

**RESOLUTION NO. 21-10**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
CASTLE PINES, COLORADO APPROVING A PROFESSIONAL  
SERVICES AGREEMENT WITH WRIGHT WATER ENGINEERS,  
INC. FOR ENGINEERING SERVICES RELATING TO MS4 PERMIT  
AND STORMWATER COMPLIANCE**

**WHEREAS**, the City of Castle Pines (the “City”) is authorized to contract for performance of necessary public services including engineering services to ensure compliance with stormwater regulations and the City’s Municipal Separate Storm Sewer System (“MS4”) Permit; and

**WHEREAS**, Wright Water Engineers, Inc. (the “Contractor”) has been performing engineering services relating to MS4 permit and stormwater compliance (“Services”) for the City in accordance with Resolution No. 17-23 and subsequent resolutions for extension of services and has the necessary skill and expertise to perform such Services; and

**WHEREAS**, the City Council desires to enter into a new Professional Services Agreement with Contractor for purposes of continuation of the Services (“Agreement”).

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CASTLE PINES, COLORADO, THAT:**

**Section 1.** The City Council hereby: (a) approves the Agreement with Contractor in substantially the same form as attached hereto and incorporated herein as **Exhibit 1**; (b) authorizes the City Attorney, in consultation with the City Manager, to make such changes as may be necessary to correct any non-material errors that do not increase the obligations of the City; and (c) authorizes the Mayor to execute the Agreement.

**Section 2.** If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining issues of this Resolution.

**Section 3.** **Effective Date.** This Resolution shall take effect upon its approval by the City Council.

*[Remainder of this page left intentionally blank.]*

**INTRODUCED, READ AND ADOPTED AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF CASTLE PINES** by a vote of 6 in favor and 1 against this 23rd day of February, 2021.



DocuSigned by:

*Tera Stave Radloff*

650C8E8279DC479

Tera Stave Radloff, Mayor

**ATTEST:**

DocuSigned by:

*Tobi Basile*

AD03A3B02032499

Tobi Basile, CMC, City Clerk

**APPROVED AS TO FORM:**

DocuSigned by:

*Linda C. Michow*

5241DE98B8FE444

Linda C. Michow, City Attorney

**EXHIBIT 1**

**Professional Services Agreement Between Castle Pines and Wright Water Engineers, Inc.**

*[ATTACHED]*

**City of Castle Pines, Colorado**  
**AGREEMENT FOR PROFESSIONAL SERVICES**

**Project/Services Name: MS4 Permit and Stormwater Compliance**

THIS AGREEMENT FOR PROFESSIONAL SERVICES (“Agreement”) is made and entered into by and between the City of Castle Pines, a municipal corporation of the State of Colorado, with offices at 360 Village Square Lane, Suite B, Castle Pines, Colorado 80108 (the “City”), and WRIGHT WATER ENGINEERS, INC., a Colorado corporation, with offices at 2490 W. 26<sup>th</sup> Avenue, Suite 100A, Denver, Colorado 80211 (“Contractor”) (each individually a “Party” and collectively the “Parties”).

**RECITALS**

WHEREAS, the City requires certain professional services as more fully described in **Exhibit A**; and

WHEREAS, Contractor represents that it has the requisite expertise and experience to perform the professional services; and

WHEREAS, the City desires to contract with the Contractor subject to the terms of this Agreement.

NOW, THEREFORE, for the consideration hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**I. SCOPE OF SERVICES**

A. Services. Contractor shall furnish all labor and materials required for the complete and prompt execution and performance of all duties, obligations, and responsibilities which are described or reasonably implied from the Scope of Services set forth in **Exhibit A**, attached hereto and incorporated herein by this reference (the “Services” or “Scope of Services”). The Parties recognize and acknowledge that, although the City has requested certain general services to be performed or certain work product to be produced, the Contractor has offered to the City the process, procedures, terms, and conditions under which the Contractor plans and proposes to achieve or produce the services and/or work product(s) and the City, through this Agreement, has accepted such process, procedures, terms, and conditions as binding on the Parties.

B. Changes to Services. A change in the Scope of Services shall not be effective unless authorized through a written amendment to this Agreement signed by both Parties. If Contractor proceeds without such written authorization, Contractor shall be deemed to have waived any claim for additional compensation, including a claim based on the theory of unjust enrichment, quantum meruit or implied contract. Except as expressly provided herein or as otherwise provided in writing by the City, no agent, employee, or representative of the City is authorized to modify any term of this Agreement.

C. Duty to Inform. The Contractor shall perform the Services in accordance with this Agreement and shall promptly inform the City concerning ambiguities and uncertainties related to the Contractor's performance that are not addressed by the Agreement.

D. Time of Performance. The Contractor shall perform all Services in accordance with this Agreement commencing on the Effective Date, as set forth in Section II of this Agreement, until such Services are terminated or suspended in accordance with this Agreement. The Contractor shall not temporarily delay, postpone, or suspend the performance of the Services without the written consent of the City Council, City Manager, or a person expressly authorized in writing to direct the Contractor's services. Contractor agrees that failure to complete any of the Services during the term of this Agreement, or as may be more specifically set forth in **Exhibit A**, shall be deemed a breach of hereof.

