

Council Business Meeting

October 1, 2019

Agenda Item	Special Procurement – Riparian Restoration at Roca Creek Sediment Basin	
From	Kaylea Kathol	Public Works Project Manager
Contact	Kaylea.kathol@ashland.or.us ; (541) 552-2419	

SUMMARY

Before the Council is a special procurement for riparian restoration services to be performed at the Roca Creek sediment basin, located in Evergreen Park at the corner of East Main Street and North Wightman Avenue. This special procurement will facilitate a pilot study on the effectiveness of a pesticide-free approach to restoring degraded riparian areas. The contract includes a process to remove and dispose of the existing blackberry-elimination materials, which include black tarps that cover the banks, and the sandbags and staples that hold the tarps in place; seeding the site with a cover crop of grasses to further suppress blackberry growth, and then plant the site with a mixture of willow, spirea, and hawthorn. These fast-growing riparian species were selected for their potential to out-compete blackberry. The contractor will also maintain the site for a one-year period.

POLICIES, PLANS & GOALS SUPPORTED

Council Goals:

Essential Services: Stormwater

Department Goals:

- Maintain existing infrastructure to meet regulatory requirements and minimize life-cycle costs
- Evaluate all city infrastructure regarding planning management and financial resources

PREVIOUS COUNCIL ACTION

None

BACKGROUND AND ADDITIONAL INFORMATION

A Special Procurement sourcing method is used for the purpose of seeking an exemption from the competitive bid process, custom designing a contracting approach, or the direct selection or award of a public contract or for a series of contracts. The Special Procurement Approval Request Form with written findings is attached for your review and consideration.

The City Council, acting as the Local Contract Review Board, may approval this request for a Special Procurement if it is determined, based on written findings, that the Special Procurement will be unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts, and result in substantial cost savings or substantially promote the public interest in a manner that could not be realized by complying with the requirements that are applicable in ORS 279B.055, 279B.060, 279B.065, or 279B.070.

FISCAL IMPACTS

This special procurement will cost \$15,100. The Roca Creek sediment basin is a structural component of the City's storm sewer system. Funds are budgeted each fiscal year for repairs and maintenance of stormwater infrastructure.

STAFF RECOMMENDATION

Staff recommends City Council, acting as the Local Contract Review Board, approve this Special Procurement.

ACTIONS, OPTIONS & POTENTIAL MOTIONS

1. I move to approve the Special Procurement which will allow a public contract to be directly awarded to Plant Oregon for this pilot riparian restoration services.
2. I move that staff solicit bids in accordance with the procurement requirements set forth in AMC 2.50.

REFERENCES & ATTACHMENTS

Attachment 1: Form #9, Special Procurement, Request for Approval (Written Findings)

Attachment 2: Proposal from Plant Oregon

**SPECIAL PROCUREMENT
REQUEST FOR APPROVAL**

To: City Council, Local Contract Review Board
From: *Paula Brown, Public Works*
Date: *9/16/19*
Subject: REQUEST FOR APPROVAL OF A SPECIAL PROCUREMENT

In accordance with ORS279B.085, this request for approval of a Special Procurement is being presented to the City Council for approval. This written request for approval describes the proposed contracting procedure and the goods or services or the class of goods or services to be acquired through the special procurement and the circumstances that justify the use of a special procurement under the standards set forth ORS 279B.085(4).

- 1. **Requesting Department Name:** Public Works
- 2. **Department Contact Name:** Kaylea Kathol
- 3. **Type of Request:** Class Special Procurement Contract-specific Special Procurement
- 4. **Time Period Requested:** From 10/1/19 To: 12/31/2020
- 5. **Total Estimated Cost:** \$15,100
- 6. **Short title of the Procurement:** Riparian Restoration, Roca Creek Sediment Basin

Supplies and/or Services or class of Supplies and/or Services to be acquired:
Revegetation services will be acquired. Contractor will remove and legally dispose of existing blackberry suppression tarps and associated rubbish, will provide riparian vegetation specified by City, supply labor and materials to reseed and replant the site, including vegetation protection items like tree guards and plastic mulch, and will provide a year of establishment maintenance.

