

RESOLUTION NO. 1777

A RESOLUTION OF THE CITY OF WILSONVILLE ACTING IN ITS CAPACITY AS ITS LOCAL CONTRACT REVIEW BOARD AUTHORIZING A PROFESSIONAL SERVICES AGREEMENT WITH MILLER/HULL PARTNERSHIP LLP TO PROVIDE CONSTRUCTION DOCUMENTS INCLUDING BIDDING-RELATED SERVICES FOR THE CITY CENTER PARK AND CITY HALL PROJECT.

WHEREAS, the City of Wilsonville previously concluded a competitive selection process for professional design services for design development documents for the Civic Center Park and City Hall Office Projects; and

WHEREAS, upon completion of the aforementioned competitive selection process, the City Council of the City of Wilsonville acting in its capacity as the city's Local Contract Review Board awarded a professional services agreement to a design team led by Miller/Hull Partnership LLP (also known as Miller/Hull Architects or Miller/Hull) as set forth in Resolution No. 1736; and

WHEREAS, the Miller/Hull Partnership LLC successfully completed the Civic Center Park and City Hall Office schematic design phase including a public process in the decision making of developing the concepts and design elements; and

WHEREAS, consistent with the City Code and Parks and Recreation Master Plan specifically addressing developing a design plan for the "Boozier" property site, the City of Wilsonville Parks and Recreation Advisory board reviewed the Civic Center Park and City Hall schematic design plans and on June 4, 2002 recommended the plans approval; and

WHEREAS, W.C. 2.314 provides an exemption from a competitive selection process for:

"(C) Follow on work where a change of consultants would clearly result in increased costs or increased time."

WHEREAS, staff reports that given the extensive and valuable information which Miller/Hull Partnership LLP has acquired, and which clearly has gone into the development of the schematic plans and their approval, the relationship of the design elements and concepts to providing construction drawings in keeping with the schematic design plans as approved and the time and costs necessary to select another professional team and the high probability that another professional architectural team would have to duplicate a great deal of the work previously done and paid for by the City to achieve the information necessary to develop construction plans, a

duplicate cost would be incurred; therefore, staff recommends a finding that a change in consultants would clearly result in increased costs or increased time is warranted and defensible; and that the Board exempts the award of the contract for professional services to Miller/Hull Partnership LLP to provide construction documents including bidding-related services for the Civic Center Park and City Hall Office Project.

WHEREAS, Section 2.314(2) states, "The Board may, by resolution exempt other contractors from competitive bidding if it finds (a) the lack of bids will not result in favoritism or substantially diminish competition in awarding the contract; and (b) the exemption will result in substantial cost savings. In making such a finding, the Board may consider the type, cost amount of the contract, number of persons available to bid and such other factors that the Board may deem appropriate": and

WHEREAS, staff experience finds that a professional services contract for furnishing of project specific construction drawings based upon public approval process of the concepts and schematic design plans after a competitive selection for providing the conceptual and schematic design project is the type of contract which probably would result in greater costs; and that given the earlier competitive process and the type of contract awarded going forward with Miller/Hull Partnership LLC will result in substantially cost savings and the lack of bids will not result in favoritism or substantially diminished competition in the awarding of the contract; and

WHEREAS, after reviewing the fees associated with providing the requested professional staff has determined that the fees for services as proposed by Miller/Hull Partnership LLP are fair and reasonable.

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

1. The above recitals including, but not limited to, the staff findings and the findings recommended therein, are hereby adopted as findings by the City Council serving in its role as Local Contract Review Board.

2. Based upon the adopted findings above, the City Council serving in its role as Local Contract Review Board does hereby exempt the award of contract for construction documents and bidding related services for the planned Civic Center Park and City Hall Office from competitive bidding and further concludes (1) this award will not result in favoritism or substantially diminish competition and will result in substantial cost savings, and (2) this award

is for follow-on work where a change in the professional services consultant/architect, Miller/Hull Partnership LLC would clearly result in increased costs and increased time.

3. The City Council serving in its role as Local Contract Review Board does hereby approve and authorize the execution of a Professional Services Agreement between the City of Wilsonville and Miller/Hull Partnership LLP, a copy of which is marked Exhibit No. 1, attached hereto and incorporated herein to provide the professional services recited within for the Civic Center Park and City Hall Office Project.

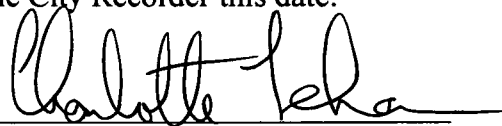
4. The City Council authorizes the expenditures for these projects not to exceed:

Account 580-49130-5000-847 \$412,000

Account 590-49130-5000-937 \$135,000

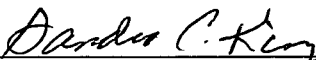
5. The effective date of this resolution is June 17, 2002.

ADOPTED by the City Council of the City of Wilsonville at a regular meeting thereof this 17th day of June 2002, and filed with the Wilsonville City Recorder this date.



CHARLOTTE LEHAN, MAYOR

ATTEST:



Sandra C. King, CMC, City Recorder

SUMMARY OF VOTES:

Mayor Lehan	Yes
Councilor Helser	Yes
Councilor Barton	Yes
Councilor Kirk	No
Councilor Holt	Yes

EXHIBIT #1

CITY OF WILSONVILLE
PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into as of the date first indicated on the signature page, by and between the City of Wilsonville, Wilsonville, Oregon (hereinafter referred to as the "City"), and Miller/Hull Partnership LLP (hereinafter referred to as "Consultant").

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

WHEREAS, Consultant represents that it is qualified on the basis of specialized experience and technical competence and prepared to provide such services as City does hereinafter require;

NOW, THEREFORE, in consideration of those mutual promises and the terms and conditions set forth hereafter, the parties agreed as follows:

A. Term

The term of this Agreement shall be from the date of execution by both parties until tasks required hereunder are complete and accepted, unless earlier terminated in accordance herewith.

B. Consultant's Services

B.1 The scope of Consultant's services and time of performance under this Agreement are set forth in Exhibit A. All provisions and covenants contained in Exhibit A are hereby incorporated by reference and shall become a part of this Agreement as if fully set forth herein.

B.2 All written documents, drawings, and plans submitted by Consultant and intended to be relied on for the project shall bear the signature, stamp or initials of Consultant or Consultant's authorized Project Manager. Any documents submitted by Consultant which do not bear Consultant's signature, stamp or initials or those of the Consultant's authorized Project Manager shall not be relied upon by City. Interpretation of plans and answers to questions covering Plans given by Consultant or Consultant's Project Manager need not be put in writing unless requested by the City and may be relied upon by City.

