

RESOLUTION NO. 2828

A RESOLUTION OF THE CITY OF WILSONVILLE AUTHORIZING THE CITY MANAGER TO EXECUTE A PERSONAL SERVICES AGREEMENT CONTRACT WITH SCOTT|EDWARDS ARCHITECTURE LLP FOR FINAL DESIGN AND CONSTRUCTION DOCUMENTS SERVICES FOR THE PUBLIC WORKS COMPLEX PROJECT (CAPITAL IMPROVEMENT PROJECT #8113).

WHEREAS, The Facility Master Plan (FMP), completed in March 2015 and adopted via Resolution 2526, identified the need for expanded and upgraded space for police operations, thereby necessitating the move of public works functions to another complex; and

WHEREAS, the FMP further identified the need for the public works functions to have consolidated office, warehouse storage and equipment yard functions on a consolidated site; and

WHEREAS, on July 7, 2016 via Resolution 2594, City Council approved the purchase of 7.58 acres of land on Boberg Road on which to construct the Public Works Complex; and

WHEREAS, the City solicited Requests for Proposals from qualified consultants for the Project that duly followed the State of Oregon Public Contracting Rules and the City of Wilsonville Municipal Code; and

WHEREAS, Scott|Edwards Architecture LLP was selected as the most qualified consultant for this Project, was awarded a contract for Phase 1 – Public Works Complex Master Plan services, and performed and completed Phase 1 services in September 2019 to the satisfaction of the City; and

WHEREAS, the City desires to execute a Professional Service Agreement contract with Scott|Edwards Architecture LLP to perform Phase 2 - Final Design and Construction Documents services.

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

Section 1. The procurement process for the Project duly followed Oregon Contracting Rules, and Scott|Edwards Architecture LLP has provided a responsive and responsible proposal for Final Design and Construction Document services.

Section 2. The City of Wilsonville, acting as the Local Contract Review Board, authorizes the City Manager to enter into and execute, on behalf of the City of Wilsonville, a Professional Services Agreement with Scott|Edwards Architecture LLP for a not-to-exceed amount of \$1,526,000.

Section 3. This resolution is effective upon adoption.

ADOPTED by the Wilsonville City Council at a regular meeting there of this 6th day of July 2020, and filed with the Wilsonville City Recorder this date.

DocuSigned by:
Tim Knapp
C2D6698B3949461...

Tim Knapp, Mayor

ATTEST:

DocuSigned by:
Kimberly Veliz
C781DC102763498...

Kimberly Veliz, City Recorder

SUMMARY OF VOTES:

Mayor Knapp	Yes
Council President Akervall	Yes
Councilor Lehan	Yes
Councilor West	Excused
Councilor Linville	Yes

EXHIBITS:

- A. Public Works Complex- Final Design and Construction Documents Professional Service Agreement

**CITY OF WILSONVILLE
PROFESSIONAL SERVICES AGREEMENT (CIP #8113)**

This Professional Services Agreement (“Agreement”) for the Public Works Complex Project (“Project”) is made and entered into on this _____ day of _____ 2020 (“Effective Date”) by and between the **City of Wilsonville**, a municipal corporation of the State of Oregon (hereinafter referred to as the “City”), and **Scott Edwards Architecture, L.L.P.**, an Oregon limited liability partnership (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. Scope of Work

Consultant shall diligently perform the final design and construction document preparation services according to the requirements identified in the Scope of Work for the Project, attached hereto as **Exhibit A** and incorporated by reference herein (the “Services”).

Section 2. Term

The term of this Agreement shall be from the Effective Date until all Services required to be performed hereunder are completed and accepted, or no later than December 31, 2021, whichever occurs first, unless earlier terminated in accordance herewith or an extension of time is agreed to, in writing, by the City.

Section 3. Consultant’s Services

3.1. 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 that 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 Work 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.

3.2. Consultant will not be deemed to be in default by reason of delays in performance due to circumstances 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.

3.3. 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 Work described herein.

3.4. 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 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 4. Compensation

4.1. Except as otherwise set forth in this **Section 4**, the City agrees to pay Consultant on a time and materials basis, guaranteed not to exceed ONE MILLION FIVE HUNDRED TWENTY-SIX THOUSAND DOLLARS (\$1,526,000), 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. Consultant's rates are set forth in **Exhibit A**.

4.2. 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 Work described on **Exhibit A**, a written Addendum to this Agreement must be executed in compliance with the provisions of **Section 17**.

4.3. 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.

