

RESOLUTION NO. 2092

A RESOLUTION OF THE CITY OF WILSONVILLE AUTHORIZING THE CITY ENGINEER TO SIGN A PROFESSIONAL SERVICES AGREEMENT WITH MACKAY & SPOSITO, INC. TO PROVIDE PROFESSIONAL (ENGINEERING) SERVICES FOR THE 95TH & BOONES FERRY ROAD INTERSECTION IMPROVEMENTS.

WHEREAS, on June 04, 2007, the Wilsonville City Council adopted a Capital Improvement Program for the City that includes a FY 2007/08 appropriation of \$500,000 and the proposed FY 2008/09 budget includes the appropriation of \$1,900,000 to fund the design and construction of the 95th and Boones Ferry Road Intersection Improvements, (Project No. 540.950.45030.00000.4041); and

WHEREAS, the City Engineer seeks the services of an engineering firm to provide professional services for the referenced project; and

WHEREAS, on the 22nd day of February, 2005, the City of Wilsonville adopted Ordinance No. 578 adopting State findings, policies and methods of fostering competition and definitions consistent therewith, to provide for competitive bids or proposals, providing for contracting officers and the creation of procedures for the screening and selection of professional services; and

WHEREAS, the 95th and Boones Ferry Road Intersection Improvements was duly advertised for Statement of Qualifications to provide professional services in the Daily Journal of Commerce, a newspaper of general circulation on November 30, 2007; and

WHEREAS, of the twelve (12) proposals requested by various engineering firms only two (2) proposals were received by December 20, 2007, prior to 5:00 p.m., local time, at the City Hall, 29799 SW Town Center Loop East, Wilsonville, Oregon; and

WHEREAS, the two (2) proposals were reviewed by a City staff panel based on the qualification based selection process and ranked on January 10, 2008; and

WHEREAS, upon completion of the review of the requested qualification materials from the two (2) firms that responded, MacKay & Sposito, Inc. was selected as the consulting firm that was best qualified to provide the requested professional services; and

WHEREAS, a copy of the summary of staffs review and evaluation of the qualifications submitted by the two (2) responding firms are attached as Exhibit A; and

WHEREAS, Section 2.310 of the Wilsonville Code states that "The Wilsonville City Council is designated as a Local Contract Review Board under the State of Oregon Public Contracting Code"; and

WHEREAS, MacKay & Sposito, Inc. has proposed to accomplish the professional engineering services for a time and materials fee, not to exceed \$474,269.00; and

WHEREAS, staff has determined that the fees, as proposed by MacKay & Sposito, Inc., are fair and reasonable based on other recently completed projects; and

WHEREAS, in the public interest the City Council acting as the Local Contract Review Board may exercise its rights to reject any proposals and waive informalities, if any, as reserved in its Request for Proposals; and

WHEREAS, the City of Wilsonville desires to execute a Professional Services Contract Agreement in a timely manner.

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

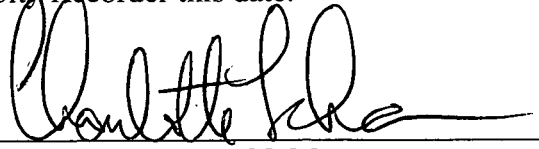
1. The recitals of findings above are incorporated by reference herein.
2. The City Council, acting as the Local Contract Review Board, does hereby exempt the award of a contract for engineering professional services from competitive bidding based on the qualification based selection process and further concludes this award will not diminish competition and will result in substantial cost savings.
3. The City Council, acting as the Local Contract Review Board, does hereby approve and authorize the City Engineer to sign a Professional Services Agreement between the City of Wilsonville and MacKay & Sposito, Inc., a copy of which is marked Exhibit "B", attached hereto and incorporated herein, to provide the engineering professional services recited within for the referenced project.
4. Subject to final completion of all improvements specified in the contract documents and any supplemental changes, the City Engineer is authorized to certify the required improvements complete and make final payment including release of retainage.
5. The City Engineer is authorized to approve change orders to this contract so long as total project costs do not exceed the budget amount.

6. The City Council hereby authorizes the expenditures for this contract, not to exceed \$474,269.00, from the Fiscal Year 2007/08 and 2008/09 budget as follows:

<u>Budget Year</u>	<u>Account</u>	<u>Budget Amount</u>
2007/08	540.950.45030.00000.4041	\$500,000.00

7. This resolution is effective upon adoption.

ADOPTED by the Wilsonville City Council at a regular meeting thereof this 4th day of February, 2008, and filed with the Wilsonville City Recorder this date.