B.3 All agreements on the Consultant's part are contingent upon, and the Consultant shall not be responsible for damages or be in default or be deemed to be in default by reason of delays in performance due to third party: strikes,

lockouts, accidents; acts of God; other delays unavoidable or beyond the Consultant's reasonable control, or due to shortages or unavailability of labor at established area wage rates or delays caused by failure of the City or City's agents to furnish information or to approve or disapprove the Consultant's work promptly, or due to late or slow, or faulty performance by the City, other contractors, other consultants not under Consultant's control or governmental agencies, the performance of whose work is precedent to or concurrent with the performance of the Consultant's work. In the case of the happening of any such cause of delay, the time of completion shall be extended accordingly.

- B.4 The existence of this Agreement between City and Consultant shall not be construed as City's promise or assurance that Consultant will be retained for future services unrelated to this public works project.
- B.5 Consultant shall maintain confidentiality of any private confidential information and any public information which is exempt from disclosure under state or federal law to which the Consultant may have access by reason of this Agreement. Consultant warrants that its employees assigned to work on services provided in this Agreement shall maintain confidentiality. All agreements with respect to confidentiality shall survive the termination or expiration of this Agreement.
- B.6 Consultant agrees to complete in satisfactory, proper and timely manner the services described in attached Exhibit A.

C. Compensation

- C.1 Except as otherwise set forth in this Section C, City agrees to pay Consultant not more than \$398,504.00 (Three Hundred Ninety-Eight Thousand, Five Hundred Four and no/100 Dollars) for performance of those services provided hereunder. However, compensation may be less than such maximum amount and shall be actually determined on an hourly basis as shown on the Rate Schedule attached as Exhibit C, which is attached hereto and incorporated herein. Compensation shall be only for actual hours worked on this project and related direct expenses. Consultant shall furnish with each bill for services an itemized statement showing the amount of hours devoted to the project by Consultant as well as any agents or employees of Consultant and any direct expenses.
- C.2 During the course of Consultant's performance, if City or its Project Manager specifically requests Consultant to provide additional services which are beyond

the scope of the services described on Exhibit A, Consultant shall provide such additional services and bill the City at the hourly rates outlined on the attached Standard Hourly Rate Schedule, provided the parties comply with the requirements of Section Q. No compensation for additional services shall be paid or owing unless both parties specifically agree to such additional compensation and services.

- C.3 Unless expressly set forth on Exhibit A as a reimbursable expense item, Consultant shall only be entitled to the compensation amount specified in subsections C.1 and C.2. Only those reimbursable expenses which are set forth on Exhibit A and itemized on Consultant's bills for services shall be the basis for which payment of those expenses by City shall be owing.
- C.4 Except for amounts withheld by City pursuant to this Agreement, Consultant will be paid for services for which an itemized bill is received by City within 30 days.
- C.5 City shall be responsible for payment of required fees, payable to governmental agencies including, but not limited to plan checking, land use, zoning, building permits, and all other similar fees resulting from this project, and not specifically covered by Exhibit A.
- C.6 Consultant's compensation rate includes but is not limited to salaries or wages plus fringe benefits and contributions including payroll taxes, workers' compensation insurance, liability insurance, pension benefits and similar contributions and benefits.
- C.7 In the event Consultant's responsibilities as described on Exhibit A have been separated into two or more phases, then Consultant shall not be entitled to any compensation for work performed directly on a later category of responsibilities unless and until City specifically directs that Consultant proceed with such work.

D. City's Project Manager

City's Project Manager is Martin Brown. City shall give Consultant prompt written notice of any redesignation of its Project Manager.

E. Consultant's Project Manager

Consultant's Project Manager is Craig Curtis. In the event that Consultant's designated Project Manager is changed, Consultant shall give City prompt written notification of such redesignation. In the event that City receives any communication

from Consultant of whatsoever nature which is not executed by Consultant's designated Project Manager, City may request clarification by Consultant's Project Manager, which shall be promptly furnished.

F. Project Information

City shall provide full information regarding its requirements for the Project. Consultant agrees to share all project information, to fully cooperate with all 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 newspaper, magazines or television and radio stations, shall be made without the authorization of City's Project Manager.

G. 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 any portion thereof, any nonconformance with the federal, state or local laws, rules, or regulations, or has any objection to any decision or order made by City with respect to such laws, rules or regulations, Consultant shall give prompt written notice thereof to City's Project Manager. Any delay or failure on the part of 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 City's rights.

H. Consultant is Independent Contractor

H.1 Consultant shall be and herein declares that it is an independent contractor for all purposes and shall be entitled to no compensation other than compensation provided for under Section C of this Agreement. Consultant binds itself, its partners, officers, successors, assigns and legal representatives to the City. Consultant shall be completely independent and solely determine the manner and means of accomplishing the end result of this Agreement, and City does not have the right to control or interfere with the manner or method of accomplishing said results. City, however, has the right to specify and control the results of the Consultant's responsibilities.

H.2 Subcontracting: City understands and agrees that only those special consulting services identified on Exhibit B may be performed by those persons identified on Exhibit B and not by Consultant. Consultant acknowledges such services are provided to City pursuant to a subcontract(s) between Consultant and those who provide such services. Consultant may not utilize any subcontractors or in any way assign its responsibility under the Agreement without first obtaining

the express written consent of the City.

- H.3 Consultant shall be responsible for and indemnify and defend City against any liability, cost or damage arising out of Consultant's use of such subcontractor(s) and subcontractor's negligent acts, omissions, or errors. Subcontractors will be required to meet the same insurance requirements of Consultant under this Agreement. Unless otherwise specifically agreed to by City, Consultant shall require that subcontractors also comply with and be subject to the provisions of this Section H.
- H.4 Consultant shall make prompt payment of any claim for labor, materials or services furnished to the Consultant by any person in connection with this Agreement as such claim becomes due. Consultant shall not permit any lien or claim to be filed or prosecuted against the City on account of any labor or material furnished to or on behalf of the Consultant. If the Consultant fails, neglects or refuses to make prompt payment of any such claim, the City may pay such claim to the person furnishing the labor, materials or services and charge the amount of the payment against funds due or to become due the Consultant under this Agreement.
- H.5 No person shall be employed under the terms of this Agreement as described herein in violation of all wage and hour laws.
- H.6 Should Consultant elect to utilize employees on any aspect of this Agreement, Consultant shall be fully responsible for payment of all withholding 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 incidental to the hiring of assistants or employees shall be Consultant's responsibility. Consultant shall indemnify, defend and hold City harmless from claims for payment of all such expenses. Unless otherwise expressly set forth on Exhibit A as a reimbursable expense item, specific costs associated with items set forth in this paragraph shall be deemed as fully and conclusively included in the rate upon which consultants compensation is based.
- H.7 No person shall be denied or subjected to discrimination in receipt of the benefits of any services or activities made possible by or resulting from this Agreement on the grounds of sex, race, color, creed, marital status, age, disability 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.

