

**RESOLUTION NO. 2023-**

**A RESOLUTION APPROVING A SERVICE AGREEMENT WITH  
OLSSON, INC., FOR THE EAST PLUM CREEK/SELLERS GULCH  
CONFLUENCE PROJECT**

**WHEREAS**, the Town of Castle Rock, Colorado (the “Town”) has solicited proposals for design engineering services for the East Plum Creek/Sellers Gulch Confluence Project (the “Project”); and

**WHEREAS**, the Project selection team has determined Olsson, Inc., (the “Contractor”) is best qualified to perform work for the Project; and

**WHEREAS**, the Town and the Contractor have agreed to the terms and conditions by which the Contractor will provide work for the Project.

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF CASTLE ROCK, COLORADO AS FOLLOWS:**

**Section 1. Approval.** The Service Agreement between the Town and Contractor is hereby approved in substantially the same form attached as ***Exhibit 1***, with such technical changes, additions, modifications, or deletions as the Town Manager may approve upon consultation with the Town Attorney. The Mayor and other proper Town officials are hereby authorized to execute the Agreement by and on behalf of the Town.

**Section 2. Encumbrance and Authorization for Payment.** In order to meet the Town's financial obligations under the Agreement, the Town Council authorizes the expenditure and payment from account no. 212-4475-444.76-37 in an amount not to exceed \$647,754.00, plus a Town-managed contingency in the amount of \$64,775.00, unless otherwise authorized in writing by the Town.

**PASSED, APPROVED AND ADOPTED** this 17th day of January, 2023 by the Town Council of the Town of Castle Rock, Colorado, on first and final reading, by a vote of \_\_\_\_ for and \_\_\_\_ against.

**ATTEST:**

**TOWN OF CASTLE ROCK**

\_\_\_\_\_  
Lisa Anderson, Town Clerk

\_\_\_\_\_  
Jason Gray, Mayor

**Approved as to form:**

**Approved as to content:**

\_\_\_\_\_  
Michael J. Hyman, Town Attorney

\_\_\_\_\_  
Mark Marlowe, Director of Castle Rock Water



# Town of Castle Rock

## Agenda Memorandum

**Agenda Date:** 1/17/2023

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**Item #:** 8. **File #:** TMP 2022-896

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**To:** Honorable Mayor and Members of Town Council

**Through:** David L. Corliss, Town Manager

**From:** Mark Marlowe, P.E., Director of Castle Rock Water  
J. David Van Dellen, P.E., Stormwater Manager  
Laura Kindt, P.E., Project Manager-Stormwater

### **Resolution Approving a Service Agreement with Olsson, Inc., for the East Plum Creek/Sellers Gulch Confluence Project**

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#### **Executive Summary**

Castle Rock Water is seeking Town Council approval of a Resolution (**Attachment A**) approving a service agreement with Olsson Associates for the East Plum Creek (EPC)/Sellers Gulch Confluence Project in the amount of \$647,754, plus staff requests a 10% Town-managed contingency in the amount of \$64,775, for a total project authorization of \$712,529. The East Plum Creek/Sellers Gulch Confluence Project is located in the heart of Downtown Castle Rock (see **Attachment B**) and will be funded through the Stormwater Fund. The scope of work generally includes survey, alternative analysis, preliminary and final design, environmental permitting and environmental approvals for stream stabilization improvements and regional water quality enhancement along EPC and Sellers Gulch. Project design and permitting is scheduled to be completed in fall of 2024. Additional funding partnerships through the Downtown Development Authority, Parks and Recreation, Chatfield Watershed Authority and grants will be pursued to determine if additional passive recreational uses are feasible within the project area.

#### **Notification and Outreach Efforts**

The Town will hold to open houses to present the proposed project improvements and solicit feedback. The Town will utilize the normal Town outreach channels including social media and email to notify the public of the open houses.

#### **History of Past Town Council, Boards & Commissions, or Other Discussions**

On January 6, 2009, Town Council passed, approved, and adopted a resolution approving the East Plum Creek Watershed Master Plan.

On January 6, 2009, Town Council passed, approved, and adopted a resolution approving the Sellers

Gulch Drainageway Master Plan.

**Discussion**

The Confluence project is located near Downtown Castle Rock and is generally bounded by East Plum Creek Parkway to the south, I-25 to the west, Douglas County Buildings to the north and East Plum Creek Trail to the east. The Confluence Project has a unique opportunity to provides downtown soft surface trail networks and gathering areas with East Plum Creek and Sellars Gulch treated as an amenity and focal point. To date, there have been multiple studies completed for the project area, including master plans for East Plum Creek and Sellars Gulch, Transportation Plan and Downtown Alley Plan for adjacent streets. The drainage master plans recommend stabilizing the channels with the use of grade control structures. The East Plum Creek master plan recommends incorporating regional water quality and detention within the confluence area along with defined soft trails. The Transportation Plans and Downtown Alley Plans provide additional access points to the confluence.

