

RESOLUTION NO. 1908

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A PROFESSIONAL SERVICES AGREEMENT WITH URS CORPORATION FOR STORM WATER PLANNING, AND TO AUTHORIZE THE USE OF CONTINGENCY FUNDS FOR THIS PURPOSE.

WHEREAS, for the past nine years the City of Wilsonville (City) has managed its storm water system in accordance with the National Pollutant Discharge Elimination System (NPDES) permit issued to the City by the Oregon Department of Environmental Quality (DEQ); and

WHEREAS, such NPDES permits are periodically updated; and

WHEREAS, the NPDES permit renewal recently issued to the City by the DEQ for the coming 5-year period includes new and/or modified requirements; and

WHEREAS, said requirements necessitate that changes be made to the City's Storm Water Management Plan and to the annual reporting submitted by the City to the DEQ; and

WHEREAS, based on the projected work load of City staff and on the desirability of obtaining additional professional expertise on matters related to said requirements, the City has solicited statements of interest from qualified firms, and has conducted interviews with potential consultant teams; and

WHEREAS, the City's 5-member consultant selection panel unanimously found URS Corporation to be the best qualified of the candidate firms to provide the needed services; and

WHEREAS, the implications of said requirements were not fully known at the time City staff prepared the budget request for FY '04-'05; and

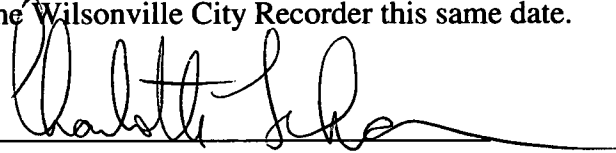
WHEREAS, contingency funds are available in the City's Budget to address important but unanticipated needs in the course of the fiscal year;

NOW, THEREFORE, THE CITY OF WILSONVILLE RESOLVES AS FOLLOWS:

1. The City Manager or designee is authorized to enter into a professional services agreement substantially in the form of that attached to this Resolution and incorporated herein by reference. Said professional services agreement includes a scope of work to be conducted by the consultant, as well as a fee schedule for the services to be provided.

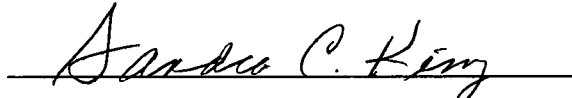
2. The City Finance Director is hereby authorized to allocate up to \$50,000.00 of contingency funds in the Storm Water Operating Budget for this purpose.
3. This resolution is effective upon the date of adoption.

ADOPTED by the City Council of the City of Wilsonville at a regular meeting thereof this 1st day of November, 2004, and filed with the Wilsonville City Recorder this same date.



CHARLOTTE LEHAN, Mayor

ATTEST:



Sandra C. King, CMC, City Recorder

SUMMARY OF VOTES:

Mayor Lehan	Yes
Councilor Kirk	Yes
Councilor Holt	Yes
Councilor Scott-Tabb	Yes
Councilor Knapp	Yes



City of
WILSONVILLE
in OREGON



PROFESSIONAL SERVICES AGREEMENT

Consulting Services for Storm Water Planning

THIS AGREEMENT is made and entered into as of the date first indicated on the signature page, by and between the City of Wilsonville, Wilsonville, Oregon, a municipal corporation of the State of Oregon, hereinafter called "City", and URS Corporation, hereinafter called "Consultant."

WHEREAS, City has need for the services of a company with a particular training, ability, knowledge, and experience possessed by Consultant, and

WHEREAS, City has determined that Consultant is qualified and capable of performing the professional services as City does hereinafter require, under the terms and conditions set forth hereafter:

THEREFORE, the parties agree as follows:

ARTICLE 1. SCOPE OF WORK

Consultant shall initiate services upon receipt of City's Notice to Proceed, together with an executed copy of this Agreement. Consultant agrees to complete work that is detailed in Exhibit A – Scope of Work and by this reference made a part hereof.

ARTICLE 2. EFFECTIVE DATE AND DURATION

This Agreement shall become effective from the date of execution by both parties and shall expire, either when tasks required hereunder are complete and accepted, or on the 31st day of October, 2005, unless earlier terminated or extended in accordance herewith. All work under this Agreement shall be completed before the expiration of this Agreement.

ARTICLE 3. COMPENSATION

City agrees to pay Consultant, on a time and material basis, an amount not to exceed fifty thousand dollars (\$50,000.00) for performance of those services described in Exhibit A--Scope of Work of this Agreement. Said payment shall cover all costs associated with the performance of services as described in Exhibit A. Compensation will be based on an hourly basis as shown in Exhibit B--Billing Rate Schedule of this agreement and related itemized direct expenses. Payment will be based on Consultant's invoice, subject to the approval of Project Manager for the City, listed herein, and not more frequently than monthly. Payment shall be payable within thirty (30) days from the date of receipt by the City.

