

RESOLUTION NO. 5272-16

RESOLUTION TO AWARD A PROFESSIONAL SERVICES CONTRACT TO BROWN AND CALDWELL FOR DEVELOPMENT OF TUALATIN'S STORM WATER MASTER PLAN

WHEREAS, the Request for Proposals was advertised in the Daily Journal of Commerce on October 21, 2015 and October 23, 2015; and

WHEREAS, six proposals were received on November 20, 2015 and subsequently evaluated on a qualifications basis; and

WHEREAS, a Notice of Intent to Award was issued to Brown and Caldwell on January 14, 2016; and

WHEREAS, City staff entered into and completed negotiations with Brown and Caldwell on the scope of work and fee estimate for a time and materials contract; and

WHEREAS, the procurement complies with the City's public contracting requirements; and

WHEREAS, this project is identified in the 2016/2017 Capital Improvement Program; and

WHEREAS, funds are available for this project in the 2015/2016 BUDGET and in the proposed 2016/2017 BUDGET in the Storm Sewer SDC Fund and the Sanitary Sewer SDC Fund;

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TUALATIN, OREGON, that:

**Section 1.** The City Manager is authorized to execute a Professional Service Agreement with Brown and Caldwell, which is attached as Exhibit 1 and incorporated by reference.

**Section 2.** The City Manager is authorized to approve changes to contract scope and not to exceed contract amount.

**Section 3.** This resolution is effective upon adoption.

Adopted by the City Council this 11th day of April, 2016.

CITY OF TUALATIN, OREGON

BY  \_\_\_\_\_  
Mayor

APPROVED AS TO FORM

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

ATTEST:

BY  \_\_\_\_\_  
City Recorder

## CITY OF TUALATIN PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT is entered into as of the date first indicated on the signature page by and between the City of Tualatin, a municipal corporation of the State of Oregon ("City"), and Brown and Caldwell ("Contractor").

**Section 1. Contract Documents.** The Contract Documents, which together form the complete Agreement between the parties, consists of the following documents in descending order of precedence: (i) this Agreement; (ii) any documents specifically referenced in this Agreement; and (iii) the attached Scope of Work (Exhibit A); (iv) the attached hourly rate schedule (Exhibit B); (v) the invitation to bid/propose; (vi) the Tualatin Public Works Design Standards; and (vi) Contractor's bid/response. To the extent there is any conflict between the Contract Documents, the conflict is resolved by the order of precedence above. There are no other Contract Documents other than those listed.

### **Section 2. Work.**

- A. Completion.** Contractor must complete all Work that is generally described as set forth in Exhibit A, which is incorporated into this Agreement as if fully set forth.
- B. Authenticity by Contractor.** All written documents, drawings, and plans submitted by Contractor in completing the Work must be stamped with the engineer, land surveyor, architect, or design professional's professional stamp and bear that professional's signature or initials.
- C. Qualified Professionals.** All Work must be performed by qualified engineers and other professionals that are properly licensed under the laws of the State of Oregon.
- D. City Standards.** All design work must be according to City of Tualatin standards, including but not limited to, the Tualatin Municipal Code and Tualatin Public Works Standards, applicable Master plans, and all other applicable documents referenced in any of these documents.
- E. Solely Responsible.** Contractor is solely responsible for all Work under this Agreement, including all services, labor, materials and supplies, documents, permits and other requirements to complete the Work, whether produced by Contractor or any of Contractor's subcontractors or Contractors, except for those items identified as the responsibility of the City.
- F. Project Costs.** In providing opinions of cost, financial analyses, economic feasibility projections, and schedules for the project, given the uncertainty with such projections, City acknowledges Contractor makes no warranty that City's actual project costs, financial aspects, economic feasibility, or schedules will not vary from Contractor's opinions, analyses, projections, or estimates.
- G. Subsurface Investigations.** City acknowledges Contractor makes no warranty about subsurface conditions and cost/execution effects, even if analyzed, as soils, foundation, ground water, and other subsurface investigations may vary significantly between successive test points and sample intervals.
- H. Record Drawings.** Record drawings, if required, will be prepared, in part, on the basis of information compiled and furnished by others, and may not always represent the exact location, type of various components, or exact manner in which the Project was finally constructed. Engineer is not responsible for errors or omissions in the information from others that are incorporated into the record drawings.
- I. Additional Work.** If City requests. Contractors to provide additional services not included in the Work described on Exhibit A, the parties will enter into a written amendment to include such Work. The Agreement price for such additional Work will not exceed Contractor's hourly rate as agreed to in Exhibit A. No compensation for additional services will be paid or owing unless both parties specifically agree in writing to such additional compensation and services.

**Section 3. Effective Date.** The effective date of this Agreement is the date both Parties sign this Agreement ("Effective Date"). If the parties sign on separate dates, the date of the last signature is the Effective Date.

**Section 4. Time is of the Essence.** Contractor agrees that time is of the essence under this Agreement.

**Section 5. Standard of Care.** In the performance of its professional or technical services, Contractor must use that degree of care and skill ordinarily exercised under similar circumstances by reputable members of its profession practicing in the Portland Metropolitan Area. Contractor will reperform any services not meeting this standard without additional compensation. Contractor's reperformance of any services, even if done at City's request, will not be considered as a limitation or waiver by City of any other remedies or claims it may have arising out of Contractor's failure to perform in accordance with the applicable standard of care or this Agreement.

**Section 6. Duty to Inform.** If during the performance of this Agreement or in the future, Contractor becomes aware of actual or potential problems, faults, or defects in the projects, any nonconformance with the federal, state or local law, rule, or regulation, or has any objection to a decision or order made by City with respect to such laws, rules, or regulations, Contractor must give prompt written notice to City's Project Manager.

**Section 7. Independent Contractor; Responsibility for Taxes and Withholding.**

- A. **Independent Contractor.** Contractor will perform all Work as an independent Contractor. The City reserves the right (i) to determine and modify the delivery schedule for the Work and (ii) to evaluate the quality of the Work Product; however, the City may not and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Work.
- B. **Not an Officer, Employee or Agent.** Contractor is not an "officer", "employee", or "agent" of the City, as those terms are used in ORS 30.265.
- C. **Federal and State Taxes.** Contractor is responsible for all federal or state taxes applicable to compensation or payments paid to Contractor under this Agreement and, unless Contractor is subject to backup withholding, City will not withhold from such compensation or payments any amount(s) to cover Contractor's federal or state tax obligations. Contractor is not eligible for any social security, unemployment insurance or workers' compensation benefits from City under this Agreement. Contractor is not entitled to, and expressly waives all
- D. claims to City benefits, including but not limited to health and disability insurance, paid leave, and retirement.

**Section 8. Subcontracting.** Except for those subcontracts identified in Exhibit A, Contractor's services are unique and as such, will not enter into any subcontracts for any of the Work required by this Agreement without City's prior written consent. Any subcontract will not relieve Contractor of any of its duties or obligations under this Agreement. All subcontracts for services must be issued under written agreements that include all provisions required under Oregon Public Contracting law. Upon request by the City, Contractor must provide City a copy of all agreements with subcontractors who are performing work under this Agreement.

**Section 9. Agreement Price.**

- A. **Hourly Rate.** City agrees to pay Consultant on an hourly basis for actual hours worked on this project. The hourly rate is shown on Exhibit B, which is attached hereto and incorporated into this Agreement as if fully set forth.
- B. **Maximum Fee.** In no event will City pay Contractor a price not to exceed \$275,424, which is inclusive of all hours necessary to complete the Work.

**Section 10. City Funds for Payment. (Check One Below)**

- City certifies that it has sufficient funds currently authorized to finance the full costs of this Agreement.
- Contractor understand and agrees that City's payment of amounts under this Agreement is contingent on City receiving appropriations, limitations, allotments or other expenditure authority sufficient to allow City, in the exercise of its reasonable administrative discretion, to continue to make payments under this Agreement.

**Section 11. Payment Process.**

- A. **Invoices.** Contractor must furnish City an invoice for services on a monthly basis. The invoice must contain an itemized statement showing the number of hours worked on the project by Contractor and the specific Work or portions of the Work performed.

- B. **Reimbursable Expenses.** City's Payment for reimbursable expenses is limited to those reimbursable expenses set forth on Exhibit A, which are actually incurred by Contractor and itemized on Contractor's invoice for services.
- C. **Payment for Services.** City will pay Contractor for services invoiced within thirty (30) days of receiving an itemized invoice ("net thirty"), unless City disputes the invoice, in which case City will only pay for those services not in dispute.