Under existing conditions East Plum Creek and Sellars Gulch are experiencing bed degradation, bank erosion and constricted channels. The bank erosion is impacting water quality with the increased sediment entering the stream. The incision of the channel has lowered the water table, impacting the vegetation and trees ability to access water, resulting in loss of vegetation and trees. The majority of the project is within the Town's Preble's meadow jump mouse (PMJM) habitat and the Riparian Conservation Zone (RCZ) as identified within the Douglas County Habitat Conservation Plan. The Town of Castle Rock along with Colorado Department of Transportation (CDOT) utilize portions of the project area as PMJM mitigation. The loss of vegetation and trees have a direct negative impact on the PMJM habitat through loss of habitat.

This project will require coordination and easements with multiple property owners within the project area, including, Town of Castle Rock, Douglas County, CDOT, one private land owner, and one unknown property. This project will require coordination with United States Fish and Wildlife Service (USFWS), United States Army Corp of Engineers (USACE) for wetland and PMJM impacts and Federal Emergence Management Agency (FEMA) for hydraulic analysis of the streams and CLOMR/LOMR approval.

Staff has already engaged multiple stakeholders and internal departments to understand their future projects and goals within and adjacent to the project. Some of which include the CDOT, DDA, Parks (environmental and trails) and Public Works.

The goal of this project is to further refine and implement the drainage master plans while providing a design to be compatible with other stakeholder goals to the extent practicable, such as soft trails and the additional access points that may be included at a later date.

*The Town issued a Request for Proposals (RFP) via Rocky Mountain BidNet, and five (5) responses were received. A selection committee, consisting of David Van Dellen and Laura Kindt, reviewed and ranked each proposal based on a weighted set of criteria included in the RFP document. Following the qualification based selection process, the fee schedule for each firm was opened and reviewed, "not for low bid, but for a reasonable and appropriate level of effort from each team member." Barbara Spagnuolo and Kevin Tilson provided feedback on the proposals in regards to environmental*

*and downtown development. The five fee schedules ranged from \$569,887 to \$746,000. The top ranked firm in terms of qualifications, response to scope of work, understanding of project and team experience was Olsson, whose proposal represented the best overall value for the services requested. The Olsson fee is within the staff estimate for engineering services and Olsson has developed a track record for successful projects along the East Plum Creek corridor with the Town over the past several years. Although this project was originally budgeted only for improvements on Sellars Gulch, staff determined that it would be most cost effective to include the East Plum Creek reach in this design and permitting effort given the proximity of improvements and the integrated nature of the open space corridor at the confluence of these two streams.*

### **Budget Impact**

Funds for this design agreement will be charged to the accounts below and will require a budget transfer from stormwater capital account 212-4475-444.75-52 which has a budget of \$2,700,000 in 2023. Additionally, there is approximately \$10 million available in capital reserves to complete this project and maintain other priorities in the coming year.

<b><i>Fund</i></b>	<b><i>Account Number</i></b>	<b><i>Amount</i></b>	<b><i>Cont.</i></b>	<b><i>Total</i></b>	<b><i>Budget</i></b>
<i>Sellars Gulch</i>	212-4475-444.75-72	\$161,938	\$16,194	\$178,132	\$180,860
<i>East Plum Creek</i>	212-4475-444.76-37	\$485,815	\$48,581	\$534,396	\$0
<i>Total</i>		\$647,754	\$64,775	\$712,529	

### **Staff Recommendation**

Staff recommends Town Council approval of a Resolution for approval of a services agreement with Olsson Associates for the East Plum Creek Reach/Sellars Gulch Confluence Project in the amount of \$647,754, plus staff requests a 10% Town-managed contingency in the amount of \$64,775, for a total project authorization of \$712,529.

### **Proposed Motion**

*"I move to approve the Resolution as introduced by title."*

### **Alternative Motion**

*"I move to approve the resolution as introduced by title, with the following conditions: (list conditions)."*

*"I move to continue this item to the Town Council meeting on \_\_\_\_\_ date to allow additional time to (list information needed)."*

### **Attachments**

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**Item #: 8. File #: TMP 2022-896**

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Attachment A: Resolution

Exhibit 1: Service Agreement

Attachment B: Site Maps



**TOWN OF CASTLE ROCK  
SERVICES AGREEMENT  
(East Plum Creek/Sellers Gulch Confluence Project)**

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**DATE:** \_\_\_\_\_.

**PARTIES:** **TOWN OF CASTLE ROCK**, a Colorado municipal corporation, 100 N. Wilcox Street, Castle Rock, Colorado 80104 (the “Town”).

