



City of Green River  
City Council Meeting  
Agenda Documentation

|                                  |                                  |
|----------------------------------|----------------------------------|
| Preparation Date: March 30, 2020 | Department: Public Works         |
| Meeting Date: April 7, 2020      | Department Head: Mark Westenskow |
|                                  | Presenter: Mark Westenskow       |

**Subject:**

*Professional Services Agreement between the City of Green River and Wood Environment and Infrastructure Solutions, Inc. for the Storm System Master Plan and Modeling Project.*

**Background/Alternatives:**

*The Engineering Division recently requested proposals from consulting firms interested in preparing a Master Plan and Modeling study for the City's stormwater management system to establish a long range plan for improvements to that system. Staff recommends award of the contract to perform the system modeling and prepare the Master Plan to Wood Environment and Infrastructure Solutions, Inc.*

**Attachments:**

*Wood Services Agreement*

**Fiscal Impact:**

*The City's 2019-2020 Budget included \$150,000 for the preparation of this study. There are adequate funds in the 10.500.555.ADMIN.70 program for this project.*

**Staff Impact:**

*Staff from the Engineering and Environmental Systems Divisions will coordinate the work of the study, with assistance from other groups as necessary*

**Legal Review:**

*Complete 3/30/2020*

**Suggested Motion:**

*"I move to authorize the Mayor to sign the Professional Services Agreement between the City of Green River and Wood Environment and Infrastructure Solutions, Inc. in the amount of \$148,876 for the Storm System Master Plan and Modeling Study."*



**SERVICES AGREEMENT**  
(Time and Materials)

THIS AGREEMENT (the "Agreement"), effective this \_\_\_\_ day of \_\_\_\_\_ 20\_\_, is made by and between Wood Environment & Infrastructure Solutions, Inc., a Nevada corporation, with an address at 920 E. Sheridan St., Suite A, Laramie, WY ("Wood") and City of Green River, with an address at 50 East 2<sup>nd</sup> North, Green River, WY 82935 ("CLIENT").

NOW, THEREFORE, in consideration of the mutual undertakings and subject to the terms set forth below and intending to be legally bound, the parties agree as follows:

**1. SCOPE OF SERVICES:** This Agreement, including Appendix A, sets forth the terms and conditions pursuant to which Wood will provide CLIENT services (the "Services") as described in its proposal, dated February 13, 2020, attached as Exhibit 1 ("Proposal").

**2. COMPENSATION:** Wood will be compensated in US dollars for its Services on a time-and-materials basis.

Wood shall be reimbursed for all hours worked, all applicable taxes, and other costs incurred at the rates and terms set forth on Exhibit 1. Should the total cost of Wood's performance be greater than the estimated amount, Wood will notify CLIENT and provide a revised estimate for CLIENT's approval. In such event, continued performance is subject to additional funding as mutually agreed.

In addition to the amount payable for services, CLIENT assumes full responsibility for the payment of any applicable sales, use, or value-added taxes under this Agreement, except as otherwise specified.

Invoices will be submitted at least monthly for Services rendered. Terms of payment are net thirty (30) days from date of invoice with a late fee of one and one-half percent (1.5%) per month or eighteen percent (18%) per annum or the maximum amount allowable by law on balances past due. Interest shall be computed at 31 days from the date of invoice. In addition, any collection fees, attorneys' fees, court costs, and other related expenses incurred by Wood in the collection of delinquent invoice amounts shall be paid by CLIENT.

The rates stated in the Proposal or included in Exhibit 1 shall be the basis for determining Wood's compensation for any Services. After January 1 of each subsequent calendar year, the rates may be increased by Wood up to an overall average increase of five percent (5%); provided that an overall average increase in excess of five percent (5%) shall be subject to CLIENT's approval. Wood shall provide CLIENT with thirty (30) days advance notice of any change in rates.

