

CONTRACT FOR DESIGN AND CONSTRUCTION
MANAGEMENT SERVICES FOR RAIN CATCHERS PROJECT

This contract is dated, made, and entered into as of the ____ day of October, 2012, by the City of Durham (“City”) and Biohabitats of North Carolina PC (“Contractor”), a professional corporation organized and existing under the laws of North Carolina.

Sec. 1. Background and Purpose. The Rain Catchers Low Impact Development (LID) Retrofit project will help restore the headwaters of South Ellerbe Creek, a tributary of Ellerbe Creek. The target subwatershed in South Ellerbe Creek was selected because it has neighborhood, local and regional water quality significance. South Ellerbe is one of the most polluted tributaries of Ellerbe Creek, which has been on the 303(d) list for impaired ecological/biological integrity since 1998. Ellerbe Creek drains to Falls Lake and the Neuse River, both of which have been classified as Nutrient Sensitive Waters. Falls Lake has the most stringent nutrient reduction goals in the state, 40% for nitrogen and 77% for phosphorous.

The project will apply multiple LID practices in existing neighborhoods, assess the relative acceptance by homeowners of each practice within an economically diverse area, and provide information to jurisdictions in the Falls Lake and Jordan Lake watersheds as they develop plans to retrofit existing development. The project will employ four LID practices: rain gardens, cisterns, trees, and downspout disconnections.

The City will recruit homeowners willing to have one or more LID retrofits installed on their property. The participating homeowners will agree to a temporary easement or contract that grants the City of Durham and its contractors access for installation, inspection, and maintenance of the practice(s). Practices will be allocated according to a ranking method based on lowest “bids” for the easements and an environmental index that includes criteria like whether the home’s downspouts are directly connected to the storm drain system, soil characteristics, and amount of impervious surface. The goal is to install a total of 230 practices. The success of Rain Catchers will be evaluated by homeowner participation rate, monitoring of water quality and runoff volume, and a detailed study of the benefits of downspout disconnection.

Sec. 2. Services and Scope to be Performed. Presumption that Duty is Contractor’s. The Contractor shall provide design and construction management services, attend and document meetings, prepare documents, meet deadlines for all tasks, and communicate regularly with the City. The detailed tasks and deliverables for the work to be performed are provided in Exhibit A, “Scope of Services.”

In this contract, “Work” means the services that the Contractor is required to perform pursuant to this contract and all of the Contractor’s duties to the City that arise out of this contract. Unless the context requires otherwise, if this contract states that a task is to be performed or that a duty is owed, it shall be presumed that the task or duty is the obligation of the Contractor.

Sec. 3. Schedule of Performance and Term. This Contract will be effective upon execution by both parties and will expire upon completion of the services and payment by the City, no later than December 31, 2013. A detailed schedule is available as Exhibit B.

Sec. 4. Complete Work without Extra Cost. Except to the extent otherwise specifically stated in this contract, the Contractor shall obtain and provide, without additional cost to the City, all labor, materials, equipment, transportation, facilities, services, permits, and licenses necessary to perform the Work.

Sec. 5. Contractor’s Billings to City. Compensation. The Contractor shall send invoices to the

City on a monthly basis for the amounts to be paid pursuant to this contract. Each invoice shall document, to the reasonable satisfaction of the City: work performed under each task described in the Scope of Work (Exhibit A). A monthly status report shall accompany each invoice, which summarizes the work progress, updated schedule, and a description of any contract issues and their resolution. Within twenty days after the City receives an invoice, the City shall send the Contractor a check in payment for all undisputed amounts contained in the invoice.

The City shall pay the Contractor for the Work on a time and materials basis not to exceed the total amount of \$53,453.00. The City shall not be obligated to pay the Contractor any payments, fees, expenses, or compensation other than those authorized by this section.

Sec. 6. Prompt Payment to Subcontractors. (a) Within 7 days of receipt by the Contractor of each payment from the City under this contract, the Contractor shall pay all Subcontractors (which term includes subconsultants and suppliers) based on work completed or service provided under the subcontract. Should any payment to the Subcontractor be delayed by more than 7 days after receipt of payment by the Contractor from the City under this contract, the Contractor shall pay the Subcontractor interest, beginning on the 8th day, at the rate of 1% per month or fraction thereof on such unpaid balance as may be due. By appropriate litigation, Subcontractors shall have the right to enforce this subsection (a) directly against the Contractor, but not against the City of Durham.