CHARLOTTE LEHAN, Mayor

ATTEST:



Sandra C. King, MMC, City Recorder

SUMMARY OF VOTES:

Mayor Charlotte Lehan	<u>Yes</u>
Council President Kirk	<u>Yes</u>
Councilor Ripple	<u>Yes</u>
Councilor Núñez	<u>Yes</u>
Councilor Knapp	<u>Yes</u>

95th & BOONES FERRY ROAD INTERSECTION IMPROVEMENTS (4041)

SELECTION PROCESS

Cover Letter (Pass/Fail):

The primary consultant contact, and the consultant person(s) authorized to negotiate and sign contracts shall be identified. A statement should be included that the consultant accepts all the terms and conditions contained in the 95th & Boones Ferry Road Intersection Improvements Request for Proposal and the attached sample contract.

NW Engineers – Consultant satisfied requirement. **Pass**
Mackay & Sposito – Consultant satisfied requirement. **Pass**

Proposal Format and Length (Pass/Fail):

The core proposal must not exceed 15 pages, excluding the cover letter and supporting documents. The proposal must be organized in accordance with the list of proposal contents. One page is considered to be one side of a single 8-1/2"x11" page and the minimum font size is 12 point for the main text. Consultants may use their discretion for the font size of other materials. Proposals using a main text font less than 12 point shall be considered non-responsive. Schedule and cost estimates are allowed on one side of an 11"x17" and will count as a single 8-1/2"x11" page.

NW Engineers – Consultant satisfied requirement. **Pass**
Mackay & Sposito – Consultant satisfied requirement. **Pass**

Project Understanding (Score 15):

This relates to the understanding of the requested services. This should include a clear and concise understanding of the project based on existing information, and a general description of the purpose of this project and the chief issues to be addressed. The consultant should be knowledgeable of standard solutions applicable to project issues as well as being able to offer innovative ideas. It is also important that the consultant demonstrate an ability to synthesize technical information and communicate this information in verbal, written or graphic form. Preference will be given to firms with a demonstrated knowledge of signal and road construction within ODOT right-of-ways, state and federal requirements, and local Wilsonville land uses, history, geography and relevant policies. The consultant should be knowledgeable of standard solutions applicable to project issues as well as be able to offer innovative ideas. Proposals that merely repeat requirements of the scope of work will be considered non-responsive.

NW Engineers – Consultant agreed with traffic analysis by DKS and stated that they understand challenges associated with obtaining ODOT approvals. Consultant stated team would rely on Lancaster Engineering to coordinate design needs with ODOT. Consultant stated CMT would

perform surveying services and Terre Dolce Consultants would perform geotechnical services. Consultant stated Boones Ferry Road was next to State Highway 141 which is listed as the Beaverton-Tualatin Highway. ODOT approvals was listed as a critical timeline item. Consultant stated they would coordinate design and design exceptions with ODOT. Consultant noted storage lengths not identified in DKS report and assumes that conceptual plans provided is adequate. Consultant stated surveying scope accounts for taper distances that extend beyond conceptual plan. Consultant noted possible issue with lane alignment and that survey and design scopes reflect dealing with issue. Consultant stated issues with pole location, vehicle stopping locations, and signal arm locations. Consultant stated issues with right-of-way due to grade differences and walls and that right-of-way acquisition will be a critical timeline. Consultant stated concerns regarding painted islands versus raised islands due to truck turning movements and illegal turning movements. Consultant noted issues with drainage, pipe cover, and water quality. Consultant has ODOT-certified Traffic Signal Inspector on staff. **Score 7**