**OLSSON, INC**, a Nebraska corporation, 1525 Raleigh Street, Suite 400, Denver, Colorado 80204 (“Contractor”).

**RECITALS:**

- A. Town wishes to engage Contractor to provide the services more fully described in the following Agreement and Exhibits.

**TERMS:**

**Section 1. Scope of Services.** Contractor shall provide engineering services as described in the attached ***Exhibit 1*** (“Services”).

**Section 2. Payment.** Contractor shall invoice Town on a monthly basis for the Services rendered in accordance with the rate and fee schedule set forth in ***Exhibit 1***. The Town shall pay such invoices within 30 days receipt of such invoice. In no event shall payment exceed \$647,754.00, unless authorized in writing by Town.

**Section 3. Completion.** Contractor shall commence the Services on January 18, 2023 and complete the Services by December 31, 2024. Contractor shall devote adequate resources to assure timely completion of the Services. Contractor shall perform the Services under this Agreement using a standard of care, skill and diligence ordinarily used by reputable professionals performing under circumstances similar to those required by this Agreement.

Town shall have the right to terminate this Agreement at any time with 30 days written notice to Contractor. The Town’s only obligation in the event of termination shall be payment of fees and expenses incurred up to and including the effective date of termination. Contractor shall turn over all work product produced up to the date of termination.

**Section 4. Annual Appropriation.** The continuance of this Agreement is contingent upon the appropriation of funds to fulfill the requirements of the Agreement by the Town. If the Town fails to appropriate sufficient monies to provide for the continuance of the Agreement, the Agreement shall terminate on the final day preceding the date of the beginning of the first fiscal year for which funds are not appropriated. The Town’s only obligation in the event of termination shall be payment of fees and expenses incurred up to and including the effective date of termination.

**Section 5. Subcontractors.** Contractor may utilize subcontractors to assist with specialized works as necessary to complete the Services. Contractor will submit any proposed subcontractor and the description of their services to the Town for approval.

**Section 6. Assignment.** This Agreement shall not be assigned by Contractor without the written consent of the Town.

**Section 7. Notice.** Any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified mail or registered mail, postage and fees prepaid, addressed to the party to whom such notice is to be given at the address set forth on the first page of this Agreement, or at such other address as has been previously furnished in writing to the other party or parties. Such notice shall be deemed given when deposited in the United States mail.

**Section 8. Insurance.** Contractor agrees to procure and maintain, at his own cost, the following policy or policies of insurance. Contractor shall not be relieved of any liability, claims, demands or other obligations assumed pursuant to this Agreement by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types.

A. Contractor shall procure and maintain, and shall cause each subcontractor of the Contractor to procure and maintain a policy with the minimum insurance coverage listed below. Such coverage shall be procured and maintained with forms and insurers acceptable to the Town. All coverage shall be continuously maintained from the date of commencement of services hereunder. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

1. Workers Compensation insurance to cover obligations imposed by the Workers Compensation Act of Colorado and any other applicable laws for any employee engaged in the performance of Work under this contract, and Employer's Liability insurance with minimum limits of FIVE HUNDRED THOUSAND DOLLARS (\$500,000) each accident, FIVE HUNDRED THOUSAND DOLLARS (\$500,000) disease-policy limit, and FIVE HUNDRED THOUSAND DOLLARS (\$500,000) disease-each employee.

2. Comprehensive General Liability insurance with minimum combined single limits of ONE MILLION DOLLARS (\$1,000,000) each occurrence and ONE MILLION DOLLARS (\$1,000,000) aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall contain a severability of interests provision.

3. 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) each occurrence and ONE MILLION DOLLARS (\$1,000,000) aggregate with respect to each of Contractor's owned, hired and/or non-owned vehicles

assigned to or used in performance of the services. The policy shall contain a severability of interests provision.

B. The policies required above, except Workers' Compensation insurance, Employers' Liability insurance and Professional Liability insurance shall be endorsed to include the Town, its officers and employees, as additional insureds. Every policy required above, except Workers' Compensation shall be primary insurance, and any insurance carried by the Town, its officers, or its employees, shall be excess and not contributory insurance to that provided by Contractor. The additional insured endorsement for the Comprehensive General Liability insurance required above shall not contain any exclusion for bodily injury or property damage arising from completed operations. The Contractor shall be solely responsible for any deductible losses under each of the policies required above.

C. Certificates of insurance shall be completed by Contractor's insurance agent and submitted at the time of execution of this Agreement as ***Exhibit 2*** as evidence that policies providing the required coverage, conditions and minimum limits are in full force and effect, and shall be subject to review and approval by the Town. Each certificate shall identify the Project and shall provide that coverage afforded under the policies shall not be cancelled, terminated or materially changed until at least 30 days prior written notice has been given to the Town. If the words "endeavor to" appear in the portion of the certificate addressing cancellation, those words shall be stricken from the certificate by the agent(s) completing the certificate. The Town reserves the right to request and receive a certified copy of any policy and any endorsement thereto.

