

RESOLUTION NO. 2705

A RESOLUTION OF THE CITY OF WILSONVILLE AUTHORIZING THE CITY MANAGER TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH KITTELSON & ASSOCIATES, INC. FOR DESIGN AND CONSTRUCTION ENGINEERING SERVICES FOR THE 2018 STREET MAINTENANCE OF WILSONVILLE ROAD AND BOONES FERRY ROAD (CAPITAL IMPROVEMENT PROJECT #4104 AND #4118).

WHEREAS, the City of Wilsonville (“City”) has planned and budgeted for annual street maintenance and associated pedestrian signal upgrades under CIP #4014 - Street Maintenance and CIP #4118 - Signal Improvements (“Projects”); and

WHEREAS, the City solicited Requests for Proposals (RFP) from qualified consulting firms in compliance with the City of Wilsonville Municipal Code and Oregon public contracting laws to assist the City with the foregoing Projects; and

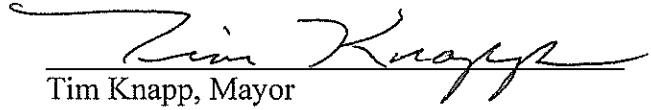
WHEREAS, Kittelson & Associates, Inc. was the only responsive proposer and, after an internal review by a City selection committee, was selected as the most qualified consultant; and

WHEREAS, the Professional Services Agreement documents the consultant will be paid on a time and materials basis not to exceed ONE HUNDRED EIGHTY-FIVE THOUSAND FOUR HUNDRED FIFTEEN DOLLARS (\$185,415).

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

1. The procurement process for the Projects duly followed Oregon public contracting laws and the Wilsonville Municipal Code.
2. City Council authorizes the City Manager to execute a Professional Services Agreement in the amount of ONE HUNDRED EIGHTY-FIVE THOUSAND FOUR HUNDRED FIFTEEN DOLLARS (\$185,415) in substantially similar form to **Exhibit A** attached hereto.
2. This Resolution becomes effective upon adoption.

ADOPTED by the Wilsonville City Council at a regular meeting thereof this 20th day of August 2018, and filed with the Wilsonville City Recorder this date.


Tim Knapp, Mayor

ATTEST:


Kimberly Veliz, City Recorder

SUMMARY OF VOTES:

Mayor Knapp	Yes
Councilor Starr	Excused
Councilor Stevens	Yes
Councilor Lehan	Yes
Councilor Akervall	Yes

Attachments:

Exhibit A – PSA 2018 Street Maintenance (4104 & 4118)

**CITY OF WILSONVILLE
PROFESSIONAL SERVICES AGREEMENT
2018 STREET MAINTENANCE (#4014/#4118)**

This Professional Services Agreement (“Agreement”) is made and entered into on this ___ day of August 2018 (“Effective Date”) by and between the **City of Wilsonville**, a municipal corporation of the State of Oregon (hereinafter referred to as the “City”), and **Kittelson & Associates, Inc.** a(n) Oregon corporation (hereinafter referred to as “Consultant”).

RECITALS

WHEREAS, the City requires services which Consultant is capable of providing, under terms and conditions hereinafter described; and

WHEREAS, Consultant represents that Consultant is qualified to perform the services described herein on the basis of specialized experience and technical expertise; and

WHEREAS, Consultant is prepared to provide such services as the City does hereinafter require.

NOW, THEREFORE, in consideration of these mutual promises and the terms and conditions set forth herein, the parties agree as follows:

AGREEMENT

Section 1. Term

The term of this Agreement shall be from the Effective Date until all services required to be performed hereunder (“Services”) are completed and accepted, or no later than June 30, 2019, whichever occurs first, unless earlier terminated in accordance herewith or an extension of time is agreed to, in writing, by the City.

Section 2. Consultant’s Services

2.1. Consultant shall diligently perform the engineering services according to the requirements identified in the Scope of Services, attached hereto as **Exhibit A** and incorporated by reference herein, for the 2018 Street Maintenance Project (“Project”).

2.2. All written documents, drawings, and plans submitted by Consultant in conjunction with the Services shall bear the signature, stamp, or initials of Consultant’s authorized Project Manager. Any documents submitted by Consultant which do not bear the signature, stamp, or initials of Consultant’s authorized Project Manager, will not be relied upon by the City. Interpretation of plans and answers to questions regarding the Services or Scope of Services given by Consultant’s Project Manager may be verbal or in writing, and may be relied upon by the City, whether given verbally or in writing. If requested by the City to be in writing, Consultant’s Project Manager will provide such written documentation.

2.3. Consultant will not be deemed to be in default by reason of delays in performance due to reasons beyond Consultant's reasonable control, including but not limited to strikes, lockouts, severe acts of nature, or other unavoidable delays or acts of third parties not under Consultant's direction and control ("Force Majeure"). In the case of the happening of any Force Majeure event, the time for completion of the Services will be extended accordingly and proportionately by the City, in writing. Lack of labor, supplies, materials, or the cost of any of the foregoing shall not be deemed a Force Majeure event.

2.4. The existence of this Agreement between the City and Consultant shall not be construed as the City's promise or assurance that Consultant will be retained for future services beyond the Scope of Services described herein.

2.5. Consultant shall maintain the confidentiality of any confidential information that is exempt from disclosure under state or federal law to which Consultant may have access by reason of this Agreement. Consultant warrants that Consultant's employees assigned to work on the Services provided in this Agreement shall be clearly instructed to maintain this confidentiality. All agreements with respect to confidentiality shall survive the termination or expiration of this Agreement.

