

# Council Business Meeting

September 4, 2018

<b>Agenda Item</b>	Approval of Personal Services Contract – Water Quality Temperature Trading Program Partnership (2018-21); Phase 1	
<b>From</b>	Paula C. Brown, PE	Public Works Director
<b>Contact</b>	<a href="mailto:paula.brown@ashland.or.us">paula.brown@ashland.or.us</a>	541-552-2411

## **SUMMARY**

Before the Council is a personal services contract with The Freshwater Trust for professional services to develop and begin implementation of a water quality trading program for temperature compliance for the Wastewater Treatment Plant. This contract is only for phase 1 which will complete the initial program design architecture of the overall riparian restoration and shading program. Phase 1 is for a not to exceed amount of \$130,988.

## **POLICIES, PLANS & GOALS SUPPORTED**

*City Council:*

- 21. Be proactive in using best practices in infrastructure management and modernization.*
- 22. Prepare for the impact of climate change on the community.*

Department Goals:

- Maintain existing infrastructure to meet regulatory requirements and minimize life-cycle costs
- Deliver timely life cycle capital improvement projects
- Maintain and improve infrastructure that enhances the economic vitality of the community
- Evaluate all city infrastructure regarding planning management and financial resources

## **PREVIOUS COUNCIL ACTION**

This project represents priorities within the Council approved 2012 Comprehensive Sewer Master Plan Update. The Riparian Restoration / Shading project has been included with staff's need to meet anticipated temperature reductions for the wastewater treatment plant since 2010.

At the February 6, 2018, business meeting, the City Council approved revisions to the City's Oregon Department of Environmental Quality (DEQ) Clean Water State Revolving Fund Loan (CWSRF). The new loan is for \$4,829,000 to fund the Riparian Restoration / Shading (\$2,000,000) and the Outfall Relocation (\$2,829,000).

## **BACKGROUND AND ADDITIONAL INFORMATION**

Staff advertised the request for qualifications based proposals on September 11, 2017, on the ORPIN statewide site, in the Ashland Daily Tidings, in the Daily Journal of Commerce, and on the City's website. One proposal was received on May 15, 2018. City staff members independently reviewed this proposal based upon the criteria that was included in the RFQ. The Freshwater Trust's proposal was deemed acceptable and the consultant was provided an intent to award on June 1, 2018, conditioned upon Council approval of this contract. The Freshwater Trust has been negotiating the cost and final scope of services with staff and submitted a final proposal on August 21, 2018.

The Water Quality Trading Program is one of several capital projects included in the 2012 Comprehensive Sanitary Sewer Master Plan (Keller Associates) identified to meet anticipated regulatory temperature limits for compliance with the Clean Water Act.

Ashland's Water Quality Trading Plan was accepted by the Oregon Department of Environmental Quality (DEQ) on March 9, 2018, as being consistent with Oregon's Water Quality Trading Rule. The Water Quality Trading Plan will focus on implementing riparian re-vegetation and shading projects to generate "credits" to satisfy the City's anticipated upcoming temperature obligation.

### **FISCAL IMPACTS**

The Riparian Restoration/Shading (water quality temperature credit) project includes \$1,262,000 in the 2017-19 BN Wastewater Fund. This amount will fund both phase 1 and 2 but will not fully fund phase 3. Phase 3 provides for the remainder of the credit requirements, likely over 6 years, and the 20-year plant establishment and maintenance obligations. Phase 3 is planned for inclusion in the 2019-21 BN. Previous expenditures for the riparian restoration included \$23,985 to The Freshwater Trust to analyze the water quality trading benefits and policy support for the City (2011-27).

### **STAFF RECOMMENDATION**

Staff recommends Council move approval of a personal services contract with The Freshwater Trust to execute the Water Quality Temperature Trading Program Partnership to develop and begin implementation of a water quality trading program for temperature compliance for the Wastewater Treatment Plant. Staff is requesting approval of phase 1 for a not to exceed amount of \$130,988, and will bring the results of phase 1 back to Council with an anticipated follow on contract for phase 2. Phase 2 begins initial site development, credit definition and should provide 30-40% of the overall credits necessary for the Water Quality Temperature Trading Program. It is anticipated that phase 2 could begin as early as three months from the start of phase 1 and will depend upon the final program "design".

