

**RESOLUTION NO. 1229**

**A RESOLUTION OF THE CITY OF WILSONVILLE EXEMPTING THE CITY FROM COMPETITIVE BIDDING REQUIREMENTS AND AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH WALKER & MACY TO PROVIDE DESIGN AND CONSTRUCTION MANAGEMENT SERVICES FOR THE OPEN SPACES BOND MEASURE FUNDED MEMORIAL PARK TRAIL.**

WHEREAS, the City of Wilsonville adopted Resolution No. 1141 approving local greenspaces and trails projects to be included in the regional greenspaces bond issue; and

WHEREAS, Resolution No. 1141 approved a Memorial Park Trail for pedestrian and bicycle access from Memorial Drive to the park; and

WHEREAS, On May 16, 1995 voters approved Measure 26-26; and

WHEREAS, the City of Wilsonville adopted Resolution No. 1224 approving an intergovernmental agreement with Metro for City of Wilsonville Local Greenspaces and Trails Projects funded from the regional bond issue; and

WHEREAS, the adopted City of Wilsonville 1995-96 fiscal year budget includes an appropriation for this project which will be reimbursed by METRO as costs are incurred; and

WHEREAS, the city now wishes to proceed with the design and construction of the Open Spaces Bond Measure Memorial Park Trail; and

WHEREAS, the Memorial Park Master Plan was developed by the consulting firm of Walker & Macy; and

WHEREAS, staff wishes to utilize the past experience and expertise of Walker & Macy in working on the Memorial park Master Plan to provide surveying, design, and construction management services for the referenced project; and

WHEREAS, Oregon Revised Statutes 279.011(5) and Section 2.310(1)(a) of the Wilsonville Code define public contracts as being other than agreements for personal service. The contract to be awarded for professional services is for personal services; and

WHEREAS, Section 2.312 of the City Code states that "The Council is hereby designated as a Local Contract Review Board and relative to contract concerns for the city, shall have all the powers granted to the Contract Review Board"; and

WHEREAS, Section 2.314(1) states that “All contracts shall be based upon competitive bid with certain exceptions”, which the city interprets to mean public contracts, but in the event it is construed to apply to any contract, the city recites and finds as set forth below; and

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

WHEREAS, Oregon Revised Statutes 279.015 Competitive Bidding Exemptions also allows exemptions as stated in the City code; and

WHEREAS, after reviewing the fees associated with providing the requested professional services, staff has determined that the fees for the services as proposed by Walker & Macy are found to be fair and reasonable; and

WHEREAS, these fees are not to exceed \$18,950.

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

1. That the City Council, serving in its role as Local Contract Review Board does hereby exempt the award of contract for design and construction management services for the planned Memorial Park Trail from competitive bidding.

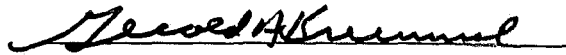
2. The City Council, serving in its role as Local Contract Review Board, does hereby approve and authorize the execution of a Professional Services Agreement between the City of Wilsonville and Walker & Macy, a copy of which is marked Exhibit “A”, attached hereto and incorporated herein.

3. The City Council authorizes the expenditures for this project not to exceed the Open Spaces Bond Measure authorized amount, and the expenditures for this agreement to not exceed \$18,950, plus 15% contingency.

Account	Budget
590-49130-5000-917	\$96,135

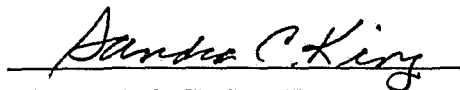
4. The scope of work shall include an arborist’s report on the trees to be removed and the trees that will be impacted by construction. The arborist will also report on any mitigation and/or restorative work necessary. The alignment should have the least impact on existing trees and vegetation.

ADOPTED by the City Council of the City of Wilsonville at a regular meeting thereof  
this 20th day of November , 1995 and filed with the Wilsonville City Recorder this date.