4.4. Consultant's Compensation Amount and Rate Schedule are all inclusive and include, but are 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 5. Prevailing Wages

This is a contract for a Public Works Project subject to ORS 279C.800 to 279C.870. Therefore, not less than the current applicable state prevailing wage must be paid on this Project. Wage rates for this Project are those published by the Bureau of Labor and Industries (BOLI), effective January 1, 2020, and all subsequent amendments. The BOLI prevailing wage rate for public works contracts can be found at: http://www.oregon.gov/boli/WHD/PWR/Pages/pwr_state.aspx. Because this is a public works contract subject to payment of prevailing wages, each worker in each trade or occupation employed in the performance of the Services, either by Consultant, a subcontractor, or other person doing or contracting to do, or contracting for the whole or any part of the Services, must be paid not less than the applicable state prevailing wage for an hour's work in the same trade or occupation in the locality where such labor is performed, in accordance with ORS 279C.838 and 279C.840, if applicable. Consultant must comply with all public contracting wages required by law. Consultant and any subcontractor, or their sureties, shall file a certificate of rate of wage as required by ORS 279C.845. If the City determines at any time that the prevailing rate of wages has not been or is not being paid as required herein, it may retain from the moneys due to Consultant an amount sufficient to make up the difference between the wages actually paid and the prevailing rate of wages, and may also cancel the contract for breach. Consultant shall be liable to the workers affected for failure to pay the required rate of wage, including all fringe benefits under ORS 279C.840(5). Consultant shall include a contract provision in compliance with this paragraph in every subcontract and shall require each subcontractor to include it in subcontract(s).

Section 6. City's Project Manager

6.1. 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.

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

Section 7. Consultant's Project Manager

Consultant's Project Manager is Andrew Kraus. 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 8. 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 9. 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 Work, 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 10. Subcontractors and Assignments

10.1. 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. The City hereby agrees that Consultant will contract with Harper Houf Peterson Righellis, Inc. to provide civil services, WDY, Inc. to provide structural services, Interface Engineering to provide mechanical services, and JLD Construction Consulting to provide cost estimating services, all of which are critical parts of this Agreement. 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.

10.2. 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.

10.3. Consultant shall include this Agreement by reference in any subcontract and require subcontractors to perform in strict compliance with this Agreement.

Section 11. Consultant Is Independent Contractor

11.1. Consultant is an independent contractor for all purposes and shall be entitled to no compensation other than the Compensation Amount provided for under **Section 4** 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.

11.2. Consultant has requested 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.

11.3. 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 11** and meet the same insurance requirements of Consultant under this Agreement.

Section 12. Consultant Responsibilities

12.1. Consultant must 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 person 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.

12.2. 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.

12.3. 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. References to “subcontractor” mean a subcontractor at any tier.

12.4. COVID-19 Safety Measures. Consultant must have a written policy in place to comply with all applicable local, state, and federal laws, regulations, and executive orders related to the COVID-19 coronavirus outbreak to ensure the protection of Consultant’s employees and/or subconsultants, City employees, and the public. Consultant must provide its written policy to the City Project Manager at the commencement of the Project. In the event that Consultant is required to stop or delay work due to a COVID-19 related event, Consultant shall not be entitled to any additional payment, remobilization costs, or delay damages.

Section 13. Indemnity

13.1. 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 13.2.** 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. As used herein, the term “Consultant” applies to Consultant and its own agents, employees, and suppliers, and to all of Consultant’s subcontractors, including their agents, employees, and suppliers.

13.2. Standard of Care. In the performance of the 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.

Section 14. Insurance

14.1. 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. Additionally, if a subcontractor is an engineer, architect, or other professional, Consultant must require the subcontractor to carry Professional Errors and Omissions insurance and must provide to the City proof of such coverage. The amount of insurance carried is in no way a limitation on Consultant's liability hereunder. The policy or policies maintained by Consultant shall provide at least the following minimum limits and coverages at all times during performance under this Agreement:

14.1.1. 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.

14.1.2. 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 after termination of this Agreement.

14.1.3. 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**.

14.1.4. 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.

14.1.5. 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.

14.1.6. Additional Insured and Termination Endorsements. The City will be named as an additional insured with respect to Consultant's liabilities hereunder in insurance coverages. 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.

14.1.7. 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.

14.2. 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 15. Early Termination; Default

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

15.1.1. By mutual written consent of the parties;

15.1.2. 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

15.1.3. 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.

15.2. 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.

15.3. 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.

15.4. 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 19**, for which Consultant has received payment or the City has made payment.

