

RESOLUTION NO. 2142

A RESOLUTION OF THE CITY OF WILSONVILLE ACTING IN ITS CAPACITY AS ITS LOCAL CONTRACT REVIEW BOARD WAIVING COMPETITIVE SELECTION AND APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH MACKAY AND SPOSITO, INC. TO PROVIDE PROFESSIONAL (ENGINEERING) SERVICES FOR THE RECONSTRUCTION OF BOONES FERRY ROAD WILSONVILLE ROAD TO 5TH STREET (PROJECT #4141), AND THE WILSONVILLE ROAD (6) LANE ENHANCEMENT (PROJECT #4142); AND AUTHORIZING THE CITY ENGINEER TO SIGN SUCH AGREEMENT.

WHEREAS, in June 2008, the Wilsonville City Council adopted a Capital Improvement Program for the City that includes a FY 2008-09 appropriation of \$465,000 to fund the design of the reconstruction of Boones Ferry Road Wilsonville Road to 5th Street (Project #4141) and an appropriation of \$570,000 to fund the design of the Wilsonville Road (6) Lane Enhancement (Project # 4142) the 'Project'; and

WHEREAS, Fred Meyer Inc. 'Fred Meyer', has filed a development application with the City to construct a regional type shopping center on property owned by Fred Meyer running generally eastward along Wilsonville Road to I5 and southward along Boones Ferry Road to Bailey Street within the City; and

WHEREAS, in conjunction with said development, the City will condition Fred Meyer to construct certain improvements along Wilsonville Road, Boones Ferry Road and at the intersection of Wilsonville Road/Boones Ferry Road, (the 'Improvements'); and

WHEREAS, the City and Fred Meyer will shortly enter into a Development Agreement outlining the respective responsibilities of the City and Fred Meyer relative to the improvements to be constructed, the cost allocations of the improvements, and the schedule for the completion of the improvements; and

WHEREAS, The City and the Oregon Department of Transportation (ODOT) entered into an Intergovernmental Agreement (IGA) agreeing to upgrade the Wilsonville Road/I5 Interchange which project will contain and complete improvements associated with the Project; and

WHEREAS, the design of the Project must begin immediately in order to assure a timely completion of the Project to take advantage of the improvements currently under design by the Oregon Department of Transportation (ODOT) at the I5/Wilsonville Road Interchange as a means to facilitate the movement of traffic, pedestrians, and bicycles along as quickly and as

expeditiously as possible so as to not impact the anticipated construction schedule of the Project, the Interchange, or the construction of Fred Meyer; and

WHEREAS, W.C. 2.315 (9) provides that procurement of personal service contracts involving an anticipated fee of more than \$150,000 per annum involve competitive solicitation. However, WC 2.315(7)(3) provides a waiver of the competitive procedures if a change in contractor to do follow on work would clearly result in increased costs and increased time.

WHEREAS, pursuant to WC 2.315 personal service contracts for professional services contracts include contracts for architectural and/or engineering services; and

WHEREAS, the City Engineer proposes to select MacKay and Sposito, Inc. in the preparation of the preliminary design for the Project due to their long involvement and particularized experience with Wilsonville Road design and that the proposed design work essentially follow on work their selection meets the waiver provisions and under WC 2.315 (7) (3) as follows:

- Since 1992, MacKay and Sposito has prepared the plans and specifications for various roadway construction/reconstruction projects within the City and is very familiar with the City's road and public works standards, including more recently, Wilsonville Road Phases 1, 2a 2b, 3a, 3b and 4 of the reconstruction of Wilsonville Road inclusive of its intersection with Boones Ferry Road, analysis of the Wilsonville lane configuration involving the I-5 Interchange with Wilsonville Road, and survey work for Wilsonville Road lane widening along the Fred Meyer frontage adjacent to the I-5Interchange with Wilsonville Road.

- MacKay and Sposito has the experience and staffing to complete the preparation of the plans and specifications for the Project in such a manner as to not impact the schedule for the completion of the Project.

- The learning curve required of an alternative firm to develop the same level of information currently available for cost, schedule and new survey/CAD information would likely add hundred of thousands of dollars and an unacceptable six months to the schedule.