**Section 12. Contractor's Representations.**

- A. In order to induce City to enter into this Agreement Contractor makes the following representations:
  - (i) Contractor has the power and authority to enter into and perform his Agreement;
  - (ii) This Agreement, when executed and delivered, is a valid and binding obligation of Contractor enforceable in accordance with its terms;
  - (iii) Contractor has examined and carefully studied all Contract Documents and the other related data identified in the Contract Documents;
  - (iv) Contractor has become familiar with all conditions that may affect cost, progress, and performance of the Work;
  - (v) Contractor has the skill and knowledge possessed by well informed members of its industry, trade or profession and Contractor will apply that skill and knowledge with care and diligence to perform the Work in a professional manner and in accordance with generally-accepted standards prevalent in Contractor's industry, trade or profession;
  - (vi) Contractor must, at all times during the term of this Agreement, be qualified, professionally competent, and duly licensed to perform the Work; and
  - (vii) Contractor prepared its proposal related to this Agreement, if any, independently from all other proposers, and without collusion, fraud, or other dishonesty.
- B. **Representations Cumulative.** The representations set forth in this section are in addition to, and not in lieu of, any other warranties or representations provided.

**Section 13. Suspension of Work.** The City may suspend work by causing a written "stop work order" to be sent to Contractor as provided in the notice provisions of this Agreement and documenting the reasons for stopping the work. Contractor must stop all work upon receiving the "stop work order."

**Section 14. Notice to Parties.** Except as otherwise expressly provided in this Agreement, any communications between the parties hereto or notices to be given hereunder must be given in writing by personal delivery, mail facsimile, or email.

- A. **Notice by Personal Delivery.** Any communication or notice given by personal delivery is effective when actually delivered.
- B. **Notice by Mail.** Notice given by mail must be by postage prepaid, to Contractor or City at the address, set forth herein, or to such other addresses or numbers as either party may indicate pursuant to this Section. Any communication or notice so addressed and mailed is effective five (five) days after mailing.
- C. **Notice by Email.** Any communication or notice given by email is effective upon the sender's receipt of confirmation generated by the recipient's email system that the notice has been received by the recipient's email system.
- D. **Party to be Notified.** Unless otherwise notified in writing as set forth above, notices must be given to the Project Managers. If a Party's Project Manager is changed, notification of the change must be promptly made in writing to the other party. If a party receives a communication from the other party not executed by the Project Manager, the party may request clarification by the other party's Project Manager, which must be promptly furnished.

1. **City's Project Manager: Dominique Huffman, Project Engineer, 18880 SW Martinazzi Ave Tualatin OR 97062-7092, Phone: 503-691-3036, Fax: 503-692-0147, dhuffman@ci.tualatin.or.us**
2. **Contractor's Project Manager: Angela Wieland, Senior Water Resources Engineer, 6500 SW Macadam Ave Suite 200 Portland OR 97239, Phone: 503-977-6655, Fax: 503-244-9095, awieland@brwncaid.com**

**Section 15. City's Obligations.** In addition to obligations of City described in other parts of the Agreement Documents, City is responsible for providing the following:

- A. **Timely Response.** City will respond in a timely manner to all properly submitted requests from Contractor.
- B. **Cooperation.** City will cooperate with Contractor to promptly review, comment on and approve all proposals and work that comply with the requirements of this Agreement.

**Section 16. Assignment of Agreement.** No assignment of any rights, duties, responsibilities, or interests in the Agreement will be binding on the other party without the written consent of the party sought to be bound. No assignment will release or discharge the assignor from any duty or responsibility under the Agreement Documents.

**Section 17. Successors and Assigns.** The provisions of this Agreement are binding upon and inure to the benefit of the parties, their respective successors, and permitted assigns.

**Section 18. Severability.** If any term or provision of this Agreements is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected, and the rights and obligations of the parties must be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

**Section 19. Merger Clause; Waiver.** This Agreement and attached exhibits constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement will bind the parties unless in writing and signed by both parties and all necessary City approvals have been obtained. Such waiver, consent, modification or change, if made, is effective only in the specific instance and for the specific purpose given.

**Section 20. Agreement Construction.** This Agreement shall not be construed against either party regardless of which party drafted it. Other than as modified by this Agreement, the applicable rules of Agreement construction and evidence will apply.

**Section 21. Ownership of Intellectual Property.**

- A. **Original Works.** All Work Product created by Contractor pursuant to the Work, including derivative works and compilations, and whether or not such Work Product is considered a work made for hire or an employment to invent, shall upon payment to Contractor be the exclusive property of City. City and Contractor agree that such original works of authorship are "work made for hire" of which City is the author within the meaning of the United States Copyright Act. If for any reason the original Work Product created pursuant to the Work is not "work made for hire," Contractor hereby irrevocably assigns to City any and all of its rights, title, and interest in all original Work Product created pursuant to the Work, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Upon City's reasonable request, Contractor will execute such further documents and instruments necessary to fully vest such rights in City. Contractor forever waives any and all rights relating to original Work Product created pursuant to the Work, including without limitation, any and all rights arising under 17 USC §106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications. In the event that Work Product created by Contractor under this Agreement is a derivative work based on Contractor Intellectual Property, or is a compilation that includes Contractor Intellectual Property, Contractor hereby grants to City an irrevocable, non exclusive, perpetual, royalty free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the pre existing elements of the Contractor Intellectual Property employed in the Work Product, and to authorize others to do the same on City's behalf. In the event that Work Product created by Contractor under this Agreement is a derivative work based on Third Party Intellectual Property, or is a compilation that includes Third Party Intellectual Property, Contractor shall secure on the City's behalf and in the name of the City an irrevocable, non exclusive, perpetual, royalty free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform

and display the pre existing elements of the Third Party Intellectual Property employed in the Work Product, and to authorize others to do the same on City's behalf. If the Work Product is the property of the Contractor-Architect, by execution of this Agreement, the Contractor-Architect grants to City an exclusive and irrevocable license to use the Work Product.

- B. Contractor Intellectual Property.** All pre-existing trademarks, service marks, patents, copyrights, trade secrets, and other propriety rights of Contractor are and will remain the exclusive property of Contractor. Notwithstanding the foregoing, Contractor hereby grants to City an irrevocable, nonexclusive, perpetual, royalty free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Contractor Intellectual Property, and to authorize others to do the same on City's behalf.
- C. Third Party Works.** In the event that Work Product is Third Party Intellectual Property, Contractor shall secure on the City's behalf and in the name of the City, an irrevocable, non exclusive, perpetual, royalty free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Third Party Intellectual Property, and to authorize others to do the same on City's behalf.

**Section 22. Records Maintenance; Access.** Contractor must maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles, and any other records pertinent to this Agreement in such a manner as to clearly document Contractor's performance, for a minimum of three (3) years following final payment or termination of this Agreement. City may have access to all, documents, whether in paper, electronic or other form, to perform examinations and audits and make excerpts and transcripts.

**Section 23. No Third-Party Beneficiaries.** There are no intended third-party beneficiaries to this Agreement. Contractor and the City are the only parties to this Agreement and are intended to be the only entities entitled to exercise and enforce the rights and obligations created by this Agreement.

**Section 24. Nondiscrimination; Compliance with Applicable Law.** Contractor agrees that no person shall, on the grounds of race, color, religion, sex, marital status, familial status, domestic partnership, national origin, age, mental or physical disability, sexual orientation, gender identity, source of income, or veteran status suffer discrimination in the performance of this Agreement. Contractor must comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Work under this Agreement.

**Section 25. Public Contracting Requirements.** Contractor must comply with provisions of ORS 279A.110; 279B.220, 279B.225, 279B.230, and 279B.235, which are incorporated by reference herein. City's performance under the Agreement is conditioned upon Contractor's compliance.

**Section 26. Certification of Compliance with Tax Laws.** As required by ORS 279B.110(2)(e), Contractor represents and warrants that Contractor has complied with the tax laws of this state, the City, and applicable political subdivisions of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317 and 318, hereafter ("Tax Laws"). Contractor further covenants to continue to comply with the Tax Laws during the term of this Agreement and Contractor covenants and acknowledges that the failure to comply with the Tax Laws is a default for which City may terminate this Agreement and seek damages.

**Section 27. Registered in Oregon and City of Tualatin.** If Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor must promptly provide to the Oregon Department of Revenue and the Secretary of State Corporation Division all information required by those agencies relative to this Agreement. Contractor must demonstrate its legal capacity to perform the Work under this Agreement in the State of Oregon prior to entering into this Agreement. Contractor must have or acquire a City business license prior to executing this Agreement.

**Section 28. Use of Recycled Products.** Contractor shall, to the maximum extent economically feasible in the performance of this Contract, use recycled paper (as defined in ORS 279A.010(1)(ee)), recycled PETE products (as defined in ORS 279A.010(1)(ff)), and other recycled products (as "recycled product" is defined in ORS 279A.010(1)(gg)).