(b) If the individual assigned to administer this contract for the City (in this section, titled “Prompt Payment to Subcontractors,” he or she will be referred to as the “Project Manager”) determines that it is appropriate to enforce subsection (a) in this manner, the City may withhold from progress or final payments to the Contractor the sums estimated by the Project Manager to be

- (i) the amount of interest due to the Subcontractor under subsection (a), and/or
- (ii) the amounts past-due under subsection (a) to the Subcontractor but not exceeding 5% of the payment(s) due from the City to the Contractor.

This subsection (b) does not limit any other rights to withhold payments that the City may have.

(c) Nothing in this section (titled “Prompt Payment to Subcontractors”) shall prevent the Contractor at the time of invoicing, application, and certification to the City from withholding invoicing, application, and certification to the City for payment to the Subcontractor for unsatisfactory job progress; defective goods, services, or construction not remedied; disputed work; third-party claims filed or reasonable evidence that such a claim will be filed; failure of the subcontractor to make timely payments for labor, equipment, and materials; damage to the Contractor or another subcontractor; reasonable evidence that the subcontract cannot be completed for the unpaid balance of the subcontract sum; or a reasonable amount for retainage not to exceed 10%.

(d) The Project Manager may require, as a prerequisite to making progress or final payments, that the Contractor provide statements from any Subcontractors designated by the Project Manager regarding the status of their accounts with the Contractor. The statements shall be in such format as the Project Manager reasonably requires, including notarization if so specified.

Sec. 7. Insurance.

Insurance Requirement –Architect/Engineer Design Services for Rain Catchers Project

Contractor shall maintain insurance not less than the following:

Commercial General Liability, covering

- premises/operations
- products/completed operations
- broad form property damage
- explosion, collapse, and underground hazards if the hazards exist in the performance of this contract

- contractual liability
- independent contractors, if any are used in the performance of this contract
- City of Durham must be named additional insured, and an original of the endorsement to effect the coverage must be attached to the certificate (if by blanket endorsement, then agent may so indicate in the GL section of the certificate, in lieu of an original endorsement)
- combined single limit not less than \$1,000,000 per occurrence; aggregate limit not less than \$2,000,000 per year

Professional Liability, covering

- engineers and architects (employed or engaged by Contractor)
- covering claims arising out of design work, calculations and estimates, and any other professional services performed in connection with this contract
- self-insured retentions/deductibles in excess of \$50,000 must be approved by City Finance Director
- coverage may be provided either by specific policy or as part of the Commercial General Liability Policy
- combined single limit not less than \$1,000,000 per claim; aggregate limit not less than \$2,000,000 per year

Workers' Compensation Insurance, covering

- statutory benefits;
- covering employees; covering owners partners, officers, and relatives (who work on this contract); certificate must specifically state who is covered by the policy)
- employers' liability, \$1,000,000.

Insurance shall be provided by:

- companies authorized to do business in the State of North Carolina
- companies with Best rating of A-VIII or better.

Insurance shall be evidenced by a certificate:

- providing notice to the City of not less than 30 days prior to cancellation or reduction of coverage
- certificates shall be addressed to:
City of Durham, North Carolina
Attention: Public Works Department
101 City Hall Plaza
Durham, NC 27701

the insurance certificate must be approved by the City's Finance Director before Contractor can begin any work under this contract

Sec. 8. Performance of Work by City. If the Contractor fails to perform the Work in accordance with the schedule referred to in section 3 above, the City may, in its discretion, in order to bring the project closer to the schedule, perform or cause to be performed some or all of the Work, and doing so shall not waive any of the City's rights and remedies. Before doing so, the City shall give the Contractor notice of its intention. The Contractor shall reimburse the City for additional costs incurred by the City in exercising its right to perform or cause to be performed some or all of the Work pursuant to this section.

