

RESOLUTION NO. 2862

A RESOLUTION OF THE CITY OF WILSONVILLE AUTHORIZING THE CITY MANAGER TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH KELLER ASSOCIATES, INC. TO PROVIDE ENGINEERING CONSULTING SERVICES FOR THE ELLIGSEN WELL FACILITY REHAB AND UPGRADES PROJECT (CAPITAL IMPROVEMENT PROJECT #1083).

WHEREAS, the City has planned and budgeted for engineering consulting services for Capital Improvement Project #1083, known as the Elligsen Well Facility Rehab and Upgrades project (the Project); and

WHEREAS, the City solicited proposals from qualified consulting firms for the Project that duly followed State of Oregon Public Contracting Rules and the City of Wilsonville Municipal Code; and

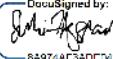
WHEREAS, Keller Associates, Inc. submitted a proposal on November 12, 2020 and was subsequently evaluated and determined to be the most qualified consultant to perform the work; and

WHEREAS, following the qualifications based selection process and under the direction of the City, a detailed scope of work was prepared, and the fee for the scope was negotiated and found to be acceptable and appropriate for the services to be provided.

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

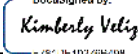
1. The procurement process for the Project duly followed Oregon Public Contracting Rules, and Keller Associates, Inc. has provided a responsive and responsible proposal for engineering consulting services.
2. The City Council, acting as the Local Contract Review Board, authorizes the City Manager to enter into and execute, on behalf of the City of Wilsonville, a Professional Services Agreement with Keller Associates, Inc. for a not-to-exceed amount of \$107,818.00, which is substantially similar to **Exhibit A** attached hereto.
3. This resolution becomes effective upon adoption.

ADOPTED by the Wilsonville City Council at a regular meeting thereof this 4th day of January, 2021, and filed with the Wilsonville City Recorder this date.

DocuSigned by:

8A974AT3ADC042E...

Julie Fitzgerald, Mayor

ATTEST:

DocuSigned by:

-767 1d-1D76B9598

Kimberly Veliz, City Recorder

SUMMARY OF VOTES:

Mayor Fitzgerald	Yes
Council President Akervall	Yes
Councilor Lehan	Yes
Councilor West	Yes
Councilor Linville	Yes

EXHIBIT:

A. Elligsen Well Facility Rehab and Upgrades Professional Services Agreement

**CITY OF WILSONVILLE
PROFESSIONAL SERVICES AGREEMENT**

This Professional Services Agreement (“Agreement”) for the Elligsen Well Facility Rehab and Upgrades 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 **Keller Associates, Inc.** an Idaho 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. Scope of Work

Consultant shall diligently perform the engineering and design 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 HUNDRED SEVEN THOUSAND EIGHT HUNDRED EIGHTEEN DOLLARS (\$107,818), 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.

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. The City will be responsible for the direct payment of required fees payable to governmental agencies, including but not limited to plan checking, land use, zoning, permitting, and all other similar fees resulting from this Project, that are not specifically covered by **Exhibit A**.

4.5. 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, office expenses, travel expenses, mileage, and all other indirect and overhead charges.

Section 5. City's Rights and Responsibilities

5.1. 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.

5.2. Award of this contract is subject to budget appropriation. Funds are approved for Fiscal Year 2020-21. If not completed within this fiscal year, funds may not be appropriated for the next fiscal year. The City also reserves the right to terminate this contract early, as described in **Section 15**.

Section 6. City's Project Manager

The City's Project Manager is Matt Palmer. 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 Peter Olsen. 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. Unless expressly authorized in **Exhibit A** or **Section 11** 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.

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 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.

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. Originals or certified copies of the original work forms, including but not limited to documents, drawings, tracings, surveying records, mylars, spreadsheets, charts, graphs, modeling, data generation, papers, diaries, inspection reports, and photographs, performed or produced by Consultant under this Agreement 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. Notwithstanding the foregoing, Consultant retains an ownership right to the work products and may reuse or modify them on future consultant projects. Upon the City’s written approval, and provided the City is identified in connection therewith, Consultant may include Consultant’s work in its promotional materials. Drawings may bear a disclaimer releasing Consultant from any liability for changes made on the original drawings and for reuse of the drawings subsequent to the date they are turned over to the City.