## II. TERM AND TERMINATION

A. Term. This Agreement is effective as of January 1, 2021 (the "Effective Date") and shall continue until December 31, 2021, or until terminated as provided herein ("Termination Date"). The Parties may mutually agree in writing to extend the term of this Agreement, subject to annual appropriation.

B. City Unilateral Termination. This Agreement may be terminated by the City for any or no reason upon written notice delivered to the Contractor at least ten (10) days prior to termination. The City reserves the right to terminate this Agreement upon notice effective immediately in case of pandemic or other health crisis at any time after a declaration by the City in accordance with C.R.S. § 24-33.5-709. In the event of the City's exercise of the right of unilateral termination as provided by this paragraph:

1. Unless otherwise provided in any notice of termination, the Contractor shall provide no further services in connection with this Agreement after Contractor's receipt of a notice of termination; and

2. The Contractor shall deliver all finished or unfinished documents, data, studies and reports prepared by the Contractor pursuant to this Agreement to the City and such documents, data, studies, and reports shall become the property of the City; and

3. The Contractor shall submit to the City a final accounting and final invoice of charges for all outstanding and unpaid Services and reimbursable expenses performed prior to the Contractor's receipt of notice of termination and for any services authorized to be performed by the notice of termination as provided by Section II.B of this Agreement. The Contractor shall deliver such final accounting and final invoice to the City within thirty (30) days of the date of termination; thereafter, the City shall not accept and Contractor shall not submit any other invoice, bill, or other form of statement of charges owing to the Contractor.

C. Termination for Non-Performance. Should a party to this Agreement fail to materially perform in accordance with the terms and conditions of this Agreement, this Agreement may be terminated by the performing party if the performing party first provides written notice to the non-performing party. Such notice shall specify the non-performance, provide a demand to cure the non-performance and reasonable time to cure the non-performance, and state a date upon

which the Agreement shall be terminated if there is a failure to timely cure the non-performance. For purpose of this Section II.C, “reasonable time” shall not be less than five (5) business days. In the event of a failure to timely cure a non-performance and upon the date of the resulting termination for non-performance, the Contractor shall prepare a final accounting and final invoice of charges for all performed but unpaid Services and any reimbursable expenses authorized by this Agreement. Such final accounting and final invoice shall be delivered to the City within fifteen (15) days of the Termination Date contained in the written notice. Thereafter, the City shall not accept and Contractor shall not submit any other invoice, bill, or other form of statement of charges owing to the Contractor. Provided that notice of non-performance is provided in accordance with this Section II.C, nothing in this Section II.C shall prevent, preclude, or limit any claim or action for default or breach of contract resulting from non-performance by a Party.

D. Suspension of Services. The City may suspend the Contractor’s performance of the Services at the City’s discretion and for any reason by delivery of written notice of suspension to the Contractor which notice shall state a specific date of suspension. Upon Contractor’s receipt of such notice of suspension from the City, the Contractor shall immediately cease performance of the Services on the date of suspension except: (1) as may be specifically authorized by the notice of suspension (e.g., to secure the work area from damage due to weather or to complete a specific report or study); or (2) for the submission of an invoice for Services performed prior to the date of suspension in accordance with this Agreement. Contractor shall not re-commence performance of the Services until it receives written notice of re-commencement from the City.

E. Delivery of Notices. Any notice permitted by this Section II and its subsections shall be addressed to the City Representative or the Contractor Representative at the address set forth in Section XII.D of this Agreement or such other address as either Party may notify the other of and shall be deemed given upon delivery if personally delivered, or forty-eight (48) hours after deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested.

### **III. REPRESENTATIVES AND SUPERVISION**

A. City Representative. The City representative responsible for oversight of this Agreement and the Contractor’s performance of Services hereunder shall be the City Manager or his or her designee (“City Representative”). The City Representative shall act as the City’s primary point of contact with the Contractor.

B. Contractor Representative. The Contractor representative under this Agreement shall be Jennifer Keyes (“Contractor Representative”). The Contractor Representative shall act as the Contractor’s primary point of contact with the City. The Contractor shall not designate another person to be the Contractor Representative without prior written notice to the City.

C. City Supervision. The Contractor shall provide all Services with little or no daily supervision by City staff or other contractors. Inability or failure of the Contractor to perform with little or no daily supervision which results in the City’s need to allocate resources in time or expense for daily supervision shall constitute a material breach of this Agreement and be subject to cure or remedy, including possible termination of the Agreement, as provided in this Agreement.

#### IV. COMPENSATION

A. Not-to-Exceed Amount. Following execution of this Agreement by the Parties, the Contractor shall be authorized to and shall commence performance of the Services as described in **Exhibit A**, subject to the requirements and limitations on compensation as provided by this Section IV and its subsections. Compensation to be paid hereunder shall not exceed One Hundred and Fifty Thousand Dollars and Zero Cents (\$150,000.00) (“Not-to-Exceed Amount”) unless a larger amount is agreed to by and between the Parties in accordance with the amendment requirements of this Agreement. Notwithstanding the amount specified in this Section, Contractor shall be paid only for work performed. Contractor shall not be paid until tasks identified in the Scope of Services are performed to the satisfaction of the City. In consideration for the completion of the Scope of Services by Contractor, the City shall pay Contractor as follows:

- If this box is checked, the City shall pay Contractor on a time and materials basis in accordance with the rate schedule shown in **Exhibit B**. This amount shall include all fees, costs and expenses incurred by Contractor, and no additional amounts shall be paid by the City for such fees, costs and expenses. Final payment may be requested by the Contractor upon completion and the City’s acceptance of all work or Services as set forth in **Exhibit A**.
- If this box is checked, the City shall pay the Contractor the Not-to-Exceed Amount in a single lump sum payment.