**3. STANDARD OF CARE:** Wood will perform the Scope of Services specified utilizing that degree of skill and care ordinarily exercised under similar conditions by reputable members of Wood's profession practicing in the same or similar locality at the time of performance. NO OTHER WARRANTY, GUARANTY, OR REPRESENTATION, EXPRESS OR IMPLIED, IS MADE OR INTENDED IN THIS AGREEMENT, OR IN ANY COMMUNICATION (ORAL OR WRITTEN), REPORT, OPINION, DOCUMENT, OR INSTRUMENT OF SERVICE, AND THE SAME ARE SPECIFICALLY DISCLAIMED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

**4. INDEPENDENT CONTRACTOR:** Wood shall be fully independent and shall not act, except as permitted herein, as an agent or employee of CLIENT. Wood shall be solely responsible for its employees and for their compensation, benefits, contributions, and taxes, if any.

Unless otherwise agreed to in writing by Wood and CLIENT, neither party shall directly or indirectly solicit, hire or retain, or knowingly cause a third party to solicit, hire or retain, during the term of this Agreement and for a period of one (1) year after the date on which this Agreement terminates, any employee of the other party who works on the preparation of the Proposal or otherwise performs Services under or in connection with this Agreement. Nothing herein shall prevent either party from hiring any individual who responds to a general advertisement for services.

**5. INSURANCE:**

Wood shall provide proof of adequate insurance acceptable to the CLIENT in the following amounts:

- |                           |                  |
|---------------------------|------------------|
| 1. Worker's Compensation: | Statutory Limits |
|---------------------------|------------------|

|  |  |
|--|--|
| 2. Comprehensive General & Auto Liability: | \$500,000 per claim  |
|  | \$1,000,000 per occurrence<br>(or per accident for Auto liability) |
| 3. Professional Liability:                 | \$1,000,000  |

Except for Professional Liability and Worker's compensation, CLIENT shall be named as an additional insured in accordance with applicable State laws.

**6. CHANGES:** CLIENT may order changes within the general scope of the Services by altering, adding to, or deleting from the Services to be performed. Work beyond the scope of services or re-doing any part of the project through no fault of Wood, shall constitute extra work and shall be paid for on a time-and-materials basis in addition to any other payment provided for in this Agreement.

Should Wood encounter conditions which were (i) not reasonably anticipated, including, but not limited to, changes in applicable law, (ii) subsurface or otherwise concealed physical conditions that differ materially from those indicated in this Agreement or (iii) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in activities of the character contemplated by this Agreement, Wood shall promptly provide notice to CLIENT. CLIENT shall promptly investigate such conditions. If, in Wood's reasonable opinion, the conditions cause an increase or decrease in Wood's cost of, or time required for, performance of any part of its Services, CLIENT shall issue a Change Order with an equitable adjustment in Wood's compensation, schedule, or both. In the event no Change Order is agreed to, Wood reserves the right to either (i) suspend its performance until a Change Order is agreed to or (ii) discontinue its performance and terminate this Agreement.

**7. FORCE MAJEURE:** Should performance of Services by Wood be affected by causes beyond its reasonable control, Force Majeure results. Force Majeure includes but is not restricted to: acts of God; acts of a legislative, administrative or judicial entity; acts of contractors other than contractors engaged directly by Wood; Coronavirus or COVID-19; epidemics; earthquakes; fires; floods; labor disturbances; pandemics, quarantines and unusually severe weather. Wood will be granted a time extension and the parties will negotiate an equitable adjustment to the price of any affected Services, where appropriate, based upon the effect of the Force Majeure on performance by Wood.

**8. INSTRUMENTS OF SERVICE:**

All documents developed as a result of the contract will be freely available to the public. Except for Wood's pre-existing Intellectual Property, none may be copyrighted by Wood. During the performance of the services, the Consultant will be responsible for any loss of or damage to the documents while they are in its possession and must restore the loss or damage at its expense. Any use of information and results of this contract by the Wood must reference the sponsorship by the Client. All information produced as part of the contract must be available to the Client in electronic format(s) as reasonably determined by the Client anytime during the course of the project and after the contract is completed.

**9. CLIENT'S RESPONSIBILITIES:** CLIENT agrees to: (i) provide Wood all available material, data, and information pertaining to the Services, including, without limitation, plot plans, topographic studies, hydrologic data and previous soil and geologic data including borings, field or laboratory tests, written reports, the composition, quantity, toxicity, or potentially hazardous properties of any material known or believed to be present at any site, any hazards that may be present, the nature and location of underground or otherwise not readily apparent utilities, summaries and assessments of the site's past and present compliance status, and the status of any filed or pending judicial or administrative action concerning the site and shall immediately transmit to Wood any new information that becomes available or any changes in plans; (ii) convey and discuss such materials, data, and information with Wood; and (iii) ensure cooperation of CLIENT's employees.