Mackay & Sposito – Consultant stated 15 years of experience with City infrastructure needs in design, surveying, inspection, and construction management. Consultant identified intersection as integral to industrial and commercial area on west side of I-5. Consultant noted large number of truck trips serving area and also noted trips serving prison and gravel operations in Tonquin area. Consultant stated understanding of recommended improvements and included the fact that widening will involve both concrete pavement, asphalt pavements, sidewalks, landscaping, and signal reconstructions. Consultant noted need for legal descriptions for both permanent right-of-way and temporary construction easements that meet unique ODOT requirements. Consultant stated understanding that improvements will reduce queuing of traffic on I-5 off ramps and that design exceptions will be needed for turn lanes between ramp and 95th Avenue. Consultant stated use of staff that performed ODOT approved improvements to Boones Ferry Road in the past. Project team will include ATEP which received design approvals on Boones Ferry Road past project. Consultant stated understanding of time constraints and a pending development application of adjoining property owner. Consultant noted intersection is listed as an Area of Special Concern and that intersection is nearing LOS D. Consultant noted schedule for construction during 2008 season and that it will reduce current impacts on I-5 ramps. Consultant anticipates preparing exhibits for access management and attending Council work sessions due to impacts to surrounding businesses. Consultant stated understanding of constrained intersection due to proximity to I-5. Consultant stated that a permit and intergovernmental agreement will be required by ODOT and that understanding of ODOT Region 2A staff requirements are critical. Consultant noted legal descriptions for right-of-way acquisition will need to be written quickly and accurately dot to short lead time. Consultant stated past success in acquiring permits for City from ODOT, USACE, DSL, ODFW, and 1200-C. Consultant stated they have held open house and stakeholder meetings for City in the past. Consultant stated production of materials for City that are understood by all audiences. **Score 15**

Approach/Resource Allocation (Score 30):

This section should outline the approach to delivering a preferred and recommended alternative to the City Council. It should include major tasks to be completed as well as resources proposed to complete each task, identifying the consultant's ability to ensure expeditious completion of the work. Resources should be included in a spreadsheet identifying hours of effort anticipated to

complete each task. Indicate proposer's all inclusive fee for which the requested work will be done, including sub-consultant fees, broken down as follows:

1. Cost estimate including hours by task as defined in the Scope of Service and total hours.
2. Identify key personnel and commit them to the project for specific numbers of hours.
3. Identify by Consultant's personnel category and individual staff, using the total hours multiplied by your proposed hourly billing rate.
4. The fee shall include all out-of-pocket costs (travel, printing, etc.) and a fee shall be stated for each segment of the project.
5. Describe the method the Consultant team will use in charging for any special requests, reports or broadening of the scope of service beyond that described in the RFP.
6. Note that all salaries shall remain constant throughout the duration of the project, or indicate any changes on the schedule to provide the total cost. Clearly show cost-of-living adjustments, when used.

NW Engineers – Consultant stated they will deliver two alternatives to Council by teamwork, attention to timeline, interactions with City and ODOT, effective documentation, and addressing design issues addressed in project understanding. Consultant provided work breakdown that included 2881 total man-hours. Consultant stated scope changes will include documentation listing reasons and need for change and that additional services will be charged at current rates.

Score 10

Mackay & Sposito – Consultant stated scope of work includes evaluating alignment alternatives, preparation of legal descriptions, preparation of final design, and coordination with ODOT, utility companies, local businesses, and general contractor. Consultant stated design will consider ODOT storm detention facility, concrete and asphalt paving, intersection signalization, temporary traffic signals, street lighting, storm water collection, possible overhead power relocation on east side of Boones Ferry Road, signing and striping, landscape restoration, and construction management and staking. Consultant will interface design with recent improvements to traffic signal on I-5 ramp and maintain update or revise interconnect between signals. Consultant stated need for access management plan to assist in appraisal of property for land acquisition and coordination with property owners and ODOT. Consultant stated intent to complete ahead of schedule and to deal with long timelines due to ODOT early in process. Consultant stated they will attend kick-off meeting and prepare 30%, 60%, and 100% design plans for ODOT approval. Consultant stated they would meet with City, property owners, and businesses to minimize impacts and to review sight distance needs for adjacent property owners. Consultant stated they will provide alignment approvals and access management plan to expedite right-of-way acquisition process. Consultant noted landscaping and irrigation impacts and would supply landscape and architecture staff. Consultant stated petroleum contamination or fuel line relocation is not anticipated from Chevron station but specialized subconsultant will be provided if necessary. Consultant recommended language to expedite acquisition of signal pole and signal equipment and achieve substantial completion prior to wet season. Consultant recommends moving power facilities 14 feet to east.