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: Matt Palmer
29799 SW Town Center Loop East
Wilsonville, OR 97070

To Consultant: Keller Associates, Inc.
Attn: Peter Olsen
245 Commercial Street SE, Suite 210
Salem, OR 97301

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:

KELLER ASSOCIATES, INC.

CITY OF WILSONVILLE

By: _____

By: _____

Print Name: _____

Print Name: _____

As Its: _____

As Its: _____

Employer I.D. No. _____

APPROVED AS TO FORM:

Ryan Adams, Assistant City Attorney
City of Wilsonville, Oregon

Scope of Work

Date: November 23, 2020

Owner: City of Wilsonville, OR

Consultant: Keller Associates, Inc.

Consultant Project Number: 218138-005

Project Name: Elligsen Well Improvements

Project Description

The Owner intends to complete facility upgrades to the Elligsen Well. The well hole rehabilitation and submersible pump/motor replacement were recently completed by others. This project includes final design, bid support, and construction phase support services for the following recommended upgrades:

- SCADA and control upgrades to reflect current City standards similar to the recently completed Gesellschaft Well upgrades. Instrumentation upgrades including a new pressure transducer(s) to be installed in an existing conduit(s) in the well hole and in the discharge piping and new flow meter. Add door switches to signal intrusion detection to SCADA.
- No changes to the chlorine residual monitoring instruments. However, project will include new LMI pumps and pump lines for poly and chlorine addition along with new poly and chlorine feeding drums with new attached flow site tubes.
- Mechanical upgrades, including new pump to waste system with pressure relief function similar to the recently completed Gesellschaft Well upgrades. Other mechanical upgrades include new eye wash, new interior hose bib (with backflow prevention), and new C-level service to the well house with connection made to the east of the well house near the entrance gate. Minor plumbing upgrades may be needed to accommodate mechanical upgrades. Interior piping shall be copper, brass, or ductile iron material.
- Painting of interior piping, walls, and flooring. Also paint exterior siding (gable ends)
- Demolition of obsolete electrical/control components; removal of air bubbler and associated compressor.
- Electrical improvements including replacing motor control equipment (soft start, no VFD), replacement or upgrading of most interior electrical, including lighting. Provide dedicated outlets for poly and chlorine pumps that can be controlled by PLC. No change to the existing electrical service, generator, or automatic transfer switch is anticipated.
- Replace existing roof frame and provide new metal roofing and roof hatch. Install roof tie-offs. Replace door and windows. Add address number to exterior of well house.
- No work on water rights permitting (services provided by City, if required); No HVAC improvements anticipated in this scope of work.
- Project financing will come from City funds.

Scope of Work

The Consultant's scope of work will include the following tasks:

Task 1: Project Management

Consultant Services

- 1.1 Provide general project administration, project accounting, and periodic schedule and project updates, including simplified monthly progress reports.
- 1.2 Participate in a kickoff meeting conference call with the Owner. Prepare a request for information.

Owner Responsibilities

- Provide timely reviews and requested data.
- Provide forum for project meetings and access to site and records as needed.

Assumptions

- Budget assumes ten-month schedule from project initiation through final construction.

Deliverables

- Kickoff meeting agenda and minutes.
- Project schedule.
- Monthly progress reports.

Task 2: Preliminary Design

Consultant Responsibilities:

- 2.1 Design Criteria. Document design criteria that will serve as basis for design.
- 2.2 Site Visit and Base Mapping. Consultant will visit the site to document existing facilities based on visual observations. Consultant to take measurements of existing facilities within the building and using this information along with available record drawings prepare a site map and existing facility base map. No surveying will be provided.
- 2.3 Site and Mechanical Layout. Develop concept design showing site civil layout with proposed yard piping improvements. Develop concept mechanical layout.
- 2.4 Structural Concepts. Work with City staff to define Owner preferences in terms of materials of construction.
- 2.5 Electrical and Controls. Develop P&ID and electrical one-line diagram. Identify elements to be demolished / salvaged with Owner input. Preliminarily size equipment and coordinate with power utility. Solicit Owner input and preferences for equipment.
- 2.6 Opinion of Probable Cost. Provide an opinion of probable cost for the project.
- 2.7 Workshop Meeting. Meet with Owner to review predesign concepts and anticipated costs. Summarize decisions in meeting minutes. No preliminary engineering report is anticipated.

Owner Responsibilities:

- Provide input on design criteria and preferred equipment.
- Review and comment on the preliminary engineering plans.
- Provide existing control network diagram of City's SCADA system.