In addition, where the Services include preparation of plans and specifications and/or construction oversight activities for CLIENT, CLIENT agrees to have its construction contractors agree in writing to indemnify and save harmless Wood from and against loss, damage, injury, or liability attributable to personal injury or property damage arising out of or resulting from such contractors' performance or nonperformance of their work.

**10. SITE ACCESS:** CLIENT shall at such times as may be required by Wood for the successful and timely completion of Services: (i) provide unimpeded and timely access to any site, including third party sites if required (ii) provide an adequate area for Wood's site office facilities, equipment storage, and employee parking; (iii) furnish all construction utilities and utilities releases necessary for the Services; (iv) provide the locations of all subsurface structures, including piping, tanks, cables, and

utilities; (v) approve all locations for digging and drilling operations; and (vi) obtain all permits and licenses which are necessary and required to be taken out in CLIENT's name for the Services. Wood will not be liable for damage or injury arising from damage to subsurface structures that are not called to its attention and correctly shown on the plans furnished to Wood in connection with its work.

**11. WARRANTY OF TITLE, WASTE OWNERSHIP:** CLIENT has and shall retain all responsibility and liability for the environmental conditions on the site. Title and risk of loss with respect to all materials shall remain with CLIENT. If the samples or wastes resulting from the Services contain any contaminants, Wood, as the CLIENT's agent, and at CLIENT's direction and expense, will either (i) return such samples or wastes to, or leave them with, CLIENT for appropriate disposal or (ii) using a manifest signed by CLIENT as generator and arranger, coordinate the transport of such samples or wastes to an approved facility selected by CLIENT for final disposal, using a transporter selected by CLIENT. At no time will Wood assume possession or title, constructive or express, to any such samples or wastes.

**12. LIMITATION OF LIABILITY:** As part of the consideration Wood requires for provision of the Services indicated herein, CLIENT agrees that any claim for damages filed against Wood by CLIENT or any contractor or subcontractor hired directly or indirectly by CLIENT will be filed solely against Wood or its successors or assigns and that no individual person shall be made personally liable for damages, in whole or in part.

**13. ASSIGNMENT AND SUBCONTRACTING:** Neither party shall assign its interest in this Agreement without the written consent of the other, except that Wood may assign its interest in the Agreement to related or affiliated companies of Wood or subcontract portions of the Services to a qualified subcontractor without the consent of CLIENT.

**14. INDEMNIFICATION:**

Wood will protect and indemnify CLIENT, its officers, agents, servants, volunteers, and employees from any and all liabilities, claims, liens, fines, demands and costs, including reasonable legal fees, or whatsoever kind and nature which may result in injury or death to any persons, including Wood's own employees, and for loss or damage to any property, including property owned or in the care, custody or control of CLIENT in connection with or in any way incident to or arising out of the occupancy, use, service, operations, performance or non-performance of work in connection with this contract to the extent resulting in whole or in part from negligent acts or omissions of the Wood, any subcontractor, or any employee, agent or representative of the contractor or any subcontractor.

**15. DISPUTE RESOLUTION:** If a claim, dispute, or controversy arises out of or relates to the interpretation, application, enforcement, or performance of Services under this Agreement, Wood and CLIENT agree first to try in good faith to settle the dispute by negotiations between senior management of Wood and CLIENT. If such negotiations are unsuccessful, Wood and CLIENT agree to attempt to settle the dispute by good faith mediation if both parties agree. If the dispute cannot be settled through mediation, and unless otherwise mutually agreed, the dispute shall be settled by litigation in an appropriate court in the state of the Wood office entering into this Agreement. Except as otherwise provided herein, each party shall be responsible for its own legal costs and attorneys' fees.

Customer does not waive sovereign/governmental immunity by entering into this Agreement, but specifically retains all immunities and defenses available to it as a governmental entity pursuant to Wyo. Stat. §1-39-101, et seq., and all other applicable law. Designations of venue, choice of law, enforcement actions, and similar provisions shall not be construed as a waiver of sovereign/governmental immunity. The Parties agree that any conflict or ambiguity as to sovereign/governmental immunity shall be construed in favor of sovereign/governmental immunity.