D. Failure on the part of Contractor to procure or maintain policies providing the required coverage, conditions, and minimum limits shall constitute a material breach of contract upon which at the Town's discretion may procure or renew any such policy or any extended connection therewith, and all monies so paid by the Town shall be repaid by Contractor to the Town upon demand, or the Town may offset the cost of the premiums against any monies due to Contractor from the Town.

**Section 9. Colorado Governmental Immunity Act.** The parties understand and agree that the Town is relying on, and does not waive or intend to waive by any provision of this contract, the monetary limitations (presently \$424,000 per person, \$1,195,000 for two or more persons, per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, §24-10-101, *et seq.*, C.R.S., as from time to time amended, or otherwise available to Town, its officers, or its employees.

**Section 10. Indemnification.** Contractor expressly agrees to indemnify and hold harmless Town or any of its officers or employees from any and all claims, damages, liability, or court awards including attorney's fees that are or may be awarded as a result of any loss, injury or damage sustained or claimed to have been sustained by anyone, including, but not limited to, any person, firm, partnership, or corporation, to the extent caused by the negligent acts, errors or omissions of Contractor or any of their employees or agents in performing work pursuant to this Agreement. In the event that any such suit or action is brought against Town, Town will give notice within ten (10) days thereof to Contractor.



**Section 11. Delays.** Any delays in or failure of performance by any party of his or its obligations under this Agreement shall be excused if such delays or failure are a result of acts of God, fires, floods, strikes, labor disputes, accidents, regulations or orders of civil or military authorities, shortages of labor or materials, or other causes, similar or dissimilar, which are beyond the control of such party.

**Section 12. Additional Documents.** The parties agree to execute any additional documents or take any additional action that is necessary to carry out this Agreement.

**Section 13. Entire Agreement.** This Agreement represents the entire agreement between the parties and there are no oral or collateral agreements or understandings. This Agreement may be amended only by an instrument in writing signed by the parties. If any other provision of this Agreement is held invalid or unenforceable, no other provision shall be affected by such holding, and all of the remaining provisions of this Agreement shall continue in full force and effect.

**Section 14. Time of the Essence.** Time is of the essence. If any payment or any other condition, obligation, or duty is not timely made, tendered or performed by either party, then this Agreement, at the option of the party who is not in default, may be terminated by the non-defaulting party, in which case, the non-defaulting party may recover such damages as may be proper.

**Section 15. Default and Remedies.** In the event either party should default in performance of its obligations under this agreement, and such default shall remain uncured for more than 10 days after notice of default is given to the defaulting party, the non-defaulting party shall be entitled to pursue any and all legal remedies and recover its reasonable attorney's fees and costs in such legal action. In addition, no Party will be entitled to lost profits, economic damages, or actual, direct, incidental, consequential, punitive or exemplary damages in the event of a default.

**Section 16. Waiver.** A waiver by any party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either party.

**Section 17. Governing Law.** This Agreement shall be governed by the laws of the State of Colorado in the Douglas County District Court.

**Section 18. Independent Contractor.** Contractor has completed the Affidavit of Independent Contractor Status, attached as *Exhibit 3*, and submitted same at the time of execution of this Agreement. In addition to the Affidavit, Contractor and the Town hereby represent that Contractor is an independent contractor for all purposes hereunder. Contractor represents and warrants that they are free from the Town's direction and control in the performance of their work or services and that they have an independent business doing the specific type of work or services which are the subject of this Agreement. More specifically, Contractor represents and warrants that the Town does not control what work or services they will perform or the manner in which such work or services will be performed. As such, Contractor is not covered by any worker's



compensation insurance or any other insurance maintained by Town except as would apply to members of the general public. Contractor shall not create any indebtedness on behalf of the Town.

**Section 19. No Third Party Beneficiaries.** It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to Town and Contractor, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other third party on such Agreement. It is the express intention of the parties that any person other than Town or Contractor receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

**Section 20. Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall be deemed to constitute one and the same instrument. Each of the Parties hereto shall be entitled to rely upon a counterpart of the instrument executed by the other Party and sent by electronic mail.

**ATTEST:**

**TOWN OF CASTLE ROCK**

\_\_\_\_\_  
Lisa Anderson, Town Clerk

\_\_\_\_\_  
Jason Gray, Mayor

**Approved as to form:**

**Approved as to content:**

\_\_\_\_\_  
Michael J. Hyman, Town Attorney

\_\_\_\_\_  
David L. Corliss, Town Manager

**CONTRACTOR:**

**OLSSON, INC.**

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

Its: \_\_\_\_\_