B. Invoicing. The City shall make payments to Contractor in accordance with subsection A of this section IV within thirty (30) days after receipt and approval of invoices submitted by Contractor. If payment is on a time and materials basis, Contractor shall submit invoices to the City no more frequently than monthly and shall identify the specific Services performed for which payment is requested.

C. Receipts. The City, before making any payment, may require the Contractor to furnish at no additional charge releases or receipts from any or all persons performing work under this Agreement and/or supplying material or services to the Contractor, or any subcontractor if this is deemed necessary to protect the City’s interest. The City, however, may in its discretion make payment in part or full to the Contractor without requiring the furnishing of such releases or receipts.

D. Reimbursable Expenses.

1. If this Agreement is for lump sum compensation, there shall be no reimbursable expenses.

2. If the Agreement is for compensation based on a time and materials basis, the following shall be considered “reimbursable expenses” for purposes of this Agreement and may be billed to the City without administrative mark-up, which must be accounted for by the Contractor, and proof of payment shall be provided by the Contractor with the Contractor’s monthly invoices:

None

- Vehicle Mileage (billed at not more than the prevailing per mile charge permitted by the IRS as a tax deductible business expense)
- Printing and Photocopying Related to the Services (billed at actual cost)
- Long Distance Telephone Charges Related to the Services
- Postage and Delivery Services
- Lodging and Meals (but only with prior written approval of the City as to dates and maximum amount)

3. Other Expenses. Any fee, cost, charge, or expense incurred by the Contractor not otherwise specifically authorized by this Agreement shall be deemed a non-reimbursable cost that shall be borne by the Contractor and shall not be billed or invoiced to the City and shall not be paid by the City.

E. No Waiver. The City's review, approval or acceptance of, or payment for any services shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

## V. PROFESSIONAL RESPONSIBILITY

A. General. Contractor hereby warrants that it is qualified to assume the responsibilities and render the services described herein and has all requisite corporate authority and professional licenses in good standing required by law.

B. Standard of Performance. The work performed by Contractor shall be in accordance with generally accepted professional practices and the level of competency presently maintained by other practicing professional firms in the same or similar type of work in the applicable community. The work and services to be performed by Contractor hereunder shall be done in compliance with applicable laws, ordinances, rules and regulations.

C. Subcontractors. The Parties recognize and agree that subcontractors may be utilized by the Contractor for the performance of certain Services if and as described more particularly in **Exhibit A**; however, the engagement or use of subcontractors will not relieve or excuse the Contractor from performance of any obligations imposed in accordance with this Agreement and Contractor shall remain solely responsible for ensuring that any subcontractors engaged to perform Services hereunder shall perform such Services in accordance with all terms and conditions of this Agreement. If Contractor engages subcontractors to perform any part of the Services, Contractor shall include section VIII (Indemnification) in any such subcontracts.

## VI. INDEPENDENT CONTRACTOR

A. General. Contractor is an independent contractor. Notwithstanding any other provision of this Agreement, all personnel assigned by Contractor to perform work under the terms of this Agreement shall be, and remain at all times, employees or agents of Contractor for all purposes. Contractor shall make no representation that it is a City employee for any purposes.

B. Liability for Employment-Related Rights and Compensation. The Contractor shall be solely responsible for all compensation, benefits, insurance and employment-related rights of



any person providing Services hereunder during the course of or arising or accruing as a result of any employment, whether past or present, with the Contractor, as well as all legal costs including attorney's fees incurred in the defense of any conflict or legal action resulting from such employment or related to the corporate amenities of such employment. The Contractor will comply with all laws, regulations, municipal codes, and ordinances and other requirements and standards applicable to the Contractor's employees, including, without limitation, federal and state laws governing wages and overtime, equal employment, safety and health, employees' citizenship, withholdings, reports and record keeping. Accordingly, the City shall not be called upon to assume any liability for or direct payment of any salaries, wages, contribution to pension funds, insurance premiums or payments, workers' compensation benefits or any other amenities of employment to any of the Contractor's employees or any other liabilities whatsoever, unless otherwise specifically provided herein.

C. Insurance Coverage and Employment Benefits. The City will not include the Contractor as an insured under any policy the City has for itself. The City shall not be obligated to secure nor provide any insurance coverage or employment benefits of any kind or type to or for the Contractor or the Contractor's employees, sub-consultants, subcontractors, agents, or representatives, including but not limited to coverage or benefits related to: local, state, or federal income or other tax contributions, FICA, workers' compensation, unemployment compensation, medical insurance, life insurance, paid vacations, paid holidays, pension or retirement account contributions, profit sharing, professional liability insurance, or errors and omissions insurance. The following disclosure is provided in accordance with Colorado law:

**CONTRACTOR ACKNOWLEDGES THAT NEITHER IT NOR ITS AGENTS OR EMPLOYEES ARE ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS UNLESS CONTRACTOR OR SOME ENTITY OTHER THAN THE CITY PROVIDES SUCH BENEFITS. CONTRACTOR FURTHER ACKNOWLEDGES THAT NEITHER IT NOR ITS AGENTS OR EMPLOYEES ARE ENTITLED TO WORKERS' COMPENSATION BENEFITS. CONTRACTOR ALSO ACKNOWLEDGES THAT IT IS OBLIGATED TO PAY FEDERAL AND STATE INCOME TAX ON ANY MONEYS EARNED OR PAID PURSUANT TO THIS AGREEMENT.**

D. Employee Benefits Claims. To the maximum extent permitted by law, the Contractor waives all claims against the City for any Employee Benefits; the Contractor will defend the City from any claim and will indemnify the City against any liability for any Employee Benefits for the Contractor imposed on the City; and the Contractor will reimburse the City for any award, judgment, or fine against the City based on the position the Contractor was ever the City's employee, and all attorneys' fees and costs the City reasonably incurs defending itself against any such liability.