**16. TERM AND TERMINATION:** The term of this Agreement shall commence as of the day and year first written above, and shall continue in effect until terminated by either party as provided herein. Either party may terminate this Agreement at any time, with or without cause, by providing not less than thirty (30) days advance written notice to the other party.

Notwithstanding the termination of this Agreement, this Agreement will survive as to the Services provided prior to the Agreement's effective termination date, until all of the rights and obligations of both parties thereunder have been fulfilled.

CLIENT shall compensate Wood for all Services performed hereunder through the date of any termination and all reasonable costs and expenses incurred by Wood in effecting the termination, including non-cancelable commitments and demobilization costs.

**17. NOTICE:** Any notice required under this Agreement will be in writing, addressed to the appropriate party at the address set forth in the introductory paragraph of this Agreement (or such other address as the parties may designate from time to time in writing) and given personally, by registered or certified mail postage prepaid, or by a commercial courier service. Notices shall be effective: (a) upon receipt after being delivered personally, (b) 3 days after being deposited in the mail as described above, or (c) 2 days after being deposited with a commercial courier service.

**18. CONFIDENTIALITY:** Both parties shall keep all information and data provided by the other party pertaining to the Services confidential. Wood acknowledges that CLIENT is subject to Wyoming Public Information Act and will comply with any provisions of such Acts as deemed appropriate.

**19. WAIVER:** The failure of either Wood or CLIENT in any one or more instances to enforce one or more of the terms or conditions of this Agreement or to exercise any right or privilege in this Agreement or the waiver by Wood or CLIENT of any breach of the terms or conditions of this Agreement shall not be construed as thereafter waiving any such terms, conditions, rights, or privileges, and the same shall continue and remain in force and effect as if no such failure to enforce had occurred.

**20. SEVERABILITY AND HEADINGS:** Every term or condition of this Agreement is severable from others. Notwithstanding any possible future finding by a duly constituted authority that a particular term or provision is invalid, void, or unenforceable, this Agreement has been made with the clear intention that the validity and enforceability of the remaining parts, terms, and provisions shall not be affected thereby. The headings used in this Agreement are for general reference only and do not have special significance.

**21. GOVERNING LAWS/LANGUAGE:** This Agreement shall be governed and construed in accordance with the laws of the state of the Wood office entering into this Agreement. All communications relating to or arising out of this Agreement shall be in the English language.

**22. NONDISCRIMINATION AND AFFIRMATIVE ACTION:** Wood agrees to comply with Executive Order 11246 and the applicable federal regulations pertaining to nondiscrimination and affirmative action, including the Equal Opportunity Clause, the Affirmative Action Clause for Handicapped Workers, and the Affirmative Action Clause for Disabled Veterans and Veterans of the Vietnam Era. Further, Wood agrees that its facilities are not segregated.

**23. FIELD REPRESENTATION:** The Services do not include supervision or direction of the means, methods or actual work of other consultants, contractors and subcontractors not retained by Wood. The presence of Wood's representative will not relieve any such other party from its responsibility to perform its work and services in accordance with its contractual and legal obligations and in conformity with the plans and specifications for the project. CLIENT agrees that each such other party will be solely responsible for its working conditions and safety on the site. Wood's monitoring of the procedures of any such other party is not intended to include a review of the adequacy of its safety measures. It is agreed that Wood is not responsible for safety or security at a site, other than for Wood's employees, and that Wood does not have the contractual duty or legal right to stop the work of others.

**24. AUTHORIZATION TO SIGN:** The person signing this Agreement warrants that he has authority to sign as, or on behalf of, the CLIENT for whom or for whose benefit Wood's services are rendered.

**25. ANTI-BRIBERY:** The Parties undertake to protect the standards of business practice of the other Party at all times and to act in such a way as to uphold the good name and reputation of the other Party and not to do or attempt to do any act or thing which is intended to and/or which in fact causes any damage to or brings discredit upon the other Party and, in particular, the Parties will not:

(a) Offer or give or agree to give to any director, officer, employee or agent of the other Party or any other entity any gift or consideration of any kind as an inducement or reward for doing or for forbearing to do or for having done or forbome to do any action in relation to the obtaining or execution of any contract or for showing or forbearing to show any favor or disfavor to any person in relation to any contract.