Assumptions:

- Permitting support will not be required for the pressure relief discharge or water rights.
- Existing control system communication means shall be utilized with upgraded equipment. If an additional Radio path survey is required, it shall be provided by others.
- Existing power utility will remain. Only electrical equipment downstream of the service is included in this scope of work.

Deliverables:

- Concept drawings.
- Agenda and meeting notes for Workshop Meeting.

Task 3: Final Design*Consultant Responsibilities*

- 3.1 Plan Sheets. Prepare general, site civil, structural, architectural, plumbing, mechanical, electrical, and instrumentation and control plan sheets for the project. Instrumentation and control plan sheets will generally include a network layout drawing (if applicable), piping and instrumentation diagrams (P&ID), control panel one-line diagrams, wiring diagrams, input/output schedule, and the instrumentation schedule. Control design will include panel design sheets and will assume that the City's SCADA integrator will be completing integration services. Prepare 50% and 90% review sets.
- 3.2 Specifications. Provide technical specifications for the project. City to prepare front end documents that will include standard bidding forms and contract forms and City standard contract requirements. Technical specifications will be prepared to detail the materials, processes, and the products that are to be used in the construction of the booster station. Where applicable, use of City Public Works Standards and ODOT Standard Specifications for Construction will be used. Prepare table of contents for the 50% review set, and complete draft technical specifications for the 90% review set.
- 3.3 50% Design and Review Workshop Meeting. Submit 50% design review drawings and specifications table of contents to the Owner. Participate in a 50% design review workshop meeting. Respond to Owner comments on 50% plan set.
- 3.4 90% Design and Review Workshop Meeting. Prepare 90% design and complete internal quality control review by senior engineer. Submit 90% design review drawings and specifications to the Owner. Participate in a 90% design review workshop meeting. Respond to Owner comments on 90% plan set.
- 3.5 Opinions of Probable Cost. Prepare an updated opinion of probable cost for the project at final design.
- 3.6 Agency Submittal. Final plans and specifications will be submitted to Oregon Health Authority (OHA), drinking water division for review. Respond to any agency comments. Building permit

submittal is assumed to be handled by the Contractor.

- 3.7 **Final Approval.** Upon Owner and OHA review, Consultant will incorporate appropriate revisions into a final set of stamped drawings and specifications that will be used for bidding.

Owner Responsibilities:

- Provide comments and input on the 50% and 90% design deliverables. Owner staff will provide review and input of deliverables in a consolidated comment log.
- Prepare front-end documents.
- Provide legal and risk reviews of the bid documents.
- Provide review comments from Owner SCADA integrator at 90% design review stage. SCADA integrator to provide SCADA panel design as part of construction submittal.
- Pay agency review and design fees.

Assumptions:

- Consultant shall be entitled to rely on the accuracy and completeness of the information provided by Owner, Owner's consultants and Contractors, information from public records, and information ordinarily or customarily furnished by others, including manufacturers, suppliers, and publishers of technical standards.
- Project will not include irrigation or landscaping of the site. Architectural rendering are not be included in the booster station design.
- Contractor will be required to prepare and implement a Storm Water Pollution Prevention Plan (SWPPP), prepare traffic control plans, and secure associated permits as required.
- Since Consultant has no control over the cost of labor, materials, equipment, or services furnished by others, or over the Contractor's methods of determining prices, or over competitive bidding or market conditions, the Consultant does not guarantee that proposals, bids, or actual construction cost will not vary from opinions of probable construction cost prepared by the Consultant.
- No environmental or geotechnical work is anticipated as part of this scope of work.

Deliverables:

- 50% design submittal, including one PDF submittal (prepared in 22"x34" reviewed in 11"x17").
- 90% design drawings and specifications, including one PDF submittal (prepared in 22"x34" reviewed in 11"x17").
- 100% stamped design package, including one PDF submittal (one full size 22"x34", three half size 11"x17").
- Opinions of probable cost.

Task 4: Bid Administration and Support

Consultant Responsibilities

- 4.1 Bid Administration – Consultant will advise Owner on bid inquiries at the request of the Owner.

Owner Responsibilities

- Complete bidder prequalification process (if desired).
- Prepare, print, and distribute Request for Qualification documents and be the main point of contact during the pre-qualification process.

