



Action Item # 6057/22  
Docket Date: March 23, 2022

## City of Newport REQUEST FOR CITY COUNCIL ACTION

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To: Mayor Jeanne-Marie Napolitano & Members of the City Council  
From: Joseph J. Nicholson, Jr. Esq., City Manager  
Date: March 11, 2022  
Subject: Amendment No. 4 - Contract # 16-040 - Engineering Services for Drainage Investigation and Flooding Analysis - Whitwell Avenue Area  
Staff Presentation: Robert C. Schultz, Jr., Director of Utilities

### **RECOMMENDATION:**

The Department of Utilities, Water Pollution Control Division staff, recommends the award of Amendment No. 4 per *Section X. Supplemental Agreements* of Contract #16-040 with Fuss & O'Neill for Engineering Services for Drainage Investigation and Flooding Analysis for the Whitwell Avenue Area for an amount not to exceed \$60,600. Amendment No.4 will fund the engineering services and assist with developing nonstructural approaches to reduce stormwater impacts Citywide. Funding for Amendment #4 will be financed by the Water Pollution Control Division Capital Program. It is also recommended that the term of Contract #16-040 be extended to July 1, 2023.

### **BACKGROUND AND FINDINGS:**

During high-intensity rain events, the City experiences several areas of localized flooding in low-lying areas. These events result from three major factors: the evolution of modern stormwater engineering, urbanization of the watershed, and climate change. The City has completed numerous Drainage Investigations and Flooding Analyses with common results. No simple solution exists, and stormwater mitigation will require a comprehensive management approach with a combination of public and private projects, adaptation, operation, and maintenance.

The 2019 SNEP Watershed Grant program funded Amendment #2 services associated with implementing the work plan for developing nonstructural approaches to reduce stormwater impacts in an urban neighborhood such as the Whitwell Avenue study area. During this project, it was found that the Whitwell Watershed was adding an average of 1 acre new impervious cover per year resulting in 133,000 extra gallons of flow per design storm.

This trend is occurring Citywide to varying degrees. The proposed amendment will quantify the annual rate of new impervious areas and the associated increase in runoff Citywide for 2018, 2019, 2020. Concurrent with the engineering analysis, a draft onsite City Stormwater Ordinance will be evaluated. The process will assess the current regulatory structure, feasibility, legality, and public outreach.

### **PREVIOUS LEGISLATIVE ACTION**

Resolution #2016-35- Contract #16-040 Drainage Investigation and Flooding Analysis- Whitwell Ave. Area  
Resolution #2017-37- #16-040 Amendment #1  
Resolution #2019-87- #16-040 Amendment #2  
Resolution #2021-60- #16-040 Amendment #3

### **FISCAL IMPACT**

☒ Currently Budgeted (Account# 10-450-2500-50440) ☐ Requires additional appropriation ☐ No Fiscal Impact

### **SUPPORTING DOCUMENTS**

Resolution  
Draft Amendment No.4

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Finance Dept. Review: \_\_\_\_\_ Date By: \_\_\_\_\_ (if applicable)

THE CITY OF NEWPORT

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**RESOLUTION  
OF THE  
COUNCIL**

No. ....

RESOLVED: that Amendment No. 4 to the Contract and Agreement for Engineering Services for Drainage Investigation and Flooding Analysis for Whitwell Avenue Area (#16-040) between the City of Newport and Fuss and O'Neill, is hereby approved at a cost not to exceed \$60,600.00 and the term of the contract is extended to July 1, 2023 and the Mayor is authorized to sign said Amendment No. 4 on behalf of the City, subject to favorable review by the City Solicitor.