I. Indemnity and Insurance

I.1 Consultant acknowledges responsibility for liability arising out of the performance of this Agreement and the attachments thereto, and all liability resulting from the negligent acts, performance or errors or omissions of the Consultant or anyone acting on behalf of Consultant in connection with or incidental to the work performed under the contract. Consultant shall hold City harmless from and indemnify City of loss or damages including reasonable costs, expenses, and attorney's fees to the extent resulting from Consultant's negligent acts, omissions, errors or willful misconduct provided 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 City, its Project Manager or City of Wilsonville employees of documents or other work prepared or submitted by Consultant shall not relieve Consultant of its responsibility to provide such materials in full conformity with City's requirements as set forth in this Agreement and to indemnify City from losses and damages resulting from Consultant's failure to adhere to the standard of performance described in Section I.2.3. The provisions of this section shall survive termination of this Agreement.

I.2 Insurance Requirements and Consultant's Standard of Care.

I.2.1 Consultant shall provide City with evidence of the following insurance coverages prior to the commencement of the work. A copy of each insurance policy, issued by a company currently licensed in the State of Oregon, and certified as a true copy by an authorized representative of the issuing company or at the discretion of the City, in lieu thereof, a certificate in a form satisfactory to City certifying to the issuance of such insurance shall be furnished to City. Expenses relating to the cost of insurance shall not be the basis for additional reimbursement to Consultant.

I.2.2 The City agrees that in accordance with generally accepted construction practices, the construction contractor will be required to assume sole and complete responsibility for job site conditions during the course of construction of the project, including safety of all persons and property.

I.2.3 In the performance of its professional services, the Consultant shall use that degree of care and skill ordinarily exercised under similar

circumstances by reputable members of its profession practicing in the Portland Metropolitan Area. The Consultant will reperform any services not meeting this standard without additional compensation. Consultant's reperformance of any services, even if done at City's request, shall not be considered as a limitation or waiver by 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 or this Agreement.

I.2.4 Consultant shall furnish the City a certificate evidencing the date, amount and type of insurance that has been procured pursuant to this Agreement. All policies shall be written on an "occurrence basis," except for Consultant's Professional Liability Insurance which may be written on a "claims made" basis, provided it shall endeavor to be maintained in full force for not less than four (4) years following Consultant's performance under this Agreement. All policies shall provide for not less than 30 days' written notice to the City before they may be canceled or reduced or materially changed by endorsement. The Consultant shall endeavor to provide for not less than 30 days' written notice to the City before the policy coverage may be reduced. Excepting professional liability and worker's compensation coverage, all policies shall provide an endorsement naming the City, its officers, employees and agents as additional insureds. In the event the policy lapses during performance, the City may: treat said lapse as a breach; terminate this Agreement and seek damages; withhold progress payments without impairing obligations of Consultant to proceed with work; pay an insurance carrier (either Consultants' or a substitute) the premium amount and withhold that amount from payments; and, use any other remedy provided by this Agreement or by law.

I.2.5 Insurance Requirements. The Consultant, its subcontractors, if any, and all employers working under this Agreement are subject employers under the Oregon Worker's Compensation Law and shall comply with ORS 656.017 which requires them to provide workers' compensation coverage for all their subject workers. The Consultant will maintain throughout this Agreement the following insurance:

I.2.5.1 Workers' compensation and employers liability insurance as required by the State where the work is performed.

I.2.5.2 Comprehensive automobile and vehicle liability insurance covering claims for injuries to members of the public and/or

damages to property of others arising from the use of motor vehicles, including on-site and off-site operations, and owned, non-owned, or hired vehicles, with \$500,000 combined single limits.

I.2.5.3 Commercial general liability insurance covering claims for injuries to members of the public or damage to property of others arising out of any covered negligent act or omission of the Consultant or of any of its employees, agents or subcontractors, with \$1,000,000 per occurrence and in the aggregate.

I.2.5.4 Professional liability insurance of \$2,000,000 per occurrence and in the aggregate, including contractual liability coverage. If Consultant proposes using subcontractors, in addition to any other requirements of this Agreement, City may require subcontractors to provide Professional Liability Insurance, provided the amount and form of coverage complies with the requirements of paragraphs I.2.1, I.2.3, I.2.4 and I.2.5.4.

I.2.5.5 City will be named as an additional insured with respect to Consultant's liabilities hereunder in insurance coverages identified in items I.2.5.2 and I.2.5.3.

I.2.6 The coverage provided by these policies shall be primary and any other insurance carried by City is excess. Consultant shall be responsible for any deductible amounts payable under all policies of insurance. In the event a dispute arises between City and Consultant for which Consultant has obtained insurance, the maximum amount which may be withheld by City for all such claims shall be no more than the amount of the applicable insurance deductible.

J. Early Termination

J.1 This Agreement may be terminated prior to the expiration of the agreed upon terms:

J.1.1 By mutual written consent of the parties;

J.1.2 By City for any reason within its sole discretion, effective upon delivery of written notice to Consultant by mail or in person, or at such later date as may be established by the City; and

J.1.3 By Consultant, effective upon seven days prior written notice in the event of substantial failure by the City to perform in accordance with the terms through no fault of the Consultant.

J.2 If City terminates the Agreement in whole or in part due to default or failure of Consultant to perform services in accordance with this Agreement, 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, Consultant shall be liable for all costs and damages incurred by City in procuring such similar service, and the Contract shall be in full force to the extent not terminated.

J.3 If City terminates the Agreement for its own convenience, 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 City under this Agreement.

J.4 Termination under any provision of this paragraph shall not affect any right, obligation or liability of Consultant or City which accrued prior to such termination. Consultant shall surrender to City items of work or portions thereof, referred to in Section N for which Consultant has received payment, or City has made payment. City retains the right to elect whether or not to proceed with actual construction of the project.

K. Suspension of Work

City may suspend, delay or interrupt all or any part of the work 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 the Consultant's control. City shall not be responsible for work performed by any subcontractors after notice of suspension is given by City to Consultant.

