



RESOLUTION
(3 – 2014)

**A RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO ENTER INTO
A CONTRACT FOR ENGINEERING SERVICES TO PREPARE A
HYDOMODIFICATION ASSESSMENT**

WHEREAS, the City of Fairview must conduct an initial hydromodification assessment and submit a report by July 1, 2015 as part of its MS4 permit that examines the hydromodification impacts related to the City of Fairview MS4 discharges, including erosion, sedimentation, and alteration to stormwater flow, volume and duration that may cause or contribute to water quality degradation, ; and

WHEREAS, the City has identified the need for a hydromodification assessment to complete its permit requirements; and

WHEREAS, the City has followed the direct appointment process for this contract as required under Resolution 8-2005 and OAR 137-048-0200; and

WHEREAS, the City desires to contract with Cardno WRG, Inc to perform the assessment for the fee set forth in the contract.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF COUNCIL OF THE CITY OF FAIRVIEW AS FOLLOWS:

Section 1 The City Council hereby authorizes the City Administrator to enter into a Personal Service Contract with Cardno WRG, Inc., for professional engineering services to perform a hydromodificatin assessment, substantially in the form attached hereto as Exhibit A.

Section 2 The resolution is and shall be effective from and after it's passage by the City Council.

Resolution adopted by the City Council of the City of Fairview, this 5th day of February, 2014.

Mayor, City of Fairview
Mike Weatherby

ATTEST

City Recorder, City of Fairview
Devree Leymaster



CITY OF FAIRVIEW, OREGON PERSONAL SERVICES CONTRACT

A CONTRACT between THE CITY OF FAIRVIEW, OREGON ("City"), and Cardno WRG, Inc. ("Provider")

WHEREAS, City and Provider believe it in their mutual interest to enter into a written contract setting out their understandings concerning Provider's provision of engineering services to the City for a hydromodification assessment. ("Project").

1. Term

The term of this contract shall be from Start Date until not later than End Date unless sooner terminated under the provisions of this contract. Notwithstanding the foregoing, it is understood by City that Provider intends to complete its work on this Project not later than Date, (#of days) days after notice to proceed, which notice is hereby given.

2. Provider's Service

The scope of Provider's services and time of performance under this contract are set forth in Exhibit "A". All provisions and covenants contained in said exhibit are hereby incorporated by reference and shall become a part of this contract as if fully set forth. Any conflict between this contract and Provider's proposal (if any) shall be resolved first in favor of this written contract. Provider will, in the rendering of its services to City, use its best efforts and due diligence and provide such personnel as are necessary to successfully provide the services covered under this contract and Exhibit "A".

3. Provider Identification

Provider shall furnish to City Provider's employer identification number, as designated by the Internal Revenue Service or, if the Internal Revenue Service has designated no employer identification number, Provider's Social Security number.

4. Compensation

City agrees to pay Provider at the times and in the amount(s) set out in and in accordance with Exhibit B.

5. Project Managers

City's Project Manager is Mouhamad Zaher. Provider's Project Manager is Cedomir Jesic. Each party shall give the other written notification of any change in their respective Project Manager.

6. Project Information

Provider agrees to share all project information, to fully cooperate with all corporations, firms, contractors, governmental entities, and persons involved in or associated with the project. No information, news, or press releases related to the project shall be made to representatives of newspapers, magazines, television and radio stations, or any other news medium without the prior authorization of City's Project Manager.

7. Duty to Inform

Provider shall give prompt written notice to City's Project Manager if, at any time during the performance of this contract, Provider becomes aware of actual or potential problems, faults or defects in the project, any nonconformity with the contract, or with any federal, state, or local law, rule or regulation, or has any objection to any decision or order made by City. Any delay or failure on the part of City to provide a written response to Provider shall constitute neither agreement with nor acquiescence in Provider's statement or claim and shall not constitute a waiver of any of City's rights.

8. Provider is Independent Contractor

Provider is an independent contractor for all purposes and shall be entitled to no compensation other than the compensation expressly provided by this contract. Provider hereby expressly acknowledges and agrees that as an independent contractor, Provider is not entitled to indemnification by the City or the provision of a defense by the City under the terms of ORS 30.285. This acknowledgment by Provider shall not affect his/her independent ability (or the ability of his/her insurer) to assert the monetary limitations found at ORS 30.270, the immunities listed at ORS 30.265, or other limitations affecting the assertion of any claim under the terms of the Oregon Tort Claims Act (ORS 30.260 to ORS30.300).

9. Overtime

Any person employed on work under this contract, other than a person subject to being excluded from the payment of overtime pursuant to either ORS 653.010 to 653.261 or 29 USC§201 to 209, shall be paid at least time and a half for all overtime worked in excess of 40 hours in any one week.