## VII. INSURANCE

A. General. During the term of this Agreement, the Contractor shall obtain and shall continuously maintain, at the Contractor's expense, insurance of the kind and in the minimum amounts specified as follows by checking the appropriate boxes:

- The Contractor shall obtain and maintain the types, forms, and coverage(s) of insurance deemed by the Contractor to be sufficient to meet or exceed the Contractor's minimum statutory and legal obligations arising under this Agreement ("Contractor Insurance"); OR
- The Contractor shall secure and maintain the following ("Required Insurance"):
- Worker's Compensation insurance in the minimum amount required by applicable law for all employees and other persons as may be required by law.
  - Comprehensive General Liability insurance with minimum combined single limits of One Million Dollars (\$1,000,000.00) each occurrence and in the aggregate. The policy shall be applicable to all premises and all operations of the Contractor. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall contain a severability of interests provision. Coverage shall be provided on an "occurrence" basis as opposed to a "claims made" basis. Such insurance shall be endorsed to name the City as Certificate Holder and name the City, and its elected officials, officers, employees and agents as additional insured parties.
  - Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than One Million Dollars (\$1,000,000.00) each occurrence with respect to each of the Contractor's owned, hired and non-owned vehicles assigned to or used in performance of the Services. The policy shall contain a severability of interests provision. Such insurance coverage must extend to all levels of subcontractors. Such coverage must include all automotive equipment used in the performance of the Services, both on the work site and off the work site, and such coverage shall include non-ownership and hired cars coverage. Such insurance shall be endorsed to name the City as Certificate Holder and name the City, and its elected officials, officers, employees and agents as additional insured parties.
  - Professional Liability (errors and omissions) insurance with a minimum limit of coverage of One Million Dollars (\$1,000,000.00) per claim and annual aggregate. Such policy of insurance shall be obtained and maintained for one (1) year following completion of all Services under this Agreement. Such policy of insurance shall be endorsed to include the City as a Certificate Holder.

B. Additional Requirements. Such insurance shall be in addition to any other insurance requirements imposed by law. The coverages afforded under the policies shall not be canceled, terminated or materially changed without at least thirty (30) days prior written notice to the City.

In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage. Any insurance carried by the City, its officers, its employees, or its contractors shall be excess and not contributory insurance to that provided by Contractor. Contractor shall be solely responsible for any deductible losses under any policy. For any and all insurance policies required hereunder, Contractor shall waive subrogation rights against the City.

C. Insurance Certificates. Contractor shall provide to the City a certificate of insurance and all endorsement required hereunder as evidence that the required policies are in full force and effect prior to the commencement of the Services. The certificate shall identify the Project/Services Name as set forth on the first page of this Agreement.

D. Failure to Obtain or Maintain Insurance. The Contractor's failure to obtain and continuously maintain policies of insurance shall not limit, prevent, preclude, excuse, or modify any liability, claims, demands, or other obligations of the Contractor arising from performance or non-performance of this Agreement. Failure on the part of the Contractor to obtain and to continuously maintain policies providing the required coverage, conditions, restrictions, notices, and minimum limits shall constitute a material breach of this Agreement upon which the City may immediately terminate this Agreement.

## **VIII. INDEMNIFICATION**

A. Contractor agrees to indemnify and hold harmless the City and its officers, insurers, volunteers, representatives, agents, employees, and assigns from and against all claims, liability, damages, losses, expenses and demands, including attorney fees, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with this Agreement if such injury, loss, or damage is caused in whole or in part by, the act, omission, error, professional error, mistake, negligence, or other fault of Contractor, any subcontractor of Contractor, or any officer, employee, representative, or agent of Contractor, or which arise out of a worker's compensation claim of any employee of Contractor or of any employee of any subcontractor of Contractor. Contractor's liability under this indemnification provision shall be to the fullest extent of, but shall not exceed, that amount represented by the degree or percentage of negligence or fault attributable to Contractor, any subcontractor of Contractor, or any officer, employee, representative, or agent of Contractor or of any subcontractor of Contractor.

B. If Contractor is providing architectural, engineering, surveying or other design services under this Agreement, the extent of Contractor's obligation to indemnify and hold harmless the City may be determined only after Contractor's liability or fault has been determined by adjudication, alternative dispute resolution or otherwise resolved by mutual agreement between the Parties, as provided by C.R.S. § 13-50.5-102(8)(c).