L. Subconsultants and Assignments

L.1 Consultant shall not enter into any subcontracts for any of the work scheduled under this contract without obtaining prior written approval from the Project Manager. The Consultant shall ensure that in all subcontracts entered into by the Consultant pursuant to this contract, the City is named as an express third party beneficiary of such subcontracts with full rights as such. Consultant acknowledges such services are provided to City pursuant to a subcontract(s) between Consultant and subcontractor(s). City incurs no liability to third persons for payment of any compensation provided herein to Consultant. Any

attempted assignment of this contract without the written consent of City shall be void. Except as otherwise specifically agreed, all costs for services performed by others on behalf of Consultant shall not be subject to additional reimbursement by City.

L.2 City shall have the right to let other agreements be coordinated with this Agreement. Consultant shall cooperate with other firms, engineers or subconsultants on the project and the City so that all portions of the project may be completed in the least possible time within normal working hours. Consultant shall furnish other engineers and subconsultants and affected public utilities, whose designs are fitted into Consultant's design, detail drawings giving full information so that conflicts can be avoided.

M. Access to Records

The City, Secretary of State's Office of the State of Oregon, the Federal Government and the duly authorized representatives of any of the above, shall have access to the books, documents, papers, records and receipts of the Consultant which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts and transcripts. The City, Secretary of State's Office of the State of Oregon, the Federal Government and authorized representatives shall have the authority to inspect, audit and copy from time to time, any records of the Consultant regarding billings or work under this Agreement for a period of four years after the completion or termination of this contract.

N. Work is Property of City

N.1 Originals or Certified copies of the original work forms, including but not limited to documents, drawings, tracings, surveying records, mylars, papers, diaries, inspection reports and photographs, performed or produced by Consultant under this Agreement shall be the exclusive property of City and shall be delivered to City prior to completion or termination of this contract and 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 City upon request without additional compensation. Upon City's approval and provided City is identified in connection therewith Consultant may include Consultant's work in its promotional materials.

N.2 Consultant shall not be held liable for any damage, loss, increased expenses or otherwise caused by or attributed to the reuse, by City or their designees, of all work performed by Consultant pursuant to this contract without the express written permission of the Consultant.

O. Law of Oregon

The Agreement shall be governed by the laws of the State of Oregon. The Agreement provisions required by ORS Chapter 279 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. Consultant shall adhere to all applicable federal and state laws, 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 which Consultant is required by law to obtain or maintain in order to perform work described on Exhibit A, shall be obtained and maintained throughout the term of this Agreement.

P. Adherence to Law

Consultant shall comply with all federal, state and local laws and ordinances, rules and regulations applicable to the work under this contract. Consultant agrees that the public contract law provisions contained in ORS chapter 279 shall apply to and govern the performance of this contract. Consultant shall certify compliance with ORS 670.600. Further, Consultant agrees to comply with applicable provisions of and amendments to the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973 and with all applicable requirements of federal and state and rehabilitation statutes, rules and regulations. Contractor shall also comply with the Americans with Disabilities Act of 1990, ORS 659.425, and all regulations and administrative rules established pursuant to those laws. Further, all certificates, licenses (including a City business license) or permits, which the consultant is required by law to obtain or maintain in order to perform work described in Exhibit A, shall be obtained and maintained throughout the term of this Agreement.

Q. Modification

Any modification of the provisions of this Agreement shall not be enforceable unless reduced to writing and signed by both parties. A modification is a written document, contemporaneously executed by City and Consultant, which increases or decreases the cost to City over the agreed sum or changes or modifies the scope of service or time of performance. No modification shall be binding unless executed in writing by Consultant and City. In the event that Consultant receives any communication of whatsoever nature from City, which communication Consultant contends to give rise to any modification of this Agreement, Consultant shall, within thirty (30) days after receipt, make a written request for modification to City's Project Manager. Consultant's failure to submit such written request for modification in the manner outlined herein may be the basis for refusal by the City to treat said communication as a basis for modification. In connection with any modification to the contract 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 which were reasonably expected as part of the original agreement or any mutually approved modifications, then City shall be responsible for payment of only those costs for which it has agreed to pay.

R. Other Conditions

R.1 Except as otherwise provided in paragraphs R.1.1, R.1.2, and R.1.3 Consultant represents and agrees that the contract specifications and plans, if any, prepared by the Consultant will be adequate and sufficient to accomplish the purposes of the project; and further, that any review or approval by the City of the plans and specifications shall not be deemed to diminish the adequacy of Consultant's work.

R.1.1 Subsurface Investigations. In soils, foundation, ground water, and other subsurface investigations, the actual characteristics may vary significantly between successive test points and sample intervals and at locations other than where observations, exploration, and investigations have been made. Because of the inherent uncertainties in subsurface evaluations, changed or unanticipated underground conditions may occur that could affect total Project cost and/or execution. These conditions and cost/execution effects are not the responsibility of the Consultant.

R.1.2 Opinions of Cost, Financial Considerations, and Schedules. In providing opinions of cost, financial analyses, economic feasibility projections, and schedules for the Project, Consultant has no control over cost or price of labor and materials; unknown or latent conditions of existing equipment or structures that may affect operation or maintenance costs; competitive bidding procedures and market conditions; time or quality of performance by third parties; quality, type, management, or direction of operating personnel; and other economic and operational factors that may materially affect the ultimate Project cost or schedule. Therefore, Consultant makes no warranty that City's actual Project costs, financial aspects, economic feasibility, or schedules will not vary from Engineer's opinions, analyses, projections, or estimates.

R.1.3 Record Drawings. Record drawings, if required, will be prepared, in part, on the basis of information compiled and furnished by others, and may not always represent the exact location, type of various components, or exact manner in which the Project was finally constructed. Consultant is responsible for any errors or omissions about which the Consultant knew or should have known in the information

from those employees or firms employed by the Consultant under the terms of the contract as stated therein that is incorporated into the record drawings.

- R.2 Notwithstanding any acceptance or payments, City shall not be precluded or stopped from recovering from Consultant, or its insurer or surety, such damages as may be sustained by reason of Consultant's failure to comply with the terms of this Agreement. A waiver by City of any breach by Consultant shall not be deemed to be a waiver of any subsequent breach by Consultant.

S. Assignments of Products Rights

The Consultant hereby assigns to the City all rights, title and interest, including but not limited to copyright rights, all notes, designs, drawings, specifications, technical data reports, computer programs and documentation, and other materials resulting from the Consultant's work under this Agreement.

