

Maintaining Green Infrastructure through Shared Services



Report by Daylight and
the Metropolitan Planning Council
for OAI, Inc.

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Introduction

When priorities are mounting and resources are limited, municipal leaders are forced to make difficult trade-offs regarding the services they provide. Services that constituents generally expect from their local government — like road resurfacing and street tree-trimming — too often become an either/or scenario. And, we know that when it comes to green stormwater infrastructure, consistent maintenance is key to maximizing their effectiveness over time. So what creative governance models might exist for lessening the burden to municipal governments while improving the quality and consistency of maintenance?

In 2019, regional community foundations along the southern shores of Lake Michigan — from Evanston to Michigan City — came together to fund a pilot project that leverages shared service arrangements, workforce development, and green infrastructure to address a regional need for consistent, quality, and affordable maintenance of green infrastructure assets. Their funding collaborative is apart of the Great Lakes One Water Partnership which is a multi-year, basin-wide initiative that brings together shoreline community foundations to inject financial and intellectual capital and advance a new era of water management.

Many communities have not ‘cracked the code’ on how to systematically and effectively maintain green infrastructure once installed.

Michael Davidson
The Chicago Community Trust

Our Research Focus

1
How shared services are being used across the region today to reduce costs and bring efficiency to many common municipal services, from snow plowing to emergency response

2
Why some shared service arrangements have succeeded and others have not

3
Review of shared service arrangements across the country to identify best practices that can inform green infrastructure maintenance approaches in the Calumet region

Introduction

OAI, Inc. — a high-quality technical workforce development organization — is leading this pilot project with the goal of directly addressing the need for effective and efficient maintenance of green infrastructure while also helping to address other community needs. The central feature of the project is to create a sustainable model for green infrastructure maintenance by deploying cross-jurisdictional green infrastructure teams. Ideally, the teams would be comprised of local residents, trained, and practiced in green infrastructure work. The teams would maintain existing green infrastructure and capitalize on geographic proximity to achieve economy of scale, reducing the costs to communities. Two key benefits or outcomes from this approach would be:

- Better maintenance quality, improved green infrastructure performance.
- Economy of scale can be achieved through a shared services approach.

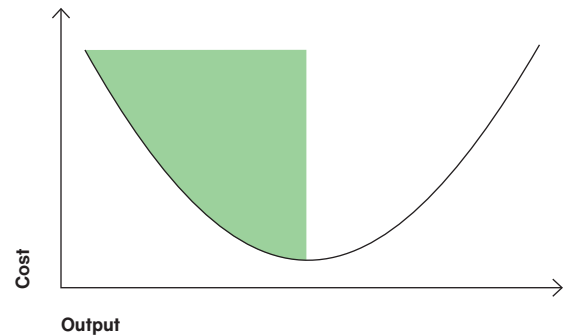
This report aims to support the pilot project development by identifying key takeaways from a broad review, exploring both the scholarly literature as well as first-hand practitioner experience, on shared service arrangements for specialized services like green infrastructure maintenance. The report also lays out context-specific recommendations to consider.

Our Hypothesis

There are untapped economies of scale to be gained in a shared service arrangement for maintaining green infrastructure across municipalities in the Calumet region, especially for low- to moderate-income communities who may struggle to individually procure and pay for maintenance services.

Economy of Scale

The premise of “economy of scale” is that the efficiency of service delivery increases as the population served increases, because the resources needed to provide additional services will not grow proportionately as fast as the volume of services that are provided, especially when leveraging geographic proximity.



Overview of Shared Service Arrangements

Service Delivery Models

Local governments provide services to the public that otherwise would not be provided by individual citizens or the private sector, because there is not sufficient financial incentive — think public parks, sewer systems, animal control, solid waste collection, police protection, and road maintenance, as well as maintaining green stormwater infrastructure.

The work could be performed by government staff or by contractors retained through competitive procurement processes. However, depending on the type of service, there are other service delivery arrangements that better optimize efficiency and quality over the traditional direct service delivery model.

While there is no single equation or recipe for government efficiency, and no clear, definitive answers on the questions listed here, there are relevant insights, as outlined in this report, which have informed the shared service recommendations for green infrastructure maintenance.

Key Research Questions

The growing body of literature on municipal government efficiency and service delivery models has been pursuing a number of key questions, including:

- Which type of services should be shared to achieve economies of scale?
- How do we align different types of services to the right arrangement model?
- How much do municipal characteristics, like size and capacity, influence the success of service sharing arrangements?
- How should the performance of shared service arrangements be measured?
- What are the prerequisites for ensuring a successful shared service arrangement?

Overview of Shared Service Arrangements

The Spectrum of Shared Service Arrangements

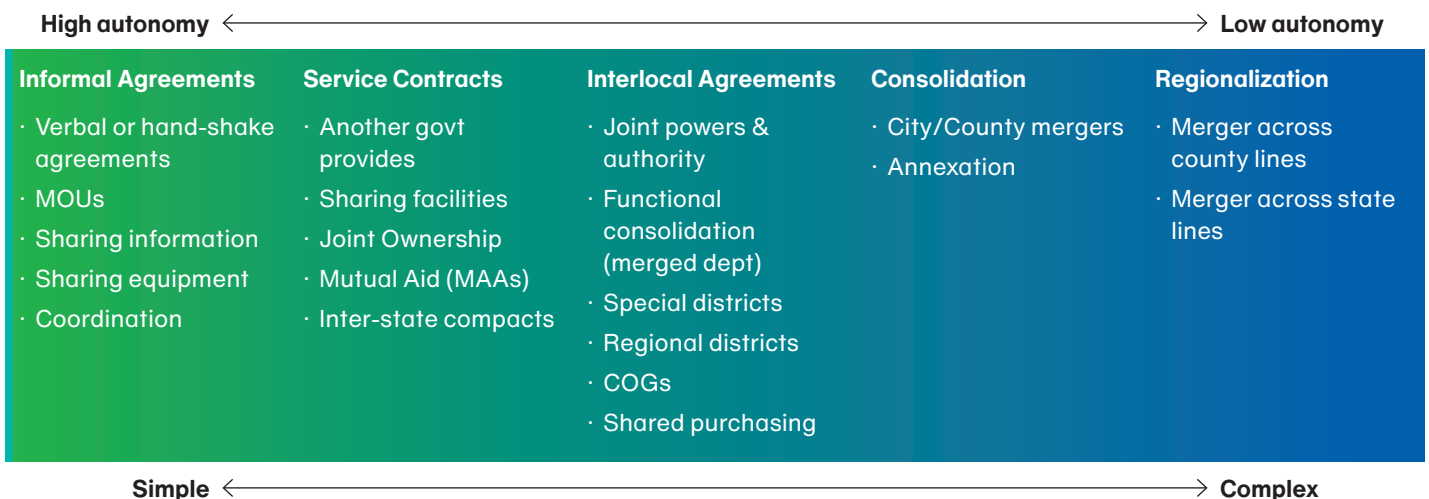
It is important to start by seeing the full spectrum of shared service arrangements, with varying degrees of formality and structure. In reality, shared service arrangements can be established with as little as a handshake, more formally established with MOUs or joint purchase agreements, or more rarely established through the complex legal creation of a special district or authority. Moving across the spectrum, municipalities can see greater efficiency and return on investment in delivering services. Administrative costs may be lower and/or costs for delivering services may be relatively lower because of the larger volume of services covered; but a trade-off is losing control over how the service is delivered. The arrangement structures in the regionalization model require quite complex policy, legal, and structural changes — increasing the risk of failure, despite their high impact potential.

San Francisco's Joint Benefits Authority

Over the next two years, the San Francisco Public Utility Commission is partnering with the World Resources Institute and Encourage Capital to explore the potential and feasibility of creating a Joint Benefits Authority with the intent of capitalizing on the shared benefits of integrated infrastructure planning.

The Joint Benefits Authority is a new governance model that will allow governmental agencies within a city to jointly and more holistically plan, implement, and finance transformative public infrastructure projects by valuing a range of co-benefits that working cross-agency mandates. This new authority would have the power to issue bonds that would be paid back by member agencies based on the benefits they received. The Public Utility Commission is excited about the potential of this collaborative governance model for implementing green infrastructure projects at scale.

Table 1: The Spectrum of Shared Service Arrangements (adapted from Hilliker, 2014)



Overview of Shared Service Arrangements

Motivations for Sharing Services

Sharing services across municipalities is a long-standing and common practice in this country. There have been numerous municipal surveys conducted at the regional and state levels to assess the motivations, challenges, and effectiveness of such arrangements. Pulling from surveys conducted in New York, Pennsylvania, and Illinois, the most oft-cited motivations that local governments have reported driving their move to shared services include:

- Cost savings
- Fiscal stress on local budget
- Maintaining service quality
- Existence of local leadership and trust
- Most effective use of labor
- Service coordination across municipalities
- Past experience with sharing agreements
- Gaining purchasing and bargaining power in the market
- Community pressure or expectation
- Unable to provide important services without sharing
- Regional equity in service delivery

Maximizing Benefits

In a survey of 117 municipalities across Northeastern Illinois, the Metropolitan Mayors Caucus found that 95% of them shared services and 99% of those municipalities found the practice beneficial. The benefits of shared service arrangements, as reported by these municipal representatives, include improving their ability to comply with regulations, operate more efficiently, save on costs, fulfill new service needs, coordinate with others, and reduce the impact of capital costs.

To maximize these benefits, it is important to understand that the type of service should be used to inform which shared service arrangement to deploy. Again, no shared service arrangement is universally efficient. In *Municipal Consolidation and Shared Services: A Critical Analysis*, public policy scholars Marc Holzer and John Fry call out two important service typologies that should be considered when evaluating arrangements to pursue: capital intensive and labor intensive. Capital-intensive services are things like sewer infrastructure, drinking water infrastructure, and park and open space creation. While labor-intensive services include police protection, housing inspections, public education, and waste collection. Green infrastructure maintenance services are labor intensive.

Sharing services might look like:

One municipality providing a service to or sharing equipment with another.

Multiple municipalities combine purchasing power to negotiate with private service providers better rates on behalf of their residents, for instance for waste collection or internet services.

Multiple municipalities sharing a joint contract with a contractor to paint fire hydrants or apply crack sealing on roads.

Multiple municipalities conducting a joint bid for sewer lining to get consolidated pricing, but manage separate contracts with the contractor selected.

One municipality sharing emergency response support to another in a moment of crisis.

Departments within a single municipality coordinating on a shared service contract.

Multiple municipalities going in for joint purchasing of a good, e.g. bulk road salt.

A municipality deferring to county-level government for things like elevator inspections.

Overview of Shared Service Arrangements

Intuitively, economies of scale are easier to achieve with capital-intensive services, because they become less costly (per capita) with increasing population size. However, the efficiency of sharing labor-intensive services may be closely tied to the population size of the municipality(s).

The Holzer & Fry literature review reveals that labor-intensive services are often more efficient in smaller governments (~25,000 or less), in part because there are reduced levels of services required (i.e., smaller populations to serve) and because expectations around the frequency and quality of services in smaller municipalities is lower among citizens than those of larger city residents. You also see higher rates of volunteerism in smaller municipalities, where citizens support municipalities in providing on-demand services, like volunteer firefighters.

Accordingly, green infrastructure maintenance would be considered a labor-intensive service. But, because it requires a certain level of expertise and is needed relatively infrequently it falls into the service category of “specialized service” which do show economies of scale when shared across municipalities of any size. Proximity matters when sharing green infrastructure maintenance, because of the need for specialized equipment – such as a watering truck – which loses efficiency when moved over wider geographic ranges.

It is also important to note that, when it comes to calculating the per capita cost of delivering a service, there is much complexity and diversity in how efficiency is measured across arrangements and case studies. So while there are insightful trends across the literature, it is difficult to be definitive.

Below is a table summarizing the characteristics of services similar or adjacent to green infrastructure maintenance. While there are many other service examples, we have pulled a few to help contextualize the emerging service area of green infrastructure maintenance.

Table 2: Service Characteristics

Service Type	Service Function	Costs	Equipment			Skills	Public Interaction	Special Expertise	Timing	On-Demand	Concurrent	Infrequent	Misc.	Regional Outlook
			Labor	Capital	Equipment									
Public Works	Snow Removal		●		●					●	●			
Public Works	Leaf Removal		●		●						●			
Public Works	Parks – grounds maintenance		●		●									
Public Works	Stormwater (grey) and pollution control systems maintenance		●		●			●						●
Public Works	Green stormwater infrastructure maintenance		●		●			●			●	●		●
Public Works	Forestry		●		●			●			●			
Public Works	Waste water systems maintenance		●		●			●						
Public Works	Infrastructure development and replacement			●				●				●		●
Construction	Inspection		●					●						
Fire	Response				●			●		●				
Management	Human Resources		●					●		●	●			
Elections								●		●	●			●

Overview of Shared Service Arrangements

Public-Private Partnerships

Public-private partnerships (P3) are a common procurement model for governments to provide new or improve existing facilities, infrastructure, or services. P3 is a broad term that describes any contract between government and a private-entity that minimally includes construction, renovation, rehabilitation – or referred to simply as design and build. These contracts might also include financing, operations, maintenance, or management. While the private partner may assume higher levels of responsibility for the project components, the government will always be held responsible for the outcome of the project.

The potential benefits of P3 arrangements include accelerated project delivery time-frames, operations and maintenance components that serve as an extended warranty of project quality and function, and increased budget certainty.

Recommendations

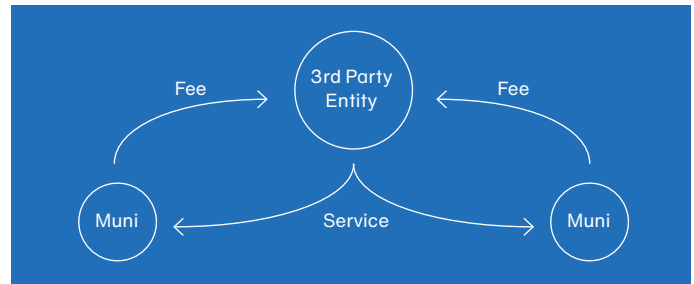
Governance Options for Green Infrastructure Maintenance

Across our broad review, we identified takeaways that were relevant to both the bi-state Calumet region, in terms of municipality size and local government capacity, as well as the type of service – green infrastructure maintenance which can be categorized as a “labor-intensive, specialized service needed infrequently.” Given this context, we recommend the following shared service arrangements, starting first with a shared service contract to better understand the appetite for more robust and complex models of collaboration in the future.

Shared Service Contract

Shared service contracts take a couple of forms. They can exist between two or more governments, where one municipality (or other forms of government) acts as the lead agency, directly producing the service for all partners and supplying the administration necessary. They can also be between multiple municipalities and a non-governmental contractor, either for-profit or non-profit entity. Recently, a group of municipalities part of the Municipal Partnering Initiative collectively identified a private contractor to work with on the joint purchase and installation of new automatic meter reading systems to replace the existing aging and inefficient ones. With this model, municipalities may choose to issue a joint bid to get a better price point and issue separate work contracts with the contractor selected. Or they may choose to share a joint contract with the contractor. In the case of the latter, it is very important to establish shared expectations and accountability systems in advance of a contract being signed.

In practice, the risks associated with a non-governmental contractor providing a public service on behalf of the municipalities is (1) that they may not share the same sensitivity to public demand as a government does and (2) that contractors may not be committed to thinking and maintaining in the long-term. On the other hand, these contractors often have more expertise, both in terms of personnel and equipment, to perform this type of service.



Shared Service Contract with 3rd Party

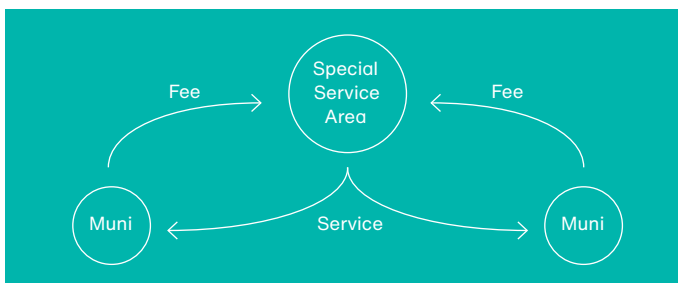
Recommendations

Special Service Districts

Special districts often involve the establishment of a new governmental entity that may have taxing or rate-setting authority, often with voter approval, to deliver a specific service. More simply, special service areas can be established as a fee assessed within a set area and the fees collected are then used to provide services in that area. Based on the pilot of shared service contracts, as described above, there may be interest in establishing special service districts for managing green infrastructure — in addition to other relevant beautification and maintenance services — across municipalities in order to have dedicated revenue generation for the long-term.

A tangible example of the special service area is a business improvement district, where a localized property tax is levied within a particular commercial corridor of the contiguous area to fund expanded services and programs that benefit the district. There are 53 special service areas (SSA) in the City of Chicago alone. Along Halsted Street from 97th Street to 119th Street, the Far South Community Development Corporation manages SSA #45, offering public way maintenance and beautification; district marketing and advertising; business retention and attraction; special events and promotional activities; security; façade improvements; and other commercial and economic development initiatives.

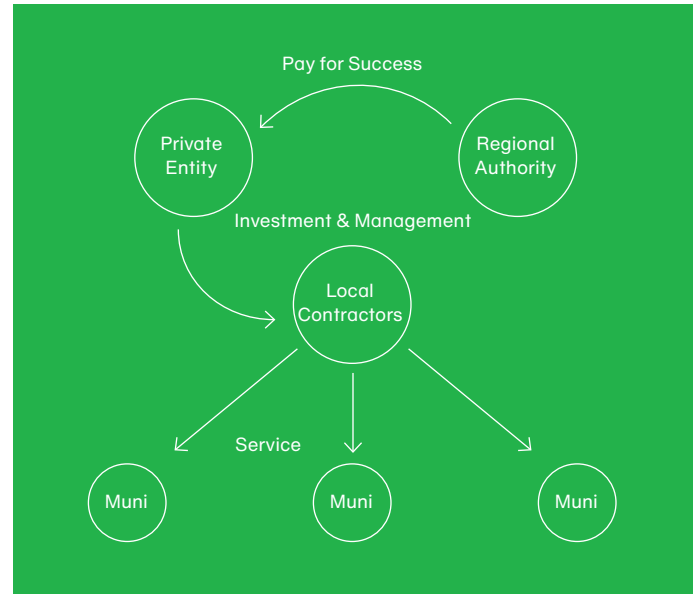
Other special taxing districts, like the tax incremental finance (TIF) district — which targets key redevelopment areas from which future tax revenues are diverted to finance infrastructure improvements and/or development — may also prove to be important funding sources for shared service contracts.