ARTICLE 4. CONTACT INFORMATION

All notices, bills, and payments shall be made in writing and may be given by personal delivery, mail, or fax. Payments may be delivered by personal delivery, mail, or electronic transfer. The following addresses and contacts shall be used to transmit notices, bills, payments, and other information:

Project Manager for City:	Project Manager for Consultant:
City of Wilsonville	Company: URS Corporation
Attn: Kerry Rappold	Attn: Ela Whelan
Address: 30000 SW Town Center Loop E Wilsonville, OR 97070	Address: 111 S.W. Columbia, Suite 1500 Portland, OR 97201-5850
Phone: (503) 570-1570	Phone: (503) 948-7268
Fax: (503) 682-7025	Fax: (503) 222-4292
Email Address: rappold@ci.wilsonville.or.us	Email Address: Ela_Whelan@URSCorp.com

ARTICLE 5. CONSULTANT AS INDEPENDENT CONTRACTOR

Consultant acknowledges that for all purposes related to this Agreement, Consultant is and shall be deemed to be an independent contractor as defined by ORS 670.600 and not an employee of City, shall not be entitled to benefits of any kind to which an employee of City is entitled and shall be solely responsible for all payments, insurance, taxes and or other expenses associated with the performance of the Consultant's duties required by law. Furthermore, in the event that Consultant is found by a court of law or any administrative agency to be an employee of City for any purpose, City shall be entitled to offset compensation due, or to demand repayment of any amounts paid to Consultant under the terms of this Agreement, to the full extent of any benefits or other remuneration Consultant receives (from City or third party) as a result of said finding and to the full extent of any payments that City is required to make (to Consultant or to a third party) as a result of said finding.

Consultant acknowledges that for all purposes related to this Agreement, Consultant is not an officer, employee, or agent of the City as those terms are used in ORS 30.265.

ARTICLE 6. INDEMNIFICATION

City has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant's work will be performed in accordance with generally accepted professional practices and standards as well as the requirements of applicable federal, state and local laws.

To the extent allowed by law, Consultant and City agree to indemnify and defend the other, and the other's officers, agents and employees and hold them harmless from any and all liability, causes of action, claims, losses, damages, judgments or other costs or expenses including attorney's fees and witness costs and (at both trial and appeal level, whether or not a trial or appeal ever takes place) incurred by the party being indemnified resulting from the indemnifying party's negligent or wrongful acts (or failure to act when action is appropriate) that may be asserted by any person or entity which in any way arise from or relate to this Agreement or the performance of obligations under this agreement. If any aspect of this indemnity shall be found to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this indemnification.

ARTICLE 7. INSURANCE

Consultant shall maintain insurance acceptable to City in full force and effect throughout the term of this contract. Such insurance shall cover all risks arising directly or indirectly out of Consultant's activities or work hereunder.

The policy or policies of insurance maintained by the Consultant shall provide at least the following limits and coverages:

a. Commercial General Liability Insurance

Consultant shall obtain, at Consultant's expense, and keep in effect during the term of this contract, Comprehensive General Liability Insurance covering Bodily Injury and Property Damage on an "occurrence" form (1996 ISO or equivalent). This coverage shall include Contractual Liability insurance for the indemnity provided under this contract. The following insurance will be carried:

<u>Coverage</u>	<u>Limit</u>
General Aggregate	1,000,000
Products-Completed Operations Aggregate	1,000,000
Each Occurrence	1,000,000
Fire Damage (any one fire)	50,000
Medical Expense (any one person)	5,000

b. Business Automobile Liability Insurance

If Consultant will be using a motor vehicle in the performance of the services herein, Consultant shall provide City a certificate indicating that Consultant has business automobile liability coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than \$1,000,000. Said insurance shall name City as an additional insured and shall require written notice to City thirty (30) days in advance of cancellation.

c. Workers' Compensation Insurance

The Consultant and all employers providing work, labor or materials under this Contract that are either subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage that satisfies Oregon law for all their subject workers or employers that are exempt under ORS 656.126. Out-of-state employers must provide Oregon workers' compensation coverage for their workers who work at a single location within Oregon for more than 30 days in a calendar year. Consultants who perform work without the assistance or labor of any employee need not obtain such coverage. This shall include Employer's Liability Insurance with coverage limits of not less than \$500,000 each accident.

d. Insurance Carrier Rating

Coverages provided by the Consultant must be underwritten by an insurance company deemed acceptable by the City. The City reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.

e. Certificates of Insurance

As evidence of the insurance coverage required by the contract, the Consultant shall furnish a Certificate of Insurance to the City. No contract shall be effected until the required certificates have been received and approved by the City.