T. Dispute Resolution

- T.1 Claims, disputes or other matters in question between the parties to this Agreement arising out of or relating to this Agreement or breach thereof shall be subject to and decided by mediation or arbitration. Such mediation or arbitration shall be conducted in accordance with the Construction Industry Mediation or Arbitration Rules of the American Arbitration Association currently in effect.
- T.2 In addition to and prior to arbitration, the parties shall endeavor to settle disputes by mediation. Demand for mediation shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. A demand for mediation shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for mediation be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of repose or limitations.
- T.3 Demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. A demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statutes of repose or limitations.

T.4 No other arbitration arising out of or relating to this Agreement shall include, by consolidation, joinder or in any other manner, an additional person or entity not a party to this Agreement except by written consent containing a specific reference to this Agreement signed by the City, the Consultant and all other persons or entities sought to be joined. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by the parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

T.5 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

U. Integration

This Agreement constitutes the entire agreement between the parties. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. Consultant, by the signature below of its authorized representative, hereby acknowledges that he/she has read this Agreement, understands it and agrees to be bound by its terms and conditions.

V. Miscellaneous / General

Consultant binds itself, its partners, officers, successors, assigns and legal representatives to the City under the terms and conditions of this Agreement as described herein.

The CONSULTANT and the CITY hereby agree to all provisions of this AGREEMENT.

IN WITNESS WHEREOF, the parties by their signatures below enter into this Agreement this _____ day of _____, 2002.

CITY OF WILSONVILLE

CONSULTANT:

By _____
Martin Brown
Building Official

By _____
Miller / Hull Partnership LLP

Mailing Address:
30000 SW Town Center Loop E.
Wilsonville, Oregon 97070

Mailing Address:
Maritime Building
911 Western Avenue, Suite 220
Seattle, Washington 98104

Attest:

Employer ID No. _____

Sandra C. King
City Recorder

Approved as to form:

Michael E. Kohlhoff
City Attorney

EXHIBIT A

CONSULTANT'S SERVICES AND RESPONSIBILITIES

1.5 CONSTRUCTION DOCUMENTS PHASE

- a. Upon written authorization to proceed from the City, the Consultant shall prepare, based upon the approved Design Development documents, all drawings and documents necessary to support a contract for construction of the project. Such documents shall describe materials, standards of workmanship, finishes, equipment and conditions affecting the work.
- b. In preparing the Construction Documents, the Consultant shall, in consultation with the City, prepare the necessary bidding information, bidding forms, and the project manual, which shall include the City's General Conditions of the Contract, Supplemental Conditions, instructions to bidders, and prevailing wage rates as furnished by the City.
- c. The Consultant shall make application for the Building Permit. Application shall be made at the time that the construction documents are sufficiently complete prior to advertisement and bidding. The fees for the permits shall be paid by the City.
- d. Basic Services for the Construction Documents Phase shall include the following:
 1. Project Administration: Services consisting of construction documents, administrative functions including consultation, meetings and correspondence, and progress design review conferences.
 2. Disciplines Coordination: Coordination of the architectural work, with the work of engineering, and with other involved Consultants for the project.
 3. Document Checking: Review and coordination of documents prepared for the project.
 4. Consulting Permitting Authority: Consultations, research of critical applicable regulations, preparation of written and graphic explanatory materials. The services apply to applicable laws, statutes, regulations, and codes. Assist obtaining approval from approving agencies as required.
 5. Data Coordination User Agency: Review and coordination of data furnished by the City.
 6. Architectural Design: Services consisting of preparation of drawings based on approved Design Development documents setting forth in detail the architectural construction requirements for the project.

7. Structural Design: Services consisting of preparation of final structural engineering calculations, drawings and specifications based on approved Design Development documentation, setting forth in detail the structural construction requirements for the project.
 8. Mechanical Design: Services consisting of preparation of final mechanical engineering calculations, drawings and specifications based on approved Design Development documentation, setting forth in detail the mechanical construction requirements for the project.
 9. Electrical Design: Services consisting of preparation of final electrical engineering calculations, drawings and specifications based on approved Design Development documentation, setting forth in detail the electrical construction requirements for the project.
 10. Site Design: Services consisting of preparation of final civil/site design drawings and specifications based on approved Design Development documentation required for the project.
 11. Specifications: Services consisting of activities of development and preparation of bidding documents, Conditions of the Contract, architectural specifications, coordination of specifications prepared by other disciplines, and compilation of project manual.
 12. Cost Estimating: Services consisting of development of a probable construction cost from quantity surveys and unit costs of building elements for the project. Costs shall reflect the level of design elements presented in the Construction documents plus appropriate design contingencies to encompass unidentified scope ultimately included in the program. Assist the City with analyzing scope, schedule, and budget options.
 13. Scheduling: Services consisting of reviewing and updating previously established schedules for the project.
- e. Additional Services for the Construction Documents Phase shall include the following:
1. Acoustical Design: Services consisting of preparation of final acoustical treatment design based on approved Design Development documentation, setting forth in detail the acoustical construction requirements for the project.
 2. Civil Engineering: Services consisting of preparation of final civil engineering calculations, drawings and specifications based on approved Design Development documentation, setting forth in detail the civil construction requirements for the project.

3. Communications Design: Services consisting of preparation of final telecommunications drawings and specifications based on approved Design Development documentation, setting forth in detail the structural telecommunications requirements for the project.
4. Audio/Visual Design: Services consisting of preparation of final audio/visual drawings and specifications based on approved Design Development documentation, setting forth in detail the audio/visual construction requirements for the project.
5. Interior Design/Furnishings City: Services consisting of preparation of final building interior, drawings and specifications based on approved Design Development documentation, setting forth in detail the interior design construction requirements for the project. Preparation of a sample board indicating the selected palette of materials and colors for the building.
6. Landscape Design: Services consisting of preparation of final landscape and irrigation drawings and specifications based on approved Design Development documentation, setting forth in detail the landscape construction requirements for the project.
7. Security Design: Services consisting of preparation of final security drawings and specifications based on approved Design Development documentation, setting forth in detail the security construction requirements for the project.
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1.6 BIDDING PHASE