## **IX. ILLEGAL ALIENS**

The Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. The Contractor shall not contract with a subcontractor that fails to

certify that the subcontractor does not knowingly employ or contract with any illegal aliens. By entering into this Agreement, the Contractor certifies as of the date of this Agreement it does not knowingly employ or contract with an illegal alien who will perform work under this public contract for services and that the Contractor will participate in the e-verify program in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement. The Contractor is prohibited from using the e-verify program to undertake pre-employment screening of job applicants while this Agreement is being performed. If the Contractor obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, the Contractor shall be required to notify the subcontractor and the City within three (3) days that the Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien. The Contractor shall terminate the subcontract if the subcontractor does not stop employing or contracting with the illegal alien within three (3) days of receiving the notice regarding the Contractor's actual knowledge. The Contractor shall not terminate the subcontract if, during such three days, the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien. The Contractor is required to comply with any reasonable request made by the Colorado Department of Labor and Employment made in the course of an investigation undertaken to determine compliance with this provision and applicable state law. If the Contractor violates this provision, the City may terminate this Agreement, and the Contractor may be liable for actual and/or consequential damages incurred by the City, notwithstanding any limitation on such damages provided by this Agreement.

## **X. REMEDIES**

A. In addition to any other remedies provided for in this Agreement, and without limiting its remedies available at law, the City may exercise the following remedial actions if the Contractor substantially fails to perform the duties and obligations of this Agreement. Substantial failure to perform the duties and obligations of this Agreement shall mean a significant, insufficient, incorrect, or improper performance, activities or inactions by the Contractor. The remedial actions the City may take include:

1. Suspend the Contractor's performance pending necessary corrective action as specified by the City without the Contractor's entitlement to an adjustment in any charge, fee, rate, price, cost, or schedule; and/or
2. Withhold payment to the Contractor until the necessary services or corrections in performance are satisfactorily completed; and/or
3. Deny payment for those services which have not been satisfactorily performed, and which, due to circumstances caused by the Contractor, cannot be performed, or if performed would be of no value to the City; and/or
4. Terminate this Agreement in accordance with this Agreement.

B. The foregoing remedies are cumulative and the City, in its sole discretion, may exercise any or all of the remedies individually or simultaneously.

## **XI. RECORDS AND OWNERSHIP**

A. **Retention and Open Records Act Compliance.** Contractor hereby acknowledges that the City is a public entity subject to the Colorado Open Records Act, C.R.S. § 24-72-101 *et seq.* (“CORA”). As such, this Agreement may be subject to public disclosure under CORA. Furthermore, all records of the Contractor related to the provision of Services hereunder, including public records as defined in CORA, and records produced or maintained in accordance with this Agreement, are to be retained and stored in accordance with the City’s records retention and disposal policies. Those records which constitute “public records” under CORA are to be at the City offices or accessible and opened for public inspection in accordance with CORA and City policies. Public records requests for such records shall be processed in accordance with City policies. Contractor agrees to allow access by the City and the public to all documents subject to disclosure under applicable law. Contractor’s willful failure or refusal to comply with the provisions of this Section shall result in the immediate termination of this Agreement by the City. For purposes of CORA, the City Clerk is the custodian of all records produced or created as a result of this Agreement. Nothing contained herein shall limit the Contractor’s right to defend against disclosure of records alleged to be public.

B. **City’s Right of Inspection.** The City shall have the right to request that the Contractor provide to the City a list of all records of the Contractor related to the provision of Services hereunder retained by the Contractor in accordance with this subsection and the location and method of storage of such records. Contractor agrees to allow inspection at reasonable times by the City of all documents and records produced or maintained in accordance with this Agreement.

C. **Ownership.** Any work product, materials, and documents produced by the Contractor pursuant to this Agreement shall become property of the City of Castle Pines upon delivery and shall not be made subject to any copyright by the Contractor unless authorized by the City. Other materials, statistical data derived from other clients and other client projects, software, methodology and proprietary work used or provided by the Contractor to the City not specifically created and delivered pursuant to the Services outlined in this Agreement shall not be owned by the City and may be protected by a copyright held by the Contractor and the Contractor reserves all rights granted to it by any copyright. The City shall not reproduce, sell, or otherwise make copies of any copyrighted material, subject to the following exceptions: (1) for exclusive use internally by City staff and/or employees; or (2) pursuant to a request under CORA, to the extent that such statute applies; or (3) pursuant to law, regulation, or court order. The Contractor waives any right to prevent its name from being used in connection with the Services. The Contractor may publicly state that it performs the Services for the City.

D. **Return of Records to City.** At the City’s request, upon expiration or termination of this Agreement, all records of the Contractor related to the provision of Services hereunder, including public records as defined in the CORA, and records produced or maintained in accordance with this Agreement, are to be returned to the City in a reasonable format and with an index as determined and requested by the City.

**XII. MISCELLANEOUS**

A. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in Douglas County, Colorado.

B. No Waiver. Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by the City shall not constitute a waiver of any of the other terms or obligations of this Agreement.

C. Integration. This Agreement constitutes the entire agreement between the Parties, superseding all prior oral or written communications.

D. Notice. Unless otherwise provided in this Agreement, any notice under this Agreement shall be in writing, and shall be deemed sufficient when directly presented or sent via pre-paid, first class United States Mail, to the party at the address set forth below.

