

**RESOLUTION NO. 1910**

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A PROFESSIONAL SERVICES AGREEMENT WITH VEOLIA WATER NORTH AMERICA OPERATING SERVICES, INC., TO PROVIDE DAY-TO-DAY MANAGEMENT, SUPPORT, AND CONSULTATION FOR THE CITY'S ENVIRONMENTAL SERVICES DIVISION.**

WHEREAS, for nearly one year the job of Environmental Services Division Manager has been vacant; and

WHEREAS, Veolia Water North America Operating Services (formerly known as U. S. Filter Operating Services) has successfully provided management and operating services for the City's water treatment plant; and

WHEREAS, Veolia Water North America Operating Services (VWNAOS) management personnel at the City's water treatment plant are also experienced and fully certified to operate wastewater treatment and collection facilities; and

WHEREAS, VWNAOS is a national, regional and local leader in the management of wastewater treatment operations, including more than 20 years of contracted operation for the City of Vancouver, Washington's wastewater treatment facilities; and

WHEREAS, on an interim basis the City of Wilsonville has contracted with VWNAOS to provide management services for the City's Environmental Services Division during the period while the manager position has been vacant; and

WHEREAS, in matters of public policy, regulatory requirements, collective bargaining commitments, budget, and emergency response, VWNAOS has served in an advisory capacity to the City's upper management and elected officials who have responsibility for such decision making, and;

WHEREAS, this arrangement with VWNAOS has served the City very well, and can provide reliable, highly professional management functions for the Environmental Services Division on an ongoing basis; and

WHEREAS, the overall cost to the City of hiring VWNAOS to provide management services for the Environmental Services Division includes wages, benefits, overhead, profit as

well as access to technical support/consultation with local, regional, and national VWNAOS personnel; and

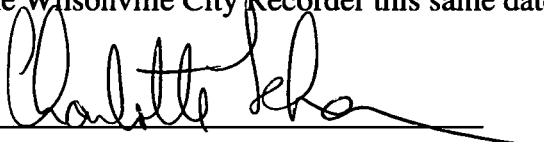
WHEREAS, the overall cost to the City of utilizing VWNAOS for management services at the Environmental Services Division is equivalent to what the City would otherwise pay to hire an individual City employee to fill the manager vacancy; and

WHEREAS, Exhibit 1 attached hereto describes mutually acceptable terms, conditions, and scope of services to provide such management services for renewable one-year increments:

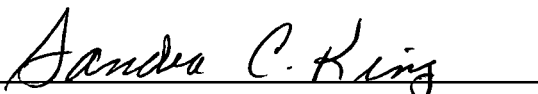
NOW, THEREFORE, THE CITY OF WILSONVILLE RESOLVES AS FOLLOWS:

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.

ADOPTED by the City Council of the City of Wilsonville at a regular meeting thereof this 6th day of December, 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



### PROFESSIONAL SERVICES AGREEMENT

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 Veolia Water North America Operating Services, Inc., a Delaware Corporation, hereinafter called "Consultant."

WHEREAS, City has an ongoing need for management consulting services to oversee the work performed by the City's Environmental Services Division, and

WHEREAS, to successfully provide the desired management consulting services a company must possess applicable training, ability, knowledge, and experience, including but not limited to appropriate certifications by the State of Oregon for wastewater collection and treatment, and

WHEREAS, Consultant has successfully provided such management consulting services to the City on an interim basis, and

WHEREAS, City has determined that Consultant is qualified and capable of continuing 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 continue services upon receipt of City's Notice to Proceed, together with an executed copy of this Agreement. Consultant agrees to perform work that is detailed in Exhibit A -- Scope of Work and by this reference made a part hereof. By mutual consent, modifications or additions may be made to this scope of work.

#### ARTICLE 2. EFFECTIVE DATE AND DURATION

This Agreement shall become effective January 1, 2005, and shall be for a one-year renewable duration, unless earlier terminated in accordance herewith.

#### ARTICLE 3. COMPENSATION

City agrees to pay Consultant seven thousand five hundred dollars (\$7,500) per month for delivery of reports documenting successful performance of those services described in Part I of Exhibit A -- Scope of Work of this Agreement. Said payment shall cover all costs associated with the performance of services as described in Part I of Exhibit A. 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. If the agreement is renewed then the monthly fee shall be increased on the basis of increase in the Consumer Price Index (the "Index") for Urban, All Item, Portland-Salem OR-WA, published by the United States Department of Labor, Bureau of Labor Statistics for the prior calendar year.