Section 3. Compensation

3.1. Except as otherwise set forth in this **Section 3**, the City agrees to pay Consultant on a time and materials basis, guaranteed not to exceed ONE HUNDRED EIGHTY-FIVE THOUSAND FOUR HUNDRED FIFTEEN DOLLARS (\$185,415) for performance of the Services ("Compensation Amount"). Any compensation in excess of the Compensation Amount will require an express written Addendum to be executed between the City and Consultant.

3.2. During the course of Consultant's performance, if the City, through its Project Manager, specifically requests Consultant to provide additional services that are beyond the Scope of Services described on **Exhibit A**, a written Addendum to this Agreement must be executed in compliance with the provisions of **Section 15**.

3.3. Except for amounts withheld by the City pursuant to this Agreement, Consultant will be paid for Services for which an itemized invoice is received by the City within thirty (30) days of receipt, unless the City disputes such invoice. In that instance, the undisputed portion of the invoice will be paid by the City within the above timeframe. The City will set forth its reasons for the disputed claim amount and make good faith efforts to resolve the invoice dispute with Consultant as promptly as is reasonably possible.

3.4. Consultant's Compensation Amount is all inclusive and includes, but is not limited to, all work-related costs, expenses, salaries or wages, plus fringe benefits and contributions, including payroll taxes, workers compensation insurance, liability insurance, profit, pension benefits and similar contributions and benefits, technology and/or software charges, licensing, trademark, and/or copyright costs, office expenses, travel expenses, mileage, and all other indirect and overhead charges.

Section 4. City's Rights and Responsibilities

4.1. The City will designate a Project Manager to facilitate day-to-day communication between Consultant and the City, including timely receipt and processing of invoices, requests for information, and general coordination of City staff to support the Project.

Section 5. City's Project Manager

The City's Project Manager is Dominique Huffman. The City shall give Consultant prompt written notice of any re-designation of its Project Manager.

Section 6. Consultant's Project Manager

Consultant's Project Manager is Jeff Whitman. In the event that Consultant's designated Project Manager is changed, Consultant shall give the City prompt written notification of such re-designation. Recognizing the need for consistency and knowledge in the administration of the Project, Consultant's Project Manager will not be changed without the written consent of the City, which consent shall not be unreasonably withheld. In the event the City receives any communication from Consultant that is not from Consultant's designated Project Manager, the City may request verification by Consultant's Project Manager, which verification must be promptly furnished.

Section 7. Project Information

Except for confidential information designated by the City as information not to be shared, Consultant agrees to share Project information with, and to fully cooperate with, those corporations, firms, contractors, public utilities, governmental entities, and persons involved in or associated with the Project. No information, news, or press releases related to the Project, whether made to representatives of newspapers, magazines, or television and radio stations, shall be made without the written authorization of the City's Project Manager.

Section 8. Duty to Inform

If at any time during the performance of this Agreement or any future phase of this Agreement for which Consultant has been retained, Consultant becomes aware of actual or potential problems, faults, or defects in the Project or Scope of Services, or any portion thereof; or of any nonconformance with federal, state, or local laws, rules, or regulations; or if Consultant has any objection to any decision or order made by the City with respect to such laws, rules, or regulations, Consultant shall give prompt written notice thereof to the City's Project Manager. Any delay or failure on the part of the City to provide a written response to Consultant shall neither constitute agreement with nor acquiescence to Consultant's statement or claim, nor constitute a waiver of any of the City's rights.

Section 9. Subcontractors and Assignments

9.1. Unless expressly authorized in **Exhibit A** or **Section 10** of this Agreement, Consultant shall not subcontract with others for any of the Services prescribed herein. Consultant shall not assign any of Consultant's rights acquired hereunder without obtaining prior written approval from the City, which approval may be granted or denied in the City's sole discretion. Some Services may be performed by persons other than Consultant, provided Consultant advises the City of the names of such subcontractors and the work which they intend to perform, and the City specifically agrees in writing to such subcontracting. Consultant acknowledges such work will be provided to the City pursuant to a subcontract(s) between Consultant and subcontractor(s) and no privity of contract exists between the City and the subcontractor(s). Unless otherwise specifically provided by this Agreement, the City incurs no liability to third persons for payment of any compensation provided herein to Consultant. Any attempted assignment of this Agreement without the written consent of the City shall be void. Except as otherwise specifically agreed, all costs for work performed by others on behalf of Consultant shall not be subject to additional reimbursement by the City.

9.2. The City shall have the right to enter into other agreements for the Project, to be coordinated with this Agreement. Consultant shall cooperate with the City and other firms, engineers or subcontractors on the Project so that all portions of the Project may be completed in the least possible time and within normal working hours. Consultant shall furnish other engineers, subcontractors and affected public utilities, whose designs are fitted into Consultant's design, detail drawings giving full information so that conflicts can be avoided.

Section 10. Consultant Is Independent Contractor

10.1. Consultant is an independent contractor for all purposes and shall be entitled to no compensation other than the Compensation Amount provided for under **Section 3** of this Agreement. Consultant will be solely responsible for determining the manner and means of accomplishing the end result of Consultant's Services. The City does not have the right to control or interfere with the manner or method of accomplishing said Services. The City, however, will have the right to specify and control the results of Consultant's Services so such Services meet the requirements of the Project.