GERALD A. KRUMMEL, Mayor

ATTEST:



SANDRA C. KING, City Recorder

SUMMARY OF Votes:

Mayor Krummel	Yes
Councilor Lehan	Yes
Councilor Hawkins	Yes
Councilor Leahy	Yes
Councilor Leo	Yes

**CITY OF WILSONVILLE  
PROFESSIONAL SERVICES AGREEMENT**

THIS AGREEMENT is made and entered into as of the date first indicated on the signature page, by and between the City of Wilsonville, Wilsonville, Oregon (hereinafter referred to as the "City"), and Walker & Macy, 111 SW Oak, Suite 200, Portland, OR 97204, (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 Manger shall not be relied upon by City. Interpretation of plans and answers to questions covering Plans given by Consultant or Consultant's Project Manager need not be put in writing unless requested by the City and may be relied upon by City.
- B.3 All agreements on the Consultant's part are contingent upon, and the Consultant shall not be responsible for damages or be in default or be deemed to be in default by reason of delays in performance due to third party: strikes, lockouts, accidents; acts of God; other delays unavoidable or beyond the Consultant's reasonable control, or due to shortages or unavailability of labor at established area wage rates or delays caused by failure of the City or City's agents to furnish information or to approve or disapprove the Consultant's work promptly, or due to late or slow, or faulty performance by the City, other contractors, other consultants not under Consultant's control or governmental agencies, the performance of whose work is precedent to or concurrent with the performance of the Consultant's work. In the case of the happening of any such cause of delay, the time of completion

shall be extended accordingly.

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

### **C. Compensation**

- C.1 Except as otherwise set forth in this section C, City agrees to pay Consultant not more than \$18,950.00 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 attached as Exhibit B which is attached hereto and incorporated herein. Compensation shall be only for actual hours worked on this project and related direct expenses. Consultant shall furnish with each bill for services an itemized statement showing the amount of hours devoted to the project by Consultant as well as any agents or employees of Consultant and any direct expenses.
- C.2 During the course of Consultant's performance, if City or its Project Manager specifically requests Consultant to provide additional services which are beyond the scope of the services described on Exhibit A, Consultant shall provide such additional services and bill the City at the hourly rates outlined on the attached Standard Hourly Rate Schedule, provided the parties comply with the requirements of Section Q. No compensation for additional services shall be paid or owing unless both parties specifically agree to such additional compensation and services.
- C.3 Unless expressly set forth on Exhibit A as a reimbursable expense item, Consultant shall only be entitled to the compensation amount specified in subsections C.1 and C.2. Only those reimbursable expenses which are set forth on Exhibit A and itemized on Consultant's bills for services shall be the basis for which payment of those expenses by City shall be owing.
- C.4 Except for amounts withheld by City pursuant to this agreement, Consultant will be paid for services for which an itemized bill is received by City within 30 days.
- C.5 City shall be responsible for payment of required fees, payable to governmental agencies including, but not limited to plan checking, land use, zoning and all other similar fees resulting from this project, and not specifically covered by Exhibit A.
- C.6 Consultant's compensation rate includes but is not limited to salaries or wages plus fringe benefits and contributions including payroll taxes, workers' compensation insurance, liability insurance, pension benefits and similar contributions and benefits.

C.7 In the event Consultant's responsibilities as described on Exhibit A have been separated into two or more phases, then Consultant shall not be entitled to any compensation for work performed directly on a later category of responsibilities unless and until City specifically directs that Consultant proceed with such work.

**D. City's Project Manager**

City's Project Manager is Constance J. Sylvester. City shall give Consultant prompt written notice of any redesignation of its Project Manager.

**E. Consultant's Project Manager**

Consultant's Project Manager is Michael Zilis. In the event that Consultant's designated Project Manager is changed, Consultant shall give City prompt written notification of such redesignation. In the event that City receives any communication from Consultant of whatsoever nature which is not executed by Consultant's designated Project Manager, City may request clarification by Consultant's Project Manager, which shall be promptly furnished.

**F. Project Information**

City shall provide full information regarding its requirements for the Project. Consultant agrees to share all project information, to fully cooperate with all corporations, firms, contractors, public utilities, governmental entities, and persons involved in or associated with the Project. No information, news or press releases related to the Project, whether made to representatives of newspaper, magazines or television and radio stations, shall be made without the authorization of City's Project Manager.

**G. Duty to Inform**

If at any time during the performance of this Agreement, or any future phase of this Agreement for which Consultant has been retained, Consultant becomes aware of actual or potential problems, faults or defects in the project or any portion thereof, any nonconformance with the federal, state or local 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.

**H. Consultant is Independent Contractor**

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

H.2 Subcontracting: City understands and agrees that only those special consulting services identified on Exhibit 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.