### **ACTIONS, OPTIONS & POTENTIAL MOTIONS**

Council has the option to approve this contract or refer staff back for renegotiation or a new request for proposals. Potential motions include:

1. I move to approve the execution of a personal services contract with The Freshwater Trust for the Water Quality Temperature Trading Program Partnership; Phase 1.
2. I move to direct staff to renegotiate terms with The Freshwater Trust for the Water Quality Temperature Trading Program Partnership.
3. I move to direct staff to develop a new solicitation for the Water Quality Temperature Trading Program Partnership.

### **ATTACHMENTS:**

1. Personal Services Contract which includes the scope of work, cost and schedule, between the City and The Freshwater Trust for an amount not to exceed \$130,988, to initiate the Water Quality Temperature Trading Program Partnership; Phase 1.

### **REFERENCES:**

- Request for Qualifications Based Proposals – Water Quality Temperature Trading Program Partnership (2018-21) (available upon request)

## PERSONAL SERVICES AGREEMENT (greater than \$25,000.00)

### CITY OF ASHLAND

20 East Main Street  
Ashland, Oregon 97520  
Telephone: 541/488-5587  
Fax: 541/488-6006

CONSULTANT: THE FRESHWATER TRUST  
CONSULTANT'S CONTACT: TIM WIGGINGTON  
ADDRESS: 700 SW TAYLOR, SUITE 200  
81 CENTRAL AVENUE  
PORTLAND, OR 97205  
TELEPHONE: (503) 222-9091 x41  
EMAIL: [Tim@thefreshwatertrust.org](mailto:Tim@thefreshwatertrust.org)

This Personal Services Agreement (hereinafter "Agreement") is entered into by and between the City of Ashland, an Oregon municipal corporation (hereinafter "City") and THE FRESHWATER TRUST, a domestic professional corporation ("hereinafter "Consultant"), for WATER QUALITY TRADING PROGRAM PARTNERSHIP, PHASE 1.

**NOW THEREFORE**, in consideration of the mutual covenants contained herein, the City and Consultant hereby agree as follows:

- 1. Effective Date and Duration:** This Agreement shall become effective on the date of execution on behalf of the City, as set forth below (the "Effective Date"), and unless sooner terminated as specifically provided herein, shall terminate upon the City's affirmative acceptance of Consultant's Work as complete and Consultant's acceptance of the City's final payment therefore, but not later than FEBRUARY 6, 2019.
- 2. Scope of Work:** Consultant will provide WATER QUALITY TRADING PROGRAM PARTNERSHIP, PHASE 1, as more fully set forth in the Consultant's Proposal dated AUGUST 21, 2018, which is attached hereto as "Exhibit A" and incorporated herein by this reference. Consultant's services are collectively referred to herein as the "Work."
- 3. Supporting Documents/Conflicting Provisions:** This Agreement and any exhibits or other supporting documents shall be construed to be mutually complimentary and supplementary wherever possible. In the event of a conflict which cannot be so resolved, the provisions of this Agreement itself shall control over any conflicting provisions in any of the exhibits or supporting documents.
- 4. All Costs Borne By Consultant:** Consultant shall, at its own risk and expense, perform the Work described above and, unless otherwise specified in this Agreement, furnish all labor, equipment, and materials required for the proper performance of such Work.
- 5. Qualified Work:** Consultant has represented, and by entering into this Agreement now represents, that all personnel assigned to the Work to be performed under this Agreement are fully qualified to perform the service to which they will be assigned in a skilled and worker-like manner and, if required to be registered, licensed or bonded by the State of Oregon, are so registered, licensed and bonded.