Payment for services as described in Part II of Exhibit A shall be mutually determined on a project-by-project basis, and shall be specifically enumerated as addenda to this agreement.

**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:

<b>Contract Manager for City:</b>	<b>Contract Manager for Consultant:</b>
City of Wilsonville	Company: Veolia Water North America Operating Services
Attn: Jeff Bauman	Attn: Owen Boe
Address: 30000 SW Town Center Loop E Wilsonville, OR 97070	Address: 2323 W. Mill Plain Blvd. Vancouver, WA 98660
Phone: (503) 570-1542	Phone: (360) 735-8810
Fax: (503) 682-8816	Fax: (360) 735-8813
Email Address: bauman@ci.wilsonville.or.us	Email Address: owen.boe@veoliawaterna.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 AND REMEDIES**

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.

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) for personal injuries, including death, and property damages asserted against the party being indemnified to the extent caused by the indemnifying party's negligent acts (or negligent 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.

Except as covered under the insurance policies provided by Consultant hereunder, neither party shall be liable to the other in any action of claim for incidental, indirect, special, collateral, consequential, exemplary or punitive damages arising out of or related to the Services regardless of whether the action in which recovery of damages is sought is based upon contract, tort (including negligence), statute or otherwise.

## **ARTICLE 7. INSURANCE**

Consultant shall maintain insurance acceptable to City in full force and effect throughout the term of this contract. The City's acceptance shall not be unreasonably withheld. Such insurance shall cover 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, Commercial General Liability insurance, insuring Consultant's negligence, in an amount not less than \$1,000,000 each occurrence and \$1,000,000 aggregate for bodily injury and/or property damage. Said insurance shall name City as additional insured.

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, which acceptance shall not be unreasonably withheld. The City reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating in which event this Agreement will terminate in accordance with Article 8 below.

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 shall be accompanied by thirty (30) 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**

"Work Product" consists of all reports, notes, laboratory test data and other information prepared by Consultant for delivery to the City. The City shall have the right to make and retain copies and use all Work Product; provided, however, such use shall be limited to the particular Site and project for which the Work Product is provided. The City may release the Work Product to third parties at its sole risk and discretion; provided, however, the Consultant shall not be liable for any claims or damages resulting from or connected with such release or any third party's use of the Work Product under any circumstances.

**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. Any action or suits involving any question arising under this Agreement must be brought in Clackamas County Circuit Court in 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 herein below first written.

**CITY OF WILSONVILLE**

**CONSULTANT**

\_\_\_\_\_  
By: Authorized City staff

\_\_\_\_\_  
By: Authorized Agent of Veolia North America

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

\_\_\_\_\_  
Approved to form by:

\_\_\_\_\_  
Printed Name

this \_\_\_\_ day of \_\_\_\_\_, 2004



## EXHIBIT A: SCOPE OF WORK

### **PART I**

THE CONSULTANT SHALL PROVIDE THE FOLLOWING MANAGEMENT CONSULTING SERVICES TO THE CITY OF WILSONVILLE:

- 1) Veolia Water North America Operating Services. (VWNAOS) will provide management and support personnel up to approximately 40 hours per week, averaged over each month of the contract.
- 2) VWNAOS project manager will review and certify to the City Public Works Director that he has reviewed or has directed responsible persons to review all records and data; that to the best of his knowledge certifies the data represent the performance of the facilities; and that the facilities have operated according to the requirements and the standard procedures developed for the facilities.
- 3) Consulting and oversight services will apply to the following public works programs:
  - Wastewater treatment (including biosolids processing)
  - Industrial pretreatment
  - Wastewater collection
  - Biosolids re-use
  - Vector services
- 4) The effort as defined in #3 will include providing recommendations to the Public Works Director for operational, maintenance, laboratory, and any other work duties consistent with practices associated with the activities above. VWNAOS will monitor and evaluate such city efforts every week to ensure informed observations and comments.
- 5) Provide monthly reports and documentation regarding work group activities to Public Works Director based upon mutually agreed reporting elements.
- 6) VWNAOS will provide City Public Works Director with recommendations regarding staff issues and employee development ideas.
- 7) Provide recommendations regarding capital improvement projects.
- 8) VWNAOS will monitor call-out procedures for emergencies, but will not provide after hours support/emergency response personnel under this scope of work
- 9) VWNAOS will review and advise on state and federal requirements, but the City Public Works Director will manage efforts to ensure compliance.
- 10) VWNAOS will review and develop monthly safety training programs for the facilities staff and provide recommendations for other training and staff development activities as deemed appropriate.