IN COUNCIL  
READ AND PASSED

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Laura C. Swistak  
City Clerk



AMENDMENT NO. 4  
FOR PRELIMINARY DESIGN SERVICES  
TO THE AGREEMENT  
BETWEEN  
CITY OF NEWPORT  
AND  
FUSS & O'NEILL, INC.  
FOR  
PROFESSIONAL SERVICES  
CONTRACT #16-040

In consideration of the mutual promises herein contained, the parties hereto agree to amend their Agreement dated April 25, 2016 as follows:

**PROJECT UNDERSTANDING**

The purpose of this amendment is to create additional deliverables building upon the City of Newport's 2019 Watershed Grant funding through the Southeast New England Program. The purpose of this amendment is to develop a citywide ordinance that will reduce stormwater impacts from private properties through regulation and small-scale physical property owner education to reduce stormwater volumes and pollutants.

**SCOPE OF SERVICES**

Fuss & O'Neill proposes the following scope of services to assist the City through preliminary design phase for these improvements.

1. Task 1. Impervious Surface Area Estimate: Assess the average annual rate of new impervious surface area in Newport for the years 2018, 2019 and 2020 by evaluating building permit data provided by City staff from the Department of Building and Inspections.
2. Task 2. Stormwater Runoff Estimate: Assess the amount of resulting stormwater generated by the new impervious surface area created during the years 2018, 2019 and 2020 (during 2- and 10-year storm events).
3. Task 3. Draft Citywide Stormwater Ordinance
  - a. Review the existing conditions report, Draft Stormwater Management Overlay Zone ordinance, which was created for the Whitwell Avenue project area under SNEP grant, and the Homeowner's Guide to on-site stormwater management.
  - b. Assess the existing City regulatory structure for a recommended method for integration of On-site Stormwater Management Mitigation Requirement for additional impervious surfaces. This task also includes:
  - c. Assess the feasibility of stand-alone ordinance as an option, including an outline of the ordinance and existing ordinance models from other communities
  - d. Assess the feasibility of an amendment to an existing ordinance (potential Sediment and Erosion Control ordinance) as an option, including an outline of ordinance amendments and existing ordinance models from other communities.



- e. Assess the legality of both options within the context of the City legal structure and legal precedents at State and Federal levels. Research and cite the case precedents which support and/or erode the feasibility of both options.
- f. Make recommendation for preferred legal method.
- g. Prepare a memorandum summarizing our findings and recommendations.
- h. Meet with the Department of Utilities to review the memorandum and to develop next steps for enactment of the stormwater ordinance.
- i. Meet with the City Solicitor and Department of Utilities to review the recommended method to enact the stormwater ordinance.
- j. Prepare a draft stormwater ordinance for the City's review by the Department of Utilities and City Solicitor.
- k. Address minor review comments to amend the draft ordinance and submit a final stormwater ordinance to the City.
- l. Participate in four (4) public meetings/hearings to present/discuss the draft ordinance.

## TERM OF AGREEMENT

Replace Part III of the Agreement with the following:

"Unless terminated earlier in accordance with the terms of this Agreement, this Agreement shall terminate on July 30, 2022. Throughout such time, all fees and work specifications as identified herein shall remain in effect."

## SCHEDULE

Task	Start Date	End Date
1. Impervious Surface Area Estimate	March 28, 2022	April 15, 2019
2. Stormwater Runoff Estimate	March 28, 2022	April 15, 2019
3. Draft Citywide Stormwater Ordinance	March 28, 2022	June 30, 2022

## FEES

Fuss & O'Neill proposes to provide the engineering services as outlined below. A table showing a man-hour and subconsultant breakdown of these tasks is attached to this proposal.

Task	Fee	Fee Basis
1. Impervious Surface Area Estimate	\$6,200	Lump Sum
2. Stormwater Runoff Estimate	\$9,600	Lump Sum
3. Draft Citywide Stormwater Ordinance	\$44,800	Lump Sum
<b>Total.</b>	<b>\$60,600</b>	



IN WITNESS WHEREOF, the said parties hereto have caused this instrument to be signed by their duly constituted officers, attested, and sealed pursuant to proper resolutions.

