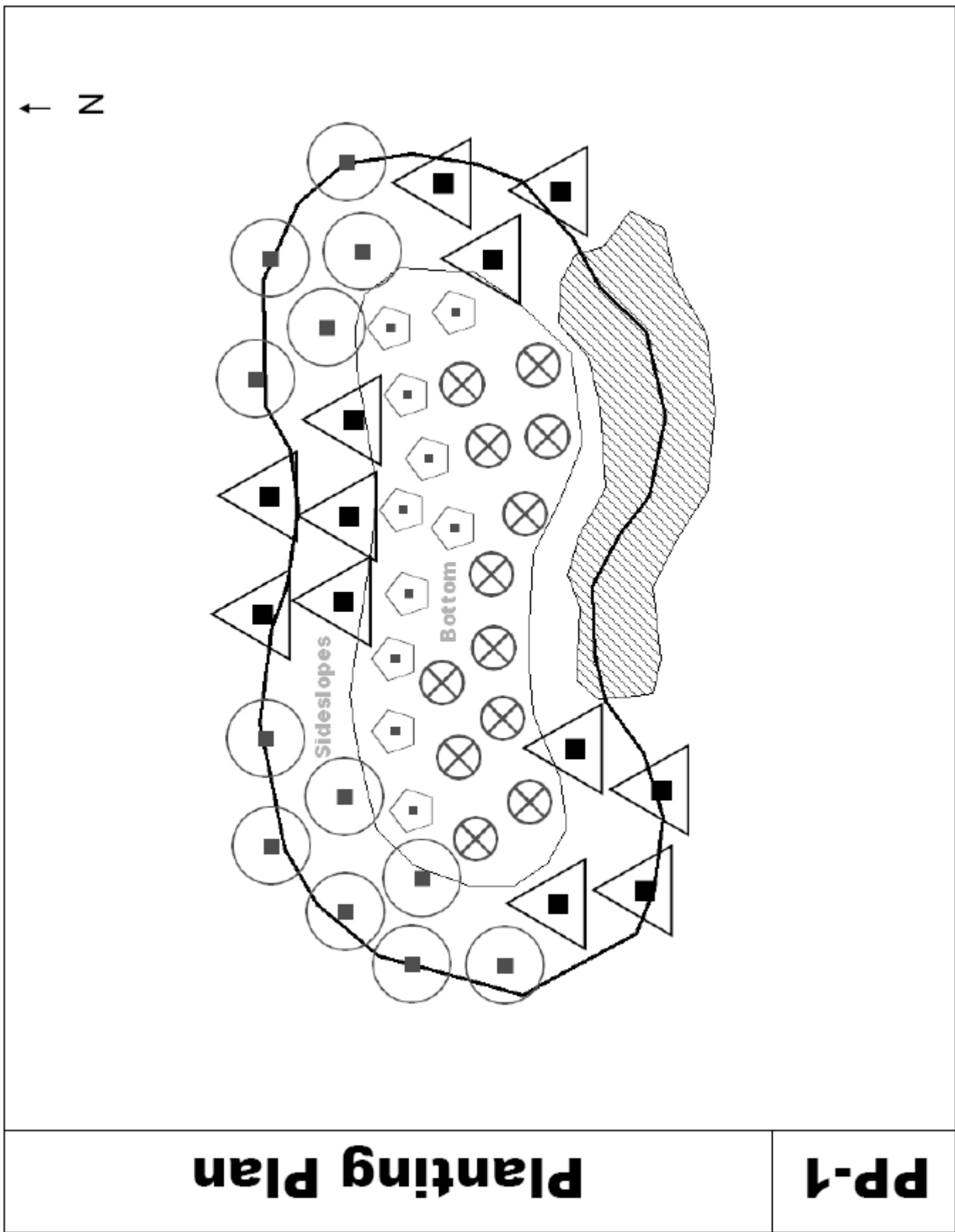


**EXHIBIT F – PLANTING PLAN PP-1**

Species	Image	Size	# Plants	Space	Sun / Shade	Zone	Height	Description	Maintenance need*
Spreading rush - <i>Juncus patens</i> 		1 Gal.	10	12" o.c.	Sun or shade	Bottom	24-30"	Grass-like plant with dark-green foliage	No on-going maintenance needed once established
Sword Fern - <i>Polystichum munitum</i> 		1 Gal.	12	12"-24" o.c.	Shade	Bottom or Sideslopes	18"-24"	Fern	No on-going maintenance needed once established
Orange Sedge - <i>Carex testacea</i> 		4" pot	12	12"	Sun or shade	Bottom	24"	Grass-like plant with orange-tipped leaves	No on-going maintenance needed once established
Dull Oregon Grape - <i>Mahonia nervosa</i> 		1 gal.	12	12" o.c.	Sun or shade	Sideslopes	24"	Small evergreen shrub.	No on-going maintenance needed once established
Kinnikinnick - <i>Arctostaphylos uva-ursi</i> 		4" pot	16	12" o.c.	Sun or shade	Sideslopes	6"	Spreading groundcover, Evergreen.	No on-going maintenance needed once established

**PP-1**

**Planting Plan**



**Planting Plan**

**PP-1**