Special Service District

Community-Based Public-Private Partnership

A new governance model is emerging for stormwater management — as seen in Prince George County, MD and soon in Milwaukee, WI — known as the community-based public-private partnership (CBP3). This model builds on the traditional public-private partnership used to reduce costs, improve quality control, and expedite the delivery of services while centering community priorities, quality of life, and economic development in attaining stormwater management goals. A CBP3 is an agreement between a local government and a private entity, where public investment is leveraged with private equity to expedite and sustain the financing, building, and maintenance of green stormwater infrastructure. For more on CBP3s, see the Clean Water Partnership Case Study in Appendix B.



Community-Based Public-Private Partnership

Ensuring Shared Service Arrangement Success

After over a dozen conversations with national and regional practitioners working on shared service arrangements and/or grappling with maintaining green stormwater infrastructure, a few key prerequisites have emerged for making sure a shared service arrangement gets off the ground and is well-positioned for success. It will be important to seek out these elements when engaging stakeholders across the Calumet region.

Must Haves: Prerequisites for Success

Across the landscape review, there were repeated themes for what makes shared service arrangements successful. We have outlined those prerequisites here.

1 Leadership

Leadership, and more specifically leadership that inherently believes there is value in collaboration is necessary for generating the interest, momentum, and resilience required for shared service arrangements. On the flip side, a change in leadership was the number one reason for informal shared service arrangements dissolving across New York municipalities.

2 Impetus

Be it fiscal stress from cuts in state aid, rising pension costs, and/or tax caps, there is usually a driving need for creative approaches to cutting costs. This sense of urgency is important to overcome the status quo — “the way we have always done things” perspective. Leadership becomes even more vital to sustaining the shared service arrangement when the original impetus lessens or fades.

3 Shared Goals

Shared service arrangements benefit when partners have similar goals and necessities. Even more so, these arrangements require a certain level of trust and respect between partners, so finding relationships that already exist is advantageous in the long run.

4 Accountability

This is a big one. Accountability requires strong project management to hold contractors accountable to their scope and benefits from having protocols and capacity to conduct periodic inspections of the green infrastructure sites. Inspections involve making field visits to green infrastructure sites to ensure (1) all of the components are functioning properly and, when necessary, (2) that maintenance needs are documented and reported. These inspections require a moderate level of specialization and training to determine the proper health and function of these assets.

Maintenance Plan Elements

Maintenance plans often include basic elements such as:

Identification of the parties responsible for maintenance

Maintenance schedules

Inspection requirements

Frequency of inspections

Easements or covenants for maintenance

Identification of funding sources

Ensuring Shared Service Arrangement Success

Additionally, before even engaging potential contractors, municipalities eager to share services must get on the same page in terms of articulating a clear, standardized scope of work with service level expectations and schedules defined. Remember, even though these conversations may be difficult to work through, there is much precedence that demonstrates compromise is possible. This may include collectively adopting an operations and maintenance guide to share with contractors on green infrastructure maintenance.

Good to Haves: Accelerators for Success

Shared service arrangements are certainly possible without the following elements, but having this infrastructure in place accelerates a municipality's or region's success in sustaining quality and efficient service delivery over time.

1 Asset Management Systems

When it comes to infrastructure maintenance, municipalities with a well-functioning inventory system are much better able to track, value, and maintain municipal assets — be they trees, pipes, or parks. Asset management systems are databases that can have many functions from geographic information systems (GIS) to constituent relationship management (CRM), all with the goal of supporting capital planning and management. These systems often hold an inventory of assets — with detailed information on an assets location, condition, and ownership — track past and upcoming maintenance schedules, and issue work order requests to contractors.

2 Dedicated Funding Stream

Infrastructure maintenance benefits from a dedicated funding stream to support it in the long-term. Stormwater utility fees on the Indiana side of the Calumet provide a steady stream of dollars to support the maintenance of infrastructure investments. However, where there are no utility fees, municipalities should get creative with their ability to generate dedicated revenue for stormwater management. Residents of the Village of Westmont, Illinois, approved the Westmont Stormwater-Infrastructure Sales Tax Referendum in the Spring of 2015. The referendum allows the Village to collect a 0.5% sales tax on local purchases to generate revenue specifically set aside for stormwater and infrastructure improvements. Since its establishment, this revenue stream brings in over \$1 million a year.

Shared Service Contract Elements

Preamble
Scope of Work
Compensation
Contract Term
Termination of Contract
Status as an Independent Contractor
Bonding
Certifications of Compliance with State and Federal Statutes
Indemnification
Additional Services
Notification
Non-Disclosure
Severability
Workman's Comp Insurance
General Liability Insurance
Commercial Automobile Liability Insurance
Umbrella or Excess Liability Insurance
Signatures

3 Outcome Evaluation

To demonstrate and communicate the value of shared service arrangements it is advisable to conduct an annual review of outcomes, both monetary and non-monetary. While the most commonly used indicator for performance evaluation is the cost per capita or per unit of service, there are others to consider, including inputs like project management staff time and equipment; outputs like the quality of the service delivered; and outcomes like cost savings, internal capabilities, and trusted relationships to leverage in the future. Benchmarking against the performance of other local governments is often used when there is comparable cost-based data. Transparently reporting on these measures is as important as collecting them to demonstrate the proof of concept, and garner political buy-in and community support for more collaboration.

Common Pitfalls & How to Avoid Them

Learning from others, there are a few common pitfalls to avoid when establishing shared service arrangements.

1 Administrative Incompatibilities

We have already established the importance of project management in crafting and managing contracts. This administrative burden can be shared or rotated across municipalities, as in the case of the Municipal Partnering Initiative. However, where municipalities lack project management capacity they will need to rely on and compensate those that have it.

2 Ensuring Equitable Quality

If municipalities are paying in equally (or proportionally), then they will naturally expect to have equitable service delivery and quality. Clearly negotiating a schedule based on the volume of green infrastructure across municipalities will be critical upfront. And, again, establishing a transparent accountability mechanism is vital.

3 Liability Concerns

What happens if a watering truck breaks a street curb? Who pays? Who is responsible? The shared service agreement and contract language should cover the many liability concerns and be vetted by the legal teams of each municipality.

Guiding Principles from the Lower Fox River Partnering Initiative

Be flexible. The challenges of shared services vary from community to community. Efforts to share services require significant flexibility, especially in the initial stages, to be able to accommodate a range of partner needs and address unexpected legal, logistical, and financial issues that arise.

Establish ownership at all staff levels. Strong leadership from municipal leaders was identified from the outset as a necessary ingredient for a sharing Partnering Initiative's success. In establishing the Partnering Initiative, the administrators set the direction for other staff by building a culture of collaboration. At the same time, the process for developing the Partnering Initiative allowed staff at other levels the autonomy to develop shared service opportunities that best fit departmental needs. The administrators' deference to staff experts on how to share services allowed them to brainstorm creative solutions that may not have arisen if they had been given prescriptive instructions from the top.

Build upon incremental gains. Past experiences emphasized the need for municipalities to proceed methodically by fostering relationships and trust, and by building upon small accomplishments. This Partnering Initiative starts with easily implementable activities before moving onto more complicated ones.

Be transparent. Shared services require trust among communities that may compete for economic development, funding, and other resources. In order for communities to develop good working relationships with their neighbors, they must create an environment of openness and transparency.

Conclusion

Distilling the insights gained across this landscape review, we have attempted to summarize the best practices for pursuing a shared service arrangement. While these cooperative efforts are not easy, once established, their benefits are tangible and numerous; moreover, they can be built upon for future efficiency, interdependency, and resiliency.

Best Practices

1 Start Small

Start by working together on smaller projects to build trusted relationships before attempting larger, more high stakes, or more complex shared service arrangements. Green infrastructure maintenance is a perfect place to start.

2 Go Formal

While handshakes are quick, getting it in writing tends to work better and more smoothly in the end. Intergovernmental agreements and MOUs are also more likely to sustain through leadership changes, as well.

3 Be Clear

As stated in the Metropolitan Mayors Caucus report, ensure agreements are absolutely clear: define exact, mutually agreed upon expectations, purpose, process, requirements, metrics, limits, liability, and long-term costs.

4 Bring a Learning Mindset

Find opportunities to check-in and reflect on the arrangement periodically. Evaluate outcome performance annually and be ready to adjust or pivot based on how things are going. Contractor feedback is also valuable and should be sought throughout both the contracting and evaluation processes.

Calumet Stormwater Collaborative Members Weighed In on Potential Challenges

-
- Local governments have conflicting priorities for resources

 - Fiefdoms – difficulty working together

 - Standardizing inspections protocol

 - Variations in municipal capacity

 - Variations in current grey infrastructure maintenance practices

 - Securing a commitment from all parties involved

 - Lack of long-term leadership and consistent focus

 - Ensuring equal distribution of service delivery quality

 - Having the oversight and accountability system worked out in advance

 - Impressions, and first impressions, matter – if projects go over budget, it may sour the appetite regionally for these efforts

 - Noise in neighborhoods (during working hours)

 - Pesticide usage – whether or not they are toxic (perception)

 - Lack of regular communication between participating communities

 - Basic skill level defined for workforce

 - Geographic limitations, especially related to moving equipment and workers

 - Consider starting with MWRD's 6 stormwater master planning communities

 - Handling the maintenance of green infrastructure on private property

Conclusion

Lesson Application

In preparing for the pilot phase of this initiative, we advocate taking the following steps to set the stage for shared service arrangement feasibility.

1 Spot Leadership

Seek out municipal leaders who see the inherent value of collaboration and potential in shared service models.

2 Create a Compelling Case

Since plans and resources for green infrastructure maintenance are not widespread, consider making the case for this pilot program as a jumping off point for sharing other existing services that can result in real cost savings for the municipalities down the road.

3 Assess Appetite

Use conversations with municipal leaders to understand their appetite for other shared service models, like CBP3s or special service districts for generating revenue for green infrastructure maintenance, long term.

References

- Beyer, L. (n.d.). Joint Benefits Authority. Retrieved November 20, 2019, from World Resources Institute: <https://wriorg.s3.amazonaws.com/s3fs-public/uploads/joint-benefits-authority.pdf>
- Chicago Metropolitan Agency for Planning. (2015). Lower Fox River Partnering Initiative Shared Services Study. Chicago: CMAP.
- Conolly, P. (2019, October 23). Director, Green Infrastructure Leadership Exchange. (L. Valicenti, Interviewer)
- Delaware Valley Regional Planning Commission. (2013). Municipal Implementing Tool #25: Implementing Shared Services. Philadelphia: Delaware Valley Regional Planning Commission.
- Durocher, R. (2019, October 31). Interim Watershed Revegetation Program Manager at City of Portland. (L. Valicenti, Interviewer)
- Ellis, J. (2014, August 6). Taking Action: The Municipal Partnering Initiative. Retrieved September 30, 2019, from Metropolitan Planning Council: <https://www.metroplanning.org/news/6983/Taking-Action-The-Municipal-Partnering-Initiative>
- English, A. (2019, December 19). RainScapes Program Manager of Montgomery County's Department of Environmental Protection. (L. Valicenti, Interviewer)
- Eskin, J. (2019, October 14). Senior Programs Specialist at Delta Institute. (L. Valicenti, Interviewer)
- Government Finance Officers Association. (2011). Technology in Capital Planning and Management. Retrieved November 26, 2019, from: <https://gfoa.org/technology-capital-planning-and-management>
- Halloran, S. (2019, November 25). Assistant to the Village of Glenview Manager. (L. Valicenti, Interviewer)
- Hileman, T. (2012). Municipal Partnering Initiative (MPI) — Endless Possibilities. ICMA Annual Conference. Phoenix: International City/County Management Association.
- Hilliker, M. (2014). Shared Services in Public Health. Wisconsin: Northwoods Shared Services Project.
- Holzer, M., & Fry, J. (2011). Shared Services and Municipal Consolidation: A Critical Analysis. Alexandria, VA: Public Technology Institute.
- Homsy, G., Qian, B., Wang, Y., & Warner, M. (2013). Shared Services in New York State: A Reform That Works. Ithaca: Cornell University.
- Kim, J. (2015). Northeastern Illinois Local Government Shared Services Survey Report. Chicago: Metropolitan Mayors Caucus.
- New Jersey Department of Community Affairs. (2010). Shared Services — Working Together: A Guide to Joint Service Feasibility Studies & Shared Service Agreements.
- NIGP: The Institute for Public Procurement. (2016). Public-Private Partnerships: Facilities and Infrastructure. Retrieved November 26, 2019, from: [https://www.nigp.org/docs/default-source/new-site/global-best-practices/public-private-partnership-\(p3\)-facilities-and-infrastructure.pdf?sfvrsn=355d907a_0](https://www.nigp.org/docs/default-source/new-site/global-best-practices/public-private-partnership-(p3)-facilities-and-infrastructure.pdf?sfvrsn=355d907a_0)
- Prince George's County Department of Environment. (2016). Meeting Regulatory Stormwater Management Requirements Using a Community-Based Public-Private Partnership Business Model. Prince George's County Department of Environment.
- Rotunno, K. (2019, November 18). Chief Executive Officer of R2O Consulting. (L. Valicenti, Interviewer)
- Sasso, L. (2019, November 18). Project Manager at the Milwaukee Metropolitan Sewerage District. (L. Valicenti, Interviewer)
- Tackett, T. (2019, October 25). Drainage and Wastewater Capital Portfolio Manager for Seattle Public Utilities. (L. Valicenti, Interviewer)
- U.S. Environmental Protection Agency. (2015). Elements of a Green Infrastructure Maintenance Business Plan. Milwaukee: U.S. Environmental Protection Agency.
- U.S. Environmental Protection Agency. (n.d.). Financing Green Infrastructure — Is a Community-Based Public-Private Partnership (CBP3) Right for You? Retrieved November 24, 2019, from U.S. Environmental Protection Agency: <https://www.epa.gov/G3/financing-green-infrastructure-community-based-public-private-partnerships-cbp3-right-you>
- Village of Westmont, Illinois. (2015). Stormwater Management. Retrieved November 24, 2019, from Village of Westmont, Illinois: <https://westmont.illinois.gov/index.aspx?NID=478>
- Wilson, E., Moyer, K., & Clayberger, L. (2007). Putting the Pieces Together: Five Case Studies of Regional Cooperation in Pennsylvania. Renew Pennsylvania.

Appendix A: Interviewees

Mike Adamow, Green Infrastructure Planner & Utility Specialist, San Francisco Public Utilities Commission

Lisa Beyer, Urban Water Infrastructure Manager, World Resources Institute

Paula Conolly, Director, Green Infrastructure Leadership Exchange

Ryan Dorochoer, Interim Watershed Revegetation Program Manager, City of Portland

Ann English, RainScapes Program Manager, Montgomery County Department of Environmental Protection

Jack Eskin, Senior Programs Specialist, Delta Institute

Donna Evans, Stormwater Facility Maintenance Program Manager, Montgomery County Department of Environmental Protection

Sean Halloran, Assistant to the Village Manager, Village of Glenview

Sarah Minick, Utility Planning Division Manager, San Francisco Public Utilities Commission

Kellie Rotunno, Chief Executive Officer, R2O Consulting

Lisa Sasso, Project Manager of Planning, Research, and Sustainability, Milwaukee Metropolitan Sewerage District

Tracy Tackett, Green Infrastructure Program Manager, City of Seattle

Appendix B: National Case Studies

Initiative	Municipal Partnering Initiative (MPI)
Location	Lake & Cook County, IL
Time-frame	2010-Present
Typology	Competitive Bids & Shared Service Agreements
Partners List	30+ municipalities
Structure Description	Informal, voluntary program (opt-in/opt-out). Sharing responsibility, administration, and accountability across the participating communities (including writing RFPs, reviewing bids, evaluating service delivery and quality, etc.).
Impetus	Following the national economic downturn in 2008/2009 and Illinois' financial crisis, municipalities in northern Illinois began discussing the potential a new business model that leveraged common concepts — bulk purchasing and cooperation — for cost-efficient service delivery.
Services	20+ Services, including sewer lining, crack sealing, tree maintenance, street sweeping, and catch basin cleaning.
Value	Total aggregate savings from 2011-2015 estimated at \$2.1-2.6 million for the taxpayers of the participating communities. (Source: Harvard University, Innovations in American Government Awards - add to references)
Challenges	Fear of the unknown and tight grasp on “the way we have always done things.”
Key Takeaways (Hileman, 2012)	<p>Information and data sharing across municipalities is critical in keeping track of value and quality, sharing best practices for continuous improvement, and dispelling misconceptions.</p> <p>Municipalities require strong project managers to hold contractors accountable.</p> <p>Leadership with a commitment to the partnership is critical to maintaining the flexibility of the informal organization, as well as upholding value as the economy improves and original impetus fades.</p> <p>Start small to build relationships and value that can be leveraged for additional collaborations in the future.</p> <p>Putting in place clear, standardized front-end bid documentation is instrumental, especially when partnering with smaller or lower-capacity municipalities.</p>

Appendix B: National Case Studies

Initiative	Clean Water Partnership (CWP)
Location	Prince George County, MD
Time-frame	2015-Present
Typology	Community-Based Public-Private Partnership (CBP3) & Pay-for-Success Funding Model
Partners List	Prince George County Department of Environment Corvias Prince George's County Public Schools Community-based, environmental, and faith-based organizations Local women- and minority-owned businesses
Structure Description	Design-Build-Operate-Maintain community-based public-private partnership (CBP3) business model contract between the County and private partner Corvias Prince George's County Stormwater Partners LLC (Corvias).
Impetus	To meet US EPA Clean Water regulatory requirements and benefit local businesses, schools, churches, and community members. To meet EPA Clean Water regulatory requirements, Prince George's County must treat 15,000 acres of polluted runoff by 2025. The CWP has been tasked with treating up to 2,000 acres of these impervious surfaces. With deadlines as soon as 2017 to remove pollutants from stormwater runoff from currently untreated impervious areas, the magnitude and compressed time-frame to complete the requirements called for a more efficient project delivery system. The County, therefore, determined it needed a new business model to accelerate implementation, increase affordability, improve program administration, and better address long-term operation and maintenance requirements, as well as promote social and economic development.
Services	Design and build stormwater infrastructure with 30 years of maintenance.
Value	In 2.5 years, CWP has been successful in completing the initial pilot retrofitting 2,000 acres using greater than 85% local minority and target class County businesses and saving the County more than 40% compared to traditional budgets.
Challenges	N/A
Key Takeaways	When the strengths of each sector are leveraged effectively, managing stormwater remarkably fast and at a large scale can be possible. The long-term success of Prince George County's CBP3 comes down to its clarity and sense of purpose in prioritizing community outcomes (that were co-defined with community stakeholders) alongside stormwater outcomes.