7. Background and Proposed Contracting Procedure:
Provide a description of what has been done in the past and the proposed procedure. The Agency may, but is not required to, also include the following types of documents: Notice/Advertising, Solicitation(s), Bid/Proposal Forms(s), Contract Form(s), and any other documents or forms to be used in the proposed contracting procedure. Attach additional sheets as needed.

Background: The City is implementing a comprehensive riparian restoration and shading program in waterways within City boundaries to comply with its Clean Water Act (CWA) obligation. A substantial amount of riparian restoration will occur on Parks-managed lands

and will require limited application of herbicide to eliminate blackberries that have overtaken most riparian areas. APRC granted the City a limited exemption to their pesticide ban and accepted a commitment from the City to develop a pilot site for experimenting with non-chemical options for blackberry control.

The City identified the sediment basin at Roca Creek, in Evergreen Park, as an ideal pilot site for non-chemical blackberry treatment prior to riparian restoration. The City recently removed accumulated sediment and vegetation from the Roca Creek sediment basin (E. Main and N. Wightman). The authorizing agency, Oregon Department of State Lands (DSL), requires the City to perform riparian restoration to shade the waterway and stabilize the banks upon completion of the work. The City is therefore obligated to revegetate and restore the banks of the sediment basin. Because of this existing obligation, Staff identified Roca Creek sediment basin as an excellent opportunity to gain efficiencies and reduce costs by accomplishing two projects for the price of one.

Presently, non-chemical treatments of blackberry have been completed at Roca Creek sediment basin, and the site is ready for fall planting. The City reached out to Plant Oregon, who will be involved in the comprehensive shading program as a sub-contractor, and requested a quote for revegetation of Roca Creek sediment basin. Plant Oregon quoted \$11,740 for labor and materials for all site preparation and restoration, and an optional \$3,360 for one year of maintenance (**Attachment**). Normally, Staff would seek three informal bids from landscaping companies, consistent with the requirements of ORS 279B.070 (intermediate procurement). However, the City seeks an exemption to competitive bidding at this site, as explained in the following paragraphs.

Proposed procedure: The City is prepared to directly award a contract to Plant Oregon for \$15,100. Plant Oregon will remove and legally dispose of the existing blackberry-elimination materials, which include black tarps that cover the banks, and the sandbags and staples that hold the tarps in place. Plant Oregon will then seed this site with a cover crop of grasses that will further suppress blackberry growth, and then plant the site with a pallet of willow, spirea, and hawthorn. These fast-growing riparian species were selected for their potential to out-compete blackberry. New plantings will be protected by squares of plastic mulch and plastic tree guards to prevent predation. Plant Oregon will maintain the site for a one-year period.

8. Justification for use of Special Procurement: Describe the circumstances that justify the use of a Special Procurement. Attach relevant documentation.

This is an experimental/pilot site. Its purpose is to identify whether riparian restoration can be successful when non-chemical weed treatments are used. Because we will be comparing it to chemically treated sites, it is important that we keep as many factors consistent as possible between the two types of treatments. By utilizing Plant Oregon, the City can be assured of consistency in nursery stock (including rearing, handling, and transport of the plants), site preparation, planting methods, and maintenance methods. It is therefore in the City's best interest to hire Plant Oregon to achieve the unique needs of this project.

9. Findings to Satisfy the Required Standards: This proposed special procurement:

✓ (a) will be unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts because:

The City’s reason for seeking non-competitive award to Plant Oregon is not rooted in favoritism. This is the first time that the City’s project manager (Kathol) has hired Plant Oregon – there is no historical record of hiring this contractor that could suggest favoritism is at play. The City rarely performs experimental/pilot projects, and even more infrequently do such projects involve riparian restoration. There is no reason to suspect that the unique needs of this project will diminish competition for future public contracts.