**Section 29. Force Majeure.** Neither City nor Contractor will be held responsible for delay or default caused by fire, riot, acts of God, terrorist acts, acts of political sabotage, or war or any other events where such cause was beyond the reasonable control of City or Contractor, respectively. Contractor must make all reasonable efforts to remove or eliminate such a cause of delay or default and must diligently pursue performance of its obligations under this Contract.

**Section 30. Survival.** All rights and obligations of the parties will cease upon termination or expiration of this Contract, except for the rights and obligations of a party for payment of completed Work, indemnity, dispute resolution, maintenance of insurance, and those provisions, including, but not limited to, provisions concerning property rights and governing laws which, by their nature, must survive termination to accomplish the intent of the parties as expressed in this Contract.

**Section 31. Joint and Several Liability.** In the event Contractor includes more than one person or entity, all such persons or entities will be jointly and severally liable for all conditions herein.

**Section 32. Indemnification.**

- A. General Indemnity.** Contractor must defend, save, hold harmless, and indemnify the City, its officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever, including reasonable attorneys' fees, resulting from, arising out of, or relating to the activities of Contractor or its officers, employees, subcontractors, or agents under this Agreement. Notwithstanding the foregoing, Notwithstanding the foregoing, Contractor's indemnity and defense obligations arising out of professional errors and omissions is provided to the extent caused by Contractor's negligent acts, errors, or omissions.
- B. Control of Defense and Settlement.** Contractor will have control of the defense and settlement of any claim that is subject to this Section; however, neither Contractor nor any attorney engaged by Contractor will defend the claim in the name of the City, nor purport to act as legal representative of the City or any of its officers, employees, or agents without first receiving from the City, in a form and manner determined appropriate by the City, authority to act as legal counsel for the City, nor will Contractor settle any claim on behalf of the City without the approval of the City. The City may, at its election and expense, assume its own defense and settlement in the event that the City determines that the Contractor is prohibited from defending the City, or is not adequately defending the City's interests, or that an important governmental principle is at issue and the City desires to assume its own defense.

**Section 33. Insurance.** Contractor must provide City with evidence of the following insurance coverage's prior to execution of this Agreement. Evidence must be provided to the City in a form satisfactory to the City that includes a copy of a certificate for each insurance policy issued by a company currently licensed in the State of Oregon certifying to the issuance of such insurance. Unless specifically set forth on Exhibit A, insurance and related costs must be borne by Contractor. All policies must be written on an "occurrence basis," except for Contractor's Professional Liability Insurance which may be written on a "claims made" basis, and maintained in full force for not less than three (3) years following Contractor's performance under this Agreement. All policies must provide for not less than 30 days' written notice to City before they may be revised, non-renewed, canceled, or coverage reduced. Excepting professional liability and worker's compensation coverage, all policies must provide an endorsement naming the City, its officers, employees, and agents as additional insureds. If the policy lapses during performance, City may treat said lapse as a breach; terminate this Agreement and seek damages; withhold progress payments without impairing obligations of Contractor to proceed with work; pay an insurance carrier (either Contractor's or a substitute) the premium amount and withhold the amount from payment to Contractor; and use any other remedy provided by this Agreement or by law.

- A. Automobile.** Business automobile and vehicle liability insurance covering claims for injuries to members of the public and/or damages to property of others arising from the use of motor vehicles, including on-site and off-site operations, and owned, non-owned, or hired vehicles, with \$1,000,000 combined single limits.
- B. General Liability.** Commercial general liability insurance covering claims for injuries to members of the public or damage to property of others arising out of any act or omission of Contractor or of any of its employees, agents, or subcontractors, with limits of \$2,000,000 per occurrence and in the aggregate.
- C. Professional Liability.** Professional Liability Insurance of \$2,000,000 per occurrence and in the aggregate, including contractual liability coverage. If Contractor proposes using subcontractors, City may require subcontractors to provide professional liability insurance, provided the amount and form of coverage complies with this Section.
- D. Policy Coverage.** Coverage provided by the policy(ies) must be primary and any other insurance carried by City is excess. Contractor will be responsible for any deductible amounts payable under all policies of insurance.

- E. Workers Compensation.** Contractor, its subcontractors, if any, and all employers working under this Agreement are subject employers under the Oregon Worker's Compensation Law and must comply with ORS 656.017.

**Section 34. Default; Remedies; Termination.**

- A. Default by Contractor.** Contractor is in default under this Agreement if Contractor commits any material breach or default of any covenant, warranty, obligation or agreement under this Agreement, fails to perform the Work under this Agreement within the time specified herein or any extension thereof, or so fails to pursue the Work as to endanger Contractor's performance under this Agreement in accordance with its terms, and such breach, default or failure is not cured within fourteen (14) calendar days after City's notice, or such longer period as City may specify in such notice.
- B. City's Remedies for Contractor's Default.** In the event Contractor is in default, 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:
- (i) Termination of this Agreement;
  - (ii) Withholding all monies due for Work and Work Products that Contractor has failed to deliver within any scheduled completion dates or has performed inadequately or defectively;
  - (iii) Initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief;
  - (iv) Exercise of its right of setoff.

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. If a court determines that Contractor was not in default, then Contractor is entitled to the same remedies as if this Agreement was terminated.

- C. Default by City.** City is in default under this Agreement if:
- (i) City fails to pay Contractor any amount pursuant to the terms of this Agreement, and City fails to cure such failure within thirty (30) calendar days after Contractor's notice or such longer period as Contractor may specify in such notice; or
  - (ii) City commits any material breach or default of any covenant, warranty, or obligation under this Agreement, and such breach or default is not cured within thirty (30) calendar days after Contractor's notice or such longer period as Contractor may specify in such notice.
- D. Contractor's Remedies for City's Default.** In the event City terminates the Agreement, or in the event City is in default and whether or not Contractor elects to exercise its right to terminate the Agreement, Contractor's sole monetary remedy is (i) with respect to services compensable on an hourly basis, a claim for unpaid invoices, hours worked within any limits set forth in this Agreement but not yet billed, authorized expenses incurred and interest of two-thirds of one percent per month, but not more than eight percent per annum, and (ii) with respect to deliverable based Work, a claim for the sum designated for completing the deliverable multiplied by the percentage of Work completed and accepted by City, less previous amounts paid and any claim(s) that City has against Contractor. In no event will City be liable to Contractor for any expenses related to termination of this Agreement or for any anticipated profits. If previous amounts paid to Contractor exceed the amount due to Contractor under this subsection, Contractor must pay immediately any excess to City upon written demand provided.
- E. Termination by City.** At its sole discretion, City may terminate this Agreement:
- (i) For any reason upon thirty (30) days' prior written notice by City to Contractor;
  - (ii) Immediately upon written notice if City fails to receive funding or expenditure authority at levels sufficient to pay for the Work or Work Products; or
  - (iii) Immediately upon written notice if federal or state laws, regulations, or guidelines are modified or interpreted in such a way that the City's purchase of the Work or Work Products under this

Agreement is prohibited or City is prohibited from paying for such Work or Work Products from the planned funding source.

- (iv) Immediately upon written notice by City to Contractor if Contractor is in default of this Agreement.
- F. Termination by Contractor.** Contractor may terminate this Agreement with such written notice to City upon the occurrence of the following events.
- (i) City is in default because City fails to pay Contractor any amount pursuant to the terms of this Agreement, and City fails to cure such failure within thirty (30) calendar days after Contractor's notice of the failure to pay or such longer period as Contractor may specify in such notice; or
  - (ii) City is in default because City commits any material breach or default of any covenant, warranty, or obligation under this Agreement, fails to perform its commitments hereunder within the time specified or any extension thereof, and City fails to cure such failure within thirty (30) calendar days after Contractor's notice or such longer period as Contractor may specify in such notice.
- G. Return of Property upon Termination.** Upon termination of this Agreement for any reason whatsoever, Contractor must immediately deliver to City all of City's property (including without limitation any Work or Work Products for which City has made payment in whole or in part) that is in the possession or under the control of Contractor in whatever stage of development and form of recordation such City property is expressed or embodied at that time. Upon receiving a notice of termination of this Agreement, Contractor must immediately cease all activities under this Agreement, unless City expressly directs otherwise in such notice of termination. Upon City's request, Contractor must surrender to anyone City designates, all documents, research or objects or other tangible things needed to complete the Work and the Work Products.
- H. City's Remedies Cumulative.** In the event of termination, in addition to the remedies provided herein, City shall have any remedy available to it in law or equity. City shall also have such remedies as are available to it in law or equity for Contractor's breach without the requirement that City first terminate this Agreement.