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

1. The City Council acting as the local Contract Review Board, based upon the findings above recited which are incorporated herein as findings of the Board, exempts/waives

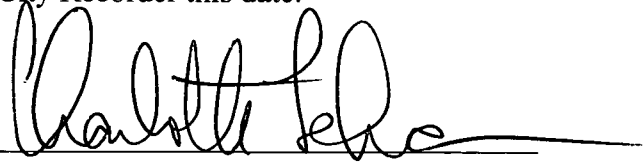
from competitive solicitation the Professional Services Agreement with MacKay and Sposito, Inc. to provide professional engineering services for Boones Ferry Road Wilsonville Road to 5th Street (Project #4141) and the Wilsonville Road (6) Lane Enhancement (Project #4142) in the total amount of \$900,000, attached as Exhibit A.

2. The council authorizes from the approved 2008-09 CIP budget expenditures necessary for the engineering design, permitting, and easement acquisition necessary for the construction of these projects: Boones Ferry Road Wilsonville Road to 5th Street (Project #4141), \$465,000, and the Wilsonville Road (6) Lane Enhancements (Project #4142) \$570,000.
3. The council authorizes the expenditure of project funds subject to budget authorization of Fiscal Year 2008-09 CIP budget as follows:

<u>ACCOUNT</u>	<u>AMOUNT</u>
	FY 08-09 Approved
540.950.45030.00000.4141	\$465,000
540.950.45030.00000.4142	<u>\$570,000</u>
	Total \$1, 035,000

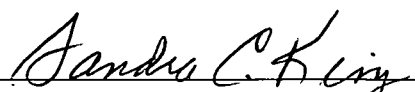
4. The Council authorizes the City Engineer to sign the Professional Services Agreement.
5. This resolution is effective upon the date adopted.

ADOPTED by the Wilsonville City Council at a regular meeting thereof this 1st day of December, 2008, and filed with the Wilsonville City Recorder this date.



CHARLOTTE LEHAN, Mayor

ATTEST:



Sandra C. King, City Recorder, MMC

SUMMARY OF VOTES:

Mayor Lehan	<u>Yes</u>
Councilor Knapp	<u>Abstain</u>
Councilor Ripple	<u>Yes</u>
Councilor Kirk	<u>Yes</u>
Councilor Nunez	<u>Yes</u>

Attachments:

Exhibit A - PROFESSIONAL SERVICES AGREEMENT - Boones Ferry Wilsonville Road To 5th Street (Project #4141) And Wilsonville Road (6) Lane Enhancement (Project #4142)

EXHIBIT 'A'
CITY OF WILSONVILLE
PROFESSIONAL SERVICES AGREEMENT
Boones Ferry Wilsonville Road to 5th Street (Project #4141) and Wilsonville Road (6) Lane
Enhancement (Project #4142)

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 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 \$ \$900,000.00 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 Michael A. Stone, P.E. City Engineer. City shall give Consultant prompt written notice of any redesignation of its Project Manager.

F. Consultant's Project Manager

Consultant's Project Manager is Pat Carroll, P.E.. 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
1st day of December, 2008.

CONSULTANT:

Name of Firm

By _____
Typed or
Printed Name: _____

Title: _____

Mailing
Address: _____

Employer I.D. No. _____

CITY OF WILSONVILLE:

By _____
Michael A. Stone
City Engineer

Attest:

Sandra C. King
City Recorder

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

Approved as to form:

Michael E. Kohlhoff
City Attorney

(EXHIBIT "A")

PROPOSED SCOPE OF WORK

**BOONES FERRY ROAD WILSONVILLE ROAD TO 5th STREET (PROJECT #4141)
AND WILSONVILLE ROAD (6) LANE ENHANCEMENT (PROJECT#4142)**

MacKay & Sposito, Inc. will provide Engineering, Landscape Architecture, Surveying, Project Management and Construction Management for the public infrastructure improvements necessary for SW Boones Ferry Road and the Boones Ferry Road/Wilsonville Road intersection.

The services will be provided for the following proposed improvements:

1. Construction of widening improvements for SW Boones Ferry Road from SW Wilsonville Road to SW 5th Street. Construction of widening improvements for SW Wilsonville Road from the Portland & Western railroad tracks to approximately 100-feet east of the intersection of SW Wilsonville Road and SW Boones Ferry Road. Improvements include widening for additional traffic lanes, utility upgrades, and landscaping.
2. Design and construction of a traffic signal modifications at the intersection of SW Boones Ferry Road and SW Wilsonville Road to provide for additional lane configuration.
3. Landscaping and irrigation design for streetscape along SW Boones Ferry Road and SW Wilsonville Road for the project limits.

SERVICES

MacKay & Sposito, Inc. will provide the following services for the items listed above.