- a. It is agreed and understood by the Consultant that the City of Wilsonville reserves the right to pre-qualify prospective general contractors for this project. The Consultant shall assist the City in any related documents as may be requested by the City.
- b. The Consultant shall assist the City in preparing the bid advertisement and instructions to bidders.
- c. The Consultant shall attend the pre-bid conference, prepare and issue addenda, attend the bid opening, and generally assist the City in managing the bid process.
- d. Services provided during the Bidding Phase shall include the following:
 1. Project Administration: Services consisting of bidding phase administrative functions.
 2. Disciplines Coordination: Coordination between the architectural work and the work of engineering and other involved Consultants for the project.
 3. Bidding Materials: Services consisting of organizing, coordinating, and handling Bidding Documents for reproduction. Distribution and retrieval, receipt and return of document deposits shall be coordinated by the City.
 4. Addenda: Services consisting of preparation and distribution of Addenda as may be required during bidding and including supplementary drawings, specifications, instructions, and notice(s) of changes in the bidding schedule and procedure.
 5. Bidding: Services consisting of participation in pre-bid conferences, responses to questions from bidders, and clarification or interpretations of the bidding documents, attendance at bid opening, and documentation and distribution of bidding results.
 6. Analysis of Substitutions: Services consisting of consideration, analysis, comparisons, and recommendations relative to substitutions proposed by bidders prior to receipt of bids.
 7. Bid Evaluation: Services consisting of validation of bids, participation in review of bids and alternates, evaluation of bids, and recommendation on award of contract.
- e. Contract Agreements: Assist City in notification of contract award, assistance in preparation of Construction Contract agreements when required, preparation and distribution of sets of contract documents for execution of the contract, receipt, distribution and processing, for City approval, of required certificates of insurance, bonds and similar documents, and preparation and distribution to consultant(s) on behalf of the City, of notice(s) to proceed with the work.

EXHIBIT "B"

PROJECT SUBCONSULTANTS

Murase Associates
Portland, Oregon

KPFF Consulting Engineers
Portland, Oregon
Seattle, Washington

PAE Consulting Engineers
Portland, Oregon

MacKay & Sposito, Inc.
Vancouver, Washington

Roen Associates
Seattle, Washington

PBS Environmental
Vancouver, Washington

InterFluve, Inc.
Hood River, Oregon

Mayer/Reed
Portland, Oregon

Listen Acoustics
Lake Oswego, Oregon

EXHIBIT "C"

HOURLY RATE SCHEDULE

MILLER/HULL ARCHITECTS

Design Partner	\$150.00 / hour
Partner-in-Charge	\$140.00 / hour
Project Manager	\$75.00 / hour
Project Architect	\$65.00 / hour
Draftsperson	\$50.00 / hour
Specification Writer	\$50.00 / hour

MURASE ASSOCIATES

Principal	\$105.00 - \$168.00 / hour
Project Manager	\$70.00 - \$85.00 / hour
Landscape Designer	\$52.00 - \$70.00 / hour
Clerical	\$45.00 / hour

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Principal	\$125.00 - \$177.00 / hour
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Design Engineer	\$55.00 - \$70.00 / hour
Drafter	\$53.00 - \$87.00 / hour
Administration	\$35.00 - \$77.00 / hour

MACKAY & SPOSITO

Senior Principal	\$152.00 / hour
Principal	\$128.00 / hour
Planning Manager	\$87.00 / hour
Project Development Manager	\$87.00 / hour
Engineer V (Engineering Manager)	\$87.00 / hour
Engineer IV	\$80.00 / hour
Project Manager	\$80.00 / hour
Engineer III	\$75.00 / hour
Engineer II	\$70.00 / hour
Engineer I	\$65.00 / hour
Survey Manager	\$87.00 / hour
Land Surveyor III	\$80.00 / hour
Land Surveyor II	\$70.00 / hour
Land Surveyor I	\$60.00 / hour
Senior Planner	\$70.00 / hour

Planner	\$62.00 / hour
Planning Technician	\$57.00 / hour
Technician III	\$73.00 / hour
Technician II	\$65.00 / hour
Technician I	\$57.00 / hour
3 Person Survey Crew	\$165.00 / hour
2 Person Survey Crew	\$126.00 / hour
Public Involvement Specialist	\$75.00 / hour
Administrative Assistant	\$46.00 / hour
Clerical	\$35.00 / hour

PAE CONSULTING ENGINEERS, INC.

Principal	\$130.00 / hour
Senior Associate	\$120.00 / hour
Associate	\$110.00 / hour
Senior Engineer / Senior Designer	\$105.00 / hour
Lead Engineer / Lead Designer	\$95.00 / hour
Project Engineer / Project Designer	\$85.00 / hour
Staff Engineer / Designer	\$75.00 / hour
Engineer / Designer	\$65.00 / hour
CAD Operator	\$55.00 / hour
Clerical	\$50.00 / hour

PBS ENVIRONMENTAL

Principal Engineer / Scientist	\$115.00 / hour
Sr. Environmental Civil Engineer	\$105.00 / hour
Sr. Geotechnical / Soils Engineer	\$95.00 / hour
Sr. Industrial Hygienist / Toxicologist	\$90.00 / hour
Sr. Ecologist / Hydrologist / Geologist	\$85.00 / hour
Sr. Scientist / Chemist	\$80.00 / hour
Project Manager / Engineer	\$80.00 / hour
Project Geologist / Ecologist	\$75.00 / hour
Field Engineer / Scientist	\$65.00 / hour
Industrial Hygienist / Inspector	\$65.00 / hour
Cultural Specialist	\$65.00 / hour
GIS / GPS Mapping	\$70.00 / hour
Field Technician	\$50.00 / hour
CAD / Drafting	\$50.00 / hour
Computer Programmer	\$80.00 / hour
Administrative Support	\$45.00 / hour

LISTEN ACOUSTICS

Principal Engineer	\$135.00 / hour
Senior Engineer	\$105.00 / hour

ROEN ASSOCIATES

Principal	\$95.00 / hour
Cost Estimator	\$75.00 / hour
Mechanical Cost Engineer	\$70.00 / hour
Electrical Cost Engineer	\$75.00 / hour

INTERFLUVE, INC.

Principal	\$149.00 / hour
Project Manager	\$110.00 / hour
Senior Staff	\$98.00 / hour
Staff	\$92.00 / hour
Technical Staff	\$82.00 / hour
Drafting / CAD	\$60.00 / hour
Administrative / Clerical	\$35.00 / hour

EXHIBIT #1

CITY OF WILSONVILLE
PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into as of the date first indicated on the signature page, by and between the City of Wilsonville, Wilsonville, Oregon (hereinafter referred to as the "City"), and Miller/Hull Partnership LLP (hereinafter referred to as "Consultant").