Appendix B: National Case Studies

Initiative	Stormwater Facility Management Program
Location	Montgomery County, MD
Time-frame	20+ Years
Typology	County-level Green Infrastructure Maintenance Program
Partners List	Montgomery County's Department of Environmental Protection (DEP) and three specialty contractors.
Structure Description	Once a publically-owned green infrastructure facility (or asset) is past its original construction warranty period, it is transferred to the County's asset management system and maintained by DEP.
Impetus	20 years ago the County issued a Water Quality Protection Charge on residents' property tax, in order to install and maintain water infrastructure on public property to comply with their MS4 permit.
Services	Green infrastructure maintenance on public property, currently there are three separate contracts covering: (1) green roofs maintenance, (2) pervious pavement maintenance, and (3) above-ground GI maintenance, respectively. (Underground/structural maintenance is handled by in-house DEP engineers.)
Value	While not quantified, DEP sees the routine GI maintenance as a cost avoidance measure for expensive repairs after an asset falls into complete disrepair.
Challenges	Ensuring green infrastructure maintenance on residential and commercial property, as well. They are piloting inspection and maintenance easements (or right of entry agreements) on private property now.
Key Takeaways	<p>Establishing a dedicated funding stream is a worthy feat, because, now that it has been established, there is very little interest in removing it from the property tax, and it has ensured the long-term efficacy of their stormwater facility investments.</p> <p>While testing creative ways to encourage or incentivize private land owners to install stormwater infrastructure is critical, it requires forethought on how those assets will be inspected and maintained in the long run.</p> <p>County-level maintenance of public stormwater assets ensures coordinated, standardized, and efficient long-term management.</p>

Appendix C: Shared Service Agreement Language

Introductory paragraph that introduces the parties to the contract

Preamble

This contract is between:

[Local Government Authority(s)]
[Contractor Name & Address]

Basis and background for this contract

Recitals

[Local Government Authority(s)] are responsible for [relationship to stormwater management].

During wet weather events, stormwater enters local sewer systems, increasing [key risk of concern, i.e., flooding, basement backups, water quality of surface waters, etc.].

Green infrastructure includes bioswales, cisterns, constructed wetlands, green roofs, native landscaping, porous pavement, rain barrels, rain gardens, soil amendments, and trees.

Green infrastructure reduces the volume of stormwater in the sewerage system and the amount of pollutants discharged to surface waters.

[Description of any regulatory responsibility, i.e., permits, if applicable] that require the construction and maintenance of green infrastructure retention capacity.

[Local Government Authority(s)] wants to promote the maintenance of green infrastructure to ensure long-term efficacy.

Contractor shall provide all Services specifically described herein and in the Scope of Work in accordance with the terms, covenants, and conditions of the Agreement.

Timespan covered by the contract

Agreement Term

This contract becomes effective when signed by both parties and expires on [end date] unless terminated sooner as provided herein.

Detailed description of work expected under this contract, including schedules, clear expectations, and reporting mechanisms; see City of Portland's Example Scope in Appendix D

Scope of Work

Contractor shall perform maintenance and/or irrigation of vegetation at green infrastructure sites. Work shall include:

A. Maintenance services in compliance with [Local Government Authority(s)] schedules.

B. Irrigation services in compliance with [Local Government Authority(s)] schedules.

All Services shall be delivered in accordance with [Attachment 1].

This Agreement authorizes Contractor to provide and the [Local Government Authority(s)] to procure those Services, and established the terms and conditions for the [Local Government Authority(s)] to obtain said Services from Contractor. Contractor shall provide those Services described herein, in accordance with the prices listed, as requested by the [Local Government Authority(s)] and the [Local Government Authority(s)] will accept and pay for the Services based upon the terms and conditions stated herein.

Appendix C: Shared Service Agreement Language

Total estimate of fee for the scope of work described and/or amount that is not to be exceeded

Compensation

[Local Government Authority(s)] agrees to pay Contractor [dollar amount across contract term] to obtain said services from Contractor. Contractor will submit an invoice to the [Local Government Authority(s)] for the amount to be reimbursed.

Include process for submitting invoices, submission frequency, and types of information to include on invoice

Procedure for Payment

Description of how the contract may be terminated before the stated end date

Early Termination

The [Local Government Authority(s)] and Contractor, by mutual written agreement, may terminate the Agreement at any time. The [Local Government Authority(s)], on thirty (30) Days written notice to Contractor, may terminate this Agreement for any reason deemed appropriate in its sole discretion. Either the [Local Government Authority(s)] or Contractor may terminate this Agreement in the event of a Material Breach of the Agreement 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 Agreement at any time thereafter by giving a written notice of termination.

In the event of termination, the [Local Government Authority(s)] shall pay Contractor for Services in accordance with the Agreement prior to the termination date and delivered to [Local Government Authority(s)] provided that such Services conform to Agreement specifications and are of use to the [Local Government Authority(s)].

Description of how to introduce and confirm changes to the scope of work or contract

Notifications

All notices and other communication related to this Agreement will be in writing and will be considered given as follows:

- A. When delivered personally to the [Contractor]'s address as stated on this Agreement; or
- B. Three (3) days after being deposited in the United States mail, with postage prepaid to the [Contractor]'s address as stated on this Agreement.

Status as an Independent Contractor

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 Agreement, its subcontractors, and their employees are not employees of the [Local Government Authority(s)] and are not eligible for any benefits through the [Local Government Authority(s)] including, without limitation, federal security benefits, health benefits, worker's compensation, unemployment compensation, and retirement benefits.

Appendix C: Shared Service Agreement Language

A pledge by each party to cover each other's losses if one does something that causes harm or causes a third party to sue the other

Indemnification

Contractor shall hold harmless, defend, and indemnify the [Local Government Authority(s)], 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, of its subcontractors, agents or employees under this Agreement. Contractor is not responsible for any damages caused solely by the actions of the [Local Government Authority(s)], its officers, employees and agents.

Explains that this contract's terms are independent of one another so that the rest of the contract will remain in force should a court declare one or more of its provisions void or unenforceable

Severability

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

Applicable Law

The laws of the State of [Illinois/Indiana] govern this Agreement.

Resolving Disputes

If a dispute arises under this Agreement, then the Parties will try to resolve the dispute with the help of a mutually acceptable mediator. The Parties will equally share the costs and fees associated with mediation, other than attorney fees. If the dispute is not resolved within 30 days after a mediation session, then either Party may take the matter to court.

Conflict of Interest

If the Contractor identifies a relationship with the [Local Government Authority(s)] officers, employees, or agents that could provide an advantage or cause a conflict of interest and if the Contractor did not disclose this relationship in the proposal, then the Contractor will notify the [Local Government Authority(s)] within five (5) days of identifying it.

Insurance

Work under this Agreement shall not commence until all insurance requirements have been met and certificates thereof have been filed with the Chief Procurement Officer or the Auditor.

Contractor shall obtain, at Contractor's expense, the required insurance coverage identified below. Insurance must be maintained in full force, throughout the duration of the Agreement and any warranty or extension periods. The [Local Government Authority(s)] reserves the right to require additional insurance coverage as required by statutory or legal changes to the maximum liability that may be imposed during the term of the Agreement.

A. Workers' compensation insurance as required by [State Regulation] and as it may be Amended. Unless exempt under [State Regulation], the Contractor and all subcontractors shall maintain coverage for all subject workers.

Appendix C: Shared Service Agreement Language

B. Commercial General Liability (CGL) insurance covering bodily injury, personal and advertising injury, property damage, including coverage for independent contractor's protection (required if any work will be subcontracted), premises/operations, contractual liability, Products and completed operations, in per occurrence limit of not less than \$1,000,000, and aggregate limit of not less than \$2,000,000.

C. Automobile liability insurance with coverage of not less than \$1,000,000 each accident, and an umbrella or excess liability coverage of \$2,000,000. The insurance shall include coverage for any auto or all owned, scheduled, hired and non-owned auto. This coverage may be combined with the commercial general liability insurance policy.

Subcontractor(s). Contractor shall provide evidence that subcontractor(s), if any, performing work or providing Services under the Agreement has the same types and amounts of coverages as required herein or that the subcontractor is included under Contractor's policy.

Additional Insured. The liability insurance coverages, except Professional Liability, Errors and Omissions, or Workers' Compensation, if included, shall be without prejudice to coverage otherwise existing, and shall name the [Local Government Authority(s)], its bureaus/divisions, officers, agents and employees as Additional Insureds, with respect to the Contractor's activities to be performed, or Services to be provided. Coverage shall be primary and non-contributory with any other insurance and self-insurance. 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.

Continuous Coverage; Notice of Cancellation or Change. Contractor agrees to maintain continuous, uninterrupted coverage for the duration of the Agreement. There shall be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) Days written notice from Contractor or its insurer(s) to the [Local Government Authority(s)]. If the insurance is canceled or terminated prior to completion of the Agreement, Contractor shall immediately notify the [Local Government Authority(s)] and provide a new policy with the same terms. Any failure to comply with the reporting provisions of this clause shall constitute a Material Breach of Agreement and shall be grounds for immediate termination of this Agreement.

Certificate(s) of Insurance. As evidence of the insurance coverages required by this Agreement, Contractor shall provide proof of insurance through acceptable certificate(s) of insurance and additional insured endorsement form(s) to the [Local Government Authority(s)] prior to the award of the Agreement if required by the procurement document, but in all events prior to Contractor's commencement of work under this Agreement. The Certificate(s) will specify all of the parties who are endorsed on the policy as Additional Insureds (or Loss Payees). Insurance coverages required under this Agreement shall be obtained from insurance companies acceptable to the [Local Government Authority(s)]. Contractor shall pay for all deductibles and premiums. The [Local Government Authority(s)] reserves the right to require, at any time, complete, certified copies of required insurance policies, including endorsements evidencing the coverage required.

Appendix C: Shared Service Agreement Language

Signatures

The persons signing this Agreement certify they have authority from the entity they represent to execute this Agreement.

[Local Government Authority(s)]

By: [Signature]

[Name of Person Signing, Title]

Date: [Date of Signature]

[Contractor]

By: [Signature]

[Name of Person Signing, Title]

Date: [Date of Signature]

Recommended Clauses

This is the joint purchasing clause used by the Municipal Partnering Initiative to ensure the contractor offers similar deals to each partnering municipality, but that the contractor should work directly with each municipality on individual orders or project contracts

Similarly, this clause from the City of Portland, ensures the contractor offers the same price to all governmental agencies

Joint Purchasing Extension

The purchase of goods and services pursuant to the terms of this Agreement shall also be offered for purchases to be made by the Municipalities, as authorized by the Governmental Joint Purchasing Act, [Illinois: 30 ILCS 525/0.01, et seq.] (the "Act"). All purchases and payments made under the Act shall be made directly by and between each Municipality and the successful bidder. The bidder agrees that the [Name of the community leading this joint bid] shall not be responsible in any way for purchase orders or payments made by the other Municipalities. The bidder further agrees that all terms and conditions of this Agreement shall continue in full force and effect as to the other Municipalities during the extended term of this Agreement.

Bidder and the other Municipalities may negotiate such other and further terms and conditions to this Agreement ("Other Terms") as individual projects may require. In order to be effective, Other Terms shall be reduced to writing and signed by a duly authorized representative of both the successful bidder and the other Municipality.

The bidder shall provide the other Municipalities with all documentation as required in the RFB (Request for Bid), and as otherwise required by the [Name of the community leading this joint bid], including, but not limited to:

Intergovernmental Cooperative Procurement

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 Agreement reflect the [Local Government Authority(s)] usage only.

Any public agency that wishes to purchase items will execute its own contract with the awarded Contractor for its requirements. If the Contractor enters into a contract with any public agency on terms or prices other than that outlined in this Agreement or in conjunction with a competitive bid process, then there is no reporting requirement to [Local Government Authority(s)].

Appendix C: Shared Service Agreement Language

Here, the City of Portland describes that the contractor shall pay an administrative fee for all additional contracts that emerge from the intergovernmental cooperative agreement, and not from a competitive bid process

This language acknowledges and plans for extreme weather or other types of events that may prohibit work from being completed on time

Intergovernmental Cooperative Administrative Fee (CAF)

A 1.0% annual cooperative administrative fee ("CAF") on Eligible Revenues will be paid to the [Local Government Authority(s)] for any Intergovernmental Cooperative Procurement contracts that Contractor agrees to enter into under identical prices and terms and conditions to this Agreement and which did not result from a competitive bid process ("Eligible Contracts"). The pricing extended to Participating Entity shall be the purchase price before promotional discount as outlined in COMPENSATION charged to the [Local Government Authority(s)] under this Agreement for each Product. Eligible Revenues shall mean the revenues on Eligible Contracts. In the event that the [Local Government Authority(s)] exercises its unilateral right to Early Termination, then Contractor will no longer be liable to [Local Government Authority(s)] for any CAF otherwise due and payable to [Local Government Authority(s)].

Force Majeure

Neither [Local Government Authority(s)] 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.

If delay in delivery due to a Force Majeure Event does not exceed thirty (30) Days, such delays in delivery shall automatically extend the delivery date for a period equal to the duration of such events; any Warranty Period affected by a Force Majeure Event shall likewise be extended for a period equal to the duration of such event so long as it does not exceed thirty (30) Days.

If delay in delivery due to Force Majeure Event is longer than thirty (30) Days, the [Local Government Authority(s)] shall have the right to terminate this Agreement, a Task/Change Order, Maintenance agreement or any license hereunder upon written notice to Contractor, in accordance with this section.

Either Party may terminate this Agreement due to a Force Majeure event as set forth herein.

Appendix D: Reference Agreements & Contracts

CITY OF PORTLAND
PRICE AGREEMENT NO. XXXXXXXXX

for

**VEGETATION MANAGEMENT & IRRIGATION SERVICES
FOR STORMWATER MANAGEMENT FACILITIES**

This Price Agreement (“Contract”) is between the City of Portland, a municipal corporation of the State of Oregon, by and through its duly authorized representatives, hereinafter called “City” and **XXXXXX** an Oregon corporation, hereinafter called “Contractor”. This Contract may refer to the City and Contractor individually as a “Party” or jointly as the “Parties.”

RECITALS:

- The City of Portland, Bureau of Environmental Services “BES”, desires to obtain maintenance, replacement planting, and irrigation of vegetation in Stormwater Management Facilities (the “Services”);
- Contractor shall provide all Services specifically described herein and in the Scope of Work in accordance with the terms, covenants, and conditions of the Contract and its Exhibits related to Services provided, and Invitation to Bid #00000639 and addenda.

THE PARTIES AGREE:

1. SCOPE OF WORK

Contractor shall perform maintenance and/or irrigation of vegetation in Stormwater Management Facilities (“SMF”). Work shall include:

- A. Maintenance services in compliance with City schedules.
- B. Irrigation services in compliance with City schedules.

All Services shall be delivered in accordance with **Attachment 1**.

This Contract authorizes Contractor to provide and the City to procure those Services, and establishes the terms and conditions for the City to obtain said Services from Contractor. Contractor shall provide those Services described herein, in accordance with the prices listed, as requested by the City and the City will accept and pay for the Services based upon the terms and conditions stated herein.

2. CONTRACT TERM

This Contract shall become effective on July 1, 2017 and shall expire on **June 30, 2022** unless terminated sooner as provided herein (“Contract Term”).

3. COMPENSATION

The City agrees to pay Contractor a sum not to exceed \$500,000 per year for a total not to exceed value of \$2,500,000 for provision of and completion of the work in accordance with pricing listed herein. Prices shall be exclusive of any sales, purchaser, or consumer tax. Tax exemption certificates will be furnished to Contractor upon request.

Compensation shall be made according to the rates and terms in Attachment 2, Pricing.

4. GENERAL DEFINITIONS

These definitions apply to the entire Contract and subsequent Amendments:

Amendment means a written document required to be signed by both Parties when in any way altering the terms and conditions, Contract period, or cost provisions of the Contract or changing, adding to, or substantially altering a Scope of Work.

City Confidential Information means any information, in any form or media, including verbal discussions, whether or not marked or identified by the City, which is reasonably described by one or more of the following categories of information: (1) financial, statistical, personnel, human resources data or Personally Identifiable Information as described in the Oregon Consumer Identity Theft Protection Act of 2007; (2) business plans, negotiations, or strategies; (3) unannounced pending or future products, services, designs, projects or internal public relations information; (4) trade secrets, as such term is defined by ORS 192.501(2) and the Uniform Trade Secrets Act ORS 646.461 to 646.475; (5) Exempt per ORS 192.501 and/or ORS 192.502 (6) attorney/client privileged communications, (7) exempt per federal laws (including but not limited to Copyright, HIPPA) and (8) information relating to or embodied by designs, plans, configurations, specifications, programs, or systems developed for the benefit of the City including

without limitation, data and information systems, any software code and related materials licensed or provided to the City by third parties; processes; applications; codes, modifications and enhancements thereto; and any work Products produced for the City.

Contract Terms and Conditions means this portion of the Contract, the body of text from the preamble through the signature page.

Coverage Hours means those hours specified in this Contract or subsequent Amendment during which period Contractor shall provide Maintenance.