10.2. Consultant may request that some consulting Services be performed on the Project by persons or firms other than Consultant, through a subcontract with Consultant. Consultant acknowledges that if such Services are provided to the City pursuant to a subcontract(s) between Consultant and those who provide such services, Consultant may not utilize any subcontractor(s), or in any way assign its responsibility under this Agreement, without first obtaining the express written consent of the City, which consent may be given or denied in the City's sole discretion. In all cases, processing and payment of billings from subcontractors is solely the responsibility of Consultant.

10.3. Consultant shall be responsible for, and defend, indemnify, and hold the City harmless against, any liability, cost, or damage arising out of Consultant's use of such subcontractor(s) and subcontractor's negligent acts, errors, or omissions. Unless otherwise

agreed to, in writing, by the City, Consultant shall require that all of Consultant's subcontractors also comply with, and be subject to, the provisions of this **Section 10** and meet the same insurance requirements of Consultant under this Agreement.

Section 11. Consultant Responsibilities

11.1. Consultant shall make prompt payment for any claims for labor, materials, or services furnished to Consultant by any person in connection with this Agreement, as such claims become due. Consultant shall not permit any liens or claims to be filed or prosecuted against the City on account of any labor or material furnished to or on behalf of Consultant. If Consultant fails, neglects, or refuses to make prompt payment of any such claim, the City may, but shall not be obligated to, pay such claim to the subcontractor furnishing the labor, materials, or services and offset the amount of the payment against funds due or to become due to Consultant under this Agreement. The City may also recover any such amounts directly from Consultant.

11.2. Consultant must comply with all applicable Oregon and federal wage and hour laws, including BOLI wage requirements, if applicable. Consultant shall make all required workers compensation and medical care payments on time. Consultant shall be fully responsible for payment of all employee withholdings required by law, including but not limited to taxes, including payroll, income, Social Security (FICA), and Medicaid. Consultant shall also be fully responsible for payment of salaries, benefits, taxes, Industrial Accident Fund contributions, and all other charges on account of any employees. Consultant shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. All costs incident to the hiring of assistants or employees shall be Consultant's responsibility. Consultant shall defend, indemnify, and hold the City harmless from claims for payment of all such expenses. Unless otherwise expressly set forth on **Exhibit A** as a reimbursable expense item not included in the Compensation Amount, specific costs associated with items set forth in this subsection shall be deemed as fully and conclusively included in the rate upon which Consultant's Compensation Amount is based.

11.3. No person shall be discriminated against by Consultant or any subcontractor in the performance of this Agreement on the basis of sex, gender, race, color, creed, religion, marital status, age, disability, sexual orientation, gender identity, or national origin. Any violation of this provision shall be grounds for cancellation, termination, or suspension of the Agreement, in whole or in part, by the City.

11.4. References to "subcontractor" mean a subcontractor at any tier.

Section 12. Indemnity and Insurance

12.1. Indemnification. Consultant acknowledges responsibility for liability arising out of the performance of this Agreement, and shall defend, indemnify, and hold the City harmless from any and all liability, settlements, loss, costs, and expenses in connection with any action, suit, or claim resulting or allegedly resulting from Consultant's negligent acts, omissions, errors, or willful or reckless misconduct pursuant to this Agreement, or from Consultant's failure to perform its responsibilities as set forth in this Agreement. The review, approval, or acceptance

by the City, its Project Manager, or any City employee of documents or other work performed, prepared, or submitted by Consultant shall not be considered a negligent act, error, omission, or willful misconduct on the part of the City, and none of the foregoing shall relieve Consultant of its responsibility to perform in full conformity with the City's requirements, as set forth in this Agreement, and to indemnify the City as provided above and to reimburse the City for any and all costs and damages suffered by the City as a result of Consultant's negligent performance of this Agreement, failure of performance hereunder, violation of state or federal laws, or failure to adhere to the standards of performance and care described in **Subsection 12.2**. Consultant shall defend the City (using legal counsel reasonably acceptable to the City) against any claim that alleges negligent acts, omissions, errors, or willful or reckless misconduct by Consultant.

12.2. Standard of Care. In the performance of professional services, Consultant agrees to use at least that degree of care and skill exercised under similar circumstances by reputable members of Consultant's profession practicing in the Portland metropolitan area. Consultant will re-perform any Services not meeting this standard without additional compensation. Consultant's re-performance of any Services, even if done at the City's request, shall not be considered as a limitation or waiver by the City of any other remedies or claims it may have arising out of Consultant's failure to perform in accordance with the applicable standard of care of this Agreement and within the prescribed timeframe.

12.3. Insurance Requirements. Consultant shall maintain insurance coverage acceptable to the City in full force and effect throughout the term of this Agreement. Such insurance shall cover all risks arising directly or indirectly out of Consultant's activities or work hereunder. Any and all agents, contractors, or subcontractors with which Consultant contracts to work on the Services must have insurance that conforms to the insurance requirements in this Agreement. The amount of insurance carried is in no way a limitation on Consultant's liability hereunder. The policy or policies of insurance maintained by Consultant shall provide at least the following minimum limits and coverages at all times during performance under this Agreement:

12.3.1. Commercial General Liability Insurance. Consultant and all subcontractors shall obtain, at each of their own expense, and keep in effect during the term of this Agreement, comprehensive Commercial General Liability Insurance covering Bodily Injury and Property Damage, written on an "occurrence" form policy. This coverage shall include broad form Contractual Liability insurance for the indemnities provided under this Agreement and shall be for the following minimum insurance coverage amounts: The coverage shall be in the amount of **\$2,000,000** for each occurrence and **\$3,000,000** general aggregate and shall include Products-Completed Operations Aggregate in the minimum amount of **\$2,000,000** per occurrence, Fire Damage (any one fire) in the minimum amount of **\$50,000**, and Medical Expense (any one person) in the minimum amount of **\$10,000**. All of the foregoing coverages must be carried and maintained at all times during this Agreement.