Sec. 9. Exhibits. The following exhibits are made a part of this contract:
Exhibit A *Scope of Work for Rain Catchers Project*
Exhibit B *Project Schedule*

Sec. 10. Notice. (a) All notices and other communications required or permitted by this contract

shall be in writing and shall be given either by personal delivery, fax, UPS, Federal Express, or certified United States mail, return receipt requested, addressed as follows. The parties are requested to send a copy by email.

To the City:

Laura Webb Smith
Stormwater Services Division
City of Durham
101 City Hall Plaza
Durham, NC 27701-3329
The fax number is (919)-560-4316
Email: laura.smith@durhamnc.gov

To the Contractor:

Kevin Nunnery
Biohabitats
8218 Creedmoor Road, Suite 201
Raleigh, NC 27613
Email: knunnery@biohabitats.com

(b) Change of Address. Date Notice Deemed Given. A change of address, fax number, or person to receive notice may be made by either party by notice given to the other party. Any notice or other communication under this contract shall be deemed given and sent at the time of actual delivery, if it is personally delivered or sent by fax. If the notice or other communication is sent by United States mail, it shall be deemed given upon the third calendar day following the day on which such notice or other communication is deposited with the United States Postal Service or upon actual delivery, whichever first occurs.

Sec. 11. Indemnification. (a) To the maximum extent allowed by law, the Contractor shall defend, indemnify, and save harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of this contract as a result of acts or omissions of the Contractor or subcontractors or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. In performing its duties under this subsection "a," the Contractor shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to City. (b) Definitions. As used in subsections "a" above and "c" below -- "Charges" means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, and expenses (included without limitation within "Charges" are (1) interest and reasonable attorneys' fees assessed as part of any such item, and (2) amounts for alleged violations of sedimentation pollution, erosion control, pollution, or other environmental laws, regulations, ordinances, rules, or orders -- including but not limited to any such alleged violation that arises out of the handling, transportation, deposit, or delivery of the items that are the subject of this contract). "Indemnitees" means City and its officers, officials, independent contractors, agents, and employees, excluding the Contractor. (c) Other Provisions Separate. Nothing in this section shall affect any warranties in favor of the City that are otherwise provided in or arise out of this contract. This section is in addition to and shall be construed separately from any other indemnification provisions that may be in this contract. (d) Survival. This section shall remain in force despite termination of this contract (whether by expiration of the term or otherwise) and termination of the services of the Contractor under this contract. (e) Limitations of the Contractor's Obligation. If this section is in, or is in connection with, a contract relative to the design, planning, construction, alteration, repair or maintenance of a building, structure, highway, road, appurtenance or appliance, including moving, demolition and excavating connected therewith, then subsection "a" above shall not require the Contractor to indemnify or hold harmless Indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of Indemnitees.

Sec. 12. Miscellaneous

(a) Choice of Law and Forum; Service of Process. (i) This contract shall be deemed made in Durham County, North Carolina. This contract shall be governed by and construed in accordance with the law of North Carolina. The exclusive forum and venue for all actions arising out of this contract shall be the North Carolina General Court of Justice, in Durham County. Such actions shall neither be commenced in nor removed to federal court. This subsection (a) shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this subsection. (ii) If the Contractor is not a natural person (for instance, the Contractor is a corporation or limited liability company), this subsection (ii) applies. "Agent for Service of Process" means every person now or hereafter appointed by the Contractor to be served or to accept service of process in any State of the United States. Without excluding any other method of service authorized by law, the Contractor agrees that every Agent for Service of Process is designated as its non-exclusive agent for service of process, summons, and complaint. The Contractor will instruct each Agent for Service of Process that after such agent receives the process, summons, or complaint, such agent shall promptly send it to the Contractor. This subsection (ii) does not apply while the Contractor maintains a registered agent in North Carolina with the office of the N. C. Secretary of State and such registered agent can be found with due diligence at the registered office.

(b) Waiver. No action or failure to act by the City shall constitute a waiver of any of its rights or remedies that arise out of this contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

(c) Performance of Government Functions. Nothing contained in this contract shall be deemed or construed so as to in any way estop, limit, or impair the City from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions.