Section 16. 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 17. 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 4** of this Agreement, or changes or modifies the Scope of Work 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 18. 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 during the term of this Agreement and for a period of four (4) years after termination of the Agreement, unless the City specifically requests an extension. This clause shall survive the expiration, completion, or termination of this Agreement.

Section 19. Property of the City

19.1. 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.

19.2. 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 20. 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: Delora Kerber, Public Works Director
	29799 SW Town Center Loop East
	Wilsonville, OR 97070

To Consultant: Scott Edwards Architecture, L.L.P.
Attn: Andrew Kraus
2525 E. Burnside Street
Portland, OR 97214

Section 21. Miscellaneous Provisions

21.1. 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.

21.2. 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.

21.3. 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.

21.4. 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.

21.5. 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.

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

21.7. 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.

21.8. 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.

21.9. 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.

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

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

21.12. 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.

21.13. 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.

21.14. 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.

21.15. 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."

21.16. 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.

21.17. 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.

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

21.19. 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.

21.20. 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:

SCOTT EDWARDS ARCHITECTURE, L.L.P.

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

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EXHIBIT 'A'

PROPOSAL FOR CITY OF WILSONVILLE PUBLIC WORKS

Implementation of the Master Plan design through Construction Documents
SW Boberg Road, Wilsonville, Oregon

S|E A is pleased to provide this proposal for architectural services for Wilsonville Public Works. We look forward to continuing our work with you towards the success of this project.

PROJECT SCOPE

Based on the City of Wilsonville Public Works Master Plan completed by S|E A and dated September 3, 2019; we will advance the project through final design and Construction Documents.

We understand the timeframe for beginning construction has not yet been determined, and that project Permitting, Bidding and Construction Administrative services are not be part of this proposal.

Proposed services, including the work of Consultants, are itemized in the DESIGN FEE OVERVIEW portion of this document and are represented by the following scope of work.

01 Site Development

- A Grading, paving, landscape and irrigation design.
- B Stormwater design including on-site treatment and retention as required by building code requirements.
- C Utility design as required for all site and building services.
- D Vehicle maneuvering and parking area design including the operations yard and public and staff parking areas.
- E Pedestrian circulation design including a recreational walk/run path.
- F Design of roadway or 'bridge' connection to adjacent 'SMART' facility through the existing conservation zone.
- G Trash and recycling enclosure.
- H Grading and preparation of building pads.

02 Operations Yard

- A Operations yard with parking and vehicle maneuvering clearances.
- B Security fencing and gate design.
- C Covered decant structure.
- D Covered and "open" outdoor bin storage areas.
- E Pesticide, herbicide and magnesium chloride storage facilities.
- F Covered vehicle wash station.

03 Warehouse / Maintenance Building

- A 17,000 square foot, clear span, engineered metal building on concrete structural slab. Structural bays to include overhead doors to allow for drive-through use. Ability to drive full-length of building interior is highly desired.
- B Building location and orientation to allow for solar power generation and future expansion.
- C Three building bays to be roof-only, with ability to add perimeter walls in the future.
- D Six building bays, including an enclosed Paint Shop, Sign Shop and Wood Shop, to be partially conditioned; likely utilizing suspended radiant heating units for worker comfort and freeze-protection.
- E Office, Industrial Pre-treatment Lab and Restroom to be fully conditioned.

- F Four separate, fenced, secure storage areas to be provided.
- G Skylights, translucent roof panels, and/or transparent overhead doors to be used to maximize natural daylight.

04 Office / Administration Building

- A 12,800 square foot Office/Administration building above a "daylight basement", connected by both elevator and stair.
- B Construction is assumed to consist of tilt-up concrete perimeter walls and long-span wood or steel floor and roof structure, with abundant windows and skylights to maximize natural light throughout.
- C First floor interior is organized into three, roughly equal areas of office/administrative functions, service/conference functions and crew areas.
- D Daylight basement to include mechanically conditioned service, utility, emergency storage and locker room functions; with remaining two-thirds consisting of unconditioned storage/parking areas open to the environment. Open areas to be designed to allow for future enclosure and mechanical conditioning.
- E Building to be fully fire sprinkled (Performance Specification included), and to incorporate green-building and energy efficiency strategies, including code-mandated 1.5% green energy requirements. Photovoltaic power generation is highly desired, including potential "solar flower" opportunities.

05 Outdoor Courtyard

- A The outdoor area between the maintenance and office buildings is to be developed as a multi-purpose courtyard with paving and landscape design conducive to staff dining and recreation opportunities.
- B A direct visual connection is desired between the outdoor area and the staff break area, along with an indirect physical connection via stair and elevator.
- C A portion of the outdoor area is envisioned to be "covered" by an awning, trellis or umbrella structure.