### Section 35. Dispute Resolution.

- A. Process.** If Contractor is not in agreement with a decision of the City under this Agreement, Contractor must comply with the following process:
- (i) Contractor must file a written notice of appeal with the City's Project Manager within fifteen (15) days following receipt of the City's written decision.
  - (ii) The City's Project Manager will have sixty (60) days for review of the appeal prior to presenting a decision to Contractor. During the sixty (60) day period, the City's Project Manager will appoint a three-person management team as the authorized review panel. The review panel may call on the resources appropriate to evaluate the merit of the appeal. This may include; but not be limited to, City's attorney, Contractor, and any employee of City.
  - (iii) Prior to the end of the sixty (60) day review period, the City's Project Manager will issue a written decision to Contractor. If Contractor is agreeable with this decision, a Change Order will be processed consistent with the decision.
- B. Exhaustion of Remedies.** If Contractor is not in agreement with the written decision of Public Works Director, Contractor will only then be entitled to initiate legal action as the prescribed administrative remedies have been exhausted.
- C. Complaint.** Any claim that cannot be resolved between the parties as set forth in this Section shall be initiated by filing a complaint in the appropriate court as provided in this Agreement. The claim and all cross and counter-claims filed in response to the complaint shall be submitted to mediation. If the parties cannot agree on a mediator, the Presiding Judge for Washington County will select the mediator. Only if the dispute cannot be resolved by mediation, will the parties proceed to litigate the claim in court.

**Section 36. Attorney Fees.** If any suit, action, arbitration or other proceeding is instituted upon this Agreement or to enforce any rights herein or otherwise pursue, defend or litigate issues related to this Agreement, each party will be liable for their own attorneys' fee and costs, including those on appeal. The parties each agree and hereby waive any right to attorney fees granted by statute or rule that conflicts with this provision.

**Section 37. Execution of Agreement; Electronic Signature.** This Agreement may be executed in one or more counterparts, all of which when taken together constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of the Agreement so executed constitutes an original. A signature of a party provided by email, "pdf," or other electronic data file constitutes an original signature of that party.

**Section 38. Governing Law; Venue; Consent to Jurisdiction.** This Agreement is governed by and will be construed in accordance with the laws of the State of Oregon without regard to principles of law. Any claim, action, suit or proceeding (collectively, "Claim") between City and Contractor that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Washington County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event will this Section be construed as a waiver of any form of defense or immunity from any Claim or from the jurisdiction of any court. Contractor, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

**Section 39. Authority to Bind.** City and Contractor each represent and warrant that the individual(s) executing this Agreement have taken all steps necessary to secure full authority to bind the City and Contractor, respectively, for the acts, expenditures, and obligations contemplated in this Agreement to be performed by each of them. BY EXECUTION OF THIS AGREEMENT, EACH PARTY HEREBY ACKNOWLEDGES THAT THEY HAVE READ THIS AGREEMENT, UNDERSTAND IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

AGREED AND ENTERED this 4 day of April, 2016.

Bryan K Paulson  
(Contractor)

By Sherilyn Lombos  
Sherilyn Lombos  
18880 SW Martinazzi Ave.  
Tualatin, Oregon 97062  
503-691-3010

By Bryan K. Paulson  
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97239  
Telephone 503-244-7005

94-1446346  
Contractor's Federal ID Number

APPROVED AS TO LEGAL FORM

S-B-S  
City Attorney

## Exhibit A

# Scope of Services

## City of Tualatin Stormwater Master Plan

The City of Tualatin (City) is developing a Stormwater Master Plan (SMP) to improve understanding of stormwater drainage characteristics and infrastructure in the city and support the prioritization of stormwater projects to address water quality and water quantity control for both existing and future development.

Key objectives for the SMP include the development/refinement of drainage basins, an evaluation of hydrology and stormwater flows, the identification of system deficiencies, the development and prioritization of capital improvement projects, and completion of a stormwater funding evaluation. Presentation of the SMP shall be clear, concise, and implementable.

Work on the SMP is scheduled to occur over the next 1.1 months, including presentation of the SMP to the public and to City Council for adoption.

### Phase 1 Project Management

**Objective** To oversee project schedule, scope, and budget and maintain communication with the City of Tualatin (City). Provide quality assurance and quality control (QA/QC) throughout the project.

#### Task 1-1 Project Administration

**Activities** The Brown and Caldwell (BC) team project manager will ensure that the project receives staff support necessary to meet the schedule and maintain project quality. Activities budgeted under Task 1-1 include:

- Overall schedule management. An initial project schedule will be developed in Microsoft Project®. It will define anticipated task duration, start/stop dates, and QA/QC reviews. Schedule updates (in digital form) will be made available to the City every 3 months.
- Overall budget management. Budget tracking occurs via WorkSmart, BC's internal tool for tracking weekly project costs by project phase and task. Internal month end reporting is conducted by the project manager to estimate effort to complete and will be used to identify budget challenges in advance. While not anticipated, budget challenges will be communicated directly to the City, as necessary, during project coordination meetings, and resolution/scope adjustments/amendments will be documented with emailed meeting summaries.
- Subcontractor coordination and oversight. The BC team project manager will manage subcontractor schedule and budget. Deliverables from subcontractors will also be reviewed by assigned BC staff, with the exception of deliverables associated with Phase 007.

- Review and scheduling of QA/QC activities. Draft deliverables will have a QA/QC review in accordance with the updated project schedule. The BC project manager will schedule and notify senior reviewers. WorkSmart will be used to track QA/QC completeness for each deliverable.
- Monthly invoicing with project progress reports. Invoices will reflect budget spent at the phase level.
- Document Control and Delivery. Final deliverables including mapping, models, technical memoranda, and reports will be provided to the City at the conclusion of the project.

## **Task 1-2 Project Coordination Meetings**

**Activities** Biweekly check-in phone calls will be conducted for the project duration to discuss project progress and coordinate deliverables for the City. The BC team project manager will provide a brief email following each call to summarize key decisions, action items for the BC team and City staff, issue resolution, and any scope/budget adjustments.

### **Phase 1 Deliverables**

The following deliverables are included under Phase 1:

- Project schedule (updated every 3 months)
- Monthly progress reports with invoices
- Email highlighting discussion items prior to each project coordination meeting
- Emailed summaries of biweekly check-in meetings, including a list of key decisions and action items

### **Phase 1 Assumptions**

The following assumptions are made for Phase 1:

- The project duration is 11 months, and will be completed by February 2017.
- The budget for specific QA/QC review of deliverables is reflected under the individual technical phases.
- Biweekly coordination meetings will be conducted via telephone and attended by the BC project manager and one or two technical team members, as required. The email with discussion items will be sent two working days prior to the project coordination meeting.
- Progress reports will summarize major activities completed during the invoicing period. BC will attempt to accommodate City preferences on invoicing in accordance with comments received on the first invoice and progress report.
- Additional project meetings are included under the individual technical tasks.

## **Phase 2 Data Collection**

**Objective** To compile, examine, and evaluate existing data, records, and reports to aid in Capital Improvement Project (CIP) identification and SMP development. Use the data collection process to identify data needs and gaps.

## **Task 2-1 Project Kickoff Meeting**

### **Activities**

City staff and the BC team will initiate the project kick-off meeting to confirm project goals and objectives, and outline the anticipated schedule for the project. Prior to this meeting, the BC team will prepare a meeting agenda, preliminary project schedule, data request list, and preliminary table of contents for the SMP. While the draft table of contents may be refined during the project, it will provide a starting point for discussion related to the format and content of deliverables.

The BC team will prepare a draft stormwater questionnaire, to be completed by City staff and Citizen Involvement Organization (CIO) leaders (see Task 1.1-2), to document areas of known stormwater system deficiencies. The data request list, preliminary table of contents, and draft stormwater questionnaire will be reviewed in detail during the project kick-off meeting.

Following the kick-off, BC will finalize the stormwater questionnaire and submit it to the City for distribution to staff and CIO members.

## **Task 2-2 Data Compilation and Review**

### **Activities**

The BC team will review geographic information system (GIS) and other technical documentation provided by the City to compile and organize information in support of Phases 3 through 6.

BC will review the City's existing storm drainage information in GIS to determine the extent of existing information and locations of the city with limited storm drainage infrastructure. BC will conduct a desktop analysis to compare available light detecting and ranging (LIDAR) data with documented rim elevations to confirm that data are recorded on a consistent datum, and can be used for future system-wide modeling.

BC staff will review the received staff and CIO-completed stormwater questionnaires, photographs, and other planning and design reports to document areas of the city with known stormwater capacity issues, and areas requiring installation of stormwater infrastructure and/or treatment and detention facilities. A problem area summary matrix will be developed for discussion with the City in order to refine locations to visit during the targeted site visit (Task 3-2).

Identified data gaps or deficiencies that may impact project objectives and schedule will also be documented in a matrix format for discussion with the City.