Day means a calendar day of twenty-four (24) hours unless otherwise stated in the Contract.

Documentation means user manuals and other written materials in any form that describe the features or functions of the Products and System, including but not limited to published specifications, marketing materials, technical manuals, and operating instructions provided by Contractor to the City, or readily available to the public, or as required to be produced by Contractor subject to the terms of this Contract.

Equipment means any goods, including hardware, machinery, mechanical and electronic devices, tool, component, or materials, of tangible form together with the necessary supplies for upkeep and Maintenance, and other apparatus necessary for the proper execution, installation and acceptable completion of the Project or any Amendment hereunder.

Intergovernmental Cooperative Procurement means the Contractor will consider, on a case by case basis and in its sole discretion, whether to extend the Services provided under this Contract with 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. Participating Entities may utilize City contracts through Intergovernmental Cooperative Procurement if the Contract is determined by the Participating Agency to have been awarded in compliance with their bidding requirements and there is no statutory provision prohibiting such purchase.

Knowledge Transfer means information and know-how regarding technological or general business issues, including, without limitation, Products, identified or foreseeable problems, personnel, resources, or costs, as may relate to the Project or any component thereof which Contractor may be required under this Contract or any subsequent Amendment to pass on to the City.

Material Breach means any breach of this Contract that (a) causes or may cause substantial harm to the non-breaching Party; or (b) substantially deprives the non-breaching Party of the benefit it reasonably expected under this Contract.

Price Agreement means the Contract and all documents referenced within.

Product(s) means goods, materials, Equipment, Documentation, and Services including installation, warranty Services, and Maintenance and Services, which may include installation, modification and training.

Project means the overall collection of activities required for delivery, installation and support of the system including, without limitation, design, development, integration, testing, support and Maintenance, any of which Contractor may be providing in whole or in part.

Update means a change, modification, or enhancement to the Equipment and related Documentation, which improves its performance or efficiency, but does not alter its core functionality.

Use means the City's right to install, integrate, configure, implement, test, access, maintain and operate the Equipment, any Contractor-provided tools to customize the Equipment; Documentation listed in the Contract; training materials City may acquire to provide internal training on the Equipment to City Users; any enhancements produced by or in collaboration with Contractor to develop the Equipment to City's unique business processes and/or programming environment for purposes of installing, operating, configuring or using the Equipment.

User means any person employed or working on behalf of the City, its bureaus, divisions, offices, directors, and any person or entity under contract or authorized by the City to provide it with Services and to use the City's resources in whole or in part, in the course of assisting the City.

5. ORDER OF PRECEDENCE

In the event there is a conflict between the terms and conditions of one portion of this Contract with another portion of this Contract, the conflict will be resolved by designating which portion of the Contract documents takes precedence over the other for purposes of interpretation, except where a clear statement of precedence other than that set forth in this section is included in the document. In this Contract the order of precedence shall be:

- Amendments
- Contract Terms and Conditions
- Attachment 1, Scope of Work
- Attachment 2, Pricing

- Exhibit A Required Tool List for SMF Maintenance
- Exhibit B Sample Maintenance & Irrigation Work Order
- Exhibit C Sample Mobile Irrigation Hydrant Use Daily Log
- Exhibit D Sample Contractor Invoice with Supporting Documentation
- Appendix A, Applicable State Laws
- Appendix B, Federal Grant Requirements

6. AMENDMENTS

All changes to this Contract, including changes to the scope of work and compensation, 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.

7. INVOICING AND PAYMENT

Contractor shall submit invoices monthly in a digital .pdf format through e-mail to Watershed Revegetation Program Project Manager(s): bessmfinvoices@portlandoregon.gov. Invoices shall be substantially similar to Exhibit D, Sample Contractor Invoice with Supporting Documents.

Digital invoice files shall be addressed to the Project Manager(s) who issued the work and shall be titled as follows:

Date (yyyy-mm-dd) – Invoice number - Project name – Project manager

Paper invoices may also be (but are not required to be) mailed to:

City of Portland
Bureau of Environmental Services
Attn: *(Project manager's name here)*
1120 SW Fifth Ave. Room 1000
B114/WRPO
Portland, OR 97204

Invoices shall contain the following information by date for each project: City contract number, invoice number, date invoice sent, number and title of work order issued, number of crew members, names of crew members who worked – by date, hours worked, and types of work performed. The City may stipulate how line items are entered on an invoice to ensure compatibility with the City's accounting and financial systems and to facilitate payment to Contractor.

For reimbursement of any additional purchases specifically requested and approved by the City in writing, Contractor shall include, as part of the monthly invoice, line items showing product quantities, sale price, project site where each product was used, and scan of purchase receipt.

Payment(s) shall be in accordance with the payment schedule set forth in COMPENSATION. Payment shall be issued by the City net thirty (30) Days from receipt of a complete and acceptable invoice from Contractor. Payment of any invoice, however, does not preclude the City from later determining that an error in payment was made and from withholding the disputed sum from the next progress payment until the dispute is resolved.

Contractor is at all times solely responsible for billing accuracy and timeliness. 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 a correct 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 shall contain the level of detail defined above. 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.

It is the City's policy to pay its vendor invoices via electronic funds transfers through the automated clearing house (ACH) network. To initiate payment of invoices, vendors shall execute the City's standard ACH Vendor Payment Authorization Agreement which is available on the City's website at: <http://www.portlandoregon.gov/bfrs/article/409834>.

Upon verification of the data provided, the Payment Authorization Agreement will authorize the City to deposit payment for Services provided directly into vendor accounts with financial institutions. All payments shall be in United States currency.

8. CITY FURNISHED PROPERTY

No materials, labor or facilities will be furnished by the City unless otherwise provided for within this Contract.

9. INSURANCE

Work under this Contract shall not commence until all insurance requirements have been met and certificates thereof have been filed with the Chief Procurement Officer or the Auditor. Contractor shall obtain, at Contractor's expense, the required insurance coverage identified below. Insurance must be maintained in full force, throughout the duration of the Contract and any warranty or extension periods. The City reserves the right to require additional insurance coverage as required by statutory or legal changes to the maximum liability that may be imposed on Oregon cities during the term of the Contract.

- A. Workers' compensation insurance as required by ORS Chapter 656 and as it may be Amended. Unless exempt under ORS Chapter 656, the Contractor and all subcontractors shall maintain coverage for all subject workers.
- B. Commercial General Liability (CGL) insurance covering bodily injury, personal and advertising injury, property damage, including coverage for independent contractor's protection (required if any work will be subcontracted), premises/operations, contractual liability, Products and completed operations, in per occurrence limit of not less than \$1,000,000, and aggregate limit of not less than \$2,000,000.
- C. Automobile liability insurance with coverage of not less than \$1,000,000 each accident, and an umbrella or excess liability coverage of \$2,000,000. The insurance shall include coverage for any auto or all owned, scheduled, hired and non-owned auto. This coverage may be combined with the commercial general liability insurance policy.

Subcontractor(s). Contractor shall provide evidence that subcontractor(s), if any, performing work or providing Services under the Contract has the same types and amounts of coverages as required herein or that the subcontractor is included under Contractor's policy.

Additional Insured. The liability insurance coverages, except Professional Liability, Errors and Omissions, or Workers' Compensation, if included, shall be without prejudice to coverage otherwise existing, and shall name the City of Portland, its bureaus/divisions, officers, agents and employees as Additional Insureds, with respect to the Contractor's activities to be performed, or Services to be provided. Coverage shall be primary and non-contributory with any other insurance and self-insurance. 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.

Continuous Coverage; Notice of Cancellation or Change. Contractor agrees to maintain continuous, uninterrupted coverage for the duration of the Contract. There shall be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) Days written notice from Contractor or its insurer(s) to the City. If the insurance is canceled or terminated prior to completion of the Contract, Contractor shall immediately notify the City and provide a new policy with the same terms. Any failure to comply with the reporting provisions of this clause shall constitute a Material Breach of Contract and shall be grounds for immediate termination of this Contract.

Certificate(s) of Insurance. As evidence of the insurance coverages required by this Contract, Contractor shall provide proof of insurance through acceptable certificate(s) of insurance and additional insured endorsement form(s) to the City prior to the award of the Contract if required by the procurement document, but in all events prior to Contractor's commencement of work under this Contract. The Certificate(s) will specify all of the parties who are endorsed on the policy as Additional Insureds (or Loss Payees). Insurance coverages required under this Contract shall be obtained from insurance companies acceptable to the City. Contractor shall pay for all deductibles and premiums. The City reserves the right to require, at any time, complete, certified copies of required insurance policies, including endorsements evidencing the coverage the required.

10. 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 ten (10) Days of written notice by the City, the City may obtain the non-performed Services from another source, and no recurring charges, one-time charges, or termination charges or other penalties.

11. ACCESS TO CITY FACILITIES

Contractor agrees that Contractor's physical or remote access to City facilities shall be subject to the security interests and controls necessary to protect public property. The City shall not be liable for any delays necessary in granting Contractor access to any portion of the facilities or Systems.

12. COMPLIANCE WITH APPLICABLE LAW

Contractor warrants it is duly authorized to operate and do business in all places where it shall be required to do business under the Contract; that it has obtained or shall obtain all necessary licenses and permits required in connection with the Contract, and that it shall fully comply with all laws, ordinances, orders, decrees, labor standards and regulations of its domicile and wherever

performance occurs during the term of this Contract. Contractor warrants it is lawfully organized and constituted under all federal, state and local laws, ordinances and other authorities of its domicile and is otherwise in full compliance with all legal requirements of its domicile. The following additional conditions apply to this Contract: Appendix A as attached hereto.

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

- A. Certification as an EEO Affirmative Action Employer. Contractor is certified as an Equal Employment Opportunity Employer as prescribed by Chapter 3.100 of the Code of the City of Portland.
- B. Non-Discrimination in Employee Benefits (Equal Benefits). Contractor has complied by completing the Equal Benefits Compliance Worksheet/Declaration Form indicating full compliance.
- C. Business License Tax Account. Contractor's Tax Account #440637 is in compliance with the City of Portland Business License Tax 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.
- D. Notification to State of Nonresident Contractor. If the Contract Price exceeds \$10,000 and Contractor is a Nonresident Contractor, the Contractor shall promptly report to the Oregon Department of Revenue on forms provided by the Department of Revenue, the Contract Price, terms of payment, Contract duration and such other information as the Department of Revenue may require before final payment can be made on the Contract. A copy of the report shall be forwarded to the City. The City shall satisfy itself that the above requirements have been complied with before it issues final payment on the Contract (PCC 5.33.695) https://www.oregon.gov/DOR/forms/FormsPubs/nonresident-bidder_800-020.pdf.
- E. Nondiscrimination. Contractor shall comply with all applicable federal, state and local laws and regulations. Contractor agrees it is currently in compliance with all tax laws. Contractor shall comply with Title VI of the Civil Rights Act of 1964 and its corresponding regulations as further described at: <http://www.portlandoregon.gov/brfs/?c=27353&a=446806>.
- F. Grant Terms and Conditions. In connection with its activities under this Contract, Contractor shall comply with all applicable Grant Terms and Conditions. This includes all terms and conditions contained in this Contract, Appendix B, and, for a contract involving a grant, the Grant Terms and Conditions as further described at: <http://www.portlandoregon.gov/brfs/?c=45663&a=455735>

13. GOVERNING LAW / VENUE

The provisions of this Contract shall be interpreted, construed and enforced in accordance with, and governed by, the laws of the State of Oregon without reference to its conflict of laws and provisions that might otherwise require the application of the law of any other jurisdiction. Any action or suits involving any question arising under this Contract must be brought in the appropriate court in Multnomah County Oregon.

14. INDEPENDENT CONTRACTOR STATUS

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.

15. 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.

16. OWNERSHIP OF PROPERTY

Contractor agrees the City will, upon completion of the Initial Term of this Contract, have full ownership of the System. Should the Contract be terminated prior to the completion of the Initial Term of the Contract, the City shall negotiate in good faith with Contractor to resolve the disposition of the System. Contractor warrants that, with the exception of property that is leased or subject to a properly perfected security interest, it shall at all times own Equipment and Software proposed for this Contract, with the exception of Third Party Software, telecommunications services and buildings, and shall keep such property free and clear of any and all security interests, liens, charges, levies, assessments or encumbrances. Any work Products produced or created by Contractor for the City shall be understood to be, to the fullest extent of the law, works made for hire unless the Parties have expressly agreed otherwise in writing.

17. 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.

18. SURVIVAL

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

19. INDEMNIFICATION

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, of its subcontractors, agents or employees under this Contract. Contractor is not responsible for any damages caused solely by the actions of the City, its officers, employees and agents.

20. ASSIGNMENT OF ANTI-TRUST RIGHTS

By entering into this Contract, Contractor, for consideration paid to Contractor under the Contract, does irrevocably assign to the City of Portland any claim for relief or cause of action which the Contractor now has or which may accrue to Contractor in the future, including, at the City's option, the right to control any such litigation on such claim for relief or cause of action, by reason of violation of 15 USC SS 1-15 or ORS 646.725 or ORS 646.730, in connection with any Services provided to Contractor by any person, which Services are used, in whole or in part, for the purpose of carrying out Contractor's obligation under this Contract.

In the event Contractor hires subcontractors to perform any of Contractor's duties under Contract, Contractor shall require the subcontractor to irrevocably assign to the City of Portland, as a third party beneficiary any right, title or interest that has accrued or may accrue to the subcontractor by reasons of any violation of 15 USC SS 1-15, ORS 646.725 or ORS 646.730, including, at the City's option, the rights to control of any litigation arising thereunder, in connection with any Services provided to the subcontractor by any person, in whole or in part, for the purpose of carrying out the subcontractor's obligations as agreed to by Contractor in pursuance of the completion of the Contract.

In connection with this assignment, it is an express obligation of Contractor that it will take no action which will in any way diminish the value of the rights conveyed or assigned hereunder to the City of Portland. It is an express obligation of Contractor to advise the City Auditor or the Office of the City Attorney of Portland, Oregon:

- A. In advance, of its intention to commence any action on its own behalf regarding such claims for relief or causes of action;
- B. Immediately, upon becoming aware of the fact that an action has been commenced on its own behalf by some other person or persons, of the pendency of such action; and
- C. The date on which it notified the obligor(s) of any such claims for relief or causes of action of the fact of its assignment to the City of Portland.

Furthermore, it is understood or agreed that in the event that any payment under such claim is made to Contractor, it shall promptly pay over to the City of Portland its proportionate share thereof, if any, assigned to the state hereunder.

21. 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.

22. 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, Contractor agrees to abide by any such decision including revision or termination of Contract.

23. 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. In the event of transfer without prior written consent, the purported transfer is void and Contractor remains liable for performance of the Contract. Notwithstanding City approval of a subcontractor, Contractor shall remain obligated for full performance hereunder, and the City shall incur no obligation other than its obligations to the Contractor hereunder. Contractor agrees that if subcontractors are employed in the performance of this Contract, Contractor and its subcontractors are subject to the requirements and sanctions of ORS Chapter 656, Workers' Compensation.

Contractor shall not subcontract any work, assign any rights (including, without limitation, in connection with the sale of all or substantially all of Contractor's assets, stock, or the line(s) of business applicable to any Amendment, or delegate any obligations under this Contract, cancel or change any previously approved subcontract without the City's prior written consent. Contractor shall be fully responsible for the acts and omissions of its subcontractors at all levels, and of their agents and employees. Contractor shall ensure that all applicable provisions of this Contract (including those relating to Insurance, Indemnification, and Confidentiality) are included in all of its subcontracts. The City reserves the right to review any agreements between Contractor and its subcontractors for Services authorized under this Contract.

All subcontractors/suppliers identified in Contractor's proposals as certified by the Certification Office for business Inclusion & Diversity ("COBID") shall be used in their proposed capacity during Contract performance. If Contractor desires to replace any COBID certified subcontractors/suppliers under this Contract all substitution requests must have approval from the City's Chief Procurement Officer before such substitutions can be made. In the event that Contractor shall subcontract any work, assign any rights, or delegate any obligations under this Contract without the City's prior consent.

24. CONTRACTOR PAYMENT TO VENDORS AND SUBCONTRACTORS

The Contractor shall timely pay all subcontractors and suppliers providing services or goods for this Contract. The Contractor shall make full payment to its subcontractors within 10 business days following receipt of any payment made by the City to Contractor.

25. 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.

26. SUSTAINABLE PROCUREMENT

Pursuant to the City's Sustainable City Principles, (<http://efiles.portlandoregon.gov/record/7477188/file/document>) which direct City bureaus to pursue long-term social equity, environmental quality, and economic vitality through innovative and traditional mechanisms, 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 (<http://www.portlandoregon.gov/shared/cfm/image.cfm?id=204110>), it is the policy of the City to encourage the use of goods that help to minimize the negative human health and environmental impacts of City operations. "Environmentally preferable" means goods that have a lesser or reduced negative effect on human health and the environment when compared with competing goods that serve the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, Maintenance, or disposal of the goods.

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 Contractor for reuse/recycling.

27. 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.

If delay in delivery due to a Force Majeure Event does not exceed thirty (30) Days, such delays in delivery shall automatically extend the delivery date for a period equal to the duration of such events; any Warranty Period affected by a Force Majeure Event shall likewise be extended for a period equal to the duration of such event so long as it does not exceed thirty (30) Days.

If delay in delivery due to Force Majeure Event is longer than thirty (30) Days, the City shall have the right to terminate this Contract, a Task/Change Order, Maintenance agreement or any license hereunder upon written notice to Contractor, in accordance with this section.

Either Party may terminate this Contract due to a Force Majeure event as set forth herein.

28. 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.

29. COORDINATION WITH OTHER CONTRACTORS AND OTHER SERVICES

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 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.

30. ACCESS TO RECORDS

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 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 these records shall be made available upon request. Payment for the reasonable cost of requested copies shall be made by the City.

31. 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 Contractor were in excess of the amount to which Contractor was entitled, then 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, 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 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.

32. 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 therefrom; but, this provision shall not be construed to extend to this Contract if made with a corporation for its general benefit.