(Please provide specific information that demonstrates how the proposed Special Procurement meets this requirement.); **and**

 (b)(i) will result in substantial cost savings to the contracting agency or to the public because:

(Please provide the total estimate cost savings to be gained and the rationale for determining the cost savings); **or**

 ✓ (b)(ii) will otherwise substantially promote the public interest in a manner that could not practicably be realized by complying with the requirements of ORS 279B.055, 279B.060, 279B.065, or 279B.070, or any rules adopted thereunder because:

ORS 279B.070 (intermediate procurement) is the only applicable rule listed above. It requires three informal quotes and allows the contracting agency to select the vendor who “will best serve the interests of the contracting agency, taking into account prices as well as consideration including, but not limited to, experience, expertise, product functionality, suitability for a particular purpose and contractor responsibility”. The City’s greatest interest in this unique project is to replicate the materials and techniques used by Plant Oregon on a different project. Plant Oregon provides a product and a service that meets the City’s primary interest of “suitability for a particular purpose”. It would be a poor use of staff time and vendor time to seek additional quotes when we’ve already determined that Plant Oregon is the most suitable vendor for replicating Plant Oregon

Public Notice:

Pursuant to ORS 279B.085(5) and OAR 137-047-0285(2), a Contracting Agency shall give public notice of the Contract Review Authority's approval of a Special Procurement in the same manner as a public notice of competitive sealed Bids under ORS 279B.055(4) and OAR 137-047-0300. The public notice shall describe the Goods or Services or class of Goods or Services to be acquired through the Special Procurement and shall give such public notice of the approval of a Special Procurement at least seven (7) Days before Award of the Contract.

After the Special Procurement has been approved by the City Council, the following public notice will be posted on the City's website to allow for the seven (7) day protest period.

Date Public Notice first appeared on www.ashland.or.us - *[Enter date]*

PUBLIC NOTICE
Approval of a Special Procurement

First date of publication: *[Enter date]*

A request for approval of a Special Procurement was presented to and approved by the City Council, acting as the Local Contract Review Board, on *[Enter date]*.

[Describe the goods and services –or- class of goods and services – include whether or not it's "Contract- specific special procurement" or a "class special procurement", cost, terms, etc. – brief explanation of procurement]

[Describe the alternative contracting procedure – include the time period requested]

It has been determined based on written findings that the Special Procurement will be unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts, and result in substantial cost savings or substantially promote the public interest in a manner that could not be realized by complying with the requirements that are applicable in ORS 279B.055, 279B.060, 279B.065, or 279B.070.

An affected person may protest the request for approval of a Special Procurement in accordance with ORS 279B.400 and OAR 137-047-0300. A written protest shall be delivered to the following address: City of Ashland, *[Enter department name, Contact name, and complete address]*. The seven (7) protest period will expire at 5:00pm on *[Enter date-seven calendar days from first date of publication]*

This public notice is being published on the City's Internet World Wide Web site at least seven days prior to the award of a public contract resulting from this request for approval of a Special Procurement.

GOODS AND SERVICES AGREEMENT (LESS THAN \$25,000)

<p style="text-align: center;">CITY OF ASHLAND</p> <p style="text-align: center;">20 East Main Street Ashland, Oregon 97520 Telephone: 541/488-5587 Fax: 541/488-6006</p>	<p>PROVIDER: Plant Oregon</p> <p>PROVIDER'S CONTACT: David Bish</p> <p>ADDRESS: 8677 Wagner Creek Road Talent, OR 97540</p> <p>PHONE: 541-535-3531</p>
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This Services Agreement (hereinafter "Agreement") is entered into by and between the City of Ashland, an Oregon municipal corporation (hereinafter "City") and Plant Oregon, an assumed business name ("hereinafter "Provider"), for Roca Creek sediment basin restoration, replanting and maintenance.