ARTICLE 8. TERMINATION

The parties agree that any decision by either party to terminate this Agreement before the first of September, 2005, shall be accompanied by sixty (60) days written notice to the other party prior to the date termination would take effect. There shall be no penalty for early termination. If City terminates the contract pursuant to this paragraph, it shall pay Consultant for services rendered prorated to the date of termination.

ARTICLE 9. AGREEMENT MODIFICATIONS

Modifications to this Agreement are valid only if made in writing and signed by all parties.

ARTICLE 10. SUBCONTRACTING

No portion of the AGREEMENT may be subcontracted to any other individual, firm, or entity without the express and prior approval of the CITY.

ARTICLE 11. NON-ASSIGNMENT

No portion of nor any interest in this AGREEMENT may be assigned to a third party without the express and prior approval of the CITY.

ARTICLE 12. OWNERSHIP OF WORK PRODUCT

City shall be entitled to ownership and possession of any and all work products, at no additional cost during the products useful lifetime and which are located at City workplaces, of Consultant which result from this Agreement, including any computations, plans, correspondence or pertinent data and information gathered by or computed by Consultant prior to termination of this Agreement by Consultant or upon completion of the work pursuant to this Agreement. Provided, however, that the City does not intend to own or claim ownership to any underlying intellectual property or source code developed by Consultant and for which Consultant intends to otherwise use in Consultants products, licensing or sales to others.

ARTICLE 13. GOVERNING LAW

Consultant shall comply with all applicable federal, state and local laws; and rules and regulations on non-discrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition or disability. The provisions of this Agreement shall be construed in accordance with the provisions of the laws of the State of Oregon. All provisions required by ORS Chapter 279 to be included in a contract of this type are incorporated into this Agreement as though fully set forth herein. Any action or suits involving any question arising under this Agreement must be brought in the appropriate court of the State of Oregon.

ARTICLE 14. COMPLETE AGREEMENT

This Agreement and attached exhibit constitutes the entire Agreement between the parties. No waiver, consent, modification, or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change if made, shall be effective only in specific instances and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. Consultant, by the signature of its authorized representative, hereby acknowledges that he/she has read this Agreement, understands it and agrees to be bound by its terms and conditions.

ARTICLE 15. SURVIVAL

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

IN WITNESS WHEREOF, City has caused this Agreement to be executed by its duly authorized undersigned officer and Consultant has executed this Agreement on the date hereinbelow first written.

CITY OF WILSONVILLE

CONSULTANT

By: Authorized City staff

By: Authorized Agent of Consultant

Printed Name

Printed Name

Date

Date

URS Scope of Work

for Wilsonville's Renewed NPDES MS4 Permit Compliance Project

Modifying the City's Stormwater Management Plan and Prepare the 2nd Annual Report

Task 1 – Kickoff Meeting

URS will meet with the City and facilitate a review of the elements of the City's existing National Pollutant Discharge Elimination System (NPDES) stormwater management plan. The purpose of this meeting will be to obtain the type of internal information that is not typically provided in the NPDES Municipal Separate Storm Sewer System (MS4) permit annual compliance reports such as how well City staff think the Best Management Practices (BMPs) are working, observations regarding potential improvements/refinements that could be made to the BMPs, issues related to maintenance, potential constraints regarding specific BMPs, etc. In other words, as a result of this meeting, URS would like to have an understanding of BMP implementation issues with respect to constraints and opportunities that are specific to Wilsonville.

Estimated Completion Date: By November 30, 2004

Tasks 2 through 4 have been separated into 2 Phases due to the potential changes to the permit renewal that the Department of Environmental Quality (DEQ) is still working on to address issues resulting from 2 lawsuits. Phase 1 will cover work that can commence immediately. Phase 2 will be work that completes the project following the issuance of the renewal Permit.

Task 2 – Gap Analysis

Phase 1:

A gap analysis will be conducted with respect to what the City is currently doing and what the City is expected to do to comply with the new NPDES MS4 permit, as is known at this time. URS will start with the template we have prepared for the City of Gresham for comparing the permit requirements with the City's stormwater management plan. URS will use this template to identify any potential gaps in the Storm Water Management Plan (SWMP). URS will prepare a memo to summarize the identified gaps. In preparing the gap analysis, URS will consider the City's other regulatory compliance issues such as those associated with Total Maximum Daily Loads (TMDLs) and the Endangered Species Act (ESA).