12.3.2. Professional Errors and Omissions Coverage. Consultant agrees to carry Professional Errors and Omissions Liability insurance on a policy form appropriate to the professionals providing the Services hereunder with a limit of no less than **\$2,000,000**

per claim. Consultant shall maintain this insurance for damages alleged to be as a result of errors, omissions, or negligent acts of Consultant. Such policy shall have a retroactive date effective before the commencement of any work by Consultant on the Services covered by this Agreement, and coverage will remain in force for a period of at least three (3) years thereafter.

12.3.3. Business Automobile Liability Insurance. If Consultant or any subcontractors will be using a motor vehicle in the performance of the Services herein, Consultant shall provide the City a certificate indicating that Consultant and its subcontractors have business automobile liability coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than **\$2,000,000**.

12.3.4. Workers Compensation Insurance. Consultant, its subcontractors, and all employers providing work, labor, or materials under this Agreement that are subject employers under the Oregon Workers Compensation Law shall comply with ORS 656.017, which requires them to provide workers compensation coverage that satisfies Oregon law for all their subject workers under ORS 656.126. Out-of-state employers must provide Oregon workers compensation coverage for their workers who work at a single location within Oregon for more than thirty (30) days in a calendar year. Consultants who perform work without the assistance or labor of any employee need not obtain such coverage. This shall include Employer's Liability Insurance with coverage limits of not less than **\$500,000** each accident.

12.3.5. Insurance Carrier Rating. Coverages provided by Consultant and its subcontractors must be underwritten by an insurance company deemed acceptable by the City, with an AM Best Rating of A or better. The City reserves the right to reject all or any insurance carrier(s) with a financial rating that is unacceptable to the City.

12.3.6. Additional Insured and Termination Endorsements. Additional Insured coverage under Consultant's Commercial General Liability, Automobile Liability, and Excess Liability Policies, as applicable, will be provided by endorsement. Additional insured coverage shall be for both ongoing operations via ISO Form CG 2010 or its equivalent, and products and completed operations via ISO Form CG 2037 or its equivalent. Coverage shall be Primary and Non-Contributory. Waiver of Subrogation endorsement via ISO Form CG 2404 or its equivalent shall be provided. The following is included as additional insured: "The City of Wilsonville, its elected and appointed officials, officers, agents, employees, and volunteers." An endorsement shall also be provided requiring the insurance carrier to give the City at least thirty (30) days' written notification of any termination or major modification of the insurance policies required hereunder. Consultant must be an additional insured on the insurance policies obtained by its subcontractors performing work on the Services contemplated under this Agreement.

12.3.7. Certificates of Insurance. As evidence of the insurance coverage required by this Agreement, Consultant shall furnish a Certificate of Insurance to the City. This

Agreement shall not be effective until the required certificates and the Additional Insured Endorsements have been received and approved by the City. Consultant agrees that it will not terminate or change its coverage during the term of this Agreement without giving the City at least thirty (30) days' prior advance notice and Consultant will obtain an endorsement from its insurance carrier, in favor of the City, requiring the carrier to notify the City of any termination or change in insurance coverage, as provided above.

12.4. Primary Coverage. The coverage provided by these policies shall be primary, and any other insurance carried by the City is excess. Consultant shall be responsible for any deductible amounts payable under all policies of insurance. If insurance policies are "Claims Made" policies, Consultant will be required to maintain such policies in full force and effect throughout any warranty period.

Section 13. Early Termination; Default

13.1. This Agreement may be terminated prior to the expiration of the agreed upon terms:

13.1.1. By mutual written consent of the parties;

13.1.2. By the City, for any reason, and within its sole discretion, effective upon delivery of written notice to Consultant by mail or in person; or

13.1.3. By Consultant, effective upon seven (7) days' prior written notice in the event of substantial failure by the City to perform in accordance with the terms through no fault of Consultant, where such default is not cured within the seven (7) day period by the City. Withholding of disputed payment is not a default by the City.

13.2. If the City terminates this Agreement, in whole or in part, due to default or failure of Consultant to perform Services in accordance with the Agreement, the City may procure, upon reasonable terms and in a reasonable manner, services similar to those so terminated. In addition to any other remedies the City may have, both at law and in equity, for breach of contract, Consultant shall be liable for all costs and damages incurred by the City as a result of the default by Consultant, including, but not limited to all costs incurred by the City in procuring services from others as needed to complete this Agreement. This Agreement shall be in full force to the extent not terminated by written notice from the City to Consultant. In the event of a default, the City will provide Consultant with written notice of the default and a period of ten (10) days to cure the default. If Consultant notifies the City that it wishes to cure the default but cannot, in good faith, do so within the ten (10) day cure period provided, then the City may elect, in its sole discretion, to extend the cure period to an agreed upon time period, or the City may elect to terminate this Agreement and seek remedies for the default, as provided above.