1. PROVIDER'S OBLIGATIONS

- 1.1 Provide Roca Creek sediment basin restoration, replanting and maintenance as set forth in the "SUPPORTING DOCUMENTS" attached hereto and, by this reference, incorporated herein. Provider expressly acknowledges that time is of the essence of any completion date set forth in the SUPPORTING DOCUMENTS, and that no waiver or extension of such deadline may be authorized except in the same manner as herein provided for authority to exceed the maximum compensation. The services defined and described in the "SUPPORTING DOCUMENTS" shall hereinafter be collectively referred to as "Work."
- 1.2 Provider shall obtain and maintain during the term of this Agreement and until City's final acceptance of all Work received hereunder, a policy or policies of liability insurance including commercial general liability insurance with a combined single limit, or the equivalent, of not less than \$2,000,000 (two million dollars) per occurrence for Bodily Injury and Property Damage.
 - 1.2.1 The insurance required in this Article shall include the following coverages:
 - Comprehensive General or Commercial General Liability, including personal injury, contractual liability, and products/completed operations coverage; and
 - Automobile Liability.
 - 1.2.2 Each policy of such insurance shall be on an "occurrence" and not a "claims made" form, and shall:
 - Name as additional insured "the City of Ashland, Oregon, its officers, agents and employees" with respect to claims arising out of the provision of Work under this Agreement;
 - Apply to each named and additional named insured as though a separate policy had been issued to each, provided that the policy limits shall not be increased thereby;
 - Apply as primary coverage for each additional named insured except to the extent that two or more such policies are intended to "layer" coverage and, taken together, they provide total coverage from the first dollar of liability;
 - Provider shall immediately notify the City of any change in insurance coverage
 - Provider shall supply an endorsement naming the City, its officers, employees and agents as additional insureds by the Effective Date of this Agreement; and
 - Be evidenced by a certificate or certificates of such insurance approved by the City.

- 1.3 Provider shall, at its own expense, maintain Worker's Compensation insurance in compliance with ORS 656.017, which requires subject employers to provide workers' compensation coverage for all of its subject workers.
- 1.4 Provider agrees that no person shall, on the grounds of race, color, religion, creed, sex, marital status, familial status or domestic partnership, national origin, age, mental or physical disability, sexual orientation, gender identity or source of income, suffer discrimination in the performance of this Agreement when employed by Provider. Provider agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. Further, Provider agrees not to discriminate against a disadvantaged business enterprise, minority-owned business, woman-owned business, a business that a service-disabled veteran owns or an emerging small business enterprise certified under ORS 200.055, in awarding subcontracts as required by ORS 279A.110.
- 1.5 In all solicitations either by competitive bidding or negotiation made by Provider for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Providers of the Provider's obligations under this Agreement and Title VI of the Civil Rights Act of 1964 and other federal nondiscrimination laws.
- 1.6 **Living Wage Requirements:** If the amount of this Agreement is \$21,127.46 or more, Provider is required to comply with Chapter 3.12 of the Ashland Municipal Code by paying a living wage, as defined in that chapter, to all employees performing Work under this Agreement and to any Subcontractor who performs 50% or more of the Work under this Agreement. Provider is also required to post the notice attached hereto as "Exhibit A" predominantly in areas where it will be seen by all employees.

2. CITY'S OBLIGATIONS

- 2.1 City shall pay Provider for its Work at the hourly rates as set forth in Exhibit "A" (September 5, 2019 Plant Oregon Estimate), which is attached hereto and incorporated herein by this reference, as full compensation for Provider's performance of all Work under this Agreement.
- 2.2 In no event shall Provider's total of all compensation and reimbursement under this Agreement exceed the sum of \$15,140.00 without express, written approval from the City official whose signature appears below, or such official's successor in office. Provider expressly acknowledges that no other person has authority to order or authorize additional Work which would cause this maximum sum to be exceeded and that any authorization from the responsible official must be in writing. Provider further acknowledges that any Work delivered or expenses incurred without authorization as provided herein is done at Provider's own risk and as a volunteer without expectation of compensation or reimbursement.

3. GENERAL PROVISIONS

- 3.1 This is a non-exclusive Agreement. City is not obligated to procure any specific amount of Work from Provider and is free to procure similar types of goods and services from other providers in its sole discretion.
- 3.2 Provider is an independent contractor and not an employee or agent of the City for any purpose.
- 3.3 Provider is not entitled to, and expressly waives all claims to City benefits such as health and disability insurance, paid leave, and retirement.