(d) Severability. If any provision of this contract shall be unenforceable, the remainder of this contract shall be enforceable to the extent permitted by law.

(e) Assignment, Successors and Assigns. Without the City's written consent, the Contractor shall not assign (which includes to delegate) any of its rights (including the right to payment) or duties that arise out of this contract. The City Manager may consent to an assignment without action by the City Council. Unless the City otherwise agrees in writing, the Contractor and all assignees shall be subject to all of the City's defenses and shall be liable for all of the Contractor's duties that arise out of this contract and all of the City's claims that arise out of this contract. Without granting the Contractor the right to assign, it is agreed that the duties of the Contractor that arise out of this contract shall be binding upon it and its heirs, personal representatives, successors, and assigns.

(f) Compliance with Law. In performing all of the Work, the Contractor shall comply with all applicable law.

(g) Notice of City Policy. THE CITY OPPOSES DISCRIMINATION ON THE BASIS OF RACE AND SEX AND URGES ALL OF ITS CONTRACTORS TO PROVIDE A FAIR OPPORTUNITY FOR MINORITIES AND WOMEN TO PARTICIPATE IN THEIR WORK FORCE AND AS SUBCONTRACTORS AND VENDORS UNDER CITY CONTRACTS.

(h) EEO Provisions. During the performance of this Contract the Contractor agrees as follows: (1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. The Contractor shall take affirmative action to insure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. Such action shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices setting forth these EEO provisions. (2) The Contractor shall in all solicitations or advertisement for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex,

national origin, political affiliation or belief, age, or handicap. (3) The Contractor shall send a copy of the EEO provisions to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding. (4) In the event of the Contractor's noncompliance with these EEO provisions, the City may cancel, terminate, or suspend this contract, in whole or in part, and the City may declare the Contractor ineligible for further City contracts. (5) Unless exempted by the City Council of the City of Durham, the Contractor shall include these EEO provisions in every purchase order for goods to be used in performing this contract and in every subcontract related to this contract so that these EEO provisions will be binding upon such subcontractors and vendors.

(i) SDBE. The Contractor shall comply with all applicable provisions of Article III of Chapter 18 of the Durham City Code (Equal Business Opportunities Ordinance), as amended from time to time. The failure of the Contractor to comply with that article shall be a material breach of contract which may result in the rescission or termination of this contract and/or other appropriate remedies in accordance with the provisions of that article, this contract, and State law. The Participation Plan submitted in accordance with that article is binding on the Contractor. Section 18-59(f) of that article provides, in part, "If the City Manager determines that the Contractor has failed to comply with the provisions of the Contract, the City Manager shall notify the Contractor in writing of the deficiencies. The Contractor shall have 14 days, or such time as specified in the Contract, to cure the deficiencies or establish that there are no deficiencies." It is stipulated and agreed that those two quoted sentences apply only to the Contractor's alleged violations of its obligations under Article III of Chapter 18 and not to the Contractor's alleged violations of other obligations.

(j) No Third Party Rights Created. This contract is intended for the benefit of the City and the Contractor and not any other person.

(k) Principles of Interpretation and Definitions. (1) The singular includes the plural and the plural the singular. The pronouns "it" and "its" include the masculine and feminine. References to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation. References to contracts and agreements shall be deemed to include all amendments to them. The words "include," "including," etc. mean include, including, etc. without limitation. (2) References to a "Section" or "section" shall mean a section of this contract. (3) "Contract" and "Agreement," whether or not capitalized, refer to this instrument. (4) "Duties" includes obligations. (5) The word "person" includes natural persons, firms, companies, associations, partnerships, trusts, corporations, governmental agencies and units, and other legal entities. (6) The word "shall" is mandatory. (7) The word "day" means calendar day. (8) The word "Work" is defined in Section 2. (9) A definition in this contract will not apply to the extent the context requires otherwise.

(l) Modifications. Entire Agreement. A modification of this contract is not valid unless signed by both parties and otherwise in accordance with requirements of law. Further, a modification is not enforceable against the City unless it is signed by the City Manager, a deputy or assistant City Manager, or, in limited circumstances, a City department director. This contract contains the entire agreement between the parties pertaining to the subject matter of this contract. With respect to that subject matter, there are no promises, agreements, conditions, inducements, warranties, or understandings, written or oral, expressed or implied, between the parties, other than as set forth or referenced in this contract.