33. CONFLICT OF INTEREST

Contractor hereby certifies that, if applicable, its Contract proposal was made in good faith without fraud, collusion or connection of any kind with any other proposer of the same request for proposals or other City procurement solicitation(s), that Contractor as a proposer has competed solely on its own behalf without connection or obligation to, any undisclosed person or firm. Contractor certifies that it is not a City official/employee or a business with which a City official/employee is associated, and that to the best of its knowledge, Contractor, its employee(s), its officer(s) or its director(s) is not a City official/employee or a relative of any City official/employee who: i) has responsibility in making decisions or ability to influence decision-making on the Contract or Project to which this Contract pertains; ii) has or will participate in evaluation or management of the Contract; or iii) has or will have financial benefits in the Contract. Contractor understands that should it elect to employ any former City official/employee during the term of the Contract then that the former City official/Contractor employee must comply with applicable government ethics and conflicts of interest provisions in ORS Chapter 244, including but not limited to ORS 244.040(5) and ORS 244.047, and the City's Charter, Codes and administrative rules, including lobbying prohibitions under Portland City Code Section 2.12.080.

34. 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. Following the end of the one-year period referenced above, City and Contractor acknowledge that prices for Services provided by Contractor under this Contract may need to be adjusted during the term of the Contract due to changes in Contractor's prices or Service offerings.

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, and the Contractor shall certify this in its request for price adjustments.

Following receipt by the Project Manager of the requested price adjustment, price changes shall only become effective in accordance with the AMENDMENTS section of this Contract. Price adjustments shall become effective thirty (30) Days from the date of last signature on the Contract Amendment document or as otherwise stated therein.

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. Following the end of the one-year period referenced above, City and Contractor acknowledge that prices for goods and 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 or service 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, and 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.

35. ADDITIONAL PURCHASES

The City reserves the right to procure additional, closely related Services beyond those stated in the Invitation to Bid. Other Services may be provided by the Contractor according to negotiated prices. Price increases will be allowed, but shall be in keeping with Pricing in this Contract. Such additional Services are not guaranteed and will be made at the City's sole discretion based upon the requirements of City bureaus.

36. EARLY TERMINATION OF CONTRACT

The City and Contractor, by mutual written agreement, may terminate the Contract at any time. The City, on thirty (30) Days written notice to Contractor, may terminate this Contract for any reason deemed appropriate in its sole discretion. Either the City or 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.

37. SUSPENSION OF THE WORK

The City may at any time give notice in writing, by electronic mail, or by facsimile to 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 Contractor be entitled to any lost or prospective profits or any incidental or consequential damages because of suspension.

38. PAYMENT ON EARLY TERMINATION

In the event of termination under EARLY TERMINATION OF CONTRACT hereof, the City shall pay Contractor for Services in accordance with the Contract prior to the termination date and delivered to 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 Contractor, then the City shall pay 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 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 Services that the City cancels during the term of this Contract.

39. REMEDIES

The remedies provided in this Contract are cumulative, and may be exercised concurrently or separately. The exercise of any one remedy shall not constitute an election of one remedy to the exclusion of any other. In the event of termination under EARLY TERMINATION OF CONTRACT by the City due to a breach by Contractor, then the City may procure Services outstanding from another contractor and 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.

40. DISPUTE RESOLUTION

Contractor shall cooperate with the City to assure that all claims and controversies which arise during Contractor's performance of Services under this Contract or a task/change order subject to this Contract and which might affect the quality of such Services will be resolved as expeditiously as possible in accordance with the following resolution procedure:

- A. Any dispute between the City and Contractor arising prior to completion of Contractor's Services or the earlier termination of the Contract shall be resolved, if possible between authorized representatives of the City and the Contractor.
- B. Should any dispute arise between the Parties concerning this Contract that is not resolved by mutual agreement above, it is agreed that such dispute will be submitted to mandatory mediated negotiation prior to any Party's commencing arbitration or litigation. In such an event, the Parties to this Contract agree to participate in good faith in a non-binding mediation process. The mediator shall be selected by mutual agreement of the Parties, but in the absence of such agreement each Party shall select a temporary mediator and those mediators shall jointly select the permanent mediator. All costs of mediation shall be borne equally by the Parties.
- C. Should an equitable solution not result from the foregoing, the City and Contractor shall be free to pursue other remedies allowed under this Contract.
- D. Unless ordered by the City to suspend all or any portion of Contractor's Services, Contractor shall proceed with the performance of such Services or delivery of Products without any interruption or delay during the pendency of any of the foregoing dispute resolution procedures and shall comply with any mutually agreed upon Amendments that the City may issue regarding the acceleration of all or any portion of the Products or Services. During the pendency of any of the foregoing dispute resolution procedures, the City shall continue to make all payments that are not in dispute, in accordance with the provisions of the Contract or Amendment.

41. PERMITS AND LICENSES

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.

42. INTELLECTUAL PROPERTY

Except Customizations, all trademarks, service marks, patents, copyrights, trade secrets, and other proprietary rights in or related to the Product or Service are and will remain the exclusive property of Contractor or its designees. City shall not decompile, disassemble, or otherwise reverse engineer the Software. The City requires the following regarding copyrighting and patent pending on work Products pertaining to this Contract:

- A. Copyright. All work Products of Contractor which result from this Contract are the exclusive property of the City. If this Contract results in a copyright, the City 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.

43. WARRANTY

The Contractor represents and warrants that (i) Contractor shall perform all Services set forth herein in a good and workmanlike manner, in conformance with the Specifications and requirements of the Contract, and in accordance with the highest applicable professional and/or industry standards; (ii) Contractor warrants that each of Contractor's employees assigned to perform Services has the proper skill, training, and background to be able to perform Services in a competent, timely, and professional manner and that all Services shall be so performed; and (iii) Contractor shall, at all times during the term of the Contract, maintain and keep current all licenses and certifications required to perform the work set forth in the Contract.

44. PROPRIETARY AND CONFIDENTIAL INFORMATION

The Oregon Public Records Law, ORS 192.410 et seq. strictly governs the City's treatment of requests for public records pertinent to this Contract.

- A. Maintenance of Confidentiality. Contractor shall treat as confidential any City Confidential Information that has been made known or available to Contractor or that Contractor has received, learned, heard or observed; or to which Contractor has had access. Contractor shall use City Confidential Information exclusively for the City's benefit and in furtherance of the Products and/or Services provided by Contractor. Except as may be expressly authorized in writing by the City, in no event shall Contractor publish, use, discuss or cause or permit to be disclosed to any other person such City Confidential Information. Contractor shall (1) limit disclosure of the City Confidential Information to those directors, officers, employees and agents of Contractor who need to know the City Confidential Information in connection with the City Project, (2) exercise reasonable care with respect to the City Confidential Information, at least to the same degree of care as Contractor employs with respect to protecting its own proprietary and confidential information, and (3) return immediately to the City, upon its request, all materials containing City Confidential Information, in whatever form, that are in Contractor's possession or custody or under its control. Contractor is expressly restricted from and shall not use Confidential intellectual property of the City without the City's prior written consent.
- B. Scope. This Contract shall apply to all City Confidential Information previously received, learned, observed, known by or made available to Contractor. This Contract shall not apply to City Confidential Information which (1) is or later becomes part of the public domain without breach of this Contract and through no wrongful act of Contractor; (2) Contractor lawfully receives from a third party; (3) was developed independently by and was reduced to writing by Contractor prior to the earlier of the date of this Contract or the date of any access or exposure to any City Confidential Information, or (4) is required to be disclosed under operation of law. Contractor's confidentiality obligations under this Contract shall survive termination.
- C. Equitable Remedies. Contractor acknowledges that unauthorized disclosure of City Confidential Information or misuse of a City computer system or network will result in irreparable harm to the City. In the event of a breach or threatened breach of this Contract, the City may obtain equitable relief prohibiting the breach, in addition to any other appropriate legal or equitable relief.
- D. Contractor's Confidential Information. During the term of the Contract, Contractor may disclose to the City, certain Contractor Confidential Information pertaining to Contractor's business. Contractor shall be required to mark CONFIDENTIAL with a restrictive legend or similar marking. If CONFIDENTIAL is not clearly marked or the Contractor's Confidential Information cannot be marked with a restrictive legend or similar marking or is disclosed either orally or by visual presentation, Contractor shall identify the Confidential Information at the time of disclosure

or within a reasonable time thereafter. The City shall not be deemed to have breached this Section if (1) Contractor's Confidential Information later becomes part of the public domain through no act or omission of the City; (2) is required to be disclosed under operation of law; (3) the City lawfully receives Confidential Information from a third party with no breach of any duty of confidentiality; or (4) was developed independently by and was reduced to writing by the City prior to the earlier of the date of this Contract or the date of any access or exposure to any Contractor Confidential Information.

- E. Public Records Request. Contractor acknowledges that the City is subject to the Oregon Public Records Act and Federal law. Third persons may claim that the Confidential Information Contractor submitted to the City hereunder may be, by virtue of its possession by the City, a public record and subject to disclosure pursuant to the Oregon Public Records Act. Subject to the following conditions, the City agrees not to disclose any information Contractor submits to the City that includes a written request for confidentiality and as described above, specifically identifies the information to be treated as Confidential. The City's commitments to maintain certain information confidential under this Contract are all subject to the constraints of Oregon and federal laws. Within the limits and discretion allowed by those laws, the City will maintain the confidentiality of information.
- F. Release of Public 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.
- G. Discovery of Documents. In the event a Party to litigation seeks discovery of information submitted by Contractor in confidence, the City will notify Contractor of the request. The City shall allow Contractor to participate in the response at its own expense. The City will comply with any effective order issued by the court having jurisdiction over the matter.

45. INFRINGEMENT INDEMNITY

Contractor shall, at its own expense, hold harmless, indemnify, and defend the City, its directors, officers, employees, agents and affiliates from and against any and all claims, demands, damages, liabilities, losses, and expenses (including reasonable attorney fees, whether or not at trial and/or on appeal), arising out of or in connection with any actual or alleged violation or infringement by the Software of any proprietary right of any person whatsoever, including any copyright, patent, trade name, trademark, or misappropriation of the trade secrets of any third party. The City agrees to notify Contractor of the claim and gives Contractor sole control of the defense of the claim and negotiations for its settlement or compromise. No settlement that prevents the City's continuing Use of the Software/Products shall be made without the City's prior written consent. If any third party claim causes the City's Use of the Software to be endangered, restricted or disrupted, Contractor shall (i) cause the Software to be replaced, at no additional charge, with a compatible functionally equivalent and non-infringing product; (ii) cause the Software to be modified to avoid the infringement; (iii) obtain a license for the City to continue using the Software and pay any additional fee required for such license; or (iv) if, after Contractor uses all due diligence or standard of care none of the foregoing alternatives is possible, Contractor will terminate the license and refund to the City license fees actually paid by the City and any direct damages documented by City for the affected Software and Documentation.

46. NEWS RELEASES AND PUBLIC ANNOUNCEMENTS

The Contractor shall not use in its external advertising, marketing programs, or other promotional efforts, the City seal or other representations of the City, any data, pictures or other representations 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 notice of three (3) City business days is required for a response to a request for such approval. If approval is not issued within that period, the request shall be deemed denied.

47. INTERGOVERNMENTAL COOPERATIVE PROCUREMENT

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 Contract reflect the City usage only.

Any public agency that wishes to purchase items will execute its own contract with the awarded Contractor for its requirements. If the Contractor enters into a contract with any public agency on terms or prices other than that outlined in this Contract or in conjunction with a competitive bid process, then there is no reporting requirement to City.

48. INTERGOVERNMENTAL COOPERATIVE ADMINISTRATIVE FEE (CAF)

A 1.0% annual cooperative administrative fee ("CAF") on Eligible Revenues will be paid to the City for any Intergovernmental Cooperative Procurement contracts that Contractor agrees to enter into under identical prices and terms and conditions to this Agreement and which did not result from a competitive bid process ("Eligible Contracts"). The pricing extended to Participating Entity shall be the purchase price before promotional discount as outlined in COMPENSATION charged to the City under this Contract (#31001056) for each Product. Eligible Revenues shall mean the revenues on Eligible Contracts. In the event that the

City exercises its unilateral right to Early Termination under clause 33(b), then Contractor will no longer be liable to City for any CAF otherwise due and payable to City.

- A. Volume Sales Reports.** When other Participating Entities are offered the same terms and conditions as the original Contract between Contractor and the City, Contractor shall provide a twice yearly Volume Sales Report to the City. The reports shall include the complete and accurate details regarding all transactions pertaining to sales under the Contract Terms and Conditions for that Reporting Period. Contractor shall provide the Volume Sales Reports regardless whether or not any sales have been conducted. When no sales have been recorded for the period a report must be submitted by so stating "NO SALES FOR THIS PERIOD".

Volume Sales Reports may be submitted either by email, US post or electronically and submitted on the City's standard document. Contractor will submit the Volume Sales Reports to:

City of Portland, Procurement Services
Jeff Blade, Procurement Supervisor
1120 SW Fifth Avenue, Room 750
Portland, OR 97204
Email: Jeff.Blade@portlandoregon.gov

City reserves the right to terminate this Contract if the Volume Sales Reports are not received on a timely basis as described herein, provided however that Contractor is granted the right to cure any breach in this regard within thirty (30) Days of written notice by the City of said breach.

The sales information shall be supplied to the City's, Procurement Services Division for the following Reporting Period of January 1 - June 30 and July 1 – December 31. All reports are due by the 30th Day following the end of the Reporting Period.

During the term of this Contract and for the sales during the previous Reporting Period, Contractor shall remit CAF payments to the City within thirty (30) Days of City's receipt of Volume Sales Report. Contractor shall be responsible for timely reporting and payment. The City reserves the right, at its own expense, to audit Contractor's records and other pertinent data as indicated herein in AUDITS.

- B. CAF Payments.** All payments shall be due thirty (30) Days after the City's receipt of the Volume Sales Report. The CAF will NOT be reflected as a separate line item charge to authorized purchasers. Contractor's bid prices shall reflect all of Contractor's charges to authorized purchasers.

City CAF shall be calculated based upon Participating Entity Volume Sales Report limited to paid-for purchases, net of returns, discounts and credits made by the Participating Entity. The calculation will be as follows:

City Price \$100.00 Markup 1% Participating Entity pays \$101.00; rebate to be paid to the City
= \$1.00 (\$101-(\$101/1.01))

Contractor shall remit CAF payments in the form of a check to:

Procurement Services, Operations
1120 SW Fifth Avenue, Room 750
Portland, OR 97204

- C. Definitions.** These definitions shall apply to the CAF provisions as follows:

Participating Entity shall be any public/governmental organization utilizing this Agreement in accordance with purchasing procedures mandated by Local and State procurement statutes and regulations.

Reporting Period means the twice yearly reporting of sales as conducted via cooperative procurement under this Agreement/Contract.

49. NON-EXCLUSIVE AGREEMENT

The City may, but is not required, to purchase any Services under this Contract. Services will be requested on an as needed basis, therefore there is no guarantee of Services to be purchased under this Contract. Payment shall be made only for Services actually ordered, performed, and accepted, whether greater or less than the original estimated quantities. This Contract does not establish an exclusive arrangement between the City and Contractor, and the City retains the right to purchase the same or similar Services from other providers.

50. NOTICE

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

CONTRACTOR:

CITY:

City of Portland, Procurement Services
Attn: Cate Antisdell
Email: cate.antisdell@portlandoregon.gov
1120 SW 5th Avenue, Room 750
Portland, OR 97204
(503) 823-6850

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.

51. ENTIRE CONTRACT

This Contract and its Attachments, Appendices, and Exhibits 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.

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:

- A. 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.
- B. 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.
- C. Contractor hereby certifies that, if applicable, its Contract proposal is made in good faith without fraud, collusion or connection of any kind with any other proposer of the same request for proposals or other City procurement solicitation(s) that Contractor as a proposer has competed solely on its own behalf without connection or obligation to, any undisclosed person or firm. Contractor certifies that it is not a City official/employee or a business with which a City official/employee is associated, and that to the best of its knowledge, Contractor, its employee(s), its officer(s) or its director(s) is not a City official/employee or a relative of any City official/employee who: i) has responsibility in making decisions or ability to influence decision-making on the Contract or Project to which this Contract pertains; ii) has or will participate in evaluation or management of the Contract; or iii) has or will have financial benefits in the Contract. Contractor understands that should it elect to employ any former City official/employee during the term of the Contract then that the former City official/Contractor employee must comply with applicable government ethics and conflicts of interest provisions in ORS Chapter 244, including but not limited to ORS 244.040(5) and ORS 244.047, and the City's Charter, Codes and administrative rules, including lobbying prohibitions under Portland City Code Section 2.12.080.
- D. The Parties agree the City and Contractor may conduct this transaction, including any Contract Amendments, by electronic means, including the use of electronic signatures.

IN WITNESS WHEREOF, Contractor and City have caused this Contract to be executed by their duly authorized representative(s), on the date stipulated in EFFECTIVE DATE AND DURATION.



CITY OF PORTLAND, OREGON

Contract No. XXXXXXXXXX

Amendment/Change Order No. 0

Contract Description: VEGETATION MANAGEMENT & IRRIGATION SVCS FOR SMFS

CITY OF PORTLAND SIGNATURES:

By: N/A
Bureau Director

Date: _____

By: *Qua D. Platt*
Purchasing Agent

Date: 07/25/2017

By: N/A
Elected Official

Date: _____

Approved:

By: *D. Bilby*
Office of the City Auditor

Date: 08/01/2017

Approved as to Form:

By: *John Fahn*
Office of City Attorney

Date: 07/21/2017

ATTACHMENT 1

SCOPE OF WORK

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1. GENERAL SCOPE OF WORK

Contractor shall perform maintenance, and/or irrigation of vegetation in stormwater management facilities (“SMF”) for the City of Portland, Bureau of Environmental Services (“BES”). The City currently has 1,900 Greenstreet SMFs and 145 parcels. Greenstreet SMF numbers are expected to reach 2,500 by the end of June 2023. Services include:

- A. Maintenance services in compliance with City schedules such as:
 - 1) Vegetation Maintenance includes: hand-weeding, trimming vegetation, soil grading, soil removal and/or installation, sweeping and leaf blowing, mulching, mowing, cutting, edging, pruning.
 - 2) Sediment, Trash, and Debris Removal includes: inlet clearing, hauling and disposal of sediment, trash, and debris.
 - 3) Replacement Planting includes: plant material loading, pick-up and delivery to project sites, reading planting plans, plant layout and installation, removal and replacement of dead plants, disposal of pots at an approved recycler.
 - 4) Miscellaneous Tasks include, but are not limited to: tree staking, seeding, installation or removal of erosion control, installation or removal of plant protection measures.
 - 5) Reporting includes: leaving a completed doorhanger at each adjacent residence or business as directed, filling out and submitting completed work orders to City staff and communicating site observations and condition reports to City staff.
- B. Irrigation services in compliance with City schedules

The City representative will issue work orders to Contractor periodically throughout the duration of the contract as sites are ready for work.