- H.3 Consultant shall be responsible for and indemnify and defend City against any liability, cost or damage arising out of Consultant's use of such subcontractor(s) and subcontractor's negligent acts, omissions, or errors. Subcontractors will be required to meet the same insurance requirements of Consultant under this Agreement. Unless otherwise specifically agreed to by City, Consultant shall require that subcontractors also comply with and be subject to the provisions of this Section H.
- H.4 Consultant shall make prompt payment of any claim for labor, materials or services furnished to the Consultant by any person in connection with this Agreement as such claim becomes due. Consultant shall not permit any lien or claim to be filed or prosecuted against the City on account of any labor or material furnished to or on behalf of the Consultant. If the Consultant fails, neglects or refuses to make prompt payment of any such claim, the City may pay such claim to the person furnishing the labor, materials or services and charge the amount of the payment against funds due or to become due the Consultant under this Agreement.
- H.5 No person shall be employed under the terms of this agreement as described herein in violation of all wage and hour laws.
- H.6 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.
- H.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.
- H.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.

## **I. Indemnity and Insurance**

- I.1** Consultant acknowledges responsibility for liability arising out of the performance of this Agreement and the attachments thereto, and all liability resulting from or incidental to the acts, performance or errors or omissions of the Consultant or anyone acting on behalf of Consultant in connection with or incidental to the work performed under the contract. Consultant shall hold City harmless from and indemnify City of any and all liability, settlements, loss, costs, expenses, attorney's fees and damages 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 1.2.3. The provisions of this section shall survive termination of this Agreement.
- I.2 Insurance Requirements and Consultant's Standard of Care.**
- I.2.1** Consultant shall provide City with evidence of the following insurance coverages prior to the commencement of the work. A copy of each insurance policy, issued by a company currently licensed in the State of Oregon, and certified as a true copy by an authorized representative of the issuing company or at the discretion of the City, in lieu thereof, a certificate in a form satisfactory to City certifying to the issuance of such insurance shall be furnished to City. Unless specifically set forth on Exhibit A, expenses relating to the cost of insurance shall not be the basis for additional reimbursement to Consultant.
- I.2.2** The City agrees that in accordance with generally accepted construction practices, the construction contractor will be required to assume sole and complete responsibility for job site conditions during the course of construction of the project, including safety of all persons and property.
- I.2.3** In the performance of its professional services, the Consultant shall use that degree of care and skill ordinarily exercised under similar circumstances by reputable members of its profession practicing in the Portland Metropolitan Area. The Consultant will reperform any services not meeting this standard without additional compensation. Consultant's reperformance of any services, even if done at City's request, shall not be considered as a limitation or waiver by City of any other remedies or claims it may have arising out of consultant's failure to perform in accordance with the applicable standard of care or this Agreement.
- I.2.4** Consultant shall furnish the City a certificate evidencing the date, amount and type of insurance that has been procured pursuant to this Agreement. All policies shall be written on an "occurrence basis," except for Consultant's Professional Liability Insurance which may be written on a "claims made" basis, provided it shall endeavor to be maintained in full force for not less than four (4) years following Consultant's performance under this Agreement. All policies shall provide for not less than 30 days' written notice to the City before they may be 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. Excepting professional liability and worker's compensation coverage, all policies shall provide an endorsement naming the City, its officers, employees and agents as additional insureds. In the event the policy lapses during performance, the City may: treat said lapse as a breach; terminate this Agreement and seek damages; withhold progress payments without impairing obligations of Consultant to proceed with work; pay an insurance carrier (either Consultants' or a substitute) the premium amount and withhold that amount from payments; and, use any other remedy provided by this Agreement or by law.

- 1.2.5 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:
  - 1.2.5.1 Workers' compensation and employers liability insurance as required by the State where the work is performed.
  - 1.2.5.2 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.
  - 1.2.5.3 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.
  - 1.2.5.4 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 1.2.1, 1.2.2, 1.2.3, 1.2.4 and 1.2.5.4.
  - 1.2.5.5 City will be named as an additional insured with respect to Consultant's liabilities hereunder in insurance coverages identified in items 1.2.5.2 and 1.2.5.3.
- 1.2.6 The coverage provided by these policies shall be primary and any other insurance carried by City is excess. Consultant shall be responsible for any deductible amounts payable under all policies of insurance. In the event a dispute arises between City and Consultant for which Consultant has obtained insurance, the maximum amount which may be withheld by City for all such claims shall be no more than the amount of the applicable insurance deductible.