6. **Compensation:** City shall pay Consultant the NOT TO EXCEED sum of **\$130,998** as full compensation for Consultant's performance of all Work under this Agreement. In no event shall Consultant's total of all compensation and reimbursement under this Agreement exceed the sum of **\$130,998** without the express, written approval from the City official whose signature appears below, or such official's successor in office. Payments shall be made within 30 days of the date of receipt by the City of Consultant's invoice. Should this Agreement be terminated prior to completion of all Work, payments will be made for any phase of the Work completed and accepted as of the date of termination.
7. **Ownership of Work/Documents:** All Work product or deliverables produced as specified in Exhibit A of this Agreement shall become the physical property of the City. To the extent the Work product and deliverables incorporate pre-existing intellectual property of Consultant, Consultant hereby grants City a perpetual, fully paid, nonexclusive and nontransferable license to use such pre-existing property for City's purposes as specified in Exhibit A. Consultant retains ownership of any and all copyright, patent, trademark, proprietary or any other protected intellectual property rights included in, or delivered with, the Work product or deliverables. The City has a perpetual, royalty-free license to use the Work.
8. **Statutory Requirements:** The following laws of the State of Oregon are hereby incorporated by reference into this Agreement: ORS 279B.220, 279B.230 and 279B.235.
9. **Living Wage Requirements:** If the amount of this Agreement is \$20,688.86 or more, Consultant is required to comply with Chapter 3.12 of the Ashland Municipal Code by paying a living wage, as defined in that chapter, to all employees performing Work under this Agreement and to any Subcontractor who performs 50% or more of the Work under this Agreement. Consultant is also required to post the notice attached hereto as "Exhibit B" predominantly in areas where it will be seen by all employees.
10. **Indemnification:** Consultant hereby agrees to defend, indemnify, save, and hold City, its officers, employees, and agents harmless from any and all losses, claims, actions, costs, expenses, judgments, or damages resulting from injury to any person (including injury resulting in death), or damage (including loss or destruction) to any property, of whatsoever nature arising out of or incident to the performance of this Agreement by Consultant, its officers, employees, and agents. To the extent permitted under the Oregon Tort Claims Act, City hereby agrees to defend, indemnify, save, and hold Consultant, its officers, employees, and agents harmless from any and all losses, claims, actions, costs, expenses, judgments, or damages resulting from or caused by the negligence or wrongful acts of City, its officers, employees, and agents.
11. **Termination:**
  - a. Mutual Consent. This Agreement may be terminated at any time by the mutual consent of both parties.
  - b. City's Convenience. This Agreement may be terminated by City at any time upon not less than 30 days' prior written notice delivered by certified mail or in person.
  - c. For Cause. City may terminate or modify this Agreement, in whole or in part, effective upon delivery of written notice to Consultant, or at such later date as may be established by City under any of the following conditions:
    - i. If City funding from federal, state, county or other sources is not obtained and continued at levels sufficient to allow for the purchase of the indicated quantity of services;
    - ii. If federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this

- Agreement or are no longer eligible for the funding proposed for payments authorized by this Agreement; or
- iii. If any license or certificate required by law or regulation to be held by Consultant to provide the services required by this Agreement is for any reason denied, revoked, suspended, or not renewed.
  - d. For Default or Breach.
    - i. Either City or Consultant may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination the party seeking termination shall give to the other party written notice of the breach and its intent to terminate. If the party committing the breach has not entirely cured the breach within fifteen (15) days of the date of the notice, or within such other period as the party giving the notice may authorize in writing, then the Agreement may be terminated at any time thereafter by a written notice of termination by the party giving notice.
    - ii. Time is of the essence for Consultant's performance of each and every obligation and duty under this Agreement. City by written notice to Consultant of default or breach may at any time terminate the whole or any part of this Agreement if Consultant fails to provide services called for by this Agreement within the time specified herein or within any extension thereof.
    - iii. The rights and remedies of City provided in this subsection (d) are not exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.
  - e. Obligation/Liability of Parties. Termination or modification of this Agreement pursuant to subsections a, b, or c above shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination or modification. However, upon receiving a notice of termination (regardless whether such notice is given pursuant to Subsection a, b, c, or d of this section, Consultant shall immediately cease all activities under this Agreement, unless expressly directed otherwise by City in the notice of termination. Further, upon termination, Consultant shall deliver to City all Agreement documents, information, works-in-progress and other property that are or would be deliverables had the Agreement been completed. City shall pay Consultant for Work performed prior to the termination date if such Work was performed in accordance with this Agreement.

**12. Independent Contractor Status:** Consultant is an independent contractor and not an employee of the City for any purpose. Consultant shall have the complete responsibility for the performance of this Agreement. Consultant shall provide workers' compensation coverage as required in ORS Chapter 656 for all persons employed to perform Work pursuant to this Agreement. Consultant is a subject employer that will comply with ORS 656.017.