(m) City's Manager's Authority. To the extent, if any, the City has the power to suspend or terminate this contract or the Contractor's services under this contract, that power may be exercised by City Manager or a deputy or assistant City Manager without City Council action.

Sec. 13. Termination for Convenience ("TFC"). (a) *Procedure*. Without limiting any party's right to terminate for breach, the parties agree that the City may, without cause, and in its discretion, terminate this contract for convenience by giving the Contractor written notice that refers to this section. TFC shall be effective at the time indicated in the notice. (b) *Obligations*. Upon TFC, all obligations that are still executory on both sides are discharged except that any right based on prior breach or performance survives, and the indemnification provisions and the section of this contract titled Trade Secrets and Confidentiality, if any, shall remain in force. At the time of TFC or as soon afterwards as is practical, the

Contractor shall give the City all Work, including partly completed Work. In case of TFC, the Contractor shall follow the City's instructions as to which subcontracts to terminate. (c) *Payment*. The City shall pay the Contractor an equitable amount for the costs and charges that accrue because of the City's decisions with respect to the subcontracts, but excluding profit for the Contractor. Within 20 days after TFC, the City shall pay the Contractor one hundred dollars as a TFC fee and shall pay the Contractor for all Work performed except to the extent previously paid for. Work shall be paid for in accordance with the method (unit prices, hourly fees, etc.) to be used for payment had the Work been completed except to the extent it would be inequitable to either party, and if Work was to be paid for on a lump-sum basis, the City shall pay the part of the lump sum that reflects the percentage of completion attained for that Work. The Contractor shall not be entitled to any payment because of TFC except as stated in this section, whether on the basis of overhead, profit, damages, other economic loss, or otherwise.

Sec. 14. Trade Secrets; Confidentiality. The request for proposals (RFP) section titled "Trade Secrets and Confidentiality" shall apply to any Trade Secrets disclosed to the City during the process leading to the parties' entering into this Contract (including all of the Contractor's responses to the RFP). This section (titled "Trade Secrets; Confidentiality") shall remain in force despite termination of this contract (whether by expiration of the term or otherwise) and termination of the services of the Contractor under this contract. For purposes of this contract, the word "candidate" in the RFP section just cited shall mean the "Contractor."

IN WITNESS WHEREOF, the City and the Contractor have caused this contract to be executed under seal themselves or by their respective duly authorized agents or officers.

ATTEST:

CITY OF DURHAM

_____ By: _____

preaudit certificate, if applicable _____

BIOHABITATS

By: _____

Title of officer: _____

(Affix corporate seal.)

State of _____ ACKNOWLEDGMENT BY BIOHABITATS

County of _____

I, a notary public in and for the aforesaid county and state, certify that

_____ personally appeared before me this day and stated that he or she is (*strike through the inapplicable:*) chairperson/ president/ chief executive officer/ vice-president/ assistant vice-president/ treasurer/ chief financial officer of Biohabitats, a corporation, and that by authority duly given and as the act of the corporation, he or she signed the foregoing contract or agreement with the City of Durham and the corporate seal was affixed thereto. This the _____ day of _____, 20_____.

My commission expires:

Notary Public

Rain Catchers Design and Construction Oversight

Exhibit A - Scope of Work

Task 1: Project Management and Administration

Project Management- This task involves the coordination of project activities between the City of Durham and BIOHABITATS' Project Manager for successful project completion. BIOHABITATS' Project Manager will manage technical staff, project budget, and project schedule to ensure that the project is completed within budget and on time. BIOHABITATS' Project Manager will prepare and submit an invoice and project status report monthly to the City Project Manager until project completion (see schedule in Exhibit B). The invoice will provide the details and a summary of labor and direct expense charges by task, and an account summary.

The project status reports shall include an updated schedule, a summary of budget status that indicates overall percent spent by task and overall percent spent for the project, work progress, and any contract issues and their resolution. The monthly invoice and project status report should be submitted electronically (in pdf format). The final formats of invoice and monthly status report shall be approved by the City Project Manager prior to submittal of first report.