13.3. If the City terminates this Agreement for its own convenience not due to any default by Consultant, payment of Consultant shall be prorated to, and include the day of, termination and shall be in full satisfaction of all claims by Consultant against the City under this Agreement.

13.4. Termination under any provision of this section shall not affect any right, obligation, or liability of Consultant or the City that accrued prior to such termination. Consultant shall surrender to the City items of work or portions thereof, referred to in **Section 17**, for which Consultant has received payment or the City has made payment.

Section 14. Suspension of Services

The City may suspend, delay, or interrupt all or any part of the Services for such time as the City deems appropriate for its own convenience by giving written notice thereof to Consultant. An adjustment in the time of performance or method of compensation shall be allowed as a result of such delay or suspension unless the reason for the delay is within Consultant's control. The City shall not be responsible for Services performed by any subcontractors after notice of suspension is given by the City to Consultant. Should the City suspend, delay, or interrupt the Services and the suspension is not within Consultant's control, then the City shall extend the time of completion by the length of the delay.

Section 15. Modification/Addendum

Any modification of the provisions of this Agreement shall not be enforceable unless reduced to writing and signed by both the City and Consultant. A modification is a written document, contemporaneously executed by the City and Consultant, which increases or decreases the cost to the City over the agreed Compensation Amount in **Section 3** of this Agreement, or changes or modifies the Scope of Services or the time for performance. No modification shall be binding or effective until executed, in writing, by both Consultant and the City. In the event Consultant receives any communication of whatsoever nature from the City, which communication Consultant contends gives rise to any modification of this Agreement, Consultant shall, within five (5) days after receipt, make a written request for modification to the City's Project Manager in the form of an Addendum. Consultant's failure to submit such written request for modification in the form of an Addendum shall be the basis for refusal by the City to treat said communication as a basis for modification or to allow such modification. In connection with any modification to this Agreement affecting any change in price, Consultant shall submit a complete breakdown of labor, material, equipment, and other costs. If Consultant incurs additional costs or devotes additional time on Project tasks, the City shall be responsible for payment of only those additional costs for which it has agreed to pay under a signed Addendum. To be enforceable, the Addendum must describe with particularity the nature of the change, any delay in time the Addendum will cause, or any increase or decrease in the Compensation Amount. The Addendum must be signed and dated by both Consultant and the City before the Addendum may be implemented.

Section 16. Access to Records

The City shall have access, upon request, to such books, documents, receipts, papers, and records of Consultant as are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of four (4) years, unless within that time the City specifically requests an extension. This clause shall survive the expiration, completion, or termination of this Agreement.

Section 17. Property of the City

17.1. All documents, reports, and research gathered or prepared by Consultant under this Agreement, including but not limited to spreadsheets, charts, graphs, drawings, modeling, maps, data generation, papers, diaries, and inspection reports, shall be the exclusive property of the City and shall be delivered to the City prior to final payment. Any statutory or common law rights to such property held by Consultant as creator of such work shall be conveyed to the City upon request without additional compensation.

17.2. Consultant shall not be held liable for any damage, loss, increased expenses, or otherwise, caused by or attributed to the reuse by the City or its designees of all work performed by Consultant pursuant to this Agreement without the express written permission of Consultant.

Section 18. Notices

Any notice required or permitted under this Agreement shall be in writing and shall be given when actually delivered in person or forty-eight (48) hours after having been deposited in the United States mail as certified or registered mail, addressed to the addresses set forth below, or to such other address as one party may indicate by written notice to the other party.

To City: City of Wilsonville
 Attn: Dominique Huffman
 29799 SW Town Center Loop East
 Wilsonville, OR 97070

To Consultant: Kittelson & Associates, Inc.
 Attn: Jeff Whitman
 851 SW 6th Avenue, Suite 600
 Portland, OR 97204

Section 19. Miscellaneous Provisions

19.1. Integration. This Agreement, including all exhibits attached hereto, contains the entire and integrated agreement between the parties and supersedes all prior written or oral discussions, representations, or agreements. In case of conflict among these documents, the provisions of this Agreement shall control.

19.2. Legal Effect and Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors, and assigns. This Agreement may be enforced by an action at law or in equity.

19.3. No Assignment. Consultant may not assign this Agreement, nor delegate the performance of any obligations hereunder, unless agreed to in advance and in writing by the City.

19.4. Adherence to Law. In the performance of this Agreement, Consultant shall adhere to all applicable federal, state, and local laws (including the Wilsonville Code and Public Works

Standards), including but not limited to laws, rules, regulations, and policies concerning employer and employee relationships, workers compensation, and minimum and prevailing wage requirements. Any certificates, licenses, or permits that Consultant is required by law to obtain or maintain in order to perform the Services described on **Exhibit A**, shall be obtained and maintained throughout the term of this Agreement.

19.5. Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Oregon, regardless of any conflicts of laws. All contractual provisions required by ORS Chapters 279A, 279B, 279C, and related Oregon Administrative Rules to be included in public agreements are hereby incorporated by reference and shall become a part of this Agreement as if fully set forth herein.