Two BC staff will attend an in-person project meeting with City staff to review the preliminary mapping (Task 2-3), the problem area summary matrix, and the matrix of identified data gaps. Options for and resolution to data gaps will also be discussed. Documentation of the resolution to data gaps will be provided in meeting minute format.

## **Task 2-3 Preliminary Mapping**

### **Activities**

Base maps in GIS will be prepared to document information collected as part of Task 2-2. Maps will reflect current city limits, land use and areas of future development, soils and topography, and the current stormwater system. Base maps will be used in support of basin characterization and hydrologic analysis under Phase 3, and will be amended as needed during Phases 4 and 5 to reflect water quality opportunities and underground injection controls (UICs), and finalized and inserted into the SMP under Phase 11.

## Phase 2 Deliverables

The following deliverables are included under Phase 2:

- Project kick-off meeting agenda
- Data request list
- Draft and final staff stormwater questionnaire, to be completed by City staff and CIO leaders and returned to BC
- Summary matrix documenting data received from the City and data gaps, including potential impacts of missing data
- Summary matrix documenting results of the received stormwater questionnaires and a preliminary list of areas to visit during the targeted site visit (Task 3-2)
- Data compilation and review meeting agenda
- Meeting minutes following the data compilation and review meeting to document options for addressing data gaps and decisions made
- Base maps (preliminary mapping) for City review and comment
- Data summary section for the SMP, documented in technical memorandum (TM) format (TM 1: Data Compilation)

## Phase 2 Assumptions

The following assumptions are made for Phase 2:

- The City's project manager will invite staff to participate in the project kick-off meeting and distribute meeting materials prior to the meeting.
- The City will provide a venue for the project kick-off meeting and the data compilation and review meeting.
- Two BC staff members will attend a 2-hour project kick-off meeting.
- City staff will distribute the final stormwater questionnaire to City staff and CIO members and facilitate collection and return of completed questionnaires to BC within the timeline agreed upon during the project kick-off meeting.
- Two BC staff members will attend a 2-hour data compilation and review meeting.
- BC staff will supplement City-provided GIS information with Metro Regional Land Information System (RLIS) data to produce the base maps.
- Fieldwork to collect additional stormwater inventory data is included under Task 9-1.
- The draft TM 1 will be provided to the City for review and comment. City comments not affecting technical or project related assumptions will be addressed when TM 1 is incorporated into the SMP (Task 11-1).
- The City will provide BC with one consolidated set of comments on TM 1.

## Phase 3 Basin Characterization/Hydrologic Analysis

**Objective** To evaluate drainage patterns, delineate representative stormwater subbasins, and calculate existing and future stormwater flows.

### **Task 3-1 Subbasin Delineation**

**Activities** BC will use the GIS inventory (Task 2-2) and preliminary mapping (Task 2-3) to delineate stormwater drainage basins. Drainage basins will be established based on the location of stormwater outfalls or connections to neighboring stormwater systems (i.e., Clean Water Services [CWS], City of Tigard, etc.). Drainage basin size will vary according to the extent of the public stormwater system mapped in each. Drainage basins may extend outside of the city limits to account for contributing areas.

Drainage basin delineations for the Basalt Creek Planning Area and the SW Industrial Planning Area will be included. Development of drainage basins in these (undeveloped) areas will be based on existing concept planning documentation, proposed transportation corridors, and existing topography.

During the targeted site visit (Task 3-2), BC will review the draft drainage basin delineation and proposed drainage basin naming convention with City staff. The site visit (Task 3-2) will be used to review and refine the draft drainage basin delineation.

### **Task 3-2 Targeted Site Visit**

**Activities** Two BC staff members will accompany City staff on a targeted tour of the stormwater drainage system and potential CIP locations. Objectives of the site visit may include:

- Verification and refinement of the subbasin delineation (if needed)
- Verification of areas with future development potential, including the Basalt Creek Planning Area and the SW Industrial Planning Area
- Initial observation and documentation of areas of the city with known capacity deficiencies, as identified in the completed stormwater questionnaires
- Observation, qualification, and documentation of known high pollutant source areas of the city with the potential to install stormwater treatment, in order to inform Phase 4
- Observation and documentation of existing stormwater treatment and detention facility installations and retrofit opportunities
- Observation and documentation of areas with current maintenance issues
- Observation and documentation of open-channel or natural-channel locations that may benefit from channel bank enhancement, improved riparian vegetation, or other in-stream channel improvements

Prior to the site visit, BC staff and City staff will coordinate locations to visit during a scheduled project coordination meeting. An agenda of targeted locations will be developed including locations where private property may require access agreements.

Field data forms for internal use will be completed during the site visit to document observations and findings.

### **Task 3-3 Hydrologic Analysis**

**Activities** Using the GIS information and preliminary mapping completed under Phase 2 and the drainage basin delineation developed under Task 3-1, BC will conduct hydrologic modeling of the city using InfoSWMM or another approved SWMM software program.

Assumptions related to the hydrologic analysis, including land use and impervious characteristics and vacant and developable lands, will be confirmed with the City during a project coordination phone call.

BC will simulate the 2-year, 10-year, and 25-year, 24-hour rainfall (based on a Type 1A distribution). Model results will be compared with hydrologic calculations using USGS regression equations in order to qualify the results.

Hydrologic model results will be tabulated for inclusion in the SMP. Hydrologic modeling methods and results will be documented in a draft TM for city review.

### Phase 3 Deliverables

The following deliverables are included under Phase 3:

- Draft and final drainage basin delineation in GIS format (.mxd and .pdf)
- Agenda of targeted locations to visit during the tour of the stormwater drainage system (Task 3-2)
- Draft TM describing hydrologic modeling methods and results, to be inserted into the SMP (TM 2: Modeling Methods and Results)

### Phase 3 Assumptions

The following assumptions are made for Phase 3:

- Drainage basin areas are expected to range from 10 acres (in highly developed areas with a defined drainage system) to upwards of a couple hundred acres (in undeveloped areas with a limited, existing drainage system)
- City staff will provide transportation and accompany BC staff during the targeted site visit
- City staff will coordinate access to private property as required
- One day (8 hours) for two BC staff members is budgeted for the site visit under Task 3-2
- City staff participating in the site visit will include representation from maintenance and engineering with knowledge of the stormwater system
- Current land use and existing vacant lands will be used to calculate current (i.e., existing) condition stormwater flows for each design storm; future land use reflecting full-build out conditions will be used to calculate the future-conditions stormwater flows
- Validation of modeled flows to field-collected flow data will not be conducted under this phase
- The draft TM 2 will be provided to the City for review and comment. City comments not affecting technical or project related assumptions will be addressed when TM 2 is incorporated into the SMP (Task 11-1).
- The City will provide BC with one consolidated set of comments on TM 2

## Phase 4 Water Quality Evaluation

**Objective** To conduct a desktop analysis to identify opportunity areas for siting water quality facilities or retrofits.

**Activities** BC will use base maps developed under Task 2-3 to review land use and existing stormwater treatment and detention facility coverage to identify potential high pollutant source areas that would benefit from the installation of stormwater treatment. Based on discussions with the City during project coordination meetings, detention facilities with the potential to retrofit for water quality will also be identified. BC will review land ownership and space opportunities (e.g., public properties) for the installation of retrofit or regional stormwater facilities.

BC will map observed water quality opportunity areas and prepare conceptual water quality CIP descriptions in tabular form.

For purposes of sizing conceptual CIPs, BC staff will review existing stormwater design standards for treatment, detention, and conveyance that are in place for the City of Tualatin. This may require interview and coordination with CWS staff to verify sizing assumptions related to design of stormwater facilities and infrastructure. Current National Pollutant Discharge Elimination System (NPDES) municipal separate storm sewer system (MS4) permit reissuance status will be also considered.

#### **Phase 4 Deliverables**

The following deliverables are included under Phase 4:

- Documentation of potential water quality opportunity areas and conceptual water quality CIP descriptions in tabular form
- Draft TM describing stormwater regulatory considerations, design criteria and standards, and surface water quality issues to be inserted into the SMP (TM 3: Water Quality Evaluation)

#### **Phase 4 Assumptions**

The following assumptions are made for Phase 4:

- Field survey and data collection activities, outside of those proposed under Task 3-2, are not included.
- Water quality CIPs will be integrated with other CIPs and refined under Phases 6 and 10.
- The draft TM 3 will be provided to the City for review and comment. City comments not affecting technical or project related assumptions will be addressed when TM 3 is incorporated into the SMP (Task 11-1).
- The City will provide BC with one consolidated set of comments on TM 3.