10. Indemnity and Insurance

- i. Indemnity:
 - a. Liability of Engineer for Claims Other Than Professional Liability: For claims other than professional liability, Provider shall defend, save and hold harmless City, its officers, agents and employees, from any and all claims, suits, or actions of whatever nature, including intentional acts, resulting from or arising out of the activities of Provider or its subcontractors and subconsultants, agents or employees under this contract.
 - b. Liability of Engineer for Claims for Professional Liability: For claims for professional liability, Provider shall defend, save and hold harmless City, its officers, agents and employees, from any and all claims, suits, or actions arising out of the professional negligent acts, errors or omissions of Provider or its subcontractors and subconsultants, agents or employees in the performance of professional services under this contract.
- ii. Liability Insurance: Provider shall maintain occurrence form commercial general liability and automobile liability insurance for the protection of Provider, City, its Councilors, officers, agents and employees. Coverage shall include personal injury, bodily injury (including death) and broad form property damage, including loss of use of property, occurring in the course of or in any way related to Provider's operations, in an amount not less than One Million dollars (\$1,000,000.00) combined single limit per occurrence. Such insurance shall name City as an additional insured.
- iii. Workers' Compensation Coverage: Provider certifies that Provider has qualified for State of Oregon Workers' Compensation coverage for all Provider's employees who are subject to Oregon's Workers' Compensation statute, either as a carrier-insured employer as provided by ORS 656.407, or as a self-insured employer. Provider shall provide to City within ten (10) days after contract award a certificate of insurance evidencing coverage of all subject workers under Oregon's Workers' Compensation statutes insured by an insurance company satisfactory to City, if any. The certificate and policy shall indicate that the policy shall not be terminated by the insurance carrier without thirty (30) days' advance written notice to City. A copy of the certificate of self-insurance issued by the State shall be provided to City if the Provider is self-insured.
- iv. Professional Errors and Omissions: Provider shall provide City with evidence of professional errors and omissions liability insurance for the protection of Provider and its employees, insuring against bodily injury and property damage and arising out of or resulting from Provider's negligent acts, omissions, activities or services, in an amount not less than \$1,000,000.00 combined single limit per occurrence. Such insurance shall be endorsed to include contractual liability.

- v. Certificates: Provider shall furnish City certificates evidencing the date, amount, and type of insurance required by this contract. All policies will provide for not less than thirty (30) days' written notice to City before they may be canceled.
- vi. Primary Coverage: The coverage provided by insurance required under this contract shall be primary, and any other insurance carried by City shall be excess.

11. Work is Property of City

All work, including but not limited to documents, drawings, papers, computer programs, and photographs, performed or produced by Provider under this contract shall be the property of City.

12. Law of Oregon

The contract shall be governed by the laws of the State of Oregon. Venue shall be in Multnomah County, Oregon.

13. Errors

Contractor shall perform such additional work as may be necessary to correct errors in the work required under this without undue delays and without additional cost.

14. Extra or Changes in Work

Only the City Administrator or the Project Manager may authorize extra (and/or change) work. Failure of Provider to secure authorization for extra work shall constitute a waiver of all right to adjustment in the contract price or contract time due to such unauthorized extra work and Provider thereafter shall be entitled to no compensation whatsoever for the performance of such work.

15. Successors and Assignments

- i. Each party binds itself, and any partner, successor, executor, administrator, or assign to this contract.
- ii. Neither City nor Provider shall assign or transfer their interest or obligation hereunder in this contract without the written consent of the others. Provider must seek and obtain City's written consent before subcontracting any part of the work required of Provider under this contract. Any assignment, transfer, or subcontract attempted in violation of this subparagraph shall be void.

16. Records

- i. Provider shall retain all books, documents, papers, and records that are directly pertinent to this contract for at least three years after City makes final payment on this contract and all other pending matters are closed.
- ii. Provider shall allow City, or any of its authorized representatives, to audit, examine, copy, take excerpts from, or transcribe any books, documents, papers, or records that are subject to the foregoing retention requirement.

17. Breach of Contract

- i. Provider shall remedy any breach of this contract within the shortest reasonable time after Provider first has actual notice of the breach or City notifies Provider of the breach, whichever is earlier. If Provider fails to remedy a breach in accordance with this paragraph, City may terminate that part of the contract affected by the breach upon written notice to Provider, may obtain substitute services in a reasonable manner, and may recover from Provider the amount by which the price for those substitute services exceeds the price for the same services under this contract.