Alternative options will be proposed and associated costs for addressing each of the identified gaps. URS anticipates that options for addressing gaps will include a heavy reliance on what other jurisdictions have already done. For example, Schedule A3 of the permit requires an evaluation of 25 categories of non-stormwater discharges and a description as to whether the City's program includes control measures to address these

discharges or else a rationale as to why the program does not include control measures to address these discharges. Significant work has already been conducted by other jurisdictions to evaluate these categories of non-stormwater discharges and to prepare a rationale as to why they are being controlled or not. This work from other jurisdictions will be tailored to the specifics of Wilsonville. Preliminary stormwater monitoring options that tag onto existing monitoring, underway by Clackamas County and the Association of Clean Water Agencies (ACWA), will be evaluated and recommended as appropriate, for Phase 1. Phase 2 will finalize the monitoring plan following issuance of the renewed permit by DEQ.

Although it seems more likely that the Willamette TMDL will not make its way into this five-year permit period, URS will assist the City in considering and preparing for the development of benchmarks as they are evaluating the 303(d) listed pollutants as required. To address the development of benchmarks as required in the permit, will be to rely heavily on the work performed by other jurisdictions. The ACWA NPDES MS4 Phase I committee has proposed some meetings to coordinate on the process to develop benchmarks. In addition, ACWA is currently preparing a tool to evaluate the effectiveness of municipal stormwater management programs. URS will prepare a step-by-step process for the City to follow in the development of benchmarks for their permit.

Estimated Completion Date: December 30, 2004

Phase 2:

Work done in Phase 1 will be updated to reflect changes to renewal Permit. The final monitoring plan will be developed as well as any changes to the management options.

Estimated Completion Date: 4 weeks following the issuance of the permit by DEQ.

Task 3 – Select Stormwater Management Plan Options

Phase 1:

Up to two meetings will be conducted with Wilsonville to present the draft Stormwater Management Plan options prepared under Task 2. One meeting will be held during Phase 1 and the second during Phase 2. During these meetings, URS will facilitate a decision making process to select and refine options for a draft plan. URS will also facilitate the process to address Schedule D(2)(b) of the permit with respect to evaluating stormwater management plan components to ensure they are sufficient to reduce the discharge of pollutants to the maximum extent practicable.

Estimated Completion Date: January 11, 2005

Phase 2:

The stormwater management plan will be updated to reflect changes in the renewal permit. Appropriate milestones will be selected in Phase 2, if required by the permit.

Estimated Completion Date: 6 weeks following the issuance of the permit by DEQ.

Task 4 – Develop a Draft Stormwater Management Plan

Phase 2:

Based on the outcome of meetings conducted under Task 3, URS will prepare the draft Stormwater Management Plan for Wilsonville. The plan will include a write-up to describe how the plan addresses the “maximum extent practicable” requirement. It will also describe how the City plans to address TMDL and/or 303(d) issues.

Estimated Completion Date: Feb. 18, or 8 weeks following the issuance of the permit by DEQ.

Task 5 – Prepare the 2nd Year Annual Report

Phase 2:

The NPDES MS4 permit requires the following six elements to be submitted in the 2nd Year Annual Report:

1. *An evaluation of, and proposed revisions to, the previously submitted SWMP which addresses the requirements of Schedules D(2)(b) (i.e., SWMP evaluation) and B(1)(c) (i.e., monitoring).*
2. *A description of the current source identification components of the SWMP and the rationale regarding the adequacy of these components.*
3. *For each of the listed non-stormwater discharges expected to occur in a co-permittee’s area, the co-permittee must identify the appropriate control measures and the rationale for the selection of these control measures (or the rationale for why control measures are deemed not necessary).*
4. *The required information regarding TMDL pollutants as described in Schedule D(2)(d)(v) and the corresponding proposed revisions to the SWMP, and/or the required information regarding 303(d) listed pollutants as described in Schedule D(2)(e) and the corresponding proposed revisions to the SWMP.*
5. *An executive summary of the SWMP, no more than 15 pages in length, that describes the main elements of the SWMP.*
6. *Maps providing updated information as described in 40CFR 122.26(d)(1)(iii), where applicable.*

Ensure that the elements described in items 1 through 4 and 6 above are each thoroughly addressed and considered under Tasks 3 and 4. Then, this task will be focused on the documentation of the evaluations and decisions that were made with respect to each item. URS will prepare a draft and final executive summary of the SWMP for the 2nd Year Annual Report submittal.

Estimated Completion Date: March 25, or 10 weeks following the issuance of the permit by DEQ.