**If to the City:**

**If to Contractor:**

City of Castle Pines Attn: City Manager 360 Village Square Lane, Suite B Castle Pines, Colorado 80108	Wright Water Engineers, Inc. 2490 W. 26 <sup>th</sup> Ave., Ste. 100A Denver, Colorado 80211
With Copy to: Castle Pines City Attorney Michow Cox & McAskin LLP 6530 S. Yosemite Street, Suite 200 Greenwood Village, Colorado 80111	With Copy to:

E. Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.

F. Modification. This Agreement may only be modified upon written agreement signed by the Parties.

G. Assignment. Neither this Agreement nor any of the rights or obligations of the Parties hereto, shall be assigned by either Party without the written consent of the other.

H. Affirmative Action. The Contractor warrants that it will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Contractor warrants that it will take affirmative action to ensure applicants are employed, and employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment,

upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

I. Governmental Immunity. The City, its officers, and its employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended (“CGIA”), or otherwise available to the City and its officers or employees. Presently, the monetary limitations of the CGIA are set at three hundred eighty-seven thousand dollars (\$387,000) per person and one million ninety-three thousand dollars (\$1,093,000) per occurrence for an injury to two or more persons in any single occurrence where no one person may recover more than the per person limit described above.

J. Rights and Remedies. In the event of a breach of this Agreement by Contractor, the City shall have the right, but not the obligation, to obtain specific performance of the Services. In addition, if the City terminates this Agreement, in whole or in part, due to a breach by Contractor, Contractor shall be liable for actual and consequential damages to the City. The rights and remedies of the City under this Agreement are in addition to any other rights and remedies provided by law. The expiration of this Agreement shall in no way limit the City's legal or equitable remedies, or the period in which such remedies may be asserted.

K. Annual Appropriation. Consistent with Article X, § 20 of the Colorado Constitution, any financial obligation of the City not performed during the current fiscal year is subject to annual appropriation, and thus any obligations of the City hereunder shall extend only to monies currently appropriated and shall not constitute a mandatory charge, requirement, debt or liability beyond the current fiscal year.

L. Binding Effect. The Parties agree that this Agreement, by its terms, shall be binding upon the successors, heirs, legal representatives, and assigns; provided that this Section XII shall not authorize assignment.

M. No Third-Party Beneficiaries. Nothing contained in this Agreement is intended to or shall create a contractual relationship with, cause of action in favor of, or claim for relief for, any third party, including any agent, sub-consultant or subcontractor of Contractor. Absolutely no third-party beneficiaries are intended by this Agreement. Any third party receiving a benefit from this Agreement is an incidental and unintended beneficiary only.

N. Release of Information. The Contractor shall not, without the prior written approval of the City, release any privileged or confidential information obtained in connection with the Services or this Agreement.

O. Attorneys' Fees. If the Contractor breaches this Agreement, then it shall pay the City's reasonable costs and attorney's fees incurred in the enforcement of the terms, conditions, and obligations of this Agreement.

P. Survival. The provisions of Sections VI (Independent Contractor), VII (Insurance), VIII (Indemnification) and XII (A) (Governing Law and Venue), (J) (Rights and Remedies), (K) Annual Appropriation), (N) (Release of Information) and (O) (Attorneys' Fees), shall survive the

expiration or termination of this Agreement.

Q. Agreement Controls. In the event a conflict exists between this Agreement and any term in any exhibit attached or incorporated into this Agreement, the terms in this Agreement shall supersede the terms in such exhibit.

R. Force Majeure. Neither the Contractor nor the City shall be liable for any delay in, or failure of performance of, any covenant or promise contained in this Agreement, nor shall any delay or failure constitute default or give rise to any liability for damages if, and only to extent that, such delay or failure is caused by "force majeure." As used in this Agreement, "force majeure" means acts of God, acts of the public enemy, acts of terrorism, unusually severe weather, fires, floods, epidemics, quarantines, strikes, labor disputes and freight embargoes, to the extent such events were not the result of, or were not aggravated by, the acts or omissions of the non-performing or delayed party.

S. Protection of Personal Identifying Information. In the event the Services include or require the City to disclose to Contractor any personal identifying information as defined in C.R.S. § 24-73-101, Contractor shall comply with the applicable requirements of C.R.S. §§ 24-73-101, et seq., relating to third-party services providers.

T. Authority. The individuals executing this Agreement represent that they are expressly authorized to enter into this Agreement on behalf of the City of Castle Pines and the Contractor and bind their respective entities.

U. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same document. In addition, the Parties specifically acknowledge and agree that electronic signatures shall be effective for all purposes, in accordance with the provisions of the Uniform Electronic Transactions Act, Title 24, Article 71.3 of the Colorado Revised Statutes.

*REMAINDER OF PAGE INTENTIONALLY LEFT BLANK*

*SIGNATURE PAGES FOLLOW*



**THIS AGREEMENT is executed and made effective as provided above.**

**CITY OF CASTLE PINES, COLORADO**

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

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

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

Date of execution: \_\_\_\_\_, 2021

ATTEST:

\_\_\_\_\_  
Tobi Basile, City Clerk

APPROVED AS TO FORM (*excluding exhibits*):

\_\_\_\_\_  
Linda Michow, City Attorney

**WRIGHT WATER ENGINEERS, INC., a  
Colorado corporation:**

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

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

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

Date of execution: \_\_\_\_\_, 2021

STATE OF COLORADO            )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing Agreement for Professional Services was subscribed, sworn to and acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2021, by \_\_\_\_\_ as \_\_\_\_\_ of Wright Water Engineers, Inc., a Colorado corporation.