### **Phase 5 UIC Evaluation**

**Objective** To inventory existing public UICs and determine CIP needs to rule-authorize the UICs.

**Activities** Based on review of the Oregon Department of Environmental Quality (DEQ) UIC database, the City currently has 19 registered but not rule-authorized UICs under public ownership.

BC will review and summarize DEQ guidelines for UIC rule authorization. BC will use available UIC inventory information from the City and review the Oregon Water Resources Department (OWRD) records for locations of identified water supply or drinking water wells, seasonal high groundwater (to assess vertical separation distance), and identified 2-year time-of-travel distances.

UICs will be categorized based on whether additional data are needed, whether rule-authorization could occur, whether retrofit is needed for rule authorization to occur, or whether decommissioning is recommended. Such information will be reviewed during Phase 6 and used to develop CIP needs.

## Phase 5 Deliverables

The following deliverables are included under Phase 5:

- An updated UIC system inventory in GIS and Microsoft Excel® showing results of the evaluation, and identification of UICs requiring retrofit or decommissioning
- A summary of the UIC evaluation, to be inserted into the draft TM 3 prepared under Phase 4

## Phase 5 Assumptions

The following assumptions are made for Phase 5:

- The City has coordinate information or GIS data to locate all public UICs for use in the evaluation.
- Where needed, additional field data collection efforts to verify UIC locations, depth, functionality, or groundwater conditions shall be conducted by the City or occur under Task 9-1.
- CIPs related to UIC retrofits or decommissioning will be developed and refined under Phase 6.
- OWRD well records will not be verified.

## Phase 6 Preliminary CIP Development

**Objective** To coordinate with City staff in a workshop setting to review CIP design concepts, compile a preliminary list of capital improvement projects, and identify where stormwater system modeling is needed for master planning purposes.

### Task 6-1 CIP Planning Workshop

**Activities** Using information collected under Phases 2 and 3, BC will prepare a summary of the existing storm system data available to support development of a hydraulic model. BC will summarize locations of the system that may warrant additional investigation and/or data collection.

BC will facilitate a 3-hour CIP Planning workshop with City staff. During the workshop, attendees will review storm system information in each basin to discuss the following:

- Known system capacity or hydromodification (i.e., in-stream) problems
- Project concepts currently proposed to address identified problems
- Anticipated future development that may cause future system capacity problems or exacerbate existing problems
- Locations where little is known about system capacity and additional information is desired
- Hydraulic modeling needs and additional field data collection needed to support hydraulic modeling

During the workshop, the conceptual projects identified in Phases 4 and 5 will be reviewed and discussed.

BC will prepare an agenda and workshop meeting materials for City review prior to the workshop. Meeting materials shall include individual drainage basin maps of predetermined “high-priority” areas and a summary table to track information related to the items bulleted above.

BC will also develop a CIP fact sheet template for inclusion in the SMP. The CIP fact sheet template shall include designated space for a map of the CIP location, identification of applicable drainage basin(s) and stormwater system components, a description of the conceptual CIP design, and conceptual cost information. The template fact sheet will be reviewed with City staff during the CIP Planning Workshop.

Following the workshop, BC will prepare a meeting summary of key results and decisions, including data collection and/or hydraulic modeling needs.

## **Task 6-2 Preliminary CIP Development**

**Activities** Based on results from the CIP planning workshop (Task 6-1), CIP design concepts for flood control, system maintenance, water quality, and UIC compliance will be documented in a matrix format. System locations that require additional survey information and/or modeling to refine the CIP design concept will be highlighted in the matrix. Potential CIP integration (i.e., combination of CIP design concepts into one project) will also be documented in the matrix format.

BC will spend one day performing additional field reconnaissance to evaluate potential capital project solutions.

Based on the scale (size and anticipated cost) of the project and feedback obtained from City staff during the workshop, an initial project prioritization will be conducted. The initial project prioritization will reflect whether the project needs immediate resolution (high priority), whether it is a lesser priority, or whether it should be constructed in conjunction with future development. The initial project prioritization will be incorporated into the CIP design concept matrix.

Using recent bid tab information, RS Means, and City-specific cost information, BC will prepare unit cost tables for applicable CIP design components and features for City review and feedback.

## **Phase 6 Deliverables**

The following deliverables are included under Phase 6:

- Agenda and materials (i.e., mapping of pre-determined "high priority" areas, tracking table, and CIP fact sheet template) for the CIP Planning workshop
- Attendance and facilitation by two BC staff members at a 3-hour workshop with the City
- Meeting summary, including documentation of additional survey and hydraulic modeling needs, following the CIP Planning Workshop
- Draft and final CIP design concept matrix
- Draft and final unit cost table

## **Phase 6 Assumptions**

The following assumptions are made for Phase 6:

- City staff will coordinate logistics for the CIP Planning workshop, including securing a meeting location, establishing a meeting date and time, and inviting appropriate City staff
- Completed stormwater questionnaires from City staff and CIOs (referenced in Phase 2) will be returned to BC prior to the workshop

- One additional day (8 hours) for two BC staff members is budgeted to review additional CIP locations and development concepts in the field; City staff from engineering and maintenance will be available to guide the visit
- As available, City staff will provide recent, local bid tab information to BC to help establish unit costs for CIP planning and development

## Phase 7 Sanitary Funding Evaluation

**Objective** To develop a sanitary system financial plan with supporting rates and a revised system development charge (SDC), based on a the City's recently completed sanitary master plan. The financial plan and SDC analysis will reflect the City's share of costs, independent of CWS rates and charges.

### Task 7-1 Financial Kick-off, Sanitary Data Review and Sanitary Policy Framework

**Activities** The BC team will initiate a funding kick-off meeting to confirm Phase 7 and 8 goals and objectives and outline the anticipated schedule for the funding evaluations. Prior to the meeting, the BC team will prepare a meeting agenda and data request list for both the sanitary and stormwater funding evaluations.

FCS Group will review data provided by the City that is associated with the completed sanitary master plan and work with City staff to identify key policy questions necessary for providing direction in the sanitary SDC and rate analyses. Policy questions may include:

- Fiscal policies, potentially including recommended reserve levels and capital funding strategies, including available grant funding opportunities
- SDC methodology options, within constraints established by CWS methodology

The BC team will coordinate with City staff to confirm data and cost assumptions. This effort may occur in conjunction with Task 8-1 as schedule allows.

### Task 7-2 Sanitary SDC Analysis

**Activities** The BC team will follow CWS' SDC rules including how SDCs are distributed between CWS and the City. The following activities are reflected under Task 7-2:

- Compile customer and growth information: FCS Group will compile customer information needed for the sanitary sewer analysis based on data in the sanitary sewer master plan and additional staff input.
- Determine the reimbursement fee cost basis: Using available City asset information, policy input from Task 7-1, and staff input, FCS Group will estimate the percent of project costs eligible for use in calculation of the sanitary SDC reimbursement fee.
- Compile the initial SDC project list: Using the sanitary sewer master plan and project costs and staff input, FCS Group will compile the list of sanitary sewer projects and costs to be used as the initial improvement fee basis.
- Calculate adjustments: FCS Group will make appropriate adjustments to cost bases for administrative costs, fund balance, and other funding sources.

- Calculate fees and surcharge: FCS Group will calculate the improvement fee from information on the eligible cost of planned future facilities, calculate the reimbursement fee, if applicable, from information on the cost of unused capacity in the existing system, and develop a schedule of charges, if applicable.

### **Task 7-3 Sanitary Rate Evaluation, Documentation, and Council Meeting**

**Activities** The BC team will follow CWS' rate rules including how sanitary utility rates are distributed between CWS and the City. The following activities are reflected under Task 7-3:

- Capital financial planning analysis: The BC team will develop a financial plan to address the recommendations of the sanitary sewer master plan. The analysis will take into account current revenue streams (e.g., rates, SDCs, and capital cash reserves) and potential additional revenue resources such as system reinvestment funding from rates, revenue bonds, and/or other instruments to be applied.
- Revenue requirement and rates: FCS Group will update the forecast of operating and maintenance (O&M) costs, debt service, and other financial obligations of the stormwater utility over the planning horizon. The City's adopted fiscal year (FY) 2016-17 operating budget will be relied upon as the baseline, and used to incorporate updated planning growth forecasts and review economic factors for cost escalation. Additional O&M expenses, as determined under Task 7-1, will be integrated into the forecast. Recommended fiscal policies, capital financing impacts and the operating forecast, and updated operating cash flow over the planning horizon will also be integrated to determine the annual and cumulative revenue adjustments needed to ensure financial sustainability over time, and provide smooth impacts to utility customers (to the extent practical).
- Documentation: A draft sanitary financial plan including SDC methodology will be developed for review and comment by City staff. A final sanitary financial plan will be developed as a stand-alone document.
- Council Meeting Attendance: Two FCS Group staff members will attend and present to City Council (in a work session or meeting) the draft sanitary financial plan.