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

WHEREAS, Consultant represents that it is qualified on the basis of specialized experience and technical competence and prepared to provide such services as City does hereinafter require;

NOW, THEREFORE, in consideration of those mutual promises and the terms and conditions set forth hereafter, the parties agreed as follows:

A. Term

The term of this Agreement shall be from the date of execution by both parties until tasks required hereunder are complete and accepted, unless earlier terminated in accordance herewith.

B. Consultant's Services

B.1 The scope of Consultant's services and time of performance under this Agreement are set forth in Exhibit A. All provisions and covenants contained in Exhibit A are hereby incorporated by reference and shall become a part of this Agreement as if fully set forth herein.

B.2 All written documents, drawings, and plans submitted by Consultant and intended to be relied on for the project shall bear the signature, stamp or initials of Consultant or Consultant's authorized Project Manager. Any documents submitted by Consultant which do not bear Consultant's signature, stamp or initials or those of the Consultant's authorized Project Manager shall not be relied upon by City. Interpretation of plans and answers to questions covering Plans given by Consultant or Consultant's Project Manager need not be put in writing unless requested by the City and may be relied upon by City.

B.3 All agreements on the Consultant's part are contingent upon, and the Consultant shall not be responsible for damages or be in default or be deemed to be in default by reason of delays in performance due to third party: strikes,

the scope of the services described on Exhibit A, Consultant shall provide such additional services and bill the City at the hourly rates outlined on the attached Standard Hourly Rate Schedule, provided the parties comply with the requirements of Section Q. No compensation for additional services shall be paid or owing unless both parties specifically agree to such additional compensation and services.

- C.3 Unless expressly set forth on Exhibit A as a reimbursable expense item, Consultant shall only be entitled to the compensation amount specified in subsections C.1 and C.2. Only those reimbursable expenses which are set forth on Exhibit A and itemized on Consultant's bills for services shall be the basis for which payment of those expenses by City shall be owing.
- C.4 Except for amounts withheld by City pursuant to this Agreement, Consultant will be paid for services for which an itemized bill is received by City within 30 days.
- C.5 City shall be responsible for payment of required fees, payable to governmental agencies including, but not limited to plan checking, land use, zoning, building permits, and all other similar fees resulting from this project, and not specifically covered by Exhibit A.
- C.6 Consultant's compensation rate includes but is not limited to salaries or wages plus fringe benefits and contributions including payroll taxes, workers' compensation insurance, liability insurance, pension benefits and similar contributions and benefits.
- C.7 In the event Consultant's responsibilities as described on Exhibit A have been separated into two or more phases, then Consultant shall not be entitled to any compensation for work performed directly on a later category of responsibilities unless and until City specifically directs that Consultant proceed with such work.

D. City's Project Manager

City's Project Manager is Martin Brown. City shall give Consultant prompt written notice of any redesignation of its Project Manager.

E. Consultant's Project Manager

Consultant's Project Manager is Craig Curtis. In the event that Consultant's designated Project Manager is changed, Consultant shall give City prompt written notification of such redesignation. In the event that City receives any communication

the express written consent of the City.

- H.3 Consultant shall be responsible for and indemnify and defend City against any liability, cost or damage arising out of Consultant's use of such subcontractor(s) and subcontractor's negligent acts, omissions, or errors. Subcontractors will be required to meet the same insurance requirements of Consultant under this Agreement. Unless otherwise specifically agreed to by City, Consultant shall require that subcontractors also comply with and be subject to the provisions of this Section H.
- H.4 Consultant shall make prompt payment of any claim for labor, materials or services furnished to the Consultant by any person in connection with this Agreement as such claim becomes due. Consultant shall not permit any lien or claim to be filed or prosecuted against the City on account of any labor or material furnished to or on behalf of the Consultant. If the Consultant fails, neglects or refuses to make prompt payment of any such claim, the City may pay such claim to the person furnishing the labor, materials or services and charge the amount of the payment against funds due or to become due the Consultant under this Agreement.
- H.5 No person shall be employed under the terms of this Agreement as described herein in violation of all wage and hour laws.
- H.6 Should Consultant elect to utilize employees on any aspect of this Agreement, Consultant shall be fully responsible for payment of all withholding 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 incidental to the hiring of assistants or employees shall be Consultant's responsibility. Consultant shall indemnify, defend and hold City harmless from claims for payment of all such expenses. Unless otherwise expressly set forth on Exhibit A as a reimbursable expense item, specific costs associated with items set forth in this paragraph shall be deemed as fully and conclusively included in the rate upon which consultants compensation is based.
- H.7 No person shall be denied or subjected to discrimination in receipt of the benefits of any services or activities made possible by or resulting from this Agreement on the grounds of sex, race, color, creed, marital status, age, disability or national origin. Any violation of this provision shall be grounds

circumstances by reputable members of its profession practicing in the Portland Metropolitan Area. The Consultant will reperform any services not meeting this standard without additional compensation. Consultant's reperformance of any services, even if done at City's request, shall not be considered as a limitation or waiver by 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 or this Agreement.

I.2.4 Consultant shall furnish the City a certificate evidencing the date, amount and type of insurance that has been procured pursuant to this Agreement. All policies shall be written on an "occurrence basis," except for Consultant's Professional Liability Insurance which may be written on a "claims made" basis, provided it shall endeavor to be maintained in full force for not less than four (4) years following Consultant's performance under this Agreement. All policies shall provide for not less than 30 days' written notice to the City before they may be canceled or reduced or materially changed by endorsement. The Consultant shall endeavor to provide for not less than 30 days' written notice to the City before the policy coverage may be reduced. Excepting professional liability and worker's compensation coverage, all policies shall provide an endorsement naming the City, its officers, employees and agents as additional insureds. In the event the policy lapses during performance, the City may: treat said lapse as a breach; terminate this Agreement and seek damages; withhold progress payments without impairing obligations of Consultant to proceed with work; pay an insurance carrier (either Consultants' or a substitute) the premium amount and withhold that amount from payments; and, use any other remedy provided by this Agreement or by law.

I.2.5 Insurance Requirements. The Consultant, its subcontractors, if any, and all employers working under this Agreement are subject employers under the Oregon Worker's Compensation Law and shall comply with ORS 656.017 which requires them to provide workers' compensation coverage for all their subject workers. The Consultant will maintain throughout this Agreement the following insurance:

I.2.5.1 Workers' compensation and employers liability insurance as required by the State where the work is performed.

I.2.5.2 Comprehensive automobile and vehicle liability insurance covering claims for injuries to members of the public and/or

J.1.3 By Consultant, effective upon seven days prior written notice in the event of substantial failure by the City to perform in accordance with the terms through no fault of the Consultant.