Projects assigned will vary in size. The average size of Greenstreet SMF’s is 250 square feet (“SF”), but individual projects may range from 60 SF to 1000 SF or more. Parcel-based SMF’s may range from 0.01 acres to 1 acre or more.

Contractor shall furnish all labor, materials, tools, machinery, and equipment necessary to perform all services under the proposed Contract.

2. GREEN STREETS AND PARCELS

The City of Portland is a leader in implementing strategies that manage stormwater runoff, enhance community and neighborhood livability, and strengthen the local economy. In April 2007, the Portland City Council approved a Green Street resolution to promote and incorporate the use of Green Street facilities in public and private development. In this context, the term "Green Street" refers to a paved street and sidewalk area that uses one or more vegetated facilities to help manage stormwater runoff at its source. The Portland Green Streets Initiative is a comprehensive and sustainable stormwater strategy that meets regulatory compliance and resource protection goals by using a natural systems approach to manage stormwater, reduce flows, improve water quality and enhance watershed health.

The Green Streets Initiative depends on a variety of on-site Stormwater Management Facility (“SMF”) designs, including both swales, planters, and parcels.

A Greenstreet SMF is a single-celled pervious area, below the grade of the adjacent street or sidewalk, comprised of special soil and vegetation, with openings along the curb and gutter line to allow water runoff to leave the street surface and enter the facility. These facilities can be 'swales', characterized by sloped sides with or without a central channel, or 'planters', characterized by a flat and relatively even grade below street level, or a hybrid design that incorporates characterizations of each. Swales and planters may be located behind the existing curb line or may be installed behind new curb that extends into area that was formerly part of the road. Facilities that extend beyond the pre-existing curb line are called 'curb extensions'.

A parcel SMF is a vegetated basin used to collect and hold stormwater runoff, allowing pollutants to settle and filter out as the water infiltrates into the ground. In general, parcels SMFs have larger upland buffer areas to maintain that are adjacent to the right-of-way. These upland buffers may or may not be fenced. Parcel SMFs can be raingardens, filter strips, grassy swales, or ponds. Stormwater is conveyed from the adjacent impervious surface into the treatment area via an inlet, a pipe inlet, or by sheet flow across a gradient. There, the stormwater is temporarily stored until it infiltrates into the ground or is released via an outlet pipe. Basins often provide complete onsite infiltration for small storm events. They can be sized to infiltrate large storms in areas where soils drain well or overflow to an approved discharge location. Basins can have a formal or informal design that can be used to help fulfill a site's landscape requirements.

Any single project that will be assigned under any line item portion of this contract may involve one or more of these different facility types.

The 2016 Stormwater Management Manual (SWMM) is the City's guiding document concerning stormwater management and treatment. It sets guidelines for the placement, sizing and design of SMFs. The Greenstreet Details document provides typical plans, sections and details to assist in SMF design and construction. Both documents are available to the public on the Bureau of Environmental Services website at the following URLs:

2016 Stormwater Management Manual (SWMM): <http://www.portlandoregon.gov/bes/64040>

Greenstreet Details: <http://www.portlandoregon.gov/bes/article/474218>

3. REQUIRED SERVICES

Contractor shall perform the tasks listed below:

- A. Accept project assignments from the City during the contract term
- B. Attend site visits as scheduled by the City or its designated agents
- C. Provide maintenance services as described in this Attachment 1 (if applicable)
- D. Provide irrigation services as described in in this Attachment 1 (if applicable)
- E. Report work-related emergencies or incidents to the City's Project Manager immediately
- F. Provide work summary reports as described in the Reporting section below

4. WORK ORDERS

Work orders shall be substantially similar to Exhibit C, Sample Maintenance & Irrigation Work Order. Multiple City staff may simultaneously issue work orders for all types of work under this Contract. Individual staff may issue work for multiple projects at once.

Contractor must begin newly-issued work on sites within three (3) business days' notification and shall proceed with work without delay or interruption until all work is completed, unless a start date greater than three (3) business days is requested by the City.

Upon completion of work, Contractor must complete its portion of the work order form and return it. See the Reporting section below.

5. PERSONNEL AND EQUIPMENT

The Contractor shall supply a crew with the necessary qualifications and all material and equipment needed to complete the work. The Contractor shall supply an English-speaking foreman on all sites. Contractor's foreman shall be skilled at reading and interpreting work plans, including site maps. Each foreman shall lead no more than the typical size crew unless pre-approved by the City.

Unless pre-approved by City staff, Contractor shall maintain the following crew sizes:

- Greenstreet maintenance four (4) persons
- Parcel-based SMFs six (6) persons
- Irrigation two (2) persons
- Site reconnaissance one (1) person

Crew members, except when employed for site reconnaissance, shall not work alone. Workers shall have access to emergency transportation at all times.

The Contractor and employees will be required to maintain their work vehicles in good working order with company name clearly displayed on the vehicle. Company employees shall wear protective clothing in accordance with OSHA standards for Landscaping and Horticultural Services. For OSHA standards, refer to: <https://www.osha.gov>.

In addition to OSHA standards, the City requires crew members to wear brightly colored reflective safety vests, puncture-resistant gloves, and safety hard hats whenever working in an active construction area. Contractor and employees must maintain a professional appearance.

6. NORMAL HOURS AND WORK CONDITIONS

Work hours under the contract shall be limited to the time between 7:00 a.m. and 5:00 p.m., Monday through Friday. When working in close proximity to residential homes work hours shall be limited to the time between 8:00 a.m. and 5:00 p.m. Work outside of normal hours is permitted only with prior approval from the City's project manager directing that project.

The City may suspend Contractor's operations if weather conditions occur that could either damage facilities, plants, materials or the surrounding environment, or negate the need for the requested work to occur. The City may suspend work when ambient air temperatures exceed 95 degrees Fahrenheit to promote worker safety.

7. TRAFFIC AND PEDESTRIAN CONTROL

During operations, Contractor shall keep work site and adjacent areas clean and orderly to the greatest extent possible. Work materials may be temporarily stocked on sidewalks as long as a minimum width of 4' is kept clear in order to allow pedestrian traffic to pass. No material shall be placed in driveways or streets (outside of the parking zone) that will create impediments to normal traffic use of the area. Mud, mulch, sand, gravel, soil, and trash shall be prevented from reaching storm drains.

- A. **Signs:** The Contractor shall provide adequate barricades, signs, and/or warning devices during the performance of work under this contract to protect motorists, bicyclists, pedestrians, and workers. All placements of cones, signs and barricades must conform to American Traffic Safety Association standards. This work must follow all additional state or local requirements.
- B. **Flaggers:** All use of flaggers must be pre-approved by the City's project manager.
- C. **Operating a leaf blower:** It is important that the Contractor display awareness and concern for passing vehicles while operating leaf blowers. It is required of the Contractor to halt operation of the leaf-blower to allow any pedestrian to pass by unhindered. Contractor will operate blowers in a manner as to reduce the amount of dust that may get lifted up into the air that surrounds the facility area, making a good effort not to negatively impact local air quality conditions.

8. PROTECTION OF EXISTING FEATURES

The Contractor shall take all necessary precautions to protect paving, curbs, walls, landscapes, and other existing site features on public or private property during maintenance and irrigation activities. Removal or destruction of existing plantings is prohibited unless specifically authorized by the City. Any damage to existing features as a result of the Contractor's operations shall be immediately reported to the City. The City will determine the appropriate course of action for repair work, either by the Contractor, the City, or another party. Repairs shall be made to original condition or as approved by the City. The cost of any repair work shall be the responsibility of the Contractor. Contractor shall deduct repair costs in their next invoice.

- A. **Utilities:** Planting and establishment operations may be conducted in areas where overhead and/or underground utilities exist. City shall identify utility locations. Contractor shall request this information and perform work in such a manner that will avoid possible damage to utilities and shall notify the City of any above or below ground utility conflicts. In the event of a damaged utility, the Contractor shall contact the utility owner immediately to initiate the repair process. If the damaged utility creates a hazardous situation, the Contractor shall call emergency services immediately and secure the area to prevent others from the hazardous situation. Contractor shall not continue work in the vicinity of a damaged utility. Any utility damage caused by Contractor's work shall be repaired only by that utility's owner or representative. Any cost shall be the sole responsibility of the Contractor.

9. MAINTENANCE

Contractor will perform the following tasks to maintain landscape elements and functionality of the City's Greenstreet and parcel SMFs.

- A. **Inlet Clearing:** Contractor shall clear SMF inlets in order to facilitate the passage of stormwater into the vegetated portion of the facility. Project managers may issue accelerated inlet cleaning work orders at any time. Typically, this is during or immediately after heavy rain events and during fall leaf drop.
- B. **Trash Removal:** Contractor shall remove all accumulated trash from the facility at every visit. Trash is defined as human-produced waste such as candy-bar wrappers, discarded plastic bags, cigarette remnants, aluminum cans, and glass bottles, domestic pet waste, and any other inanimate object that is not intended to be a part of the original facility design or approved addition. The Contractor is to take all necessary precautions while removing sharp objects such as broken glass and shall have a City-provided sharps kit on hand for proper disposal of biohazard litter. Contractor shall make efforts to recycle as much of the glass, plastic, and metal that is retrieved from the public Right-of-Way. Waste material shall be properly disposed of by the Contractor at City-approved locations.

- C. **Debris Removal:** All debris generated by the Contractor while executing requested maintenance work, as well as any pre-existing debris, will be required to be removed from the work locations and disposed of in appropriate City-approved locations. Debris is defined as grass clippings, weeds, leaf litter, dead or broken branches, dead plant material, and illegally dumped yard waste, composted materials, or soils.

If the Contractor suspects that debris is being placed in a facility by surrounding neighbors, the Contractor shall remove the debris, leave a door hanger (described below), and report the incident to the City, who will outreach to the neighbor.

- 1) **Dead Plant Material:** Contractor shall remove dead plant material from shrubs, groundcovers, herbaceous plants, and trees as part of regular maintenance, to maintain a kept appearance and to not deter new growth. Dead plants shall be removed only per the City's direction.
- 2) **Leaf Pick-Up:** Some projects are located in older neighborhoods with well-established tree-canopy. Leaves accumulate quickly in SMF's and must be removed at each visit. The Contractor shall remove leaves from the facility and roughly fifteen (15) feet upstream and downstream of the facility, following the gutter line. Where facilities are located at street intersections, the Contractor will insure that the intersecting street does not have any leaf litter that may immediately impact the function of the SMF and clear the intersecting gutter line from the location where it intersects, to roughly fifteen (15) feet upstream.

- D. **Sediment Removal:** Contractor shall remove sediment from the inlets and forebays of SMF's, as well as the interiors of the facilities. Inlets/Outlets are curbs where stormwater can enter or exit a facility. Forebays are settling basins or plunge pools constructed at the incoming discharge points of a stormwater system to allow sediment to settle from incoming stormwater in a location that facilitates maintenance.

Facility forebays are typically either a concrete pad or semi-loose gravel and rock. In some facilities there is no forebay. On concrete pad forebays, the Contractor shall use a flat shovel to scoop the sediment out. If rock is present, a shovel can be used, however smaller hand tools or gloved hands should be used to remove remaining sediment. Any contaminated materials removed from inlets and forebays shall be kept in a separate leak-proof compartment and delivered to a City-approved dump location.

- E. **Weeding:** Contractor shall remove all weeds from within recognizable boundaries of SMF's. Removal shall be by hand tools. No herbicide shall be used without written approval from the City. Target vegetation must be completely removed by the roots wherever possible. Where soils are disturbed, they must be tamped down and raked smooth. All material cut or rooted out of the ground must be removed from the area and disposed of as directed herein.
- F. **Cutting:** The use of trimmers is required in some locations to cut grasses and weedy vegetation. City staff will provide specific instructions regarding the desired cut height of vegetation.
- G. **Mowing and Edging:** The use of edgers and mowers is required in some locations to mow and edge grass. City staff will provide specific instructions regarding the desired cut or mowed height of vegetation. Typically, mowed grass will be maintained to a height of no less than three (3) inches and no greater than nine (9) inches, depending on the type of grass and the specific site conditions.
- H. **Plant Installation:** Plant installation includes all labor spent installing specified plant material in SMF's as well as any pruning of trees and clean-up of the site after planting. The following specifications and requirements apply to plants installed as replacement planting.

- 1) **Planting Seasons:** The typical planting seasons are February 1st to May 1st and October 1st to December 1st. The City may direct plantings to occur outside of these dates.
- 2) **Plant Transportation:** Whenever transporting plants for the City, Contractor must show great care with the handling, loading, and unloading. Stacking of containers is only permissible if it can be achieved in a manner that does not negatively impact any of the vegetation before, during, or after transport has occurred. Contractor must take care to protect plants from excessive heat and wind.
- 3) **Plant Installation:** The Contractor shall implement all treatments without deviation according to plans and instructions provided by the City. The Contractor shall be able to read, interpret, and implement planting plans. The Contractor is expected to be able to work independently; however, the City will provide assistance towards interpreting plans and treatment instructions upon request.

Planting materials may include balled and burlap ("B&B") trees, containerized trees and shrubs, herbaceous containers, plugs, and bulbs. Contractor shall contact City immediately if conditions exist that preclude the planting in a specified location.

- a) **Containerized Plants:** Containerized plants will be any of the following: 4" pots, # 1, # 2, or # 3 containers. Care will be taken when handling plants to avoid damaging plant parts. The soils in the bottom of the planting hole will be loosely positioned into a dome. If roots are tightly bound inside the container, some careful teasing of the roots to separate them will be required. Place the plant on top of the soil dome allowing for roots to separate and fall over the sides of the soil dome. While keeping the plant in position, excavated soils will be back-filled into the hole while gently compacting the soils around the plant to reduce air gaps and allow the plant to stand erect and firmly in place. Contractor shall recycle or reuse empty containers.
- b) **Herbaceous Plug Planting:** Plug plant installation involves using a small trowel or spade to open a hole large enough to gently place the plug into the hole with the soil around the plug at the surrounding ground level. The installed plant should be firm in its position and standing erect and level with its existing surroundings. Contractor shall recycle or re-use empty plug trays.
- c) **Balled and Burlap Trees:** Contractor shall handle B&B stock only by the root ball, taking caution to avoid fracturing the ball. Contractor shall not drop root balls at any time, from any height. Contractor shall not move root balls using the twine or tree trunk. B&B trees shall be moved using either hooks on the wire basket or tree dollies. These steps shall be followed:
- **Remove wire baskets, twine, tape, and tags:**
Carefully remove all twine and free tangled branches prior to placing the tree in the planting hole. Remove nursery tags and tape. Cut and remove all twine and rope from around the ball and trunk without disturbing the root ball. Following best practices, remove wire basket in its entirety before backfilling the planting hole.
 - **Set tree in the hole:**
First, locate the trunk flare. This might require the Contractor to gently remove the top portion of soil from the root ball if the trunk flare is buried. Any fibrous roots growing at or above the trunk flare shall be pruned off at the trunk. The top of the trunk flare shall be level with, or slightly higher than, the existing finish grade at the planting site. To achieve this, the planting hole shall be 1-2 inches shallower than the root ball depth, in anticipation of some minor settling and flattening of the root ball. To minimize settling, do not disturb the soil under the root ball. Re-compact the soil if it has been disturbed. The planting hole needs only to be wide enough to facilitate planting. Contractor shall orient tree so that lower branches do not protrude into the flow of pedestrian or vehicular traffic. Where possible, the Contractor shall plant the tree with the same trunk orientation it had in the nursery.
 - **Remove burlap:**
After the tree is in its final position, Contractor shall gently fold the burlap back from the top and sides of the ball, cutting away excess material. If removing burlap from underneath the root ball will result in the soil crumbling, Contractor shall leave bottom in place and cut away as much of the burlap as possible. If removal of the burlap on the sides will result in the soil crumbling, the burlap shall be rolled back to the top and slit along the sides from top to bottom every 2-3 inches with a sharp knife.
- d) **Bare-root Planting:** Great care must be shown when handling bare-root plants. Roots must not be exposed to dry air or direct sunlight conditions for any extended period of time. Bare-root plants should be wetted prior to installation by dipping the roots into a bucket of water then placing the plants in a sheltered bag to keep the roots moist. To prepare a planting hole for a bare-root plant, clear loose debris and other vegetation, such as grass, to have a minimum of an 8" diameter area of bare ground. Dig deep enough so that the root tips do not touch the bottom of the planting hole when the root collar is in position at the ground level. Roots should be carefully teased apart to avoid tangles and twists, and then planted with all root tips pointed downward. While holding the plant in place with the root collar at ground level, gently back-fill the hole, lightly compacting the soil to the level where about 1" of soil covers the first root below the collar. Finish backfilling to provide a level surface around the planting area. Root pruning should not be done unless directed by City staff.
- i. **Pruning:** All pruning operations shall be undertaken only by employees trained to do so. In general, pruning activities shall be minimized and will only be conducted from the ground.

Contractor shall limit pruning to the removal of the following from trees and shrubs: broken or dead branches/stems, crossing branches/stems that rub each other (remove one), branches/stems growing inward towards the trunk.

Contractor shall limit pruning to the removal of the following from trees only: sprouts at or near the base, and water sprouts (young, weak growth that grows straight up from horizontal branches). Unless trees are specified as multi-stem or clump form, if there is more than one leader, choose the strongest and straightest one and remove others.

Contractor shall limit pruning to the removal of the following from shrubs only: spent flower parts (deadheading).