19.6. Jurisdiction. Venue for any dispute will be in Clackamas County Circuit Court.

19.7. Legal Action/Attorney Fees. If a suit, action, or other proceeding of any nature whatsoever (including any proceeding under the U.S. Bankruptcy Code) is instituted in connection with any controversy arising out of this Agreement or to interpret or enforce any rights or obligations hereunder, the prevailing party shall be entitled to recover attorney, paralegal, accountant, and other expert fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, as determined by the court or body at trial or on any appeal or review, in addition to all other amounts provided by law. If the City is required to seek legal assistance to enforce any term of this Agreement, such fees shall include all of the above fees, whether or not a proceeding is initiated. Payment of all such fees shall also apply to any administrative proceeding, trial, and/or any appeal or petition for review.

19.8. Nonwaiver. Failure by either party at any time to require performance by the other party of any of the provisions of this Agreement shall in no way affect the party's rights hereunder to enforce the same, nor shall any waiver by the party of the breach hereof be held to be a waiver of any succeeding breach or a waiver of this nonwaiver clause.

19.9. Severability. If any provision of this Agreement is found to be void or unenforceable to any extent, it is the intent of the parties that the rest of the Agreement shall remain in full force and effect, to the greatest extent allowed by law.

19.10. Modification. This Agreement may not be modified except by written instrument executed by Consultant and the City.

19.11. Time of the Essence. Time is expressly made of the essence in the performance of this Agreement.

19.12. Calculation of Time. Except where the reference is to business days, all periods of time referred to herein shall include Saturdays, Sundays, and legal holidays in the State of Oregon, except that if the last day of any period falls on any Saturday, Sunday, or legal holiday observed by the City, the period shall be extended to include the next day which is not a Saturday, Sunday, or legal holiday. Where the reference is to business days, periods of time referred to herein shall exclude Saturdays, Sundays, and legal holidays observed by the City. Whenever a

time period is set forth in days in this Agreement, the first day from which the designated period of time begins to run shall not be included.

19.13. Headings. Any titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

19.14. Number, Gender and Captions. In construing this Agreement, it is understood that, if the context so requires, the singular pronoun shall be taken to mean and include the plural, the masculine, the feminine and the neuter, and that, generally, all grammatical changes shall be made, assumed, and implied to individuals and/or corporations and partnerships. All captions and paragraph headings used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Agreement.

19.15. Good Faith and Reasonableness. The Parties intend that the obligations of good faith and fair dealing apply to this Agreement generally and that no negative inferences be drawn by the absence of an explicit obligation to be reasonable in any portion of this Agreement. The obligation to be reasonable shall only be negated if arbitrariness is clearly and explicitly permitted as to the specific item in question, such as in the case of where this Agreement gives the City “sole discretion” or the City is allowed to make a decision in its “sole judgment.”

19.16. Other Necessary Acts. Each party shall execute and deliver to the other all such further instruments and documents as may be reasonably necessary to carry out this Agreement in order to provide and secure to the other parties the full and complete enjoyment of rights and privileges hereunder.

19.17. Interpretation. As a further condition of this Agreement, the City and Consultant acknowledge that this Agreement shall be deemed and construed to have been prepared mutually by each party and it shall be expressly agreed that any uncertainty or ambiguity existing therein shall not be construed against any party. In the event that any party shall take an action, whether judicial or otherwise, to enforce or interpret any of the terms of the Agreement, the prevailing party shall be entitled to recover from the other party all expenses which it may reasonably incur in taking such action, including attorney fees and costs, whether incurred in a court of law or otherwise.

19.18. Entire Agreement. This Agreement and all documents attached to this Agreement represent the entire agreement between the parties.

19.19. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original Agreement but all of which together shall constitute one and the same instrument.

19.20. Authority. Each party signing on behalf of Consultant and the City hereby warrants actual authority to bind their respective party.

The Consultant and the City hereby agree to all provisions of this Agreement.

CONSULTANT:

CITY:

CITY OF WILSONVILLE

By: _____

By: _____

Print Name: _____

Print Name: _____

As Its: _____

As Its: _____

Employer I.D. No. _____

APPROVED AS TO FORM:

Amanda Guile-Hinman, Asst. City Attorney
City of Wilsonville, Oregon

Exhibit A – Scope of Work

Wilsonville Road and Boones Ferry Road Repaving and Pedestrian Improvements

Kittelison and Associates, Inc. (Kittelison) and GeoDesign, Inc. (GeoDesign) will provide engineering services related to the design of pavement rehabilitation on SW Wilsonville Road and SW Boones Ferry Road, and associated pedestrian improvements on SW Wilsonville Road.

All plans will be developed in accordance with the City of Wilsonville (City) and Clackamas County (County) latest standards and specifications. Three agency-review periods are assumed: at preliminary design (60%), at advance design (90%), and final design (95%). Stamped and signed plans will be provided at 100% submittal.

DESIGN ASSUMPTIONS

This scope of work assumes a pavement investigation and recommendations for rehabilitation of the existing pavement within the limits defined below:

- SW Wilsonville Road from SW Willamette Way West to SW Kinsman Road (approximately 1 mile).
- SW Boones Ferry Road from SW Wilsonville Road to SW Boeckman Road (approximately 1 mile).
- Pavement striping will be replaced along both corridors within the project limits. Traffic signal loop detection will be replaced on SW Wilsonville Road.