- ii. If the breach is material and Provider fails to remedy the breach in accordance with this paragraph, City may declare Provider in default and pursue any remedy available for a default.
- iii. Pending a decision to terminate all or part of this contract, City unilaterally may order Provider to suspend all or part of the services under this contract. If City terminates all or part of the contract pursuant to this paragraph, Provider shall be entitled to compensation only for services rendered prior to the date of termination, but not for any services rendered after City ordered suspension of those services. If City suspends certain services under this contract and later orders Provider to resume those services, Provider shall be entitled to reasonable damages actually incurred, if any, as a result of the suspension.
- iv. To recover amounts due under this paragraph, City may withhold from any amounts owed by City to Provider, including but not limited to, amounts owed under this or any other contract between Provider and City.

18. Mediation/ Trial without a jury

Should any dispute arise between the parties to this contract it is agreed that such dispute will be submitted to a mediator prior to any litigation and the parties hereby expressly agree that no claim or dispute arising under the terms of this contract shall be resolved other than first through mediation and only in the event said mediation efforts fail, through litigation. Any litigation arising under or as a result of this contract shall be tried to the court without a jury.

The parties shall exercise good faith efforts to select a mediator who shall be compensated equally by both parties. Mediation will be conducted in Portland, Oregon, unless both parties agree in writing otherwise. Both parties agree to exercise good faith efforts to resolve disputes covered by this section through this mediation process. If a party requests mediation and the other party fails to respond within ten (10) days, or if the parties fail to agree on a mediator within ten (10) days, a mediator shall be appointed by the presiding judge of the Multnomah County Circuit Court upon the request of either party. The parties shall have any rights at law or in equity with respect to any dispute not covered by this Section.

19. Termination for Convenience

The City may terminate all or part of this contract at any time for its own convenience by written notice to Provider. Upon termination under this paragraph, Provider shall be entitled to compensation for all services rendered prior to actual notice of the termination or the receipt of the City's written notice of termination, whichever is earlier, plus Provider's reasonable costs actually incurred in closing out the contract.

20. Intellectual Property

The interest in any intellectual property, including but not limited to copyrights and patents of any type, arising from the performance of this contract shall vest in the City. Provider shall execute any assignment or other documents necessary to effect this paragraph. Provider may retain a nonexclusive right to use any intellectual property that is subject to this paragraph. Provider shall transfer to the City any data or other tangible property generated by Provider under this contract and necessary for the beneficial use of intellectual property covered by this paragraph.

21. Payment for Labor or Material

Provider shall make payment promptly, as due, to all persons supplying to Provider labor or material for the prosecution of the work provided for in this contract. (ORS 279B.220)

22. Contributions to the Industrial Accident Fund

Provider shall pay all contributions or amounts due the Industrial Accident Fund from Provider incurred in the performance of this contract, and shall ensure that all subcontractors pay those amounts due from the subcontractors. (ORS 279B.220)

23. Income Tax Withholding

Provider shall pay to the Oregon Department of Revenue all sums withheld from employees pursuant to ORS 316.167. (ORS279B.220)

24. Payment of Claims by the City

If Provider fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to Provider or a subcontractor by any person in connection with this contract as the claim becomes due, the City may pay the claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due to Provider pursuant to this contract. The City's payment of a claim under this Paragraph shall not relieve Provider or Provider's surety, if any, from responsibility for those claims.

25. Hours of Labor

Provider shall pay employees for overtime work performed under the terms of this contract in accordance with ORS 653.010 to ORS 653.261 and the Fair labor standards Act of 1938. (29 USC §§ 201 *et. seq.*)

26. Workers' Compensation

Provider is a subject employer that will comply with ORS 656.017. Provider warrants that all persons engaged in contract work and subject to the Oregon Workers' Compensation law are covered by a workers' compensation plan or insurance policy that fully complies with Oregon law. Provider shall indemnify City for any liability incurred by City as a result of Provider's breach of the warranty under this Paragraph. (ORS 279B.230)

27. Medical Care for Employees

Provider shall make payment of all sums to any person, co-partnership, association or corporation, furnishing medical, surgical and/or hospital care or other needed care and attention, incident to the sickness or injury of Provider's employee(s), all sums which Provider agrees to pay for such services and all monies and sums which Provider collected or deducted from the wages of employees pursuant to any law, contract or contract for the purpose of providing or paying for such service. (ORS 279B.230)

28. Conflict of Interest

Except with City's prior written consent, Provider shall not engage in any activity, or accept any employment, interest or contribution that would, or would reasonably appear, to compromise Provider's professional judgment with respect to this Project, including, without limitation, concurrent employment on any project in direct competition with the Project.

29. Modification

Any modification of the provisions of this contract shall be reduced to writing and signed by the parties.

30. No Waiver of Legal Rights

A waiver by a party of any breach by the other shall not be deemed to be a waiver of any subsequent breach.

31. Integration

This contract contains the entire agreement between the parties and supersedes all prior written or oral discussions or agreements regarding the same subject.

PROVIDER

CITY OF FAIRVIEW, OREGON

City Administrator