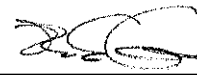
By: \_\_\_\_\_  
Party of the First Part (Signature)

Jeanne-Marie Napolitano, Mayor, City of Newport  
(Printed Name and Title)

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Date:

\_\_\_\_\_  
Date:

By:  \_\_\_\_\_  
Party of the Second Part (Signature)

Dean E. Audet, Senior Vice President  
(Printed Name and Title)

March 4, 2022

\_\_\_\_\_  
Date:

 \_\_\_\_\_  
Witness Arnold Robinson

March 4, 2022

\_\_\_\_\_  
Date:

Approved as to Form By:

\_\_\_\_\_  
Christopher Behan  
City Solicitor

\_\_\_\_\_  
Date:

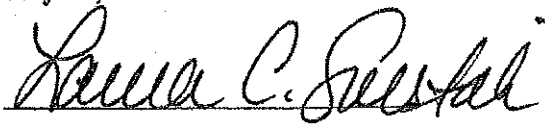
CITY OF NEWPORT

RESOLUTION  
OF THE  
COUNCIL

No. 2021-60

RESOLVED: that Amendment No. 3 to the Contract and Agreement for Engineering Services for Drainage Investigation and Flooding Analysis for Whitwell Avenue Area (#16-040) between the City of Newport and Fuss and O'Neill, is hereby approved at a cost not to exceed \$54,100.00 and the term of the contract is extended to January 31, 2022, and the Mayor is authorized to execute said Amendment No. 3, on behalf of the City, subject to favorable review by the City Solicitor.

IN COUNCIL  
READ AND PASSED  
July 28, 2021

A handwritten signature in cursive script, appearing to read "Laura C. Swistak", written over a horizontal line.

Laura C. Swistak  
City Clerk

**CITY OF NEWPORT**

**RESOLUTION  
OF THE  
COUNCIL**

**No. 2019-87**

RESOLVED: that Amendment No. 2 to the Contract and Agreement for Engineering Services for Drainage Investigation and Flooding Analysis for Whitwell Avenue Area (#16-040) between the City of Newport and Fuss and O'Neill, is hereby approved at a cost not to exceed \$145,000.00 and the term of the contract is extended to September 30, 2020, and the Mayor is authorized to execute said Amendment No. 2, on behalf of the City, subject to favorable review by the City Solicitor.

IN COUNCIL  
READ AND PASSED  
SEPTEMBER 25, 2019



Laura C. Swistak  
City Clerk

CITY OF NEWPORT

RESOLUTION  
OF THE  
COUNCIL

No. 2017-37

RESOLVED: that Amendment No. 1 to the Contract and Agreement for Engineering Services for Drainage Investigation and Flooding Analysis for Whitwell Avenue Area (#16-040) between the City of Newport and Fuss and O'Neill, is hereby approved at a cost not to exceed \$132,671.00.00 and the term of the contract is extended to November 1, 2017, and the Mayor is authorized to execute said Amendment No. 1, on behalf of the City, subject to favorable review by the City Solicitor.

IN COUNCIL  
READ AND PASSED  
APRIL 12, 2017



Laura C. Swistak  
City Clerk

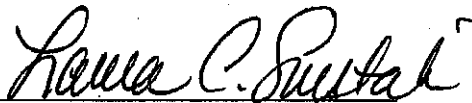
**CITY OF NEWPORT**

**RESOLUTION  
OF THE  
COUNCIL**

**No. 2016-35**

RESOLVED: that the Contract and Agreement for Engineering Services for Drainage Investigation & Flooding Analysis-Whitwell Avenue Area, Project (#16-040) between the City of Newport and Fuss & O'Neill, is hereby approved at a cost not to exceed \$49,950.00 and the Mayor is authorized to execute said Contract and Agreement, on behalf of the City, subject to favorable review by the City Solicitor.

IN COUNCIL  
READ AND PASSED  
April 13, 2016

A handwritten signature in cursive script, reading "Laura C. Swistak".

Laura C. Swistak  
City Clerk