- 3.4 This Agreement embodies the full and complete understanding of the parties respecting the subject matter hereof. It supersedes all prior agreements, negotiations, and representations between the parties, whether written or oral.
- 3.5 This Agreement may be amended only by written instrument executed with the same formalities as this Agreement.
- 3.6 The following laws of the State of Oregon are hereby incorporated by reference into this Agreement: ORS 279B.220, 279B.230 and 279B.235.
- 3.7 This Agreement shall be governed by the laws of the State of Oregon without regard to conflict of laws principles. Exclusive venue for litigation of any action arising under this Agreement shall be in the Circuit Court of the State of Oregon for Jackson County unless exclusive jurisdiction is in federal court, in which case exclusive venue shall be in the federal district court for the district of Oregon. Each party expressly waives any and all rights to maintain an action under this Agreement in any other venue, and expressly consents that, upon motion of the other party, any case may be dismissed or its venue transferred, as appropriate, so as to effectuate this choice of venue.
- 3.8 Provider shall defend, save, hold harmless and indemnify the City and its officers, employees and agents from and against any and all claims, suits, actions, losses, damages, liabilities, costs, and expenses of any nature resulting from, arising out of, or relating to the activities of Provider or its officers, employees, contractors, or agents under this Agreement.
- 3.9 Neither party to this Agreement shall hold the other responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of the other or the other's officers, employees or agents.
- 3.10 If any provision of this Agreement is found by a court of competent jurisdiction to be unenforceable, such provision shall not affect the other provisions, but such unenforceable provision shall be deemed modified to the extent necessary to render it enforceable, preserving to the fullest extent permitted the intent of Provider and the City set forth in this Agreement.
- 3.11 Deliveries will be F.O.B destination. Provider shall pay all transportation and handling charges for the Goods. Provider is responsible and liable for loss or damage until final inspection and acceptance of the Goods by the City. Provider remains liable for latent defects, fraud, and warranties.
- 3.12 The City may inspect and test the Goods. The City may reject non-conforming Goods and require Provider to correct them without charge or deliver them at a reduced price, as negotiated. If Provider does not cure any defects within a reasonable time, the City may reject the Goods and cancel this Agreement in whole or in part. This paragraph does not affect or limit the City's rights, including its rights under the Uniform Commercial Code, ORS Chapter 72 (UCC).
- 3.13 Provider represents and warrants that the Goods are new, current, and fully warranted by the manufacturer. Delivered Goods will comply with SUPPORTING DOCUMENTS and be free from defects in labor, material and manufacture. Provider shall transfer all warranties to the City.

4. SUPPORTING DOCUMENTS

The following documents are, by this reference, expressly incorporated in this Agreement, and are collectively referred to in this Agreement as the "SUPPORTING DOCUMENTS:"

- The Provider's complete written Estimate dated 09/05/2019.

5. REMEDIES

- 5.1 In the event Provider is in default of this Agreement, City may, at its option, pursue any or all of the remedies available to it under this Agreement and at law or in equity, including, but not limited to:
- 5.1.1 Termination of this Agreement;
 - 5.1.2 Withholding all monies due for the Work that Provider has failed to deliver within any scheduled completion dates or any Work that have been delivered inadequately or defectively;
 - 5.1.3 Initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief;
 - 5.1.4 These remedies are cumulative to the extent the remedies are not inconsistent, and City may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever.
- 5.2 In no event shall City be liable to Provider for any expenses related to termination of this Agreement or for anticipated profits. If previous amounts paid to Provider exceed the amount due, Provider shall pay immediately any excess to City upon written demand provided.

6. TERM AND TERMINATION

6.1 Term

This Agreement shall be effective from the date of execution on behalf of the City as set forth below (the "Effective Date"), and shall continue in full force and effect until 12/31/2020, unless sooner terminated as provided in Subsection 6.2.

6.2 Termination

- 6.2.1 The City and Provider may terminate this Agreement by mutual agreement at any time.
- 6.2.2 The City may, upon not less than thirty (30) days' prior written notice, terminate this Agreement for any reason deemed appropriate in its sole discretion.
- 6.2.3 Either party may terminate this Agreement, with cause, by not less than fourteen (14) days' prior written notice if the cause is not cured within that fourteen (14) day period after written notice. Such termination is in addition to and not in lieu of any other remedy at law or equity.