J.2 If City terminates the Agreement in whole or in part due to default or failure of Consultant to perform services in accordance with this Agreement, 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, Consultant shall be liable for all costs and damages incurred by City in procuring such similar service, and the Contract shall be in full force to the extent not terminated.

J.3 If City terminates the Agreement for its own convenience, 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 City under this Agreement.

J.4 Termination under any provision of this paragraph shall not affect any right, obligation or liability of Consultant or City which accrued prior to such termination. Consultant shall surrender to City items of work or portions thereof, referred to in Section N for which Consultant has received payment, or City has made payment. City retains the right to elect whether or not to proceed with actual construction of the project.

K. Suspension of Work

City may suspend, delay or interrupt all or any part of the work 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 the Consultant's control. City shall not be responsible for work performed by any subcontractors after notice of suspension is given by City to Consultant.

L. Subconsultants and Assignments

L.1 Consultant shall not enter into any subcontracts for any of the work scheduled under this contract without obtaining prior written approval from the Project Manager. The Consultant shall ensure that in all subcontracts entered into by the Consultant pursuant to this contract, the City is named as an express third party beneficiary of such subcontracts with full rights as such. Consultant acknowledges such services are provided to City pursuant to a subcontract(s) between Consultant and subcontractor(s). City incurs no liability to third persons for payment of any compensation provided herein to Consultant. Any

O. Law of Oregon

The Agreement shall be governed by the laws of the State of Oregon. The Agreement provisions required by ORS Chapter 279 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. Consultant shall adhere to all applicable federal and state laws, 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 which Consultant is required by law to obtain or maintain in order to perform work described on Exhibit A, shall be obtained and maintained throughout the term of this Agreement.

P. Adherence to Law

Consultant shall comply with all federal, state and local laws and ordinances, rules and regulations applicable to the work under this contract. Consultant agrees that the public contract law provisions contained in ORS chapter 279 shall apply to and govern the performance of this contract. Consultant shall certify compliance with ORS 670.600. Further, Consultant agrees to comply with applicable provisions of and amendments to the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973 and with all applicable requirements of federal and state and rehabilitation statutes, rules and regulations. Contractor shall also comply with the Americans with Disabilities Act of 1990, ORS 659.425, and all regulations and administrative rules established pursuant to those laws. Further, all certificates, licenses (including a City business license) or permits, which the consultant is required by law to obtain or maintain in order to perform work described in Exhibit A, shall be obtained and maintained throughout the term of this Agreement.

Q. Modification

Any modification of the provisions of this Agreement shall not be enforceable unless reduced to writing and signed by both parties. A modification is a written document, contemporaneously executed by City and Consultant, which increases or decreases the cost to City over the agreed sum or changes or modifies the scope of service or time of performance. No modification shall be binding unless executed in writing by Consultant and City. In the event that Consultant receives any communication of whatsoever nature from City, which communication Consultant contends to give rise to any modification of this Agreement, Consultant shall, within thirty (30) days after receipt, make a written request for modification to City's Project Manager. Consultant's failure to submit such written request for modification in the manner outlined herein may be the basis for refusal by the City to treat said communication as a basis for modification. In connection with any modification to the contract 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

from those employees or firms employed by the Consultant under the terms of the contract as stated therein that is incorporated into the record drawings.

- R.2 Notwithstanding any acceptance or payments, City shall not be precluded or stopped from recovering from Consultant, or its insurer or surety, such damages as may be sustained by reason of Consultant's failure to comply with the terms of this Agreement. A waiver by City of any breach by Consultant shall not be deemed to be a waiver of any subsequent breach by Consultant.

S. Assignments of Products Rights

The Consultant hereby assigns to the City all rights, title and interest, including but not limited to copyright rights, all notes, designs, drawings, specifications, technical data reports, computer programs and documentation, and other materials resulting from the Consultant's work under this Agreement.

T. Dispute Resolution

T.1 Claims, disputes or other matters in question between the parties to this Agreement arising out of or relating to this Agreement or breach thereof shall be subject to and decided by mediation or arbitration. Such mediation or arbitration shall be conducted in accordance with the Construction Industry Mediation or Arbitration Rules of the American Arbitration Association currently in effect.

T.2 In addition to and prior to arbitration, the parties shall endeavor to settle disputes by mediation. Demand for mediation shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. A demand for mediation shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for mediation be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of repose or limitations.

T.3 Demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. A demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statutes of repose or limitations.

CITY OF WILSONVILLE

CONSULTANT:

By _____

Martin Brown
Building Official

By _____

Miller / Hull Partnership LLP

Mailing Address:

30000 SW Town Center Loop E.
Wilsonville, Oregon 97070

Mailing Address:

Maritime Building
911 Western Avenue, Suite 220
Seattle, Washington 98104

Attest:

Employer ID No. _____

Sandra C. King
City Recorder

Approved as to form:

Michael E. Kohlhoff
City Attorney

EXHIBIT A

CONSULTANT'S SERVICES AND RESPONSIBILITIES

1.5 CONSTRUCTION DOCUMENTS PHASE

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 5. Data Coordination User Agency: Review and coordination of data furnished by the City.
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3. Communications Design: Services consisting of preparation of final telecommunications drawings and specifications based on approved Design Development documentation, setting forth in detail the structural telecommunications requirements for the project.
4. Audio/Visual Design: Services consisting of preparation of final audio/visual drawings and specifications based on approved Design Development documentation, setting forth in detail the audio/visual construction requirements for the project.
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6. Landscape Design: Services consisting of preparation of final landscape and irrigation drawings and specifications based on approved Design Development documentation, setting forth in detail the landscape construction requirements for the project.
7. Security Design: Services consisting of preparation of final security drawings and specifications based on approved Design Development documentation, setting forth in detail the security construction requirements for the project.
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MACKAY & SPOSITO

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Land Surveyor II	\$70.00 / hour
Land Surveyor I	\$60.00 / hour
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ROEN ASSOCIATES

Principal	\$95.00 / hour
Cost Estimator	\$75.00 / hour
Mechanical Cost Engineer	\$70.00 / hour
Electrical Cost Engineer	\$75.00 / hour

INTERFLUVE, INC.

Principal	\$149.00 / hour
Project Manager	\$110.00 / hour
Senior Staff	\$98.00 / hour
Staff	\$92.00 / hour
Technical Staff	\$82.00 / hour
Drafting / CAD	\$60.00 / hour
Administrative / Clerical	\$35.00 / hour