**13. Assignment:** Consultant shall not assign this Agreement or subcontract any portion of the Work without the written consent of City. Any attempted assignment or subcontract without written consent of City shall be void. Consultant shall be fully responsible for the acts or omissions of any assigns or subcontractors and of all persons employed by them, and the approval by City of any assignment or subcontract of the Work shall not create any contractual relation between the assignee or subcontractor and City.

**14. Default.** The Consultant shall be in default of this Agreement if Consultant: commits any material breach or default of any covenant, warranty, certification, or obligation under the Agreement; institutes an action for relief in bankruptcy or has instituted against it an action for insolvency; makes a general

assignment for the benefit of creditors; or ceases doing business on a regular basis of the type identified in its obligations under the Agreement; or attempts to assign rights in, or delegate duties under, this Agreement.

**15. Insurance.** Consultant shall, at its own expense, maintain the following insurance:

- a. Worker's Compensation insurance in compliance with ORS 656.017, which requires subject employers to provide Oregon workers' compensation coverage for all their subject workers
- b. Professional Liability insurance with a combined single limit, or the equivalent, of not less than \$2,000,000 (two million dollars) per occurrence. This is to cover any damages caused by error, omission or negligent acts related to the professional services to be provided under this Agreement.
- c. General Liability insurance with a combined single limit, or the equivalent, of not less than \$2,000,000 (two million dollars) per occurrence for Bodily Injury, Death, and Property Damage.
- d. Automobile Liability insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 (one million dollars) for each accident for Bodily Injury and Property Damage, including coverage for owned, hired or non-owned vehicles, as applicable.
- e. Notice of cancellation or change. There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without 30 days' prior written notice from the Consultant or its insurer(s) to the City.
- f. Additional Insured/Certificates of Insurance. Consultant shall name the City of Ashland, Oregon, and its elected officials, officers and employees as Additional Insureds on any insurance policies, excluding Professional Liability and Workers' Compensation, required herein, but only with respect to Consultant's services to be provided under this Agreement. The consultant's insurance is primary and non-contributory. As evidence of the insurance coverages required by this Agreement, the Consultant shall furnish acceptable insurance certificates prior to commencing the Work under this Agreement. The certificate will specify all of the parties who are Additional Insureds. Insuring companies or entities are subject to the City's acceptance. If requested, complete copies of insurance policies; trust agreements, etc. shall be provided to the City. The Consultant shall be financially responsible for all pertinent deductibles, self-insured retentions, and/or self-insurance.

**16. Nondiscrimination:** Consultant agrees that no person shall, on the grounds of race, color, religion, creed, sex, marital status, familial status or domestic partnership, national origin, age, mental or physical disability, sexual orientation, gender identity or source of income, suffer discrimination in the performance of any Work under this Agreement when employed by Consultant. Consultant agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. Further, Consultant agrees not to discriminate against a disadvantaged business enterprise, minority-owned business, woman-owned business, a business that a service-disabled veteran owns or an emerging small business enterprise certified under ORS 200.055, in awarding subcontracts as required by ORS 279A.110.

**17. Consultant's Compliance With Tax Laws:**

17.1 Consultant represents and warrants to the City that:

17.1.1 Consultant shall, throughout the term of this Agreement, including any extensions hereof, comply with:

- (i) All tax laws of the State of Oregon, including but not limited to ORS 305.620 and ORS Chapters 316, 317, and 318;

- (ii) Any tax provisions imposed by a political subdivision of the State of Oregon applicable to Consultant; and
- (iii) Any rules, regulations, charter provisions, or ordinances that implement or enforce any of the foregoing tax laws or provisions.

17.1.2 Consultant, for a period of no fewer than six (6) calendar years preceding the Effective Date of this Agreement, has faithfully complied with:

- (i) All tax laws of the State of Oregon, including but not limited to ORS 305.620 and ORS Chapters 316, 317, and 318;
- (ii) Any tax provisions imposed by a political subdivision of the State of Oregon applicable to Consultant; and
- (iii) Any rules, regulations, charter provisions, or ordinances that implement or enforce any of the foregoing tax laws or provisions.