- 1.0 Project Management
 - 1.1 Project Administration
 - 1.2 Correspondence
 - 1.2.a Coordinate various members of the consultant team
 - 1.2.b Communicate clearly and regularly with the City's project manager
 - 1.2.c Providing monthly status reports to the City's project manager
 - 1.3 Meetings
 - 1.3.a Kick-off meeting with project team
 - 1.3.b Meetings with City Staff (Maintenance & Operations, Engineering)
 - 1.3.c Overall team meetings
 - 1.3.d Internal team coordination meetings
 - 1.4 Research
 - 1.4.a Provide monthly status reports to the City's project manager
 - 1.4.b Separate costs between those paid with City and state/federal funds
 - 1.5 Site Visit

- 1.5.a Inventory and Site Reconnaissance
 - 1.5.a.1 Site visit notes and mapping mark-ups
- 2.0 Surveying
 - 2.1 Boundary/Legal Description
 - 2.1.a Research existing boundary information in the location of proposed improvements
 - 2.1.b Resolution of boundary issues as necessary for the legal descriptions
 - 2.1.c Drafting of legal description and sketches.
 - 2.1.d Prepare legal descriptions for areas needed for right-of-way or easement acquisition
 - 2.1.e Field tie all monuments of record along alignment subject to destruction
 - 2.1.f Drafting of Pre-Construction and Post-Construction Record of Survey
 - 2.2 Topography Survey
 - 2.2.a Perform existing topography surveys.
 - 2.2.b Determine existing ground elevation.
 - 2.2.c Determine horizontal and vertical location of existing utilities, surface improvements, structures, etc.
 - 2.2.d Integrate and datum adjust existing topographic information
 - 2.2.e Generate a topographic base drawing with contours for use in the design
 - 2.3 Construction Staking
 - 2.4 As-Builts
 - 2.4.a Stake horizontal and vertical location of improvements
 - 2.4.b Landscape As-builts drawing development

- 3.0 Design Services
 - 3.1 Design Conceptual
 - 3.1.a Design Review & QA/QC
 - 3.1.a.1 Get City approval for major design assumptions
 - 3.1.a.2 Provide QA/QC of deliverables
 - 3.1.b Prepare Conceptual Plans for City
 - 3.1.b.1 Presentation Graphics of alignment alternatives
 - 3.1.c Conceptual Design
 - 3.1.c.1 Roadway alignments, project limit, and lane configuration
 - 3.1.c.2 Provide conceptual Landscaping Plans
 - 3.2 Design 30%
 - 3.2.a Design Review & QA/QC
 - 3.2.a.1 Provide QA/QC of deliverables
 - 3.2.b Prepare 30% plans for submittal to City
 - 3.2.c 30% Design
 - 3.2.c.1 Identify required easements and right-of-way for recommended alignments
 - 3.2.c.2 Prepare access control plan for City Council
 - 3.2.c.3 Planting Plans and Details
 - 3.2.c.4 Preliminary Cost Estimate

- 3.3 Design 60%
 - 3.3.a Design Review & QA/QC
 - 3.3.a.1 Provide QA/QC of deliverables
 - 3.3.b Prepare 60% design plans for submittal to City
 - 3.3.c 60% Design
 - 3.3.c.1 Calculation
 - 3.3.c.1.1 Prepare 60% cost estimates
 - 3.3.c.2 Drafting
 - 3.3.c.2.1 Prepare Grading and Erosion Control Plans
 - 3.3.c.2.2 Prepare street traffic signal
 - 3.3.c.2.3 Prepare Planting Plans and Details
 - 3.3.c.2.4 Prepare Irrigation Plans and Details
 - 3.3.c.2.5 Prepare access control plan
 - 3.3.c.3 Design
 - 3.3.c.3.1 Storm sewer mains, laterals, inlets, storm water quantity/quality facilities.
 - 3.3.c.3.2 Integrate Green Streets concept into the design where possible