Contractor shall always use clean, sharp pruning tools. All pruning cuts shall be made in compliance with ANSI A300 pruning standards. No application of wound dressings shall occur. All pruned branches shall be disposed of off-site by Contractor along with other organic cuttings and waste, as specified in this Contract.

- J. **Mulching:** Mulch must not inhibit water flow in the flow path, inlets, or outlets. Mulch material must be fine to medium 100% hemlock bark, free of dyes and pesticides. Mulch must be applied after beds are clear of weeds and debris, after Planting and watering-in of new plants is complete, and after the soil surface is brought to a smooth, finished grade. Keep mulch off plants, structures, roadways, shoulders, walks, and lawns. Mulch must not cover herbaceous plants or come into contact with the stems of woody shrubs or trees. Mulch surface must be left with a smooth, finished appearance.

The Contractor shall take all reasonable precautions to prevent mulch from collecting in storm drains or affecting other infrastructure, public or private.

- K. **Miscellaneous Tasks:** At any time, City staff may require specific tasks that have not been identified under routine maintenance tasks. Any tools required for miscellaneous tasks that are not on the required list of tools for regular maintenance will be provided by the City.
- L. **Doorhanger:** The Contractor shall complete and place doorhangers on the front door handle of adjacent residences and businesses as directed. The door hangers explain the purpose of SMF's and that City-contracted crews perform periodic maintenance. They also contain phone numbers of City contacts if a neighbor has questions or concern regarding SMFs.
- M. **Disposal:** At the end of each work day, and at the conclusion of each project, the Contractor shall clean all adjacent and impacted pavement surfaces on both public and private property. All waste materials collected during maintenance shall be separated and properly disposed of as specified below:

- 1) **Organic Matter:** Organic matter or 'yard debris' includes all plant clippings and trimmings, pruned branches, weeds, and leaf matter. This waste material shall be delivered and managed as designated by City staff. Yard waste will be dumped at City-approved locations. Or, if City staff directs, it may be dumped at a private composting facility. City will reimburse Contractor for dumping fees incurred at a private facility.
- 2) **Sediment:** Sediment is mineral or organic matter that has deposited into a facility or is blocking inlets. Excess sediment in a facility can impede conveyance and infiltration, and bury vegetation. This material is primarily from road run-off and can contain chemicals, oils, and pollutants. Sediments and other organic matter that is saturated in run-off shall be placed in a separate holding container and delivered and managed as designated by City staff. Current disposal location is the Columbia Boulevard Wastewater Treatment Plant (CBWTP). Directions on CBWTP dumping procedures will be given to Contractor.
- 3) **Trash:** Contractor shall remove all accumulated trash from the facility at every visit. Waste material shall be properly disposed of.

- N. **Site Reconnaissance:** Site reconnaissance includes additional site visits by (1) crew member, in advance of mobilizing an entire crew, for the purpose of assessing site conditions. Conditions include maintenance needs of both desirable and weedy vegetation, volume of debris needing removal, leaf drop conditions (seasonally), storm damage, observing conveyance, making structural damage observations, and summary correspondence with City staff. Site reconnaissance will be conducted by (1) crew member only.

10. IRRIGATION

Irrigation services include hourly irrigation of street trees, shrubs, and vegetated landscapes within the public right-of-way, including SMFs, as well as over-land irrigation of native tree and shrub seedlings in stormwater parcels and natural area settings. For our purposes, irrigation 'season' is defined as those months in which the City anticipates need for irrigation services. Weather-dependent, the 'season' may typically span the four (4) months of June – September.

The Contractor will provide, at its own risk and cost, all labor, transportation, supervision, and other items including, but not limited to: a transportable reservoir, water pumps, hoses, watering wands, tools for accessing fire hydrants, and clean water needed to do the irrigation work as directed.

- A. **Hourly Irrigation:** The Contractor will be expected to utilize a mobile water tank with a minimum volume of three-hundred (300) US gallons.

The Contractor will not use hose larger than 1.5-inch diameter to draw water from a City fire hydrant. Gentle shower wands will be used to deliver water to the vegetation. Any variation of delivery will need to be pre-approved by BES staff prior to initial use.

When utilizing a gentle shower spray nozzle, some minor erosion and soil movement may occur. It is the responsibility of the Contractor to repair the soil grading, and re-position any mulch or soil that moves as a result of irrigation practices. Any disturbance to the plant's roots and the soils surrounding the plant's roots during irrigation or self-inspection will require proper repair or replanting and backfilling to ensure pre-disturbance conditions.

It is the responsibility of the Contractor to avoid damaging existing vegetation while in the process of providing irrigation. If negligence results in damage or death of adjacent plants due to trampling via foot or hose, the Contractor may be assessed replacement costs. See the Replacement Costs section below.

The Contractor is required to complete and submit all data forms issued by City personnel, including work orders and Hydrant Use Daily Log sheets, as shown in Exhibit C, Sample Maintenance & Irrigation Work Order and Exhibit D, Sample Mobile Irrigation Hydrant Use Daily Log.

- 1) Landscapes: This item requires the Contractor to irrigate all desirable vegetation located within SMFs with a gentle shower spray nozzle. The soil is to be fully saturated to a depth of four (4) inches. The **minimum** volume of water needed to achieve this is **2 gallons per square foot**. The presence of slope may cause some run-off, therefore requiring more than the minimum volume to be applied to achieve saturation. The majority of work orders for this item will be to irrigate SMF vegetation. However, this item may also be applied to other types of landscapes.
- 2) Trees: This item requires the Contractor to apply a **minimum of 10 gallons of water per one inch of caliper size of the tree** to the root zone of the *individual tree* by using a gentle shower spray nozzle / watering wand. This type of service requires a deliberate pre-soaking and saturation of the drip line area surrounding an individual tree. The City uses 20-gallon tree bags and may require Contractor assistance with installation and removal of bags. For larger sized trees, two bags may be provided and the Contractor will be asked to fill both during each watering cycle. Trees to be irrigated under this item will be located within or directly adjacent to the public right-of-way, either in a planter strip, a SMF, or within a traffic circle, and may range from 3/4 inch to 4-inch caliper in size. The majority of trees requiring this service will be 2-inches in caliper size, needing a minimum of 20 gallons of water per visit.
- 3) Seedlings: This item requires the Contractor to apply a **minimum of 2 gallons** of water to each plant with a gentle shower spray nozzle. Satisfactory irrigation is achieved when the area determined by the natural drip line of the vegetation is fully saturated to a depth of 4 inches. This work may require extensive length, potentially up to one-thousand (1,000) feet, of hose to reach across natural area terrain to deliver water to the requested plant stock. Terrain may vary greatly and be difficult to maneuver upon; this may involve traversing steep slopes, uneven ground, over rocks, and through other vegetation. Care will be required to not damage any vegetation while moving hoses over land.

- B. **Crew Requirements:** Requirements in the Personnel and Equipment section shall apply as well as the following: Irrigation crew size is typically two (2) persons. The driver shall be an active part of the irrigation crew performing watering tasks, and not solely the driver of the vehicle. Additional personnel can be utilized for work on large sites and/or when a safety flagger is needed. All instances of crew size greater than two (2) persons and all use of flaggers requires the City's pre-approval.
- C. **Trash Removal:** Contractor shall remove all accumulated trash from the facility at every visit. Trash is defined as human-produced waste such as candy-bar wrappers, discarded plastic bags, cigarette remnants, aluminum cans, and glass bottles, domestic pet waste, and any other inanimate object that is not intended to be a part of the original facility design or approved addition. The Contractor is to take all necessary precautions while removing sharp objects such as broken glass and shall have a City-provided sharps kit on hand for proper disposal of biohazard litter. Efforts will be made to recycle as much of the glass, plastic, and metals that is retrieved from the public Right-of-Way. Waste material shall be properly disposed of by the Contractor at City-approved locations.
- D. **Fire Hydrant Permit:** The Contractor must also keep valid for the duration of the contracted work season, a fire hydrant permit issued by the City of Portland Water Bureau. *This permit is mandatory* and it is the responsibility of the contractor to comply with all permit requirements for the duration of the contract. The hydrant permit, for use on this contract, will be offered for purchase to the at a pro-rated rate dictated by the Water Bureau. If Contractor does not maintain a valid hydrant permit for the duration of each irrigation 'season' or if the Contractor is found in violation of this permit, this may be considered a Material Breach of contract.

11. REPORTING

The Contractor is encouraged to add any significant observations as part of both the completed work order and the Work Summary Report.

- A. **Work Orders:** Upon completion of work, Contractor will fill in all required information on the work order form and submit the completed form via email to the City staff who initiated the work. Reference Exhibit C, Sample Maintenance & Irrigation Work Order.
- B. **Work Summary Report:** A work summary report for each project site shall be submitted along with each invoice. Work summaries shall include:
- 1) Name of project or site description (street address, asset number, etc.).
 - 2) Dates of work, crew size, times worked, and total hours by date.
 - 3) Brief description of work performed.
 - 4) Volume of sediment removed per facility.
 - 5) Count and description of any plants that require removal or replacement.
 - 6) Any additional pertinent information from the project, (i.e. structural or vegetation damage, illegal dumping, etc.).

Reference the last page of Exhibit E, Sample Contractor Invoice and Supporting Documentation.

12. INSPECTION AND ACCEPTANCE

All work sites are subject to post-inspection by the City in order to evaluate the work. Within 30 Days of receiving an invoice, the City shall inspect invoiced work quality and determine compliance with specifications on a per facility basis. Workmanship shall be evaluated based on the specifications as provided in herein and any additional facility-specific special instructions provided by the City in writing on a per-facility basis.

Work that meets all specifications, per-facility special instructions, follows generally accepted horticultural practices, and the work site has been sufficiently cleaned up with materials properly disposed of, shall be deemed satisfactory and accepted. Once work has been accepted and a correct and complete invoice has been received, City shall make payment to the Contractor in accordance with the terms of the Contract.

No services received by an agency or jurisdiction pursuant to a Contract shall be deemed accepted until the agency has had reasonable opportunity to inspect said equipment, supplies, and/or services.

All services which do not comply with the specifications and/or requirements or which are otherwise unacceptable or defective may be rejected and subject to remedy by Contractor in accordance with the Rejection section below. In addition, all services which are discovered to be defective or which do not conform to any warranty of the Contractor upon inspection (or at any later time if the defects contained were not reasonably ascertainable upon the initial inspection) may be rejected and subject to remedy by Contractor.

13. REJECTION

Any work (including clean-up) that does not meet the specifications as provided in this contract, additional special instructions given on a per-facility basis, and generally accepted horticultural practices, shall be deemed unsatisfactory and rejected. Should the City determine work quality is unsatisfactory, City shall notify the Contractor in writing.

Remedy: Unless a written authorization is given by a City representative, Contractor must remedy the rejected work within three (3) calendar days following notification to avoid default. Contractor will perform remediation work at no additional cost to the City, and Contractor will not invoice City for this work. Contractor will notify designated City Project Manager when work is completed. City will re-inspect the work for compliance. Contractor shall reimburse the City at a rate of \$123.00 per hour for any re-inspections. Contractor acknowledges this rates and shall deduct the amounts agreed to by the City's project manager from their next invoice.

Repeated rejection of work may be considered a material breach of contract.

14. MATERIAL BREACH: Any of the following events or circumstances may constitute Material Breach by Contractor:

- Repeated failure to promptly respond to work assignments from City project managers.
- Repeated (more than three (3) occurrences) failure to perform work of acceptable quality.
- Repeated failure to remedy rejected work as identified in Rejection above.

15. REPLACEMENT COSTS: Proper and timely delivery of services is essential for the success of the vegetation being managed by the City of Portland. If it is determined that improper methodology or unresponsiveness in service has occurred while under contract with the City and this poor practice has resulted in loss of vegetation, the Contractor will be held responsible and be assessed replacement costs as follows:

- A. Individual plants in the ROW are valued at \$10.00 each
- B. Individual street trees in the ROW are valued at \$250.00 each
- C. Individual native trees and shrubs in parcels and natural areas are valued at \$10.00 each

Contractor shall confirm the application of replacement costs with the City's project manager for any damages directly associated with its improper and/or untimely work performance. Contractor acknowledges these rates and shall deduct the amounts agreed to by the City's project manager from their next invoice.

16. WORK PERFORMED BY THE CITY

BES staff shall make available sufficient hours of staff personnel as is required to meet with the Contractor and provide such information as required. BES has assigned a project manager who will oversee the work and provide support as needed.

Specific duties the City will perform include:

- A. Procure plant materials and provide specifications for planting, mulching, tree staking, etc.
- B. Assign the maintenance and irrigation work for each project site.
- C. Provide project area maps as necessary.
- D. Perform periodic site visits during scheduled work.
- E. Provide on-site supervision as necessary.
- F. Provide inspection services and constructive feedback to ensure satisfactory service delivery.

17. PUBLIC SAFETY

In accordance with generally accepted safety practices, the Contractor will be 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.

Public safety may require that the City limits access to public work sites, public facilities, and public offices, sometimes without little advance notice. The Contractor's employees and agents shall carry sufficient identification to show by whom they are employed and display it upon request to security personnel. City project managers have discretion to require the Contractor's employees and agents to be escorted to and from any public office, facility or work site if national or local security appears to require it.

18. PLACE OF PERFORMANCE

All services will be performed in the City of Portland. Work will likely take place on multiple SMFs in a generally defined city location (for example, a single work order might be created to serve a stretch of road or geographical boundary).

[END OF ATTACHMENT 1]

ATTACHMENT 2 PRICING

ITEM #	WORK	CREW SIZE	UNIT PRICE
1	MAINTENANCE Hourly maintenance of Stormwater Management Facilities (SWFs)	4-6 persons	\$28.00 per hour per person
2	MOBILE IRRIGATION Hourly irrigation of SMFs, Minimum tank size is 300 gallons	2 persons	\$28.00 per hour per person

Reimbursements may be made for any additional purchases specifically requested and approved by the City in writing, Contractor shall include, as part of the monthly invoice, line items showing product quantities, sale price, project site where each product was used, and scan of purchase receipt.

Dumping fees incurred at a private City-approved facility are eligible for reimbursement.

TRAVEL TIME: Time spent traveling to the first project location of the day and time spent traveling from the last project back to Contractor's place of origin are not billable. All time spent traveling from one project area to another will be billed towards the next project. Time spent disposing of stormwater sediments or yard debris is included and should be itemized on invoices.

WATER TANK FILL UP: The initial fill up of the mobile water tank will be included as part of the daily hours to be compensated, therefore the Contractor may arrive at a hydrant close to the first project site to fill the tank and then proceed to the project location. All travel time to and from hydrants and between sites during the work day is compensated. Contractor is expected to use the nearest practicable hydrant to the project location.

[END OF ATTACHMENT 2]

EXHIBIT A

REQUIRED TOOL LIST FOR MAINTENANCE

Safety

- PPE – gloves, class 2 or 3 high visibility vest / clothing, eye protection, closed toed shoes, long pants
- Traffic safety as required by DOT - cones, appropriate warning signs
- Sharps kit (supplied by City)
- Hard hats for working within active construction zones

Power Tools

- Leaf blower
- String trimmer
- Metal blade weed whacker (required for parcel SMFs only)
- Chainsaw (required for parcel SMFs only)

Hand Tools

- Hand weeders (ex. Hori, soil knife)
- Hand rakes
- Hand pruners
- Hedge shears
- Loppers
- Small pruning saw
- Leaf rakes
- Bow rakes
- Stirrup hoes
- Spade shovels
- Square shovels
- Large scoop shovel
- Potato hook fork for unloading debris

Miscellaneous

- Tarps for collecting debris and tie downs or securing load
- Cans and bags for trash and recycling
- Buckets for collecting debris

[END OF EXHIBIT A]

EXHIBIT B

SAMPLE MAINTENANCE AND IRRIGATION WORK ORDER

Group Project Description:	SLJ – (Contractor Name Here) GS Maintenance - META GS North of Division between 0 - 60th. 7 assets.		
Work Information:	All regular maintenance tasks required.		
Contractor	Contractor Name Here		
Date Issued:	8/30/2016	for	Issued By: Laura Sloan 503-823-XXXX
	9/3/2016		Route: # 5675
Locations			
Asset: STCH APY254 APY255 Location: 302 SE 24TH AVE			
WO# 436761 Comments: None			
Contractor's Field Notes:			
Asset: STCH ANZ865 ANZ866 Location: 5600 SE ANKENY ST (*NORTH SIDE OF STREET EAST OF INT/W 56TH AVE)			
WO# 436762 Comments: None			
Contractor's Field Notes:			
Asset: STCH ANZ867 ANZ868 Location: 5600 SE ANKENY ST (*SOUTH SIDE OF STREET EAST OF INT/W 56TH AVE)			
WO# 436763 Comments: None			
Contractor's Field Notes:			
WO# 436770 Comments: None			
Contractor's Field Notes:			
Asset: STCH ANZ398 ANZ399 Location: 1954 SE DIVISION ST (*SOUTH SIDE ON DIVISION JUST WEST OF INT/W 20TH AVE)			
WO# 436782 Comments: New Seasons swale			
Contractor's Field Notes:			
Asset: STCH ANZ400 ANZ401 Location: 1954 SE DIVISION ST (*SOUTH SIDE ON DIVISION JUST WEST OF INT/W 20TH AVE)			
WO# 436783 Comments: New Seasons swale			
Contractor's Field Notes:			
Asset: STCH ANZ404 ANZ405 Location: 1954 SE DIVISION ST (*SOUTH SIDE ON DIVISION JUST WEST OF INT/W 20TH AVE)			
WO# 436784 Comments: New Seasons swale			
Contractor's Field Notes:			
Asset: STCH ANZ402 ANZ403 Location: 1954 SE DIVISION ST (*SOUTH SIDE ON DIVISION JUST WEST OF INT/W 20TH AVE)			
WO# 436785 Comments: New Seasons swale			
Contractor's Field Notes:			
Completed Tasks	Describe Effort		
Maintenance			
Sediment Removal:	Volume removed (Gal) =		
Total Hours Worked:	Date Complete:		
Contractor's Overall Notes:			

[END OF EXHIBIT B]

EXHIBIT D

SAMPLE CONTRACTOR INVOICE AND SUPPORTING DOCUMENTATION

Invoice

Contractor Name
 Address
 Phone
 Contact Name

DATE SENT:

BILL TO:

City of Portland
 Environmental Services
 Attn: Laura Sloan
 1120 S.W. Fifth Ave., Room 1000
 Portland, OR 97204-1972

P.O. NO.