- 18. Governing Law; Jurisdiction; Venue:** This Agreement shall be governed and construed in accordance with the laws of the State of Oregon without resort to any jurisdiction's conflict of laws, rules or doctrines. Any claim, action, suit or proceeding (collectively, "the claim") between the City and the Consultant that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Jackson County for the State of Oregon. If, however, the claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon filed in Jackson County, Oregon. Consultant, by its signature hereon of its authorized representative, hereby consents to the *in personam* jurisdiction of said courts.
- 19. THIS AGREEMENT AND THE ATTACHED EXHIBITS CONSTITUTE THE ENTIRE UNDERSTANDING AND 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 THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS AGREEMENT. CONSULTANT, BY 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.**
- 20. Amendments.** This Agreement may be amended only by written instrument executed by both parties with the same formalities as this Agreement.
- 21. Nonappropriations Clause.** Funds Available and Authorized: City has sufficient funds currently available and authorized for expenditure to finance the costs of this Agreement within the City's fiscal year budget. Consultant understands and agrees that City's payment of amounts under this Agreement attributable to Work performed after the last day of the current fiscal year is contingent on City appropriations, or other expenditure authority sufficient to allow City in the exercise of its reasonable administrative discretion, to continue to make payments under this Agreement. In the event City has insufficient appropriations, limitations or other expenditure authority, City may terminate this Agreement without penalty or liability to City, effective upon the delivery of written notice to Consultant, with no further liability to Consultant.

22. **Certification.** Consultant shall sign the certification attached hereto as “Exhibit C” and incorporated herein by this reference.

**CITY OF ASHLAND:**

**THE FRESHWATER TRUST (CONSULTANT):**

By: \_\_\_\_\_  
City Administrator

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

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

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

Purchase Order No. \_\_\_\_\_

**(W-9** is to be submitted with this signed Agreement)

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Assistant City Attorney

\_\_\_\_\_  
Date

**EXHIBIT B**

CITY OF ASHLAND, OREGON

# City of Ashland **LIVING** WAGE

ALL employers described below must comply with City of Ashland laws regulating payment of a living wage.



**\$15.12** per hour, effective June 30, 2018.

The Living Wage is adjusted annually every June 30 by the Consumer Price Index.

### Employees must be paid a living wage:

- For all hours worked under a service contract between their employer and the City of Ashland if the contract exceeds **\$21,127.46** or more.
- For all hours worked in a month if the employee spends 50% or more of the

employee's time in that month working on a project or portion of business of their employer, if the employer has ten or more employees, and has received financial assistance for the project or business from the City of Ashland in excess of **\$21,127.46**.

- If their employer is the City of Ashland, including the Parks and Recreation Department.

- In calculating the living wage, employers may add the value of health care, retirement, 401K and IRS eligible cafeteria plans (including childcare) benefits to the amount of wages received by the employee.
- **Note:** For temporary and part-time employees, the Living Wage does **not** apply to the first 1040 hours worked in any calendar year. For more details, please see Ashland Municipal Code Section 3.12.020.

### For additional information:

Call the Ashland City Administrator's office at 541-488-6002 or write to the City Administrator, City Hall, 20 East Main Street, Ashland, OR 97520, or visit the City's website at [www.ashland.or.us](http://www.ashland.or.us).

**Notice to Employers:** This notice must be posted predominantly in areas where it can be seen by all employees.



**EXHIBIT C**

**CERTIFICATIONS/REPRESENTATIONS:** Consultant, by and through its authorized representative, under penalty of perjury, certifies that (a) the number shown on the attached W-9 form is its correct taxpayer ID (or is waiting for the number to be issued to it and (b) Consultant is not subject to backup withholding because: (i) it is exempt from backup withholding, or (ii) it has not been notified by the Internal Revenue Service (IRS) that it is subject to backup withholding as a result of a failure to report all interest or dividends, or (iii) the IRS has notified it that it is no longer subject to backup withholding. Consultant further represents and warrants to City that: (a) it has the power and authority to enter into and perform the Work, (b) the Agreement, when executed and delivered, shall be a valid and binding obligation of Consultant enforceable in accordance with its terms, (c) the work under the Agreement shall be performed in accordance with the highest professional standards, and (d) Consultant is qualified, professionally competent, and duly licensed (if applicable) to perform the Work. Consultant also certifies under penalty of perjury that its business is not in violation of any Oregon tax laws, it is an independent contractor as defined in the Agreement, it is authorized to do business in the State of Oregon, and Consultant has checked four or more of the following criteria that apply to its business.