EXHIBIT A

- Prepare, print, and distribute construction bid documents and be the main point of contact for all bidders during the bidding process.
- Distribute bid documents and maintain list of plan holders. Respond to bidder questions and issue addenda.
- Conduct bid opening and make recommendation for award. Provide legal review and support as required.

Assumptions

- For budgeting purposes, only one set of bid documents and one bidding process were assumed. Up to thirteen hours of bid support services is anticipated for budgeting purposes. Bidding is anticipated to include a single lump sum for the project.

Deliverables

- Responses to Owner questions clarifying bid documents.

Task 5: Construction Phase Services

Consultant Responsibilities

- 5.1 Construction Meetings – Consultant will attend pre-construction meeting to address questions that may arise. Consultant to attend up to three additional construction meetings as requested by Owner.
- 5.2 Construction Administration – Review contractors' submittals to check that proposed materials generally conform to the specifications. Respond to requests for information and provide plan and specification clarification. Review and recommend change orders, field orders, and work change directives. Participate in start-up of project (anticipated to be limited to one day).
- 5.3 Operations and Maintenance Manual (O&M) Update – Consultant will review and approve O&M materials provided by the Contractor and provide these for the Owner for inclusion in the existing O&M manual.
- 5.4 Record Drawings – Consultant will review, make revision recommendations and approve record drawings prepared by the Contractor. Record Documents will include marked-up construction drawings, addenda, change orders and other data that show significant changes made during construction based on information provided by the Contractor, and observed by the Consultant and Owner. Consultant will prepare record drawings reflecting changes made to the design during construction. Consultant will provide the Owner with:
 - Final as-built plans in PDF format digitally stamped and signed by a Professional Engineer registered in the State of Oregon.
 - One full size (22"x34") Mylar (min. 3-mil) final record drawings stamped and signed by a Professional Engineer registered in the State of Oregon.
 - AutoCad copy, 2018 version, final record drawings plan set. Owner assumes responsibility for any reuse or modification of drawings for other than the original purpose.
- 5.5 Construction Observation – The Consultant shall make supplemental site visits to observe construction activities. Such visits and observation are not intended to be an exhaustive check of the contractor's work but rather are to allow the Consultant to become generally familiar

EXHIBIT A

with the work in progress and to check that installed improvements are in general accordance with the contract documents. Based on these observations, the Consultant shall keep the Owner informed about the progress of the work and shall endeavor to guard the Owner against deficiencies in the work. For budgeting purposes, the Consultant has assumed 20 hours of observation (including travel time to/from Salem) during the project.

Owner Responsibilities

- Provide day-to-day inspection services and construction management. Review, approve, and process pay requests and change orders.
- Coordinate SCADA integration.

Assumptions

- Work will be completed by a single prime contractor over a three-month period.
- No hardware or software will be provided as part of the scope of services. SCADA integration services are not included with this this scope of work. Sequence of operations development, PLC and HMI programming, testing, startup and commissioning are planned to be included as an “Owner’s supplied” scope of work within the 100% design documents.
- The Consultant will not be producing a new or updated well house O&M manual. The scope is limited to review of O&M material provided by the Contractor.

Deliverables

- Approved O&M manual materials and record drawings.

Project Schedule

Design and construction services are anticipated to be completed based on the following milestones.

- Kickoff meeting and RFI – within 14 days of Notice to Proceed (NTP)
- Predesign – within 60 days of Kickoff meeting and receiving RFI items
- 50% Design – within 45 days of receiving Owner comments on predesign.
- 90% Design – within 45 days of receiving Owner comments on 50% design
- Final Design – within 21 days of receiving Owner comments on 90% Design
- Bidding and Award – Anticipated to take 4-6 weeks
- Construction – Closeout anticipated to occur within one month of Construction Final Completion

EXHIBIT A**Cost of Services**

Services will be on a time and materials with an estimated budget shown below. While individual task budgets may be exceeded, the overall budget will not be exceeded without Owner approval.