7. NOTICE

Whenever notice is required or permitted to be given under this Agreement, such notice shall be given in writing to the other party by personal delivery, by sending via a reputable commercial overnight courier, or by mailing using registered or certified United States mail, return receipt requested, postage prepaid, to the address set forth below:

If to the City:

City of Ashland – Public Works Department
Attn: Kaylea Kathol
20 E. Main Street
Ashland, Oregon 97520
Phone: (541) 488-5587

With a copy to:

City of Ashland – Legal Department
20 E. Main Street
Ashland, OR 97520
Phone: (541) 488-5350

If to Provider:

Plant Oregon
Attn: David Bish
8677 Wagner Creek Road
Talent, OR 97540

8. WAIVER OF BREACH

One or more waivers or failures to object by either party to the other's breach of any provision, term, condition, or covenant contained in this Agreement shall not be construed as a waiver of any subsequent breach, whether or not of the same nature.

9. PROVIDER'S COMPLIANCE WITH TAX LAWS

9.1 Provider represents and warrants to the City that:

9.1.1 Provider shall, throughout the term of this Agreement, including any extensions hereof, comply with:

- (i) All tax laws of the State of Oregon, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318;
- (ii) Any tax provisions imposed by a political subdivision of the State of Oregon applicable to Provider; and
- (iii) Any rules, regulations, charter provisions, or ordinances that implement or enforce any of the foregoing tax laws or provisions.

9.1.2 Provider, for a period of no fewer than six (6) calendar years preceding the Effective Date of this Agreement, has faithfully complied with:

- (i) All tax laws of the State of Oregon, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318;
- (ii) Any tax provisions imposed by a political subdivision of the State of Oregon applicable to Provider; and
- (iii) Any rules, regulations, charter provisions, or ordinances that implement or enforce any of the foregoing tax laws or provisions.

9.2 Provider's failure to comply with the tax laws of the State of Oregon and all applicable tax laws of any political subdivision of the State of Oregon shall constitute a material breach of this Agreement. Further, any violation of Provider's warranty, as set forth in this Article 9, shall constitute a material breach of this Agreement. Any material breach of this Agreement shall entitle the City to terminate this Agreement and to seek damages and any other relief available under this Agreement, at law, or in equity.

IN WITNESS WHEREOF the parties have caused this Agreement to be signed in their respective names by their duly authorized representatives as of the dates set forth below.

CITY OF ASHLAND:

By: _____
Signature

Printed Name

Title

Date

PLANT OREGON (PROVIDER):

By: _____
Signature

Printed Name

Title

Date

(W-9 is to be submitted with this signed Agreement)

Purchase Order No. _____



Exhibit A

Estimate

DATE	ESTIMATE #
9/5/19	5474

NAME / ADDRESS
City of Ashland 20 East Main Street Ashland, OR 97520

Ship To
Kaylea Kathol, Project Manager City of Ashland - Public Works/Engineerin 51 Winburn Way, Ashland OR 97520 Roca Creek Sedimentation Pond

TERMS	REP
Net 30	Dave

ITEM	QTY	SIZE	DESCRIPTION	PRICE	TOTAL
Restoration	1	each	1.1 This estimate is for work on Roca Creek sediment basin as described in SOW. Complete project work.		
Restoration	1	each	1.2 Restoration labor and materials to remove black plastic, sandbags, staples and hand sow the listed species	2,240.00	2,240.00
Restoration	1	each	1.3 Planting Pallet, Size and Density, plants of species discussed to accomplish task	1,680.00	1,680.00
Restoration	1	each	1.4 Implementation, includes planting, willow stake harvest and installation, tree guards, mulch squares, materials and labor	7,820.00	7,820.00
			Subtotal for installation, labor and materials		11,740.00
Labor - Dan	0	yrs	Maintenance	3,360.00	0.00

It's a pleasure working with you! Thank you!

TOTAL	\$11,740.00
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