TERMS
 Net 30 days

PROJECT
 Green Streets Maintenance
 Price Agreement #31000317

September 2016

Date	Site	Crew Size	Project Hours	Total Hours	Hourly Rate	Invoice Amount
9/1/2016	Number and title of Worker Order Issued (i.e. NE Church-NE 48th (7853) #5622)	4	6.50	26.00	\$	\$
9/2/2016	80s Greenway Bike - NE (10151) #5691	5	1.50	7.50	\$	\$
9/2/2016	NE 31st and Davis (8942) #5688	5	0.50	2.50	\$	\$
9/2/2016	NE Klickitat Bike Blvd (10126) #5689	5	5.00	25.00	\$	\$
9/6/2016	NE Klickitat Bike Blvd (10126) #5689	5	7.50	37.50	\$	\$
9/7/2016	NE Klickitat Bike Blvd (10126) #5689	5	2.25	11.25	\$	\$
Date	Reimbursements	Quantity	Purchase Price	Work Order product was used on	Receipt Attached?	Reimbursement Amount
	<i>Product</i>	1	14.99	#5622	Yes	\$ 14.99
	TOTAL		23.25	109.75		\$

Monthly maintenance activities - see attachments for details

Employee Hours – Number and Title of Work Order Issued
(i.e. NE Church-NE 48th (7853) #5622)

Project Month (i.e. September 2016)

Work Date	Crew Members	Hours	Type of work
09/12/2016	<i>Crew member name</i>	7.50	crew lead
09/12/2016		7.50	
09/12/2016		7.50	
09/13/2016		8.00	
09/13/2016		8.00	
09/13/2016		0.50	mob/demob/drive
09/13/2016		8.00	
09/13/2016		8.00	
09/13/2016		8.00	
09/14/2016		8.00	
09/14/2016		0.75	
09/14/2016		7.00	

WORK SUMMARY REPORT

Number and Title of Work Order Issued (i.e. NE Church-NE 48th (7853) #5622)

Project Month (i.e.) September 2016

Date of Work	Crew Size	Times Worked	Total Hours by Date
9/12/2016	4	8:00 am – 1:30 pm	22
9/13/2016	2	8:00 am – 11:00 am	6

Brief description of work performed:

hand weeding, trash & sediment removal

Volume of sediment removed per facility:

50 gal, 100 gal

Count and description of any plants that require removal or replacement:

13 dead Deschampsia in facility address SE 16th & Ankeny (southernmost facility on East side of 16th).

Additional pertinent information or observations from the project (i.e. structural or vegetation damage, illegal dumping, etc):

Needles found in 4 SE Grand facility by Plaid Pantry. Broken tree branch in upper canopy at SE 29th & Franklin (SE corner facility). Crew can't reach it from the ground.

[END OF EXHIBIT D]

APPENDIX A

APPLICABLE OREGON STATE LAWS

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.
- 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 ORS279C.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

APPENDIX B FEDERAL GRANT REQUIREMENTS

Federal Grant Requirements: This Contract may be funded, in whole or in part, by Federal funds. In addition to other provisions required by the Federal agency or City, the following provisions shall be covenants of the contract, as applicable. These provisions shall be in addition to all other provisions in this Contract, and shall prevail over any conflicting terms.

(A) **Administrative, contractual, or legal remedies.** Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, shall include the following provision: In the event of a breach of Contract terms by Contractor, the City may seek any remedies in this Contract, in law, or at equity. Additionally, the City may complete the project or the purchase itself, by agreement with another contractor, or by a combination thereof. In the event the cost of completing the Project or purchase exceeds the amount the City would have paid Contractor to complete the Project under this Contract, then Contractor shall pay to the City the amount of the reasonable excess.

(B) **Termination for Cause and Convenience.** All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement. The City, on thirty (30) Calendar Days' written notice to Contractor, may terminate this Contract for any reason deemed appropriate in its sole discretion. In the event of such termination, the City shall pay to Contractor the portion of the not-to-exceed price attributable to all deliverables accepted by the City, or Services performed by Contractor and accepted by the City, through the effective date of the termination. Additionally, the City may terminate this Contract in the event of a breach of this Contract by Contractor. Prior to such termination, however, the City shall give Contractor written notice to cure the breach and of the City's intent to terminate. If Contractor has not entirely cured the breach within thirty (30) Calendar Days of the notice, then the City shall have the option to: (a) terminate this Contract by giving a written notice of termination, (b) seek any remedies in this Contract, in law, or at equity, to the extent not otherwise limited by the terms of this Contract, or (c) any combination thereof.

(C) **Equal Employment Opportunity.** If this Contract meets the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3, it shall incorporate the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

(D) **Davis-Bacon Act, as amended (40 U.S.C. 3141-3148).** In addition to State or Oregon Bureau of Labor and Industries (BOLI) prevailing wage law requirements, if this Contract is a prime construction contract in excess of \$2,000, Contractor shall comply with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, Contractor must pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, Contractor must pay wages not less than once a week. A copy of the current prevailing wage determination issued by the Department of Labor has been included in the solicitation and is also separately available to Contractor upon request to the City. Award of the City contract or subcontract to Contractor is conditioned upon Contractor's acceptance of the wage determination. Contractor shall also comply with the Copeland "Anti-Kickback"

Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). Contractor and subcontractor are prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which the person is otherwise entitled. Contractor (or subcontractor) is on notice that all suspected or reported violations of these laws shall be reported to the Federal awarding agency.

(E) **Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).** In addition to other general provisions in the Contract, if this Contract is in excess of \$100,000 and involves the employment of mechanics or laborers, Contractor must comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5) . Under 40 U.S.C. 3702 of the Act, and shall compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) **Rights to Inventions Made Under a Contract or Agreement.** As applicable, if this Contract is funded by a Federal "funding agreement," as defined under 37 CFR §401.2(a), then a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental , or research work under that "funding agreement" must comply with the requirements of 37 CFR Part 401 , "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency, and if such contracting is allowed by the City.

(G) **Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended.** In addition to any applicable State and local environmental laws and regulations and/or provisions elsewhere in the Contract, if this Contract is in excess of \$150,000, then Contractor must comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Contractor (or subcontractor) is on notice that the violations of these laws shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) **Debarment and Suspension (Executive Orders 12549 and 12689).** A party shall not be eligible for a contract award (see 2 CFR 180.220) if that party is listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMS guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189 and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. In entering into this Contract with the City, Contractor certifies that Contractor and its subcontractor(s) are not on the SAM Exclusions list; Further Contractor and any subcontractor(s) are on notice that inclusion on the SAM Exclusions list during the term of the Contract shall be a basis for material breach of the Contract.

(I) **Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).** In addition to requirements City Code Chapter 2.12 *Regulation of Lobbying Entities*, Contractors that apply or bid for an award exceeding \$100,000 must file the required certification under the "Byrd Anti-Lobbying Amendment." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(J) **Compliance with 2 CFR §200.322 Procurement of recovered materials.** In addition to rules, regulations and policies providing for environmentally sound and sustainable procurement, Contractor shall comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

Appendix B: Operation and Maintenance Agreement Template

NORTHEAST OHIO REGIONAL SEWER DISTRICT

OPERATION AND MAINTENANCE AGREEMENT TEMPLATE

[This template is designed for those projects where the District does not own the green infrastructure control measures and the owner of the green infrastructure control measures is responsible for operation and maintenance]

This Operation and Maintenance Agreement, made this ____ day of _____ 20__, by and between the Northeast Ohio Regional Sewer District (District), a regional sewer district organized and existing as a political subdivision under Chapter 6119 of the Ohio Revised Code, acting pursuant to Resolution No.____, adopted by the Board of Trustees of the District on _____, 2011 (copy attached as Exhibit A), and, the [party responsible for the green infrastructure control measure] (Owner) and provides as follows:

RECITALS

The District is implementing a Green Infrastructure (GI) Plan pursuant to Appendix 3 to the Consent Decree in *United States and State of Ohio v. Northeast Ohio Regional Sewer District* 1:10-CV-02895 (N.D. Ohio) to capture wet weather flow that would otherwise be discharged by the District's combined sewer system.

The Owner is responsible for certain real estate described as (*property description, parcel number, etc.*); and, the Owner is providing operation and maintenance for a GI project consisting of the following GI control measures (*list all components of the stormwater management system*) as shown and described on the attached Stormwater Management Plan (*attach copy of the District Plan*) (Exhibit B); and,

The District has developed a site specific Operation and Maintenance Plan to ensure the function of the GI control measures described in Recital 2 [*attach copy of the District O&M Plan*] (Exhibit C).

The Owner has agreed to maintain the GI control measures in accordance with the terms and conditions hereinafter set forth.

NOW, THEREFORE, for and in consideration of the mutual covenants and undertaking of the parties, the parties hereby agree as follows:

Operation and Maintenance Plan for the GI Control Measures. The Owner agrees to operate and maintain in perpetuity the GI control measures in accordance with the approved Operation and Maintenance Plan and in a manner that will permit the GI control measures to perform for the purposes and in accordance with the standards by which they were designed and constructed, all as shown and described in the approved Stormwater Management Plan. This includes all conveyance systems built to convey stormwater runoff to the GI control measures, as well as the GI control measures. It also includes site management measures to minimize pollutants harmful to the proper operation of GI control measures. The Operations and Maintenance Plan will include specific discussion of site management practices required to maintain proper operation of GI control measures.

The Owner shall perform all maintenance in accordance with the District's approved Operation and Maintenance Plan and shall complete all repairs identified through regular inspections, and any additional repairs as requested in writing by the District.

The Owner shall maintain, update, and store the maintenance records and as-built drawings for the GI control measures. These records will be provided to the District.

Payment and Term. The Owner is responsible for the financial costs of operation and maintenance of the GI control measure for a *[insert details on term of Agreement]*. Upon completion of this Term the District shall assume the responsibility of all financial costs of operation and maintenance of the GI control measure.

Relocation and/or Redesign. Owner reserves the right to relocate and/or to redesign the GI control measure subject to the following terms and conditions: (a) such relocation and/or redesign requires the express written consent of the District, which shall not be unreasonably withheld; (b) such relocation and/or redesign shall only be considered possible so long as the GI control measure retains a location within its original sewer shed and that it maintains the same or better performance standards as originally conceived; (c) such relocation and/or redesign shall be at the sole cost and expense of Owner; (d) Owner shall notify District of its intent to relocate and/or redesign the GI control measure, which notice shall be given at least 180 days prior to commencement of such relocation and/or redesign and shall contain the anticipated date for commencement and completion of the work, state the reason for such work, and shall be accompanied by drawings and specifications showing the proposed new location and/or the work encompassing the redesign of the GI control measure; (e) District shall have the right to approve the drawings and specifications showing the proposed new location and/or the work encompassing the redesign of the GI control measure which approval shall not be unreasonably withheld; (f) such relocation and/or redesign shall not materially increase the cost of maintaining, decrease the efficiency of, or diminish the capacity of the GI control measure; and (g) concurrently with or after fulfillment of the foregoing clauses, Owner and District each covenants and agrees, for itself and its successors and assignees, that it will, upon request of the other, execute recordable evidence of the termination of the original Operation and Maintenance Agreement and the execution of a new Operation and Maintenance Agreement document for the relocated GI control measure area containing precisely the same provisions as the original and differing only in Exhibits B and C which will portray the relocated GI control measure area.

Owner's Responsibilities for Inspection and Repairs of GI Control Measures. The Owner shall inspect all GI control measures identified in the District approved Operation and Maintenance Plans, at a minimum, every three (3) months and within 24 hours after all storm event greater than one-half (0.5) inch of rain for the first year of operation. The Operation and Maintenance Plan may include additional inspection requirements for specific GI control measures.

The Owner shall inspect all GI control measures identified in the District approved Operation and Maintenance Plans at least once every year thereafter. The Operation and Maintenance Plan may include additional inspection requirements for specific GI control measures.

The Owner shall submit Inspection Reports in writing to the District engineer within 7 business days after each inspection using the Inspection Form attached to the District approved Operation and Maintenance Plan.

The Owner grants permission to the District to enter the Property and to inspect all aspects of the GI project and related drainage whenever the District deems necessary in accordance with the perpetual Easement for Construction, Operation, Inspection and Maintenance of a Stormwater Management System Agreement executed by the parties in form attached as Exhibit D. The District shall provide the Owner copies of the inspection findings and a directive to commence with the repairs if necessary.

The Owner grants permission to the U.S. Environmental Protection Agency and the Ohio Environmental Protection Agency, their employees and representatives, with reasonable notice to enter the Property and to inspect all aspects of the GI project and to conduct physical monitoring of the GI project in order to determine District compliance with its Consent Decree and the Clean Water Act.

The Owner shall make all repairs within ten (10) days of their discovery through Owner inspections or through a request from the District. If repairs will not occur within this ten (10) day period, the Owner must receive written approval from the District for a repair schedule.

Default. In the event of any default or failure by the Owner in the performance of any of the covenants and warranties pertaining to the maintenance of the GI control measures, or the Owner fails to maintain the GI control measures in accordance with the approved design standards and Operation and Maintenance Plan, or, in the event of an emergency as determined by the District, the District shall have the right, in its sole discretion after providing reasonable notice to the Owner, to enter the property and take whatever steps necessary to correct deficiencies and to charge the cost of such repairs to the Owner. The Owner shall reimburse the District upon demand, within thirty (30) days of receipt thereof for all actual cost incurred by the District.

Dispute Resolution. In the event of a dispute between the Parties for obligations under this Agreement, either Party may request the following dispute resolution process. The Parties shall continue the performance of their obligations under this Agreement notwithstanding the existence of a dispute.

The Parties are committed to working with each other to resolve disputes and agree to communicate regularly so as to avoid or minimize disputes. The Parties shall first try to resolve the dispute at the level of the designated representatives in Exhibit D. If the Parties are unable to resolve the dispute at that level within 10 working days, the Parties shall escalate the issue to the next higher level within their respective organizations to resolve the dispute.

If the Parties are unable to resolve the dispute through the above meetings, then on the written notice of either party requesting the matter may be taken to mediation, the Parties shall begin the mediation process within 20 days of such notice. The Parties shall select a mediator, who is experienced in engineering design and construction administration services. The mediator shall review all documents and written statements, in order to accurately and effectively resolve the dispute. The mediator shall call a meeting between the Parties within 10 working days after mediator appointment, which meeting shall be attended by at least the respective representatives in Exhibit D. The Parties shall attempt in good faith to resolve the dispute. The Parties agree to follow the Uniform Mediation Act, Chapter 2710 of the Ohio Revised Code. The Parties shall share the cost of the mediator equally.

If the dispute is resolved and settled through the mediation process, the decision will be implemented by a written agreement signed by both Parties. If the dispute is unable to be resolved through mediation, the Parties agree to submit the dispute to the appropriate jurisdiction as per Section Remedies below.

Indemnification. The Owner hereby agrees that it shall save, hold harmless, and indemnify the District and its employees and officers from and against all liability, losses, claims, demands, costs and expenses arising from, or out of, default or failure by the Owner to operate and maintain the GI control measures, in accordance with the terms and conditions set forth herein, or from acts of the Owner arising from, or out of, the construction, operation, repair or maintenance of the GI control measures.

Remedies. The parties agree that all claims, counter-claims, disputes and other matters in question between the District and Owner arising out of or relating to this Agreement, or the breach thereof, will be decided at law. This Agreement shall be governed by and interpreted according to the law of the State of Ohio.

Perpetual Easement Agreement. Simultaneously with execution of this Agreement, the parties will execute a perpetual Easement for Construction, Operation, Inspection and Maintenance of a Stormwater Management System Agreement in the form attached hereto as Exhibit D.

Counterpart Signatures. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but which counterparts when taken together shall constitute one Agreement.

Governing Law. The terms and provisions of this Agreement shall be construed under and governed by the laws of Ohio (to which all parties hereto consent to venue and jurisdiction).

Disclaimer of Joint Venture. This Agreement is not intended to create a joint venture, partnership or agency relationship between Owner and the District, and such joint venture, partnership, or agency relationship is specifically hereby disclaimed.

Authority to Execute. Each person executing this Agreement represents and warrants that it is duly authorized to execute this Agreement by the party on whose behalf it is so executing.

Covenant. This Operation and Maintenance Agreement shall be a covenant that runs with the land and shall inure to the benefit of and shall be binding upon the parties hereto, their respective successors and assigns, and all subsequent owners of the property.

Each instrument hereafter conveying any interest in or responsibility for the GI control measures shall contain a notice of the activity and use limitations set forth in this Agreement, and provide the recorded location of this Agreement. The notice shall be substantially in the following form:

“THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN AGREEMENT DATED _____, RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE _____ COUNTY RECORDER ON _____, 20____, IN DOCUMENT _____ OR VOLUME _____, PAGE _____. THE AGREEMENT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS:”

The Owner shall supply the District with a copy of any document of transfer, executed by both parties within thirty days of recordation.

Recordation. Upon execution of this Operation and Maintenance Agreement, it shall be recorded in the Recorder’s Office of _____ County, Ohio, at the District’s expense.

Exhibits. The following Exhibits attached hereto are hereby incorporated with and made a part of this Agreement:

- Exhibit A - District Resolution No.
- Exhibit B - District Stormwater Management Plan
- Exhibit C - District Operation and Maintenance Plan
- Exhibit D - Easement for Construction, Operation, Inspection, and Maintenance of Stormwater Management System
- Exhibit E - Designated Representatives

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement as of the date first above written.

Northeast Ohio Regional Sewer District

by: _____

Julius Ciaccia, Jr.

Executive Director

and: _____

Darnell Brown

President, Board of Trustees

[Owner]

By: _____

Print Name: _____

Its: _____

The legal form of this instrument is approved.

Marlene Sundheimer

Director of Law

Northeast Ohio Regional Sewer District

Date: _____, 20__