My commission expires: \_\_\_\_\_

(S E A L)

\_\_\_\_\_  
Notary Public

## **EXHIBIT A**

### **SCOPE OF SERVICES**

Contractor shall provide consulting to the City on stormwater permit compliance as provided in this Exhibit A, including the Colorado Discharge Permit System (CDPS) and National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System (MS4) permits. Contractor shall provide the following:

- Program Documentation of
  - Public Involvement
  - Public Education and Outreach
  - Illicit Discharge Detection and Elimination
  - Construction Site Stormwater Runoff Control
  - Post Construction Stormwater Management in New Development and Redevelopment
  - Pollution Prevention/Good Housekeeping for Municipal Operations
- Ongoing Support
  - Attending Meetings with the City and with DC CLEAR (Douglas County Water Quality Stakeholder Group) and Colorado Stormwater Council (CSC), and High Flood Control District (MHFD) with some coordination with Cherry Creek Basin Water Quality Association (CCBWQA)
  - Training and Additional Onsite Assistance as needed
  - Performing Construction Oversight Inspections typically monthly with follow-up Compliance Inspections as needed and assistance with enforcement
  - Performing Permanent Stormwater Facility oversight inspections annually
- Performing MS4 Oversight Construction Inspections and sending out associated reports to permittees and uploading to SmartGov software system
- Performing Compliance Follow-up Inspections as needed uploading to SmartGov and assisting with enforcement as needed
- Performing Post-Construction/Permanent Stormwater Facility Inspections, sending out reports and following up to ensure all findings are addressed

#### **Task 1: Program Documentation**

Contractor will assist the City of Castle Pines Public Works Manager with developing the required program documents, providing a program framework for compliance with the MS4 Permit, and updating current SOPs and processes on an as-needed basis on the renewed permit.

Our approach in this program area is based on the tasks listed in the RFP and also includes preparing the MS4 Annual Report that is submitted to CDPHE:

#### **Public Education and Outreach**

Contractor will assist the City of Castle Pines with public education and outreach related to its Stormwater Program and the new MS4 Permit.

- To raise public awareness of the City's Stormwater Program and the new MS4 Permit, Contractor will develop public education and outreach brochures, outreach materials and other relevant MS4 stormwater materials. Contractor will work closely with the City to identify the most effective areas to target for outreach efforts, which might including training contractors in the community, educating the public on what illicit discharges are, giving targeted businesses information on various pollutants that might be more likely to be associated with that particular type of business, or providing residents with information regarding car washing, dog waste and oil changing. These topics would be based on the City's input. Contractor would work to understand where the City would like to target their efforts and if requested will help the City identify target groups. We anticipate collaborating with the Douglas County CLEAR and CSC to use some of the material they have developed to meet some or all of these requirements if they fit into the City's desired MS4 program.
- Contractor will develop similar outreach and educational information on the City's Stormwater Program and the new MS4 Permit for the City's stormwater webpage, relying on materials that have already been developed for one of the several stormwater groups in which the City participates. Contractor will assist with providing links to these documents on the City's website and developing any additional materials that the City might need for the website.
- Contractor will ensure that outreach is conducted and documented to fulfill the requirements in the MS4 Permit. Contractor understands the annual reporting system and the need for accurate tracking and ensuring that all elements of the required MS4 public education and outreach program are met using the requirements of the education and outreach activities table provided in the MS4 Permit. Contractor will work throughout the year to meet these goals in a proactive fashion.

#### Illicit Discharge Detection and Elimination (IDDE)

Contractor will assist the City of Castle Pines with illicit discharge detection and elimination related to its Stormwater Program and the new MS4 Permit.

- Contractor will develop and/or update the standard operating procedures (SOPs) for IDDE compliance, enforcement and tracking. The SOPs will include instructions for proper documentation procedures. WWE would work with Carrie Powers to see what is in place and update the document as necessary to meet all of the July 2016 MS4 permit requirements.
- Contractor will support the Public Works Manager to update the Stormwater Ordinance for compliance with the MS4 Permit as needed.
- Contractor will assist the City with tracking and follow up for IDDE investigations using the program that has already been established in previous years.

#### Construction Site Stormwater Runoff Control

Contractor will assist the City of Castle Pines with Construction Site Stormwater Runoff Control related to its Stormwater Program and the new MS4 Permit.

- Contractor will edit and update the Douglas County's GESC Manual into a manual specific to the City of Castle Pines ahead of the compliance schedule in the MS4 Permit.

The new document will be based on the City's previous consultant's draft and will include procedures for the internal GESC Plan review, inspection and enforcement.

- Contractor will provide MS4 Stormwater Construction Oversight inspections. Contractor will inspect the sites for compliance with the City's MS4 Construction Sites Program and provide assistance with the goal of achieving consistent onsite compliance.
- As part of this work, Contractor will:
  - Conduct routine and follow up MS4 inspections as necessary to confirm that corrective actions have been completed as required. Routine site inspections will be conducted a minimum of once every month, with compliance follow-up inspections conducted within 14 days if they are required. Compliance inspections may also include the review of Operator Compliance Forms.
  - Contractor will also work with the City to determine whether they want to use Indicator Inspections in their program and, if so, Contractor can assist in determining which sites may be more suited for these types of inspections based on the condition of the site, the observable CMs and the history of compliance on the site. City Staff have been performing the indicator inspections.
  - Contractor will also work to upload all inspection reports to SmartGov.
  - Contractor will make every effort to notify the Site Operators in advance of the inspections, conducting meetings to walk the site and/or in-person de-briefing.
  - Contractor will meet with the Public Works Director, City Engineer and Stormwater Coordinator to discuss enforcement recommendations as needed.
  - Contractor will conduct enforcement actions as necessary and as approved by the City. Enforcement actions and follow up may include writing Notices of Violation and issuing Stop Work Orders.
  - Contractor will review all GESC submittals and Floodplain submittals.