BIOHABITATS' Project Manager and key technical leads will prepare for and attend a project kick-off meeting scheduled within two weeks after execution of this contract.

BIOHABITATS' Project Manager will ensure that all quality goals for the work products are met for the entire duration of the project.

Deliverables for Task 1:

- Monthly project status reports and invoices.
- One 2-hour kick-off meeting with summary provided by BIOHABITATS. Minutes will be emailed within one week of the meeting.

Task 2. Technical drawings and specifications

BIOHABITATS shall provide technical drawings, technical notes, and specifications suitable for bid documents for three of the retrofits: rain gardens, native plantings, and trees.

2.1 Prepare rain garden design and engineering specifications for the following variations: full sun rain garden with underdrain, full sun rain garden without underdrain, partial sun rain garden with underdrain, partial sun rain garden without underdrain. The drawings will be drawn on a 8.5x11 page to an engineering scale and follow typical format for engineering details. Rain garden specifications and drawings are to include, at a minimum:

- rain garden depth*
- side slope
- earthwork and grading requirements
- media depth and type*
- mulch depth and type
- inflow and outflow options

- underdrain pipe material, depth, estimated length of pipe, filter fabric/geo-membrane or gravel jacket wrapped in non-woven filter fabric to be used as a sock on perforated pipe
 - cleanouts for underdrains
 - connection of underdrain to the storm drain system
 - list of possible native plants to use in the rain garden
 - percentage of forbs, shrubs, and grasses
 - details for edging between lawn and rain garden bed
 - height of berm
 - seeding and stabilization plan for the berm
 - rain garden sizing charts
 - construction techniques and sequencing
- * Since construction will be site-specific and actual design may vary in the field, a table should be provided showing a range of different depths and corresponding media depths.

2.2 Prepare tree technical notes and drawings. To include:

- 3 species options for small, medium and large trees
- caliper size
- planting pit depth and width
- mulch depth and type
- planting techniques

Deliverables for Task 2.

- Produce a project manual with specifications suitable for bid documents that incorporates City's comments. Project manual should be provided in hard copy and electronic formats, with template provided by the City. The City will retain rights to the project manual and its individual components. BIOHABITATS will provide the project manual in MS-Word format. Project manual should be sealed by a registered professional engineer or landscape architect. Level of effort includes a single round of compiled comments by City staff that will be fully addressed to the reasonable satisfaction of the City and carried forward into final bid document.

Task 3. Coordinate bidding process

3.1 Prepare Invitation for Bid and public advertisement per City and state regulations. Includes one revision fully responsive to City comments.

3.2 Lead a 2-hour pre-bid conference to discuss project requirements and content of the construction documents.

3.3 Respond to questions and clarify drawings during the pre-bid meeting and construction bidding process. Prepare addenda to bid documents.

The City will open sealed bids at the scheduled date.

Deliverables for Task 3.

- BIOHABITATS will provide bid documents, including notice of bid, public advertisement, and addenda, all reviewed by the City.
- BIOHABITATS will plan, execute, and provide minutes for a pre bid meeting.
- BIOHABITATS will provide written responses to bidders' questions.

Task 4- Construction Oversight Services

After completion of the design and bidding services described above, BIOHABITATS shall perform the services described below.

BIOHABITATS shall provide professional construction oversight services as specifically stated below.

Pre-Construction Conference

BIOHABITATS shall conduct and attend five 2-hour pre-Construction Conferences with the selected contractor and a group of homeowners prior to commencement of the work.