Additionally, this scope of work assumes the following pedestrian improvements along SW Wilsonville Road:

- SW Wilsonville Road/SW Willamette Way East signalized intersection
 - ADA ramp upgrades – eight (8) ramps total; two ramps at each corner
 - New push buttons on new posts at each corner
 - New loop detection on SW Wilsonville Road impacted by pavement rehabilitation
- SW Wilsonville Road/Autumn Park Apartments/Wood Middle School stop-controlled intersection with pedestrian crossing beacon
 - ADA ramp upgrades – four (4) ramps total; two ramps at northwest corner, one ramp at southwest corner, and one ramp at northeast corner
 - New push buttons on new posts at the northwest and southwest corners
- SW Wilsonville Road/SW Guiss Way/Orchard Drive stop-controlled intersection
 - ADA ramp upgrades – four (4) ramps total; one ramp at each corner
- SW Wilsonville Road/SW Oakleaf Loop stop-controlled intersection

- ADA ramp upgrades – two (2) ramps total; one ramp at the southwest corner and one ramp at the southeast corner

- SW Wilsonville Road/SW Brown Road signalized intersection
 - ADA ramp upgrades – eight (8) ramps total; two ramps at each corner
 - New push buttons on new posts at each corner
 - New loop detection on SW Wilsonville Road impacted by pavement rehabilitation

- SW Wilsonville Road/SW Montebello Drive signalized intersection
 - ADA ramp upgrades – eight (8) ramps total; two ramps at each corner
 - New push buttons on new posts at each corner
 - New loop detection on SW Wilsonville Road impacted by pavement rehabilitation

EXCLUSIONS FROM THIS SCOPE

Based on preliminary review of the existing intersection configurations and potential improvements needed at each intersection (based on the descriptions above) it is anticipated the following design services will not be needed, and thus, not included as part of this scope of work. If these services are deemed necessary in the future, an amendment to the scope of work will be required.

- Major wet (water, sewer, storm) utility relocations including manholes and gravity main line relocation
- Major dry utility relocations (power, phone, telecommunications, etc.)
- Stormwater treatment and detention
- Landscape design
- Environmental documentation
- Signing plans (relocated signs will be noted on construction plans)
- Traffic signal interconnect plans
- Street lighting plans (relocated poles will be noted on construction plans)

SCOPE OF WORK

The following provides descriptions of each task to be completed during the project.

TASK 1: PROJECT MANAGEMENT AND KICK-OFF

- Coordinate project management-related items with the City, including schedule, meeting preparation, and deliverables. It is anticipated this project may last for a 10 month period.
- Prepare monthly invoices and progress reports (assume 10), and submit to the City for approval and payment. Monitor and manage project budget.
- Participate in a project kickoff meeting.
- Provide project coordination with subconsultants regarding their scope of work.
- Prepare and maintain project schedule.

TASK 2: SURVEY COLLECTION (Provided by S&F Land Services)

- Unmanned Aerial Vehicle (UAV) mapping along the project corridors:
 - SW Wilsonville Road from SW Willamette Way West to SW Kinsman Road
 - SW Boones Ferry Road from SW Wilsonville Road to SW Boeckman Road
- UAV mapping will be supported by topographic survey at the following intersections:
 - SW Wilsonville Road/SW Willamette Way East
 - SW Wilsonville Road/Autumn Park Apartments/Wood Middle School
 - SW Wilsonville Road/SW Guss Way/Orchard Drive
 - SW Wilsonville Road/SW Oakleaf Loop
 - SW Wilsonville Road/SW Brown Road
 - The City will provide survey for the SW Wilsonville Road/SW Montebello Drive intersection.

TASK 3: PAVEMENT INVESTIGATION AND RECCOMENDATIONS (Provided by GeoDesign)

- Review available documentation and as-builts for the pavement.
- Conduct a walkthrough to observe pavement condition. Provide information regarding pavement distress that may require repair or reconstruction prior to global rehabilitation.
- Coordinate and manage the field investigation, including locating utilities and scheduling of sub-contractors and GeoDesign staff.

- Prepare traffic control plans and obtain right-of-way permits from the City.
- Complete falling weight deflectometer (FWD) testing in the outside wheel track of the outside travel lanes at approximate 100 foot spacing. FWD tests in adjacent lanes will be offset by 50 feet.
- Complete seventeen pavement borings to depths of up to five feet below ground surface using solid stem auger methods; nine on SW Wilsonville Road and eight on SW Boones Ferry Road.
- Maintain a detailed log of each exploration, visually classify the soil encountered, obtain soil samples as appropriate for the soil conditions encountered, and observe groundwater conditions in each exploration.
- Conduct the following laboratory tests using soil samples obtained from the explorations:
 - Up to 17 moisture content tests in general conformance with American Society for Testing and Materials (ASTM) D2216.
 - Up to four atterberg limit tests in general conformance with ASTM D4318.
 - Up to four fines content tests (material passing the U.S No. 200 sieve) in general conformance with ASDM D1140.
- Collect 48-hour tube count information at three (3) locations along SW Wilsonville Road and two (2) locations along SW Boones Ferry Road.
- Analyze traffic classification count data and estimate design pavement ESAL.
- Analyze FWD and subsurface data to calculate estimated effective pavement structural capacity and subgrade resilient modulus.
- Provide recommendations for pavement repair and reconstruction if required.
- Provide rehabilitation recommendations for the existing road prism.
- Provide recommendations for pavement materials and construction.
- Provide project management including attendance of up to one meeting with the design team and the City.
- Provide a draft pavement report presenting the results of our field investigation and present our pavement engineering recommendations.
- Finalize the draft pavement report after incorporating review comments from the City and the design team.