Consultant identified project lead person and supporting manager. Consultant stated NW Geotech will provide geotechnical and ATEP will provide traffic signal design. Consultant list critical timeline items include right-of-way acquisition, ODOT plan review and permitting, utility relocation, and material lead times. Consultant provided work breakdown that included 3490 total man-hours. **Score 30**

Firm Capabilities (Score 20):

The consultant will provide a brief professional work history of relevant projects as it relates to the capabilities of the primary firm and any subconsultants to provide the requested services. This work history will only cover projects undertaken by the same staff members to be utilized for this project. A list of individual clients should be provided to serve as references regarding the capabilities and success of the consultant in performing similar past projects. The response should address the following:

- Similar projects, by type and location, performed within the last five years, that best characterize work quality and cost control.
- Internal procedures and/or policies related to work quality and cost control.
- Management and organizational structure.
- Other on-going projects.
- Availability to perform the work within the time frame of the project.

NW Engineers – Consultant listed two public projects and one private project that included signal improvements. No dates were provided. **Score 10**

Mackay & Sposito – Consultant listed five public projects. No dates were provided but three were City of Wilsonville within the last five years. **Score 20**

Project Team (Score 30):

The project principal, project manager, key staff, and subconsultants to be utilized in carrying out this project should be identified. Provide information on each individual regarding related work experience, publications, education/training and demonstrated competence. Substitution of personnel on this contract will not be permitted without prior written approval by the City. The team's qualifications and experience relative to the requested services should be addressed in the following areas:

1. Extent of principal involvement
2. Current assignments and location of key team members
3. Names of key members on consultant and sub-consultants team who will be performing the work on this project and their responsibilities
4. Qualifications and relevant individual experience of project team members, including subconsultants
5. Experience as a team on similar or related projects
6. Project manager's experience with similar projects, managing interdisciplinary teams, and managing controversial public involvement programs

NW Engineers – Consultant listed team experience. **Score 30**

Mackay & Sposito – Consultant listed team experience. **Score 30**

Resources (Score 5):

This relates to the ability of the consultant to provide materials consistent with City of Wilsonville formats. Upon completion of the project, copies of all materials generated by the consultant will be provided to the City in both reproducible hard-copy and electronic form. Design materials should be AutoCAD 2006 or ArcGIS 9.1 compatible and written materials should be in Word/Excel 2003.

NW Engineers – Consultant stated they can provide materials in requested formats. **Score 5**

Mackay & Sposito – Consultant stated they can provide materials in requested formats. **Score 5**

Supporting Information (No Score):

Supportive material may include graphs, charts, photos, resumes, additional references, etc. Supporting information will not count toward the 15 page limit, but brevity is encouraged.

NW Engineers – Consultant provided schedule, organizational chart and resumes.

Mackay & Sposito – Consultant provided schedule, example of plans, and resumes.

Summary of Evaluation Criteria:

Each proposal will be limited in length and judged as a demonstration of the consultant's capabilities and understanding of the services requested. Evaluation factors and maximum points will be as follows. The maximum number of pages for each criterion is left to the discretion of the consultant but must not exceed the specified total.

<u>Criteria</u>	<u>Maximum Score</u>
Cover Letter (not included in page limit)	Pass
Proposal Format and Length	Pass
Project Understanding	15
Approach/Resource Allocation	30
Firm Capabilities	20
Project Team	30
Resources	5
Supporting Information	<u>N/A</u>
Total Score Possible	100

**CITY OF WILSONVILLE
PROFESSIONAL SERVICES AGREEMENT**

95TH & BOONES FERRY ROAD INTERSECTION IMPROVEMENTS (4041)

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 Mackay and Sposito, Inc., (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.

C. City's Responsibilities

- C.1 The scope of City's responsibilities, including those of its Project Manager, are set forth in the Request for Proposals in Exhibit B, which is attached hereto and incorporated herein.
- C.2 City certifies that sufficient funds are available and authorized for expenditure to finance costs of this Agreement.

D. Compensation

- D.1 Except as otherwise set forth in this subsection D, City agrees to pay Consultant not more than \$474,269.00 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, 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.
- D.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 R. No compensation for additional services shall be paid

or owing unless both parties specifically agree to such additional compensation and services.