- \_\_\_\_\_ (1) Consultant carries out the work or services at a location separate from a private residence or is in a specific portion of a private residence, set aside as the location of the business.
- \_\_\_\_\_ (2) Commercial advertising or business cards or a trade association membership are purchased for the business.
- \_\_\_\_\_ (3) Telephone listing is used for the business separate from the personal residence listing.
- \_\_\_\_\_ (4) Labor or services are performed only pursuant to written contracts.
- \_\_\_\_\_ (5) Labor or services are performed for two or more different persons within a period of one year.
- \_\_\_\_\_ (6) Consultant assumes financial responsibility for defective workmanship or for service not provided as evidenced by the ownership of performance bonds, warranties, errors and omission (professional liability) insurance or liability insurance relating to the Work or services to be provided.

\_\_\_\_\_ Consultant

\_\_\_\_\_ Date



## Water Quality Temperature Trading Program Partnership

### PROPOSED Scope of Work for the City of Ashland

August 21, 2018

#### Introduction:

The City of Ashland (the City) has selected The Freshwater Trust (TFT) as its partner to develop and implement a water quality trading program for temperature compliance with the Clean Water Act. The City's Water Quality Trading Plan, which has been accepted by the Oregon Department of Environmental Quality (DEQ) as consistent with Oregon's Water Quality Trading Rule, will focus on implementing riparian revegetation projects to generate credits to satisfy the City's expected upcoming temperature obligation. Developing this program will consist of three phases: 1) program design (Phase I), 2) research/demonstration project implementation (Phase II), and 3) full program implementation (Phase III). Phase III will commence after the City receives its updated NPDES permit. The project implementation, program administration, and credit cycle activities associated with Phase III will be informed by the lessons learned through Phases I-II. TFT has outlined the subtasks and "not to exceed" cap for the first two phases. While included for illustrative purposes, the City and TFT only intend to contract for Phase I activities at this time.

#### Phase 1: Trading Program Design

Up to 6 months after project kick-off

- A. **Program planning and prioritization:** Through geospatial analysis and modeling with a geographically-calibrated module of HeatSource named Shade-a-lator, TFT identified credit potential in the Bear Creek trading area in 2016. TFT will refresh these estimates to reflect current conditions. TFT will coordinate with the City to determine which City-owned sites could be good candidates for credit generation, and will identify the privately-owned sites in the trading area that have both high credit generation potential and potentially interested landowners. **Task Estimate:** \$21,150 (175 hours).
- B. **Program cost range:** After obtaining a better understanding of City priorities and potential private land participants, and the likely public-private blend of sites, TFT will run various scenarios in order to provide the City with a likely program cost range. TFT cost scenarios will be based on the site-specific credit and site size information confirmed from (A), as well as current restoration costs experienced by TFT in the Rogue Basin. TFT's cost estimate will have a target accuracy of -20% to +30%, which is consistent with the accuracy range for a "Class 5" cost estimate described by the Association for the Advancement of

Cost Engineering.<sup>1</sup> TFT will further refine this estimate based on the experience obtained through Phase II activities. **Task Estimate:** \$13,800 (100 hours).