Task 3 Assumptions:

- The core borings will be drilled within the City right-of-way.

- The drill cuttings are not contaminated and may be disposed of off-site by our drilling subcontractor. If the drill cuttings appear to be contaminated, the City will be informed immediately, and GeoDesign will take necessary action upon authorization.
- Polymer modified asphalt patch and aggregate base will be adequate for patching pavement borings.
- Work can be completed during normal weekday daylight hours.

TASK 4: DESIGN AND CONTRACT DOCUMENTS PREPARATION

- ADA Field Assessment and Report
 - Conduct an ADA Field Assessment to evaluate pedestrian ramps, landings, and push buttons for ADA compliance. Ramp and landing slopes will be measured with a smart level. Those meeting standards will be protected during construction and those not meeting standards will receive a detailed survey.
 - Prepare an ADA Assessment Report to include:
 - Summary of field assessment
 - Recommendations for ADA ramp reconstruction and push button relocation
 - Concept drawings depicting recommendations and associated impacts
 - A draft and final report will be provided to the City
 - Meet with the City to discuss the draft ADA Assessment report and review comments.
- 60% Design Submittal
 - Request and review traffic signal asbuilts.
 - Prepare 60% design plans including the following sheets:
 - **Title Sheet, Sheet Index, Construction Notes, Erosion Control Notes (3 sheets)**
 - **Demolition and Erosion/Sediment Control Plans (8 sheets),**
 - Assume 1 intersection per sheet. In addition, assume 1 sheet for Wilsonville Road corridor, and 1 sheet for Boones Ferry Road corridor showing location of inlet protection.
 - **General Construction Plans (6 sheets)**
 - Assume 1 intersection per sheet.
 - **ADA Ramp Grade Detail Plans (9 sheets)**
 - Assume 4 ramps per sheet (34 ramps total).

- Assume ramp details will note spot elevations, slopes, and dimensions for all grade breaks, control features, and at tie-in locations. No curb return profiles will be provided.
- **Traffic Signal and Detection Plans and Legend (8 sheets),**
 - Assume 4 signal plan sheets, 3 detection plan sheets, and 1 legend sheet.
 - Assume signal and detection plans will show existing poles, conduit, and wiring at each intersection based on asbuilts provided by the City and County.
- **Pavement Rehabilitation Plans and Details (6 sheets)**
 - Pavement rehabilitation plans will highlight area of needed rehabilitation based on GIS or aerial base-mapping information.
 - Assume 2 plan sheet for Wilsonville Road, 2 plan sheet for Boones Ferry Road, and up to 2 detail sheets.
- **Striping Plans (10 sheets)**
 - Striping plans will show all striping to be replaced as currently striped within the pavement rehabilitation project limits based on GIS or aerial base-mapping information. No changes to existing striping configuration is expected.
 - Assume each sheet will consist of 1,200 feet of roadway, with 2 rows of 600-foot sections of roadway stacked on each sheet.
- **Associated Construction and Standard City and County Detail Sheets (3 sheets)**
 - Prepare engineer's construction cost estimate.
 - Submit request for City and County specific special provisions.
- 90% Design Submittal
 - Attend meeting at the City to discuss 60% design review comments and responses.
 - Update design plans and engineer's construction estimate addressing City's review comments.
 - Prepare draft construction specifications/special provisions based on ODOT 2018 Standard Specifications and the latest City and County Public Works Standards. City and County will provide standard Special Provisions for inclusion in the project special provisions. The order of precedence shall be (1) Project Specific Special Provisions, (2) City and County Special Provisions, (3) ODOT Special Provisions.
 - Prepare bid schedule and bid item descriptions.
- 95% Design Submittal
 - Via phone call, discuss 90% design review comments and responses.

- Update design plans, engineer's construction estimate, construction specifications/special provisions, and bid schedule and bid item descriptions addressing the City's review comments.
- 100% Stamped and Signed Plans Submittal
 - Via phone call, discuss 95% design review comments and responses.
 - Update and prepare final (signed) design plans, engineer's construction estimate, construction specifications/special provisions, and bid schedule and bid item descriptions addressing the City's review comments.

TASK 5: BID AND CONSTRUCTION

This scope and fee estimate assumes City staff will provide primary construction management and inspection services for all work. KAI will provide supplemental field review services and engineering/design support.

- Bid Support
 - Coordinate with City staff regarding the construction plans/specifications. City to prepare bid documents.
 - Provide bidding assistance, including responding to questions from potential construction contractors and suppliers about the plans and specifications during the bidding process, and completion of any addendums necessary to clarify the documents when requested by the City.
- Construction Support
 - Participate in a pre-construction meeting.
 - Provide up to eight (8) contractor submittal reviews to the City.
 - Provide up to three (3) technical review of Requests for Information (RFIs) and Change Order Requests (COR) from the contractor, and coordinate with the City and Contractor as appropriate.
 - Conduct one field visit, if necessary, to review Contractor's construction staking layout.
- As-built Plans
 - Request and review as-built drawings/notes provided by the contractor.
 - Prepare preliminary as-built plans that reflect any changes made to the design during construction, and submit to the City for review.
 - Prepare final as-built plans to the City for approval. Final as-built engineering plans shall be provided in full size (22" x 34") paper, Mylar (min. 3-mil), digitally signed PDF, and 2018 of AutoCAD dwg format.