- 11) VWNAOS will develop Indicators/Benchmarks that will track program status of key management elements and facility performance, and include these in the monthly reports to the City Public Works Director.
- 12) VWNAOS will review overtime requests and will evaluate and analyze trends on overtime usage in monthly reports.
- 13) Other duties that may be reasonably associated with management oversight, such as: fostering effective communication to/from/within the work group, coordination with other City Departments, anticipating foreseeable needs/issues, and budget tracking.

## **PART II**

At any time the City may request VWNAOS provide support services for the City's sewer system capital projects. Such support may include planning, design and/or construction management services. In this case, VWNAOS shall propose a scope of services, schedule, and budget identifying direct costs and overhead/profit charges. VWNAOS shall not proceed with any capital project services without express approval of the City.

## **PART III**

### **City Roles and Responsibilities**

Environmental Services Division personnel will remain City employees for the duration of this contract and will be subject to policies in effect for the City of Wilsonville employees. The City further acknowledges the following:

1. The City will be responsible for managing and enforcing all City rules; policies; procedures; Collective Bargaining Unit requirements; OSHA, DEQ and any other regulatory requirements; and any other work place rules or requirements that might pertain to its employees.
2. The City is responsible for scheduling the work of its employees, hiring/firing/disciplinary actions, performance evaluations, internal administrative paperwork, any other employee issues that require formal action, and being the official contact with outside organizations (including the public).
3. In consultation with VWNAOS project manager, the City will manage all emergency situations including providing Standard Operating Procedures for call out, overtime, scheduling, and procurement of items needed for proper response.

# MEMORANDUM

**DATE:** DECEMBER 6, 2004

**TO:** HONORABLE MAYOR AND CITY COUNCIL

**FROM:** JEFF BAUMAN, PUBLIC WORKS DIRECTOR

**RE:** RESOLUTION NO. 1910  
MANAGEMENT OF ENVIRONMENTAL SERVICES DIVISION

---

## SUMMARY

The City's Environmental Services Manager position has been vacant for nearly one year. During the interim, Veolia Water North America has provided management services. This arrangement has worked very well. Resolution No. 1910 would continue this working relationship for renewable one-year increments.

## RECOMMENDATION

City staff recommends Council adoption of Resolution No. 1910.

## DISCUSSION

Early in 2004 the Environmental Services Manager position became vacant when incumbent Ron Morrow left the City to accept a job offer in his hometown of Eugene. In the meantime, the City has contracted with Veolia Water North America (formerly U.S. Filter) to fill the management gap in the Environmental Services Division. This arrangement was initially intended only for an interim period. But it has served the City very well and has the potential to provide reliable, highly professional management functions for the Environmental Services Division on an ongoing basis. For several reasons it is in the City's interest to continue such an arrangement with Veolia.

While we are most familiar with Veolia for their highly successful work operating the City's water treatment plant, Veolia is also a national, regional, and local leader in wastewater treatment. In fact, for more than 20 years Veolia has managed and operated the Vancouver (WA) wastewater treatment facilities. The level of expertise, management experience, and depth of technical support provided by the Veolia team to Wilsonville surpass what we could expect from hiring a new individual to manage the Environmental Services Division.

December 6, 2004

Page 2

Relying on Veolia for such management services is also cost effective. The term of the proposed agreement with Veolia is for one-year renewable increments at a fixed price of \$7,500 per month, to be adjusted annually based on the Portland-Salem Consumer Price Index. This fee covers Veolia's wages, benefits, overhead, profit, and access to technical support/consultation with Veolia's local, regional, and national personnel. This cost is equivalent to what the City would otherwise pay to hire an individual (with benefits) as a City employee to fill the manager vacancy in the Environmental Services Division.