- C. **SRF administration:** DEQ has determined that most activities occurring at riparian revegetation sites within five (5) years of implementation can be eligible for SRF reimbursement. TFT will propose an SRF administration approach aimed at maximizing the eligibility of activities for SRF reimbursement within these timelines, and will produce an estimated breakdown of site costs by SRF-eligible and non SRF-eligible expenses. TFT will lead in coordinating with DEQ to finalize any necessary documentation needed to support use of SRF funds in the trading program. **Task Estimate:** \$11,850 (70 hours).
- D. **Long-term stewardship financial approach:** Because trading sites must be actively stewarded for 20 years (longer here because of desire to delay credit life activation until the City receives its updated permit), but SRF reimbursement eligibility only lasts for five years post-implementation, the City will need to ensure that adequate funds are available to cover these long-term stewardship activities. TFT will coordinate with the City to develop a financial strategy for covering these long-term costs in the most cost-effective manner. **Task Estimate:** \$7,000 (40 hours).
- E. **Program tracking and reporting templating:** Over the last decade, TFT has identified the tracking and reporting documentation necessary to efficiently and effectively administer a trading program. To ensure that the City's trading program documentation will remain consistent with its Trading Plan, TFT: 1) will update and customize landowner lease agreements; 2) coordinate with the City to help draft durable and trading-appropriate easement language for City-owned trading sites; 3) recommend a trading program tracking approach that is both consistent with Oregon trading rules and cost-effective for the City; 4) coordinate with the City to develop SRF and other DEQ reporting templates; and 5) develop the overall stewardship and third party verification system as discussed in the Trading Plan. **Task Estimate:** \$25,950 (210 hours).
- F. **Supply chain scaling:** During the pre-permit phase, it will be important to scale up the supply and labor chain so that when the City receives a thermal compliance obligation and compliance schedule, implementation and management of the program can proceed smoothly. TFT will coordinate with the City to identify the likely annual trading program funding availability over the next decade and then recommend a responsive funding and implementation arc to maximize economies of scale in the supply and labor chain. **Task Estimate:** \$27,800 (220 hours).

**Deliverables:**

1. Updated credit potential analysis for Bear Creek (digitally and in map format with spreadsheet (excel) backup).
2. Summary analysis of best prospects, with initial outreach completed and results documented.
3. Program cost range estimate for full trading program. This includes all three phases – the third phase being the costs of the longer term stewardship activities for full credit life.

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<sup>1</sup> "Class 5 estimates are generally prepared based on very limited information, and subsequently have wide accuracy ranges...." AACE, International Recommended Practice No. 10S-90, Cost Engineering Terminology, <http://www.aacei.org/terminology/>. For a Class 5 cost estimate, the AACE expects -20% to -50% in cost variation on the low end of the range, and +30% to +100% on the high end of the range.

4. SRF administration approach aimed at maximizing the eligibility of activities for SRF reimbursement, with estimated breakdown of site costs by SRF-eligible and non SRF-eligible expenses.
5. Financial plan and recommendation for effective long-term stewardship of sites.
6. Customized landowner lease agreement template, which will require City legal approval and City Council approval of the overall lease structure.
7. Durable and trading appropriate easement language for City-owned trading sites.
8. Summary memo articulating trading program tracking approaches and recommendations.
9. SRF and other DEQ reporting templates.
10. Recruitment timing recommendations memo based on likely funding levels and ability to maximize supply chain efficiencies.

Phase 1 Not to Exceed Amount: \$130,988. Includes \$107,050 in projected TFT labor, \$6,853 in projected direct expenses, and a 15% contingency.

## Phase 2: Riparian Research Project Implementation

### Up to 2 years after project kick-off

- A. **Private site implementation:** TFT will select, recruit, and secure site protection agreements from the first set of private landowners within the Bear Creek watershed. TFT will prep and implement the sites consistent with the Trading Plan, calculate credits, and ensure all proper credit cycle documentation is completed. TFT will perform monitoring and stewardship activities. Stewardship activities include planting establishment. TFT will also test the SRF funding reimbursement approach. **Task Estimate:** \$572,465 (largely comprised of supply/material purchases and subcontractor costs, but also includes TFT labor and direct expenses). The estimated private site costs cover the first 24-months of expected costs at those sites, not the full project site costs that will accrue over the project life (approximately 50% of project site costs are expected to occur in the first two years). Because all sites produce credits differently, these estimated Y1-Y2 project costs are based on what TFT expects it will cost to secure and implement enough sites to fulfill approximately 1/3 of Ashland's estimated credit need (not a particular number of sites; for example, one site could produce 40 million credits, or three could). Once TFT has completed Phase I of this scope and has actual sites recruited/prioritized, the cost and credit return from these sites will be fully known.
- B. **Public site implementation support and leadership:** TFT will support the City in selecting and implementing at least one City-owned demonstration project. TFT will coordinate with the City to identify the roles and responsibilities each partner (City, TFT, implementation contractors) will take with respect to implementing and managing the site. **Task Estimate:** \$54,900 (400 hours), with up to \$34,800 (240 hours) available as contingency that the City may authorize. For this task, TFT has only estimated the costs associated with supporting the City in selecting/managing public demonstration project(s), not implementation costs. Once both parties better understand roles and responsibilities, and specific City site preferences are known, TFT will be able to provide implementation cost estimates for these site(s).