#### Post Construction Stormwater Management in New Development and Redevelopment (NDRD)

Contractor will assist the City of Castle Pines with Post Construction Stormwater Management for both new development and redevelopment. Contractor shall:

- Develop procedures to ensure adequate long-term operation and maintenance of permanent stormwater facilities.
- Add language to the GESC manual concerning the permanent stormwater facilities per the Post-Construction requirements for NDRD.
- Develop and/or update standard operating procedures for plan review of post construction measures for Castle Pines' engineering consultant and review to be sure the post-construction checklist are being submitted for all applicable GESC permits.
- Perform post construction inspections to ensure long-term operation of permanent BMPs as required by the MS4 Permit. Contractor will prepare letters for permanent stormwater facilities requiring maintenance that the City or Contractor will send out and follow up on to ensure the findings are address, as needed.

#### Pollution Prevention/Good Housekeeping for Municipal Operations

Contractor will assist the City of Castle Pines with pollution prevention and good housekeeping for municipal operations. Contractor shall:

- Review and update the existing water quality standard operating procedures for municipal operations.
- Review the program for compliance with Regulation 85 requirements and update the program if needed.

### Task 2: Ongoing Support

Contractor will support Castle Pines with ongoing stormwater permit compliance issues by attending meetings, providing training and addressing other related needs that may arise.

#### Meeting Attendance

Contractor will attend meetings including the Douglas County CLEAR group, Colorado Stormwater Council (CSC) and similar meetings on behalf of the City. Contractor will relay pertinent information to the City and/or update processes and procedures as needed for the City's continued compliance with the MS4 Permit.

#### Training and Additional Onsite Assistance

Contractor will help address any compliance concerns that arise and provide any additional training or attention that is needed for a particular program area, including ongoing training for construction inspectors and City staff relating to stormwater compliance as requested by the City. At City's request, Contract will conduct spot check audits for compliance with stormwater standard operation procedures and construction site erosion control plans, or provide related services as the need arises.

### Deliverables

Contractor will develop the following deliverables:

- **MS4 Routine Inspection Reports.** The City Inspection Form will be completed, emailed to the site contact(s), filed and emailed to the City's Public Works Manager within 48 hours of inspection. For sites with significant findings or enforcement actions required, the Inspection Form will be filled out and conveyed to the site contact(s) and City's Public Works Manager within 24 hours of inspection.
- **MS4 Follow Up Compliance Inspection Reports:** Contractor will complete the Current City Note Form and file it within 48 hours of inspection. For sites with significant findings or enforcement actions required, the Note Form will be filled out and conveyed to the site contact(s) and City Stormwater Administrator within 24 hours of inspection.
- **Review all GESC submittals and provide updates in Smartgov or Bluebeam**
- **Post Construction Inspection Reports.** Contractor will complete Post Construction Inspection Reports for the long-term operation and maintenance of permanent BMPs. Contractor will provide follow up letters for those needing maintenance.
- **Updated Procedures.** Contractor will develop internal procedures documenting the processes for compliance with the MS4 Permit.
- **Develop the Castle Pines GESC Manual**
- **Support and Update all MS4 related documents and SOPs.**
- **Address all CDPHE requests for data**
- **Complete MS4 Annual Reports**

**EXHIBIT B**  
**COMPENSATION**

<b>PERSONNEL</b>	<b>RATE PER HOUR</b>
SENIOR PRINCIPAL/CONSULTANT	\$216
SENIOR PROJECT ENGINEER/CONSULTANT	\$193
SENIOR ENGINEER/SCIENTIST CONSULTANT	\$171
ENGINEERING/SCIENTIST PROFESSIONAL I	\$160
ENGINEERING SPECIALIST/CONSULTANT	\$146
ENGINEERING/SCIENTIST PROFESSIONAL II	\$130
ENGINEERING DESIGNER/PROFESSIONAL III	\$119
ENGINEERING TECHNICIAN I	\$106
ENGINEERING TECHNICIAN II	\$93
ENGINEERING TECHNICIAN III	\$90
ENGINEERING TECHNICIAN IV	\$74
ENGINEERING TECHNICIAN V	\$67
◆ Automobile at 60 cents per mile	◆ GIS computer at 20 dollars per hour.
◆ Four-wheel drive/Pick-up truck vehicle at 70 cents per mile	◆ Info water® at 20 dollars per hour.
◆ AutoCAD computer at 15 dollars per hour.	◆ Civil 3D at 25 dollars per hour.
<p><i>Seven and one-half percent (7.5%) will be added to all reimbursable expenses to cover administration for special consultants, independent laboratory tests, direct printing costs, telephone, supplies, lodging and subsistence, all in-house computer, auto, postage, fax, and travel.</i></p>	