Basic Services	Cost
Task 1: Project Management	\$ 8,370
Task 2: Preliminary Design	\$ 15,015
Task 3: Final Design	\$ 57,013
Task 4: Bidding Admin and Support	\$ 2,600
Task 5: Construction Phase Services	\$ 24,820
Total	\$ 107,818

City of Wilsonville
Elligsen Well Improvements



EXHIBIT A

Date: 23-Nov-20

Task	Description	Keller Associates																	Sub-Consultant / Direct Costs*	Total				
		Principal in Charge James Bledsoe	Project Manager Peter Olsen	Structural Engineer - II Brandon Keller	Structural Engineer - I	Structural CAD	Electrical Engineer Lead - Adam N.	Electrical Engineer - I	Electrical CAD	Controls Engineer Lead - Reven H.	Controls Designer	Controls CAD	Mechanical/Plumbing Lead	Project Engineer	Mechanical CAD	Civil Engineer/Lead - Ryan M.	Civil Designer	Quality Control - Chief Engineer - David K.			Admin			
1 Project Management		Composite Rates	\$200	\$180	\$185	\$125	\$95	\$170	\$115	\$105	\$200	\$145	\$105	\$155	\$120	\$110	\$150	\$100	\$240	\$75				
1.1	Project management	4	23																			10	\$5,690	
1.2	Kickoff meeting	2	4	2				2							2									\$2,070
1.3	Request for information		1	0.5				0.5						0.5								1		\$610
Task Total		6	28	2.5	0	0	2.5	0	0	0.5	0	0	0.5	2	0	0	0	0	0	0	1		\$0	\$8,370
2 Preliminary Design																								
2.1	Design criteria	1	1	1				1	1		1			1										\$1,205
2.2	Site visit and base mapping		3												6	8	12	2	4	1				\$2,740
2.3	Site and mechanical layouts	1	9											2	8									\$4,270
2.4	Structural concepts		0.5	1	2																			\$525
2.5	Electrical and controls	0	1					2	4	4	1	4	4		2						1			\$3,080
2.6	Opinion of probable cost	0	1		2			0.5	2			2		1	4			1						\$1,820
2.7	Workshop meeting	2	3		0			0				0		3	3						1			\$1,375
Task Total		4	12.5	2	4	0	3.5	7	4	2	6	4	4	23	20	3	10	2	1			\$0	\$15,015	
3 Final Design																								
3.1	50% design	2	6	2	8	20	2	8	20	2	4	6	2	16	16	6	4							\$15,010
3.2	50% workshop		4											4	4									\$1,275
3.3	90% design	2	7	2	7	16	5	18	22	4	40	40	5	18	18	4	4	4	4	1				\$27,330
3.4	90% workshop		4											4	4									\$1,275
3.5	90% cost estimate		0	0	0		0	0			0		0	0		0								\$0
3.6	90% QC		1																			1		\$2,100
3.7	100% design	1	3	2	2	4	2	8	8	1	2	8	1	3	4	0.5	1	8	8					\$6,825
3.8	100% cost estimate		0.5	1	2	0	1	2	0	1	2		0.5	3										\$1,725
3.9	Agency submittal / response		2	1	2	0	1	2	0	1												1		\$1,475
Task Total		5	27.5	8	21	40	11	38	50	8	48	54	8.5	48	38	10.5	9	12	11			\$0	\$57,015	
4 Bid Administration and Support																								
4.1	Pre-qualification review	0	0																			2		\$0
4.2	Bid schedule and docs		1		0		0							0										\$330
4.3	Pre-bid meeting		0											0										\$0
4.4	Bid administration	1	3		1		3			1	1		2	2		0								\$2,270
4.5	Bid review	0	0											0								0		\$0
Task Total		1	4	0	1	0	3	0	0	1	1	0	2	2	0	0	0	0	0	2		\$0	\$2,600	
5 Construction Phase Services																								
5.1	Construction meetings (4 total)		12		0		0				0			0								1		\$2,235
5.2	Submittal reviews	0	4	0.5	4		2	6		1	8		2	10		2		1	4					\$6,053
5.3	Field orders, change orders, RFIs	1	4	0.5	2		2	6		1	6		2	8		1		1	2					\$5,173
5.4	Startup support	0	8				1	4			6			8										\$3,900
5.5	O&M review and approval	1	1				1	4			4			8								1		\$2,625
5.6	Record drawings		2						2			1		3	3		1							\$2,135
5.7	Construction observation		5				0				0			15										\$2,700
Task Total		2	36	1	6	0	7	20	2	2	24	1	4	52	3	3	1	2	8		\$500	\$24,820		
Total		18	108	13.5	32	40	27	65	56	13.5	79	59	19	127	61	16.5	20	16	33	\$500				\$107,818
																					Total Consultant Fee	\$107,818		

*Subconsultant fees include 5% Consultant Markup