- C. **Lessons learned and approach comparison:** TFT will analyze the lessons learned from each approach, including a cost comparison, and identification of if/where cost categories differ between the two approaches. **Task Estimate:** \$22,325 (160 hours).
- D. **Stakeholder outreach:** Buy-in from local partners and landowners is key to program success. Often, recruitment hinges on finding and persuading the right influencers. TFT will coordinate with the City to identify key stakeholders, communicate with those stakeholders, and ultimately develop and implement a coordinated outreach strategy for the program. **Task Estimate:** \$24,700 (160 hours).
- E. **Permit support:** TFT will support the City in its permit negotiations with DEQ. Potential activities include amendments/adjustments to the trading plan, proper reference and incorporation of trading into the City's NPDES permit, compliance schedule development and justification, and incorporation of pre-permit trading sites into post-permit compliance sites. **Task Estimate:** \$37,275 (285 hours).

**Deliverables:**

1. TFT will implement and manage all mutually agreed aspects of the public land demonstration site(s).
2. TFT will complete private land credit-ready riparian restoration projects in the Bear Creek watershed. Volume of project sites will be dependent on City funding availability and timing.
3. TFT will draft, in coordination with City staff, a lessons learned and cost comparison document articulating the primary differences and cost impacts associated with the two approaches.
4. Outreach strategy summary.
5. As needed permit support.
6. Develop and implement first stages of the verification process while still preserving maximum credit life for the City's compliance period, and gain DEQ approval of the process.

Phase 2 Not to Exceed Amount: \$753,515. Includes \$572,465 for private site implementation and early establishment costs through the first two years (including all TFT costs); \$174,000 in projected TFT labor (with \$34,800 in Phase 2(B) contingent upon City approval); and \$7,050 in projected direct expenses.

**Suggested Meetings:**

- The exact meeting schedule will be determined after contracting, but TFT proposes participation in a project team kick-off with the City at the beginning of this Scope of Work.
- The Trust expects to schedule and lead monthly conference calls and quarterly in-person meetings with the City to adequately resource this innovative and complex partnership.

**Timeline:**

Months	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	
Phase 1																									
Phase 2*																									

*\*Phase 2 may start as early as Month 4, but could start as late as Month 7.*

**Conclusion:**

TFT has proposed this Scope of Work based on its deep experience developing temperature credit trading programs for Clean Water Act compliance in Oregon. At the conclusion of this Scope, all program design steps will have been completed, the City will have several project sites completed, and TFT and the City will have identified the respective roles, responsibilities, costs and implications of further implementing sites on both publicly- and privately-owned land.

**Contact for next steps:**

TFT looks forward to working with the City. Please direct questions, comments and additions to:

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# The Freshwater Trust®

Changing the course  
of conservation.

The Freshwater Trust is a  
501(c)(3) not-for-profit organization  
that actively works to preserve  
and restore our freshwater ecosystems.

## 2017-2018 Billing Rate Sheet

<b>Senior Directors</b>	<b>\$175 per hour</b>
<b>Directors</b>	<b>\$140 per hour</b>
<b>Policy Specialist*</b>	<b>\$130 per hour</b>
<b>Project Manager</b>	<b>\$120 per hour</b>
<b>Legal Analyst</b>	<b>\$110 per hour</b>
<b>Ecosystem Services Analyst</b>	<b>\$100 per hour</b>
<b>GIS Analyst</b>	<b>\$90 per hour</b>
<b>Monitoring/Field Staff</b>	<b>\$85 per hour</b>
<b>Communications/Design</b>	<b>\$75 per hour</b>
<b>Field Technician</b>	<b>\$65 per hour</b>
<b>Invoice/Administration</b>	<b>\$55 per hour</b>

\*While some of The Freshwater Trust's policy specialists are licensed attorneys, The Freshwater Trust only provides policy analysis and not legal advice to its clients.



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