(b) Induce or attempt to induce any officer, servant or agent of any private or public body to neither depart from his duties to his employer nor be involved with any such arrangement.

**26. Compliance with Laws:** Wood shall comply with all federal, state, and local regulations, including but not limited to all applicable Occupational Safety and Health Administration/Wyoming Department of Workforce Services (OSHA/DWS) requirements and the Americans with Disabilities Act.

Wood shall comply with all applicable federal, state and local laws and regulations as may be required, including but not limited to: Occupational Safety and Health Administration/Wyoming Department of Workforce Services (OSHA/DWS) requirements, the Americans with Disabilities Act, regulations in 40 CFR Part 31 and Part 35, Subpart O.

**27. ENTIRE AGREEMENT:** The terms and conditions set forth herein constitute the entire understanding and agreement of Wood and CLIENT with respect to the Services. All previous proposals, offers, and other communications relative to the provisions of these Services are hereby superseded. Any modification or revision of any provision set forth herein or any additional provision contained in any purchase order, acknowledgment, or other form of the CLIENT is hereby superseded and expressly objected to by Wood and shall not operate to modify this Agreement. Should CLIENT utilize its purchase order or any other form to procure services, CLIENT acknowledges and agrees that its use of such purchase order or other form is solely for administrative purposes and in no event shall Wood be bound to any terms and conditions on such purchase order or other form, regardless of reference to (e.g. on invoices) or signature upon (e.g. acknowledgement) such purchase order or

other form by Wood. CLIENT shall endeavor to reference this Agreement on any purchase order or other form it may issue to procure Wood services, but CLIENT's failure to do so shall not operate to modify this Agreement.

IN WITNESS WHEREOF, CLIENT and Wood have caused this Agreement to be executed by their respective duly authorized representatives as of the date first set forth above.

**CLIENT**

**Wood Environment & Infrastructure Solutions, Inc.**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

## **Appendix A: Wood's Consultant specific duties**

### **A. Reporting of Consultant**

1. The Consultant is to report to the Director of Public Works or his designee and will cooperate and confer with him/her as necessary to ensure satisfactory work progress.
2. All reports, estimates, memoranda, and documents submitted by the Consultant must be dated and bear the Consultant's name.
3. All reports made in connection with these services are subject to review and final approval by the City Engineer.
4. The City of Green River may review and inspect the Consultant's activities during the term of the contract.
5. The Consultant shall submit a final, written report to the City Engineer.
6. After reasonable notice to the Consultant, the City of Green River may review any of the Consultant's internal records, reports, or insurance certificates.

### **B. Personnel**

The parties agree that the Consultant is neither an employee nor an agent of CLIENT for any purpose. Notwithstanding a force majeure event as described above in section 7, It is expected that the project personnel referenced in the Consultant's proposal and attending the interview remain as project personnel for the full term of the project and contract for professional services. In the event that personnel changes are necessary, the Consultant must provide advance notice to the City along with providing an opportunity for review of the new personnel's credentials.

### **C. Interest of Consultant and the City of Green River**

The Consultant promises that there is no interest that would conflict with the performance of services required by this contract. The Consultant also promises that, in the performance of the contract no officer, or the agent, employees of the CLIENT, or members of its governing bodies, may participate in any decision relating to the contract which affects his/her personal interest or the interest of any corporation, partnership or association in which he/she is directly or indirectly interested or has any personal or pecuniary interest.

### **D. Contingent Fees**

The Consultant promises that he/she has not employed or retained any company or person, other than bona fide employees working solely for the Consultant, to solicit or secure this contract, and has not paid or agreed to pay any company or person, other than bona fide employees working solely for the Consultant, any fee, commission, percentage, brokerage fees, gifts, or any other consideration contingent upon or resulting from the award or making of the contract. For breach of the promises, the CLIENT may cancel the contract without liability or, at its discretion, deduct the full amount of the fee, commission, percentage, brokerage fees, gift, or contingent fee from the compensation due to the Consultant.