Task 6 - Project management

The project manager will assure successful completion of scope of work and supervise all staff working on this project. Day to day coordination, progress reports, and processing invoices are all a part of this task.

Task 7 – Legal Assistance

Legal assistance from Cable Huston Benedict per attached letter.

TABLE 1

This table provides personnel hours by task and it provides total task hours and estimated costs. The billing rates are based on a multiplier of 2.9 on raw salary costs. A 3.5% communication fee is also added to URS labor costs.

	Krista Reiniga	Ela Whelan	Anne MacDonald	Jennifer Renninger	Shannon Spolek, Admin Support	Total Labor Hours	Total Labor Cost	URS Communic. Fee (3.5%)	ODCs	Total Cost
Billing Rate	\$129	\$119	\$113	\$75	\$69					
TASKS										
Task 1 - Kickoff Meeting	5	8				13	\$1,601	\$56	\$ 20	\$1,677
Task 2 - Gap Analysis	8	32		85		125	\$11,260	\$394		\$11,654
Task 3 - Select Stormwater Management Plan Options	8	20		33		61	\$5,908	\$207	\$ 40	\$6,155
Task 4 - Develop the Draft Stormwater Management Plan	8	20		87		115	\$9,979	\$349	\$ 55	\$10,384
Task 5 - Provide Support for Preparation of the 2nd Year Report	10	40	12			62	\$7,415	\$260		\$7,674
Task 6 - Project Management		20			40	40	\$5,160	\$181		\$5,340
Task 7 - Legal Consultant - Cable Huston Benedict									\$ 7,105	\$7,105
Total:	39	140	12	205	40	416	\$41,322	\$1,446	7220	\$49,989

CABLE HUSTON BENEDICT HAAGENSEN & LLOYD LLP

**ATTORNEYS AT LAW
SUITE 2000
1001 SW FIFTH AVENUE
PORTLAND, OREGON 97204-1136**

**TELEPHONE (503) 224-3092
FACSIMILE (503) 224-3176**

JAMES S. KINCAID

jkincaid@chbh.com
www.cablehuston.com

October 21, 2004

ATTORNEY/CLIENT PRIVILEGED

Via Electronic and Regular Mail

Ela Whalen
URS Corporation
111 SW Columbia Street
Portland, Oregon 97204

***Re: City of Wilsonville, Oregon
Municipal Separate Storm Sewer System Permit Renewal***

Dear Ela:

Thank you for the opportunity to provide to you a cost estimate for providing legal services relating to the renewal of the City of Wilsonville's Municipal Separate Storm Sewer System National Pollutant Discharge Elimination System permit (MS4 Permit). I have assisted a number of entities with regard to the development of the initial "Phase I" MS4 Permits, and I am currently assisting several entities in negotiations with the Department of Environmental Quality (DEQ) during reconsideration of the Phase I MS4 Permits issued earlier this year.

As you know, I have only had a brief opportunity to talk with you and the City's legal counsel, Paul Lee, about the scope for the legal services that the City would like me to provide. Based on these discussions, I understand that the work would at a minimum include assisting URS Corporation in evaluating whether the City's existing legal authorities satisfy that required by Schedule D of the draft renewal MS4 Permit and by the Environmental Protection Agency (EPA) rules.

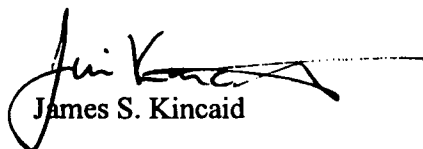
My rate for legal services of this nature is \$175 per hour. For the scope of services provided above, I estimate that about 40 hours would be needed to assist URS Corporation and the City in analyzing the City's existing legal authorities in light of the requirements currently included in Schedule D of the draft renewal MS4 Permit. I am assuming that this work would include making recommendations to the City on possible modifications to the City's legal authorities where appropriate to meet the requirements in Schedule D. Thus, for this scope, I estimate that the cost for my legal services will not exceed \$7,000 without approval from the City.

Ela Whalen
October 21, 2004
Page 2

Although not included in this estimate, I certainly would be available to assist the City and URS Corporation with regard to other matters relating to the renewal of the City's MS4 Permit. As mentioned, I am currently assisting several other entities in negotiations with the DEQ regarding the DEQ's reconsideration of the MS4 Permits, and am assisting those entities on matters relating to legal challenges brought with respect to the MS4 Permits.

Please call if you or the City would like any additional information regarding this estimate. Thank you again for the opportunity to provide this estimate to you. I look forward to working with you and the City on this matter.

Very truly yours,



James S. Kincaid

JSK:ls

cc: Paul Lee