### **Phase 7 Deliverables**

The following deliverables are included under Phase 7:

- Financial evaluation kick-off meeting agenda
- Financial (sanitary and stormwater) data needs
- Written summary of data assumptions related to project, policy, and operational costs per the sanitary master plan under Task 7-1
- An electronic copy of the draft sanitary financial plan, including the SDC methodology, for review and comment by the City
- Up to 5 bound copies of the final sanitary financial plan, integrating City review comments; the report will also be submitted in electronic format
- An electronic copy of the Microsoft Excel® spreadsheet model
- Attendance and presentation (in PowerPoint®) for two FCS Group staff members during one City Council meeting or workshop.

## Phase 7 Assumptions

The following assumptions are made for Phase 7:

- Initiation of the sanitary funding evaluation will occur following completion of the sanitary master plan, developed under a separate contract
- All necessary operational and capital cost information will be provided by the City
- One meeting (via conference call) with City staff will be held to verify sanitary operational and project costs and confirm data assumptions. This meeting may be held in conjunction with Task 8-1 as schedule allows.
- One in-person meeting between FCS Group and City staff will be held to review interim sanitary SDC and financial plan findings
- FCS Group will present in PowerPoint® format during the City Council work session or meeting. The presentation will be provided to the City in advance of the work session or meeting
- BC will oversee schedule for this phase and review deliverables for clarity and readability, but technical review of data assumptions and calculations will not be provided.
- The City will provide FCS Group with one consolidated set of comments on the draft sanitary financial plan

## Phase 8 Stormwater Funding Evaluation

**Objective** To develop a stormwater system financial plan with supporting rates and a revised system development charge (SDC). The financial plan and SDC analysis will reflect the City's share of costs, independent of CWS rates and charges.

### Task 8-1 Stormwater Policy Framework and Staffing Evaluation

**Activities** The BC team will review data received in conjunction with Task 7-1, and will work with City staff to identify key policy questions necessary for providing direction in the stormwater SDC and rate analyses. Policy questions may include:

- Fiscal policies, potentially including recommended reserve levels and capital funding strategies, including available grant funding opportunities
- SDC methodology options, within constraints established by CWS methodology

BC will facilitate an in-person meeting with City staff to evaluate staffing and equipment needs, and establish assumptions for use in the stormwater rate analyses. Variable levels of service will be discussed with the City to aid in CIP prioritization.

Current City organization, staffing levels, and (if available) time sheet records documenting time spent on related activities will be used to assess whether current staffing levels are adequate to meet additional workload resulting from CIP implementation. Replacement costs and frequency for equipment used to implement the City's stormwater program will be discussed with the City.

Consideration of future NPDES MS4 requirements will also be used in evaluating future staffing needs.

## **Task 8-2 Stormwater SDC Analysis**

**Activities** The BC team will follow CWS' SDC rules including how SDCs are distributed between CWS and the City. The following activities are reflected under Task 8-2:

- Compile customer and growth information: The BC team will characterize the customer base in the units required under the proposed methodology: equivalent service units. Forecasted growth will be applied to estimate the future customer base to be served.
  - Determine the reimbursement fee cost basis: Using available City asset information, policy input from Task 8-1, and staff input, the BC team will estimate the percent of project costs eligible for use in calculation of the stormwater SDC reimbursement fee.
  - Compile the initial SDC project list: Using the CIPs developed/finalized under Phase 10 and the collective input of City staff, the BC team will compile the list of projects and costs to be used as the initial improvement fee basis. It is assumed that the estimated "growth share" of each project will be determined by the BC team using available information for inclusion in the improvement fee.
  - Calculate adjustments: The BC team will make appropriate adjustments to cost bases for administrative costs, fund balance, and other funding sources.
  - Calculate fees and surcharge: The BC team will calculate the improvement fee from information on the eligible cost of planned future facilities, calculate the reimbursement fee, if applicable, from information on the cost of unused capacity in the existing system, and develop a schedule of charges, if applicable. The BC team will also evaluate an appropriate local stormwater SDC surcharge on top of the CWS SDC allowed by CWS. A designated surcharge will be developed for the Basalt Creek Planning Area.

## **Task 8-3 Stormwater Rate Evaluation and Documentation**

**Activities** The BC team will follow CWS' rate rules including how stormwater utility rates are distributed between CWS and the City. The following activities are reflected under Task 8-3:

- Capital financial planning analysis: The BC team will develop a financial plan to address the stormwater CIPs developed under Phase 10. The analysis will take into account current revenue streams (e.g., rates, SDCs, and capital cash reserves) and potential additional revenue resources such as system reinvestment funding from rates, revenue bonds, and/or other instruments to be applied.
- Revenue requirement and rates: The BC team will update the forecast of operating and maintenance (O&M) costs, debt service, and other financial obligations of the stormwater utility over the planning horizon. The City's adopted fiscal year (FY) 2016-17 operating budget will be relied upon as the baseline, and used to incorporate updated planning growth forecasts and review economic factors for cost escalation. Additional O&M expenses, as determined under Task 8-1, will be integrated into the forecast. Recommended fiscal policies, capital financing impacts and the operating forecast, and updated operating cash flow over the planning horizon will also be integrated to determine the annual and cumulative revenue adjustments needed to ensure financial sustainability over time, and provide smooth impacts to utility customers (to the extent practical).

- Documentation: A draft stormwater financial plan including SDC methodology will be developed for review and comment by City staff. A final stormwater financial plan will be developed for inclusion with the final SMP.

## Phase 8 Deliverables

The following deliverables are included under Phase 8:

- Written summary of key decisions related to staffing and maintenance assumptions under Task 8-1
- An electronic copy of the draft stormwater financial plan, including the SDC methodology, for review and comment by the City
- An electronic copy of the final stormwater financial plan, integrating City review comments, for inclusion in the SMP
- An electronic copy of the Microsoft Excel® spreadsheet model

## Phase 8 Assumptions

The following assumptions are made for Phase 8:

- The City will provide the BC team with ongoing operational costs including street sweeping and catch basin cleaning for inclusion in the stormwater rate evaluation.
- One in-person meeting with the BC team and City staff will be held to finalize assumptions related to levels of service, staffing and equipment needs.
- One in-person meeting with the BC team and City staff will be held to review interim stormwater SDC and stormwater financial plan findings.
- The City will provide the BC team with one consolidated set of comments on the draft stormwater financial plan.

## Phase 9 Targeted Data Collection and Hydraulic Modeling

**Objective** To obtain information to aid in the evaluation and CIP development of pipe/system capacity problems requiring hydraulic modeling and analysis.

### Task 9-1 Field Data Collection

**Activities** Based on results from Task 6-1, BC will contract with a survey firm of the City's choosing to perform targeted field data collection of the stormwater drainage system. Data collection will be limited to measure downs on storm drainage manholes along main lines to obtain information related to flow direction, pipe diameters, and depths. Data collection may include global positioning system (GPS) horizontal locating of storm drainage structures including manholes, catch basins, culverts, outlet structures, and outfalls. LIDAR will be used to estimate the ground surface elevation if rim elevations are not available in the City's GIS.

LIDAR will be used to develop cross-sections and map any ditches or open channel portions of the conveyance system.

Collected data will be added to the City's existing GIS database.

Because of the unknown scope and scale of this work, a placeholder of \$20,000 in subconsultant services has been incorporated into the project budget.

## **Task 9-2      Hydraulic Model Development and Validation**

**Activities**      For select drainage basins, the stormwater system data collected under Task 9-1 will be imported into the InfoSWMM or approved other SWMM hydraulic modeling platform.

Existing-conditions flows calculated under Task 3-3 will initially be simulated in select drainage basins for model validation. Validation efforts will be limited to comparing existing-conditions model results for a select storm event to available information from the City such as flooding reports and photographs. If validation adjustments are necessary, the hydrologic model results developed under Task 3-3 will be adjusted and updated for reporting in TM 2.

For drainage basins not included in the hydraulic capacity analysis under Tasks 9-2 or 9-3, the available GIS data will be imported with placeholders for missing data to create a framework hydraulic model of the existing stormwater system. This effort will help the City to conduct future system-wide hydraulic modeling as additional survey information is available.

Because of the unknown scope and scale of this work, 80 hours of staff engineer time and 16 hours of senior engineer time for modeling support and QA/QC has been budgeted. Specific efforts include development of the hydraulic model for select drainage basins, development of a framework model for the existing stormwater system, model validation and hydrologic model adjustments, and documentation of hydraulic model development into TM 2 (developed under Phase 3). These hours reflect 16 hours of staff engineer time and 4 hours of senior engineer time to support the model validation efforts.