- D.3 Unless expressly set forth on Exhibit C as a reimbursable expense item, Consultant shall only be entitled to the compensation amount specified in subsections D.1 and D.2. Only those reimbursable expenses which are set forth on Exhibit C and itemized on Consultant's bills for services shall be the basis for which payment of those expenses by City shall be owing.
- D.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.
- D.5 City shall be responsible for payment of required fees, payable to governmental agencies including, but not limited to plan checking, land use, zoning and all other similar fees resulting from this project, and not specifically covered by Exhibit A.
- D.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.
- D.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.

E. City's Project Manager

City's Project Manager is Gerald Fisher, PE. City shall give Consultant prompt written notice of any redesignation of its Project Manager.

F. Consultant's Project Manager

Consultant's Project Manager is Rob Palena, PE and Consultant's Engineering Manager is Pat Carroll, PE. 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.

G. 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.

H. 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 law, rule, or regulation, 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.

I. Consultant is Independent Contractor

- I.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 paragraph D 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.
- I.2 Subcontracting: City understands and agrees that only those special consulting services identified on Exhibit A may be performed by those persons identified on Exhibit A 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.
- I.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 I.
- I.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.

- I.5 No person shall be employed under the terms of this agreement as described herein in violation of all wage and hour laws.
- I.6 Consultant shall make prompt payment as due to any person, co-partnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to the employees of such Consultant of all sums which the Consultant agrees to pay for such services and all monies and sums which the Consultant collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service.
- I.7 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 incident 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.
- I.8 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.

J. Indemnity and Insurance

- J.1 Consultant acknowledges responsibility for liability arising out of the performance of this Agreement and the attachments thereto only and shall hold City harmless from and indemnify City of 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 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 any and all costs and damages resulting from Consultant's failure to adhere to the standard of performance described in Section J.2.3. The provisions of this section shall survive termination of this Agreement. City agrees to indemnify and hold Consultant harmless from liability, settlements, losses, costs, and expenses in connection with any action, suit or claim resulting or allegedly resulting from City's negligent acts, omissions or from its willful misconduct as governed by ORS Chapter 30.

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

- J.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. Unless specifically set forth on Exhibit A, expenses relating to the cost of insurance shall not be the basis for additional reimbursement to Consultant.
- J.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.
- J.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.
- J.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 revised, non-renewed, or canceled. The Consultant shall endeavor to provide for not less than 30 days' written notice to the City before the policy coverage may be reduced.

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.

J.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:

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

J.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.

J.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.

J.2.5.4 Professional liability insurance of \$500,000 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 J.2.1, J.2.2, J.2.3, J.2.4 and J.2.5.4.

J.2.5.5 City will be named as an additional insured with respect to Consultant's liabilities hereunder in insurance coverages. The following is included as additional insured: City of Wilsonville, its elected and appointed officials, officers, agents, employees and volunteers. Except professional liability and worker's compensation coverage, all policies shall provide an endorsement.

J.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.

K. Early Termination

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

K.1.1 By mutual written consent of the parties;

K.1.2 By City for any reason within its sole discretion, effective upon delivery of written notice to Consultant by mail or in person; and

K.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.

K.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.

K.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.

K.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 Paragraph O 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.

L. 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. Should the City suspend, delay or interrupt the work and the suspension is not within the Consultant's control, then the City shall extend the time of completion by the length of the delay and the method of compensation shall be adjusted to reflect the Consultant's increase or decrease in its standard hourly rates.

M. Subconsultants and Assignments

M.1 Unless expressly authorized in Exhibit A or Paragraph I of this Agreement, Consultant shall neither subcontract with others for any of the work prescribed herein, nor assign any of Consultant's rights acquired hereunder without obtaining prior written approval from City. Work may be performed by persons other than Consultant, provided Consultant advises City of the names of such subcontractors and the work which they intend to perform and the City specifically agrees thereto. Consultant acknowledges such services are provided to City pursuant to a subcontract(s) between Consultant and subcontractor(s). Except as otherwise provided by this Agreement, 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.

M.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.

N. Access to Records

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

O. Work is Property of City

A. 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 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. Drawings may bear a disclaimer releasing the 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.

- B. 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.
- C. City agrees it will indemnify and hold Consultant harmless for all losses or damages that may arise out of the reuse of specific engineering designs incorporated into extensions, enlargements or other projects, without the express written permission of the Consultant.

P. Law of Oregon

The Agreement shall be governed by the laws of the State of Oregon. The Agreement provisions required by ORS Chapter 279A and 279C 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.

Q. Adherence to Law

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.