- 3.4 Design 90% and Final
 - 3.4.a Design Review & QA/QC
 - 3.4.a.1 Provide QA/QC of deliverables
 - 3.4.b 90% Design
 - 3.4.b.1 Coordination
 - 3.4.b.1.1 Coordinate design and construction with utility companies
 - 3.4.b.1.2 Coordinate repair or replacement of any existing storm water or sanitary mains
 - 3.4.b.1.3 Submit 90% and final design plans to City
 - 3.4.b.2 Technical Writing
 - 3.4.b.2.1 Prepare project specifications and bid documents
 - 3.4.b.3 Calculations
 - 3.4.b.3.1 Prepare quantity takeoffs and estimates
 - 3.4.b.4 Drafting
 - 3.4.b.4.1 Prepare final plans
 - 3.4.b.4.2 Prepare final grading, tree removal, and erosion control plans
 - 3.4.b.4.3 Prepare signing, striping, and street lighting system plans
 - 3.4.b.4.4 Prepare Planting Plans and Details
 - 3.4.b.4.5 Prepare Irrigation Plans and Details
 - 3.4.b.5 Design
 - 3.4.b.5.1 Design electrical, telecommunication, cable TV vault and conduit systems as necessary

3.4.b.6 Final Estimate Updates

4.0 Subconsultants

- 4.1 Traffic engineering, including signal design, signing and striping plans, and lighting design (ATEP)
 - 4.1.a Project Familiarization
 - 4.1.a.1 Meet with City/ County staff to review all design and construction elements
 - 4.1.a.2 Review existing traffic data
 - 4.1.b Preliminary Engineering
 - 4.1.b.1 Prepare signal draft plans and specifications for temporary signal, Preliminary traffic signal and loop detectors, striping, signing plans, and street light plans to conform to City/ County staff
 - 4.1.b.2 Submit preliminary to City/ County for review
 - 4.1.b.3 Review preliminary work with City/ County staff
 - 4.1.c Final Design
 - 4.1.c.1 Complete Plans and Specifications, complete list of quantities with Engineer's, estimate to construct, submit plans for final review
 - 4.1.c.2 Provide composite mylars of bid-ready plans and specifications for City/ County bid
 - 4.1.c.3 Coordination with bid package through approval
 - 4.1.d Provide As built for the Signal Design
- 4.2 Geotechnical engineering, soils analysis, and inspection (GCNW)
 - 4.2.a Office Study
 - 4.2.b Field Reconnaissance
 - 4.2.c Subsurface Explorations
 - 4.2.d Analysis and Report

5.0 Construction Management

- 5.1 Project Administration
 - 5.1.a Manage the project bid process
 - 5.1.b Lead the project bid opening
 - 5.1.c Prepare bid tabulation
- 5.2 Correspondence
 - 5.2.a Prepare and distribute Addenda as necessary
 - 5.2.b Respond to RFI's
- 5.3 Meetings
 - 5.3.a Lead the pre-construction conference
 - 5.3.b Lead weekly progress meetings during construction
- 5.4 Coordination
 - 5.4.a Provide centralized documentation and handling of project communication.
 - 5.4.b Monitor Contractor's progress and adherence to the project schedule.
 - 5.4.c Coordinate with City on project close-out and transfer of documents.
 - 5.4.d Coordinate the plan holder's list.

- 5.5 Site Visit
 - 5.5.a Conduct site visits as necessary
 - 5.5.b Periodic Inspections for approval and clarification
 - 5.5.c Substantial Completion Walk-thru (includes memo)
 - 5.5.d Substantial Completion Follow-up (includes memo)
 - 5.5.e Punch List Walk-thru (includes memo)
 - 5.5.f Punch List Completion Follow-up (includes memo)
- 5.6 Submittals & Processing
 - 5.6.a Process plans, and specifications
 - 5.6.b Process Requests For Information (RFI's), Clarifications, Change Order Requests (COR's), Work Change Directives (WCD), and Change Orders (CCO's)
 - 5.6.c Review monthly invoices form the Contractor and prepare monthly pay estimates for City throughout construction.
 - 5.6.d Review and process daily on-site construction inspection reports.
 - 5.6.e Process material submittals
 - 5.6.f Review Shop Drawings
 - 5.6.g Review certified payrolls

6.0 Contingency – 15%

7.0 Expenses – Mileage, printing, etc.

Markup – 10%

SUBCONSULTANTS

MacKay & Sposito, Inc. proposes to use the following subconsultants for the work listed above:

1. Associated Transportation Engineering and Planning for traffic engineering, including signalization, street lighting and signing and striping plans.
2. GeoCon NW for Geotechnical services, including investigation (signal pole base boring for design), pavement design, inspection services and testing.

SCHEDULE

MacKay & Sposito, Inc. will make every attempt to meet the proposed schedule to complete construction of the Boones Ferry Road Wilsonville Road to 5th Street (Project #4141) and Wilsonville Road (6) Lane Enhancements (Project #4142) Improvements during the 2009 construction season. Right of way acquisition and utility relocations may substantially affect the schedule.