06 Building Technology Components

- A Telephone and Cable Television (CATV) utility design including site raceway system, vault/pedestal location and demarcation location.
- B Data/telecommunications system design including layout of outlets, rack, backbone cabling, distribution cabling and connecting hardware, raceways and grounding system.
- C Cable Television (CATV) system including layout of devices, block/one-line diagrams and technical specifications.
- D Security system design including electronic access control entry system and intrusion detection.
- E Audio Visual (A/V) equipment coordination.

07 Optional Services

- A Traffic Impact Study.

08 Other References The following parameters further define the proposed scope of work.

- A The anticipated duration of this scope of work is (34) calendar weeks.
- B Master Plan Diagrams dated July 17, 2019

SCOPE OF SERVICES

Based on completed Master Plan, advance the project design through production of Construction Documents. Completed documents to be ready for permit review submittal and General Contractor bidding.

01 DESIGN TEAM S|EA's Project Design Team is the following.

- | | | |
|---|--|-------------------------------------|
| A | Architectural Design | Scott Edwards Architecture LLC |
| B | Civil Engineering | Harper Houf Peterson Righellis Inc. |
| C | Landscape Design | Harper Houf Peterson Righellis Inc. |
| D | Structural Engineering | WDY |
| E | Mechanical, Electrical, Plumbing and Fire Protection Engineering | Interface Engineering |
| F | Interior Design | Scott Edwards Architecture LLC |
| G | Cost Estimating | JLD Cost Consulting |

02 PRE-DESIGN

- A** Review previously completed Master Plan and Due Diligence/Research documentation and update as required.
- B** Define project team, roles and responsibilities.
- C** Assist in discussions on “project delivery” method (competitive bid, CMGC, etc.) and Contractor selection. Decision to be determined by mid Design Development phase.
- D** Develop a project “Work Plan”, establishing the steps, sequence and timing of critical design and decision points for the project.
- C** Establish a regular meeting schedule. (Assumptions for proposal are noted under Design Development.)

Deliverables: Meeting schedule and minutes, project “Work Plan”.

03 DESIGN DEVELOPMENT

A Design:

- 01** Verify design concept complies with intentions of the building program.
- 02** Refine the Master Plan concept through further investigation and detailing of the project scope.
- 03** Establish a general level of quality through details about materials, systems, and compliance with life safety requirements.
- 04** Develop a diagrammatic space planning layout for offices and workspaces to establish utility requirements and configuration.
- 05** Coordinate public and non-public furniture selection and layout, including style, material, and color. Develop a Furniture Schedule to summarize results.
- 06** Develop interior design and finish concept for the Administration Building.
- 07** Develop preliminary interior elevations and/or 3D imagery as required to convey design.
- 08** Develop preliminary signage scheme consisting of illuminated monument and building-mounted identification signage.
- 09** Develop Building Technology Components including Telephone, Data/telecommunications, Cable Television (CATV), Security and Audio Visual (A/V) coordination.

B Materials Review:

- 01** Provide recommendations for construction materials, including exterior finishes and colors.
- 02** Provide recommendations for interior finish materials and colors.
- 03** Review and provide comments on furniture recommendations provided by Owners furniture vendor.
- 04** Review proposed fixtures, furnishings & equipment with Owner, including mechanical, plumbing and lighting fixtures and equipment.

C Cost Estimating:

- 01** To be conducted at approximately 80% Design Development

D Land Use application:

- 01** Coordinate a pre-application conference to review submittal and approval requirements.
- 02** Research, prepare and submit documents as required by Authority having Jurisdiction (AHJ) for Land Use review and approval.

E Progress Meetings:

- 01** Monthly meeting between applicable Design Team and Owner representatives.
- 02** Weekly telephone ‘check-in’ between Project Manager and Owner Representatives.

Deliverables: Design Development drawings, preliminary furniture schedule, finish material board, cost estimate, Land Use review submittal and progress meeting documentation.

04 CONSTRUCTION DOCUMENTS**A Document Production:**

- 01** Produce technical detailing, engineering and drafting of documents required for bidding, permitting and construction.
- 02** Coordinate with independent owner sub-consultant work / specialty services as required and integrate their work into the documents package.
- 03** Finalize space planning layout of offices and workspaces and provide utility connections as appropriate.
- 04** Finalize public and non-public furniture selections and Furniture Schedule.
- 05** Develop a Fixtures, Furnishings and Equipment (FF&E) bid package to include products, specifications, and installation sequencing requirements.
- 06** Finalize interior design, finish materials and colors.
- 07** Finalize Building Technology Components including Telephone, Data/telecommunications, Cable Television (CATV), Security and Audio Visual (A/V)
- 08** Develop and incorporate project specifications.
- 09** Upon receipt of project cost estimates, modify documents per team discussion to help assure a balance between design and budget.