R. 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.

S. Other Conditions

S.1 Except as otherwise provided in paragraphs S.1.1, S.1.2, and S.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 owner of the plans and specifications shall not be deemed to diminish the adequacy of Consultant's work.

S.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.

S.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 Owner's actual Project costs, financial aspects, economic feasibility, or schedules will not vary from Engineer's opinions, analyses, projections, or estimates.

S.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.

S.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.

T. Integration

This Agreement, including but not limited to Exhibits and Consultant's proposal submitted to City 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.

U. 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 _____, 2_____.

CONSULTANT:

CITY OF WILSONVILLE:

Name of Firm

By _____
Michael A. Stone
City Engineer

By _____
Typed or
Printed Name: _____

Attest:

Sandra C. King
City Recorder

Title: _____

Mailing
Address: _____

Mailing
Address:
29799 SW Town Center Loop East
Wilsonville, OR 97070

Employer I.D. No. _____

APPROVED AS TO FORM:

Michael E. Kohlhoff
City Attorney

COMMUNITY DEVELOPMENT

STAFF REPORT

Date: January 25, 2008
To: Honorable Mayor and City Councilors
From: Gerald Fisher, PE, Civil Engineer – Capital Projects
Subject: 95th and Boones Ferry Intersection Improvements Project (#4041)

RECOMMENDATION:

Staff respectfully recommends that the City Council, acting as the Contract Review Board, adopt Resolution No. 2092, authorizing the City Engineer to sign the Professional Services Agreement with MacKay & Sposito, Inc. to provide Professional Engineering Services for the 95th/Boones Ferry/Commerce Intersection Improvements Project (#4041) in an amount not to exceed \$474,269.00.

SUMMARY:

On June 2, 2003, the City of Wilsonville adopted the 2003 Transportation System Plan. Three intersections were identified in an “Area of Special Concern” in which specific improvements to those intersections were to be identified through a traffic analysis. The intersections identified were S-11 (Intersection of 95th Ave. and Boones Ferry Rd.), S-22 (Intersection of 95th Ave. and Commerce Circle), and S-10 (Elligsen Rd. and I-5 SB Ramp).

On October 4, 2006, DKS and Associates submitted a supplemental traffic analysis memorandum as part of the Bryce Development with improvement recommendations for the intersections of 95th Ave. /Boones Ferry Rd. and 95th Ave. /Commerce Circle. DKS calculated both intersections were operating at the City’s maximum Level of Service “D” and noted that the intersection of 95th Ave. /Commerce Circle was operating at Level of Service “F” in their traffic simulation model due to queuing of traffic from the intersection of 95th Ave. /Boones Ferry Rd. Improvement recommendations included striping of the east leg and widening of the west and south legs of the 95th Ave. /Boones Ferry Rd. intersection as well as installation of a median at the intersection of 95th Ave. /Commerce Circle to change traffic flow to right in and right out movements only.

On September 14, 2007, City Staff met with District 2A representatives of ODOT to discuss the proposed project and to identify any concerns with the improvements listed in the DKS memorandum. District 2A staff recommended additional striping on 95th Avenue south of the Commerce Circle intersection and stated that minor improvements to the intersection of Elligsen Rd./I-5 SB Ramps were underway to reduce traffic queuing and safety concerns. The need for intersection improvements in that location were identified in project S-10 of the 2003 Transportation System Plan listed above.

Staff advertised the Request for Qualifications (RFQ) in the Daily Journal of Commerce on November 30, 2007 and of the twelve (12) firms requesting copies of the RFQ only two (2) firms, MacKay & Sposito, Inc. and NW Engineers, LLC, submitted materials for evaluation. While both firms were able to demonstrate the qualifications to accomplish the needed professional services, staff is prepared to recommend Mackay and Sposito based on the demonstration of prior experience on many projects of similar size, scope, and dealing with the many reviews/approvals in working with roadways under ODOT jurisdiction and staffing commensurate with an aggressive design and construction schedule.

The approved FY 2007/08 budget includes \$500,000 and the proposed FY 2008/09 budget included \$1,900,000 for the design and construction of the 95th and Boones Ferry Intersection Improvements project. Unless unforeseen delays due to permitting, property acquisition, or material delivery occur, construction of the project should not extend beyond FY 2008/09.

cc: IOC-CD File
Staff Report File