Visits to Site and Oversight of Construction

BIOHABITATS shall provide on-site construction oversight services during the construction phase. BIOHABITATS shall make visits at intervals as directed by the CITY in order to observe the progress of the Work. For purposes of a budget, BIOHABITATS assumes 8 hours per week for the 13-week duration of construction excluding the travel time to and from the site. Target number of construction site visits is 70. At least 40 of the 70 sites are to be rain garden sites. BIOHABITATS will coordinate with the selected contractor to make arrangements for field visits. Such visits and observations by BIOHABITATS are not intended to be exhaustive or to extend to every aspect of contractor's work in progress. Observations are to be limited to spot checking, selective measurement, and similar methods of general observation of the Work based on BIOHABITATS's exercise of professional judgment. Based on information obtained during such visits and such observations, BIOHABITATS shall evaluate whether contractor's work is generally proceeding in accordance with the technical specifications issued by BIOHABITATS and contract documents, and BIOHABITATS shall keep CITY informed of the general progress of the Work by a field visit summary sheet for each week.

Biohabitats will act to ensure the contractor provides a quality product. The purpose of BIOHABITATS's site visits shall be to enable BIOHABITATS to better carry out the duties and responsibilities specifically assigned in this Agreement to BIOHABITATS, and to provide CITY a greater degree of confidence that the completed Work will conform in general to the contract documents. BIOHABITATS shall, during such visits or as a result of such observations of contractor's work in progress, supervise contractor's work. BIOHABITATS shall not have authority over or responsibility for the sequences and schedule selected by contractor.

Recommendations with Respect to Defective Work

BIOHABITATS shall recommend to CITY that contractor's work be disapproved and rejected while it is in progress if, on the basis of such observations, BIOHABITATS believes that such work will not produce a completed Project that conforms generally to contract documents.

Clarifications and Interpretations

BIOHABITATS shall respond to reasonable and appropriate contractor requests for information and issue necessary clarifications and interpretations of the contract documents to CITY as appropriate to the orderly completion of contractor's work. This may include written clarifications or a CAD drawing showing the modified design. Any orders authorizing variations from the contract documents shall be made by CITY.

Change Orders

BIOHABITATS may recommend Change Orders to CITY, and shall review and make recommendations related to Change Orders submitted or proposed by the contractor.

Substitutes and "or-equal"

BIOHABITATS shall evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by contractor in accordance with the contract Documents, but subject to the provisions of applicable standards of state or local government entities.

Inspections and Tests

BIOHABITATS may require special inspections or tests of contractor's work as BIOHABITATS deems appropriate, and may receive and review certificates of inspections within BIOHABITATS' area of responsibility or of tests and approvals required by laws and regulations or the contract documents. BIOHABITATS' review of such certificates will be for the purpose of determining that the results certified indicate compliance with the contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the contract Documents. BIOHABITATS shall be entitled to rely on the results of such tests and the facts being certified.

Disagreements between Client and Contractor

BIOHABITATS shall, if requested by CITY, render written decision on all claims of CITY and contractor relating to the acceptability of contractor's work or the interpretation of the requirements of the contract documents pertaining to the progress of contractor's work. In rendering such decisions, BIOHABITATS shall be fair and not show partiality to CITY or contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.

Substantial Completion

BIOHABITATS shall, promptly after notice from contractor that it considers the entire Work ready for its intended use, conduct a site visit to determine if the Work is substantially complete, for rain gardens only. Work will be considered substantially complete following satisfactory completion of all items with the exception of those identified on a final punch list. If after considering any objections of CITY,

BIOHABITATS considers the Work substantially complete, BIOHABITATS shall notify CITY and contractor.

Final Notice of Acceptability of the Work

BIOHABITATS shall conduct a final site visit to determine if the completed Work of contractor is generally in accordance with the contract documents and the final punch list so that BIOHABITATS may recommend, in writing, final payment to contractor. Accompanying the recommendation for final payment, BIOHABITATS shall also provide a notice that the Work is generally in accordance with the contract documents to the best of BIOHABITATS' knowledge, information, and belief based on the extent of its services and based upon information provided to BIOHABITATS upon which it is entitled to rely.

Limitation of Responsibilities

BIOHABITATS shall not be responsible for the acts or omissions of any contractor, or of any of their subcontractors, suppliers, or of any other individual or entity performing or furnishing the Work. BIOHABITATS shall not have the authority or responsibility to stop the work of any contractor.

Deliverables for Task 4.

- Agenda and handouts for pre-construction meetings, created in collaboration with City.
- Notes and punch-list from construction and final inspections.
- Records of communication with construction contractor.