B Cost Estimating:

- 01** To be conducted at approximately 70% Construction Documents
- 02** Coordinate a meeting to review cost estimate variations and establish a path for reconciliation and document modification if required.
- 03** Update 70% Construction Document Estimate based on final Documents.

C Progress Meetings:

- 01** Monthly meeting between applicable Design Team and Owner representatives.
- 02** Weekly telephone 'check-in' between Project Manager and Owner Representatives.

D Document Approval:

- 01** Construction Document package to be sent to Owner and Contractor for review and approval prior to bid.

Deliverables: Construction Document drawings and specifications, cost estimate and progress meeting documentation.

05 OPTIONAL SERVICES: We'll be glad to provide a proposal to complete the following optional services upon request.**A Traffic Impact Study.****06 FUTURE SERVICES:** When the project advances to the construction stage the following services will be provided upon request, for a fee to be established at that time.

- A** Permitting – submit and manage building permit application and coordinate trade permits.
- B** Bidding and Negotiations – assist and coordinate bidding and construction contract processes.
- C** Contract Administration - perform on-site construction observation, shop drawing and submittal review, "punch list", and project close-out processes.

EXCLUSIONS TO SCOPE OF SERVICE

- 01 Design Review Fees.
- 02 Permit Fees.
- 03 SDC Fees.
- 04 Traffic Impact Study.
- 05 Geotechnical investigations (soils structural report).
- 06 Topographic survey.
- 07 Infiltration testing.
- 08 Full building technology systems design.
- 09 Food Service/Kitchen design.
- 10 Fixtures, Furnishings & Equipment [FF&E] specification and design.
- 11 Sustainable certification [LEED, etc.].
- 12 Hazardous material assessment and abatement.
- 13 Special testing and inspection required by code during construction.
- 14 Record drawings following construction completion.
- 15 As-built field measuring and documentation.
- 16 3rd party Fire and Life Safety review.
- 17 3D model imagery except as described in scope of services.
- 18 Value Engineering.
- 19 Studies or surveys, unless outlined above.

FEES

We propose to provide the services outlined above {on a Time and Materials basis with a not to exceed, for a Fixed Fee, for a Percentage of Construction Cost}. Refer to the Design Fee Overview table below.

STANDARD BILLING SCHEDULE

For additional information on Standard Billing rates, refer to 'Exhibit A' - payment.

Principal	\$180	per hour
Project Architect	\$140	per hour
Project Manager	\$130	per hour
Interior Designer	\$120	per hour
Technical Staff	\$90-100	per hour
Graphic Support	\$70-80	per hour

DESIGN FEE OVERVIEW

Values indicated are in thousands: \$1 = \$1,000

PHASE	Architectural S/E A	Civil H/HR	Landscape H/HR	Structural W/DY	MEP Interface	Interior Design S/E A	Cost Estimating J/LD	Acoustic Eng. TBD	Other	TOTAL
PRE-DESIGN	\$5	\$00	\$00	\$00	\$00	\$00	\$00	\$00	\$00	\$5
DESIGN DEVELOPMENT	\$260	\$35	\$16	\$30	\$126	\$40	\$11	\$7	\$00	\$525
CONSTRUCTION DOCUMENTS	\$472	\$50	\$30	\$61	\$208	\$60	\$21	\$15	\$00	\$917
SIGNAGE	\$00	\$00	\$00	\$00	\$00	\$00	\$00	\$00	\$15	\$15
LOW VOLTAGE	\$00	\$00	\$00	\$00	\$00	\$00	\$00	\$00	\$24	\$24
FF&E	\$00	\$00	\$00	\$00	\$00	\$00	\$00	\$00	\$20	\$20
REIMBURSABLES	\$00	\$00	\$00	\$00	\$00	\$00	\$00	\$00	\$20	\$20
TOTAL	\$737	\$85	\$46	\$91	\$334	\$100	\$32	\$22	\$79	\$1,526

Total Fee: One million five hundred twenty-six thousand dollars. (\$1,526,000)

REIMBURSABLE EXPENSES

Printing, plotting, shipping, travel, and long distance communication costs are included as defined by the DESIGN FEE OVERVIEW.

END OF DOCUMENT