## **Task 9-3      Hydraulic Model Analysis (Targeted)**

**Activities**      BC will use the hydrologic model developed under Task 3-3 and validated hydraulic model developed under Task 9-2 to analyze the functionality of select portions of the existing, public stormwater drainage system along Manhasset Drive and associated with the Sandalwood development area for both current- and future-conditions flows.

Future-conditions flows will be incorporated into the hydraulic model. Hydraulic model results will be tabulated and included in TM 2 (developed under Phase 3).

Because of the unknown scope and scale of this work, 40 hours of staff time for hydraulic modeling and documentation and 8 hours of senior staff time for modeling support and QA/QC have been incorporated into the project budget.

## **Task 9-4      Hydraulic Model Analysis (Other Areas)**

**Activities**      BC will use the hydrologic model developed under Task 3-3 and validated hydraulic model developed under Task 9-2 to analyze the functionality of other portions of the existing, public stormwater drainage system not identified under Task 9-3 for both current- and future-conditions flows. These other portions of the drainage system would have been identified under Task 6-1 and incorporated into the framework hydraulic model under Task 9-2.

Future-conditions flows will be incorporated into the hydraulic model. Hydraulic model results for will be tabulated and included in TM 2 (developed under Phase 3).

Because of the unknown scope and scale of this work, 24 hours of staff engineer time for hydraulic modeling and documentation and 8 hours of senior engineer time for modeling support and QA/QC have been incorporated into the project budget.

## Phase 9 Deliverables

The following deliverables are included under Phase 9:

- Digital (computer-aided design [CAD] or GIS) survey results, incorporated into the City's existing GIS database
- Hydraulic model results for targeted areas identified in Phase 6 for existing- and future-conditions flows based on design storms, in tabular format
- Updated TM 2 to incorporate hydraulic modeling methods and results. The updated TM 2 will include hydraulic results tables associated with Tasks 9-3 and 9-4 and a map depicting the extent of area (drainage basins) included as part of the hydraulic evaluation effort.

## Phase 9 Assumptions

The following assumptions are made for Phase 9:

- The subcontract for field data collection in Task 9-1 is not to exceed \$20,000.
- Ground, manhole rim elevations, and open-channel system geometry shall be based on existing information in the City's system inventory, or interpolated from available LIDAR.
- No surveyed cross-sections of stream channels or detailed topographic survey needs are included
- Modeled pipe segments will be limited to the public conveyance system, 12 inches in diameter and larger.
- Validation efforts will be limited to comparing existing-conditions model results for a select storm event to available information from City flooding reports and photographs. 16 hours of staff engineer time and 4 hours of senior modeling support time are budgeted under Task 9-2 for validation efforts.
- The framework hydraulic model will not include model processing, model clean up, or QA/QC of existing storm system data in drainage basins not simulated as part of Tasks 9-3 and 9-4.
- The total hydraulic modeling scope reflected under Tasks 9-2, 9-3, and 9-4 reflects 144 hours of staff engineer time and 32 hours of senior modeling support and review. These hours assume only targeted modeling of select areas of the City will be required. If the hydraulic modeling needs determined under Task 6-1 extend to include a majority of the City's drainage basins, then an amendment will be required to update and expand the scope and budget for modeling efforts accordingly.

## Phase 10 CIP Refinement and Prioritization

**Objective** To finalize the scope, costs, and implementation schedule of CIPs for inclusion in the stormwater financial plan (Phase 8) and final SMP (Phase 11).

### Task 10-1 Flood Control CIP Development

**Activities** Using future-conditions flows evaluated under Tasks 9-3 and 9-4, BC will develop strategies to address observed system capacity deficiencies. Strategies may include pipe upsizing, adding new trunklines (to address areas of future growth), regional detention or retention facility installations, or other system retrofits.

Flood control CIPs will be added to the CIP design concept matrix developed under Task 6-2, and the final list of CIPs will be developed and provided to the City for review and approval. General CIP descriptions will be incorporated into the CIP design concept matrix.

## **Task 10-2 CIP Prioritization, Fact Sheet Development, and Cost Estimates**

**Activities** BC will work with the City to develop CIP scoring criteria and weighting factors (if desired) and develop a management approach that considers the level of service needed for stormwater utilities. Prioritization criteria shall be developed to integrate with current planned improvements in the city and reflect water quality benefits, project integration, and public safety.

Using the final CIP design concept matrix to guide CIP scoring, BC will provide scoring forms to representatives from engineering and maintenance. BC will collect scoring forms and compile data to prioritize CIPs. CIPs will be scheduled as either highest priority (5-year CIP) or lower priority (20-year CIP) for use in developing the financial plan under Phase 7.

CIP fact sheets will be prepared for up to 10 of the highest priority CIPs for inclusion in the SMP. Using the unit cost tables prepared under Task 6-2, conceptual-level project cost estimates will be developed for each CIP fact sheet. CIP descriptions per the design concept matrix including general cost ranges will be prepared for lower priority CIPs for incorporation in the SMP.

### **Phase 10 Deliverables**

The following deliverables are included under Phase 10:

- Updated hydraulic model results reflecting flood control CIP implementation for areas evaluated under Tasks 9-3 and 9-4
- Updated CIP design concepts matrix incorporating results from Task 10-1 and reflecting general CIP descriptions
- CIP scoring forms, reflecting selected prioritization criteria and final CIP scoring and scheduling
- CIP fact sheets with conceptual-level cost estimates for up to 10 highest priority CIPs

### **Phase 10 Assumptions**

The following assumptions are made for Phase 10:

- Flood control CIP development for future growth areas will be limited to identification of conceptual locations for major trunklines and/or regional facilities; design of stormwater systems within individual development areas will be the responsibility of the developer.
- Flood control CIP development may incorporate design costs into the overall CIP cost estimate to account for more detailed modeling, survey, and analysis. This approach may be used in areas not evaluated in detail as part of Phase 9.
- For budgeting purposes, a maximum of 10 CIP fact sheets with conceptual level cost estimates will be prepared. General cost ranges will be developed for lower priority CIPs for inclusion in the SMP.

## **Phase 11 SMP Development**

**Objective** To develop a final SMP document and to coordinate with City staff in public outreach efforts to help ensure SMP adoption.

### **Task 11-1 Draft SMP Development**

**Activities** BC will develop the draft SMP based on compilation of the TMs (TM 1, TM 2, and TM 3) developed during previous tasks.

Preliminary mapping developed under Task 2-3 will be updated to reflect the City's stormwater conveyance system and include new survey data as available. Mapping will also reflect identified system capacity deficiencies, water quality opportunity areas, and CIP locations.

CIP fact sheets, scoring, prioritization, and proposed scheduling will be incorporated in the SMP.

A draft SMP in digital format will be provided to the City for internal and stakeholder review and comment.

### **Task 11-2 Draft-Final SMP Development**

**Activities** City comments provided under Task 11-1 will be incorporated to create a draft-final SMP for City Council review and comment. A draft-final SMP in digital format will be provided to the City for review and comment by City Council.

City comments on the draft-final SMP will be incorporated to create a final SMP. A print and Web-ready electronic version of the final SMP, in addition to five hard copies, will be provided to the City.

### **Task 11-3 Public Meetings**

**Activities** Two BC staff members will attend and provide project information during a meeting of CIO leaders at the beginning of the project. This meeting will be used to solicit feedback related to the stormwater questionnaire. Such feedback will be used to set priorities for field data collection and CIPs.

Two BC staff members will attend a public open house in support of the adoption of the SMP. BC will prepare a summary map for use at the public open house.

Two BC staff members and one FCS Group staff member will attend and present to City Council (in a work session or meeting) the draft SMP and stormwater financial plan.

### **Phase 11 Deliverables**

The following deliverables are included under Phase 11:

- Draft SMP (in .doc format) for City review and comment
- Draft-Final SMP (in .pdf format) for Council review and comment
- Final SMP (in .pdf format) and five hard copies
- Electronic copies of project GIS data and InfoSWMM models
- Attendance for two BC staff members during one CIO meeting to discuss the project scope
- Attendance for two BC staff members during a 2-hour public open house
- Attendance and presentation (in PowerPoint®) for two BC staff members and one FCS Group staff member during one City Council meeting or workshop

## **Phase 11 Assumptions**

The following assumptions are made for Phase 11:

- One consolidated set of City and stakeholder review comments on the draft SMP will be provided to BC.
- One consolidated set of City comments on the draft-final SMP will be provided to BC.
- No formal PowerPoint® presentation will be required for the CIO meeting or public open house.
- City staff will coordinate logistics for the open house, including securing a meeting location, establishing a meeting date and time, and advertising.
- Presentation during the City Council work session or meeting will be in PowerPoint® format and provided to the City in advance of the work session or meeting.
- Any public meeting materials developed may be reused during this project.