## **J. Early Termination**

- J.1 This Agreement may be terminated prior to the expiration of the agreed upon terms:
- J.1.1 By mutual written consent of the parties;
  - J.1.2 By City for any reason within its sole discretion, effective upon delivery of written notice to Consultant by mail or in person, or at such later date as may be established by the City; and
  - J.1.3 By Consultant, effective upon seven days prior written notice in the event of substantial failure by the City to perform in accordance with the terms through no fault of the Consultant.
- J.2 If City terminates the Agreement in whole or in part due to default or failure of Consultant to perform services in accordance with this Agreement, City may procure, upon reasonable terms and in a reasonable manner, services similar to those so terminated. In addition to any other remedies the City may have, Consultant shall be liable for all costs and damages incurred by City in procuring such similar service, and the Contract shall be in full force to the extent not terminated.
- J.3 If City terminates the Agreement for its own convenience, payment of Consultant shall be prorated to and include the day of termination and shall be in full satisfaction of all claims by Consultant against City under this Agreement.
- J.4 Termination under any provision of this paragraph shall not affect any right, obligation or liability of Consultant or City which accrued prior to such termination. Consultant shall surrender to City items of work or portions thereof, referred to in 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.

## **K. Suspension of Work**

City may suspend, delay or interrupt all or any part of the work for such time as the City deems appropriate for its own convenience by giving written notice thereof to Consultant. An adjustment in the time of performance or method of compensation shall be allowed as a result of such delay or suspension unless the reason for the delay is within the Consultant's control. City shall not be responsible for work performed by any subcontractors after notice of suspension is given by City to Consultant.

## **L. Subconsultants and Assignments**

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

Except as otherwise specifically agreed, all costs for services performed by others on behalf of Consultant shall not be subject to additional reimbursement by City.

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

**M. Access to Records**

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

**N. Work is Property of City**

- N.1 Originals or Certified copies of the original work forms, including but not limited to documents, drawings, tracings, surveying records, mylars, papers, diaries, inspection reports and photographs, performed or produced by Consultant under this Agreement shall be the exclusive property of City and shall be delivered to City prior to completion or termination of this contract and prior to final payment. Any statutory or common law rights to such property held by Consultant as creator of such work shall be conveyed to City upon request without additional compensation. Upon City's approval and provided City is identified in connection therewith Consultant may include Consultant's work in its promotional materials.
- N.2 Consultant shall not be held liable for any damage, loss, increased expenses or otherwise caused by or attributed to the reuse, by City or their designees, of all work performed by Consultant pursuant to this contract without the express written permission of the Consultant.
- N.3 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.

**O. Law of Oregon**

The Agreement shall be governed by the laws of the State of Oregon. The Agreement provisions required by ORS Chapter 279 to be included in public agreements are hereby incorporated by reference and shall become a part of this Agreement as if fully set forth herein. Consultant shall adhere to all applicable federal and state laws, including but not limited to laws, rules, regulations, and policies concerning employer and employee relationships, workers' compensation, and minimum and prevailing wage requirements. Any certificates, licenses or permits which Consultant is required by law to obtain or maintain in order to perform work described on Exhibit A, shall be obtained and maintained throughout the term of this Agreement.

**P. Adherence to Law**

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

**Q. Modification**

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

**R. Other Conditions**

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

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

R.1.2 Opinions of Cost, Financial Considerations, and Schedules. In providing opinions of cost, financial analyses, economic feasibility projections, and schedules for the Project, Consultant has no control over cost or price of

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

R.1.3 Record Drawings. Record drawings, if required, will be prepared, in part, on the basis of information compiled and furnished by others, and may not always represent the exact location, type of various components, or exact manner in which the Project was finally constructed. Consultant is responsible for any errors or omissions about which the Consultant knew or should have known in the information from those employees or firms employed by the Consultant under the terms of the contract as stated therein that is incorporated into the record drawings.

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

#### **S. Assignments of Products Rights**

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

#### **T. Integration**

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

#### **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 \_\_\_\_\_, 19\_\_

CONSULTANT:

Walker & Macy \_\_\_\_\_

By \_\_\_\_\_  
Typed or  
Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Mailing  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Employer ID. No. \_\_\_\_\_

CITY OF WILSONVILLE:

By \_\_\_\_\_  
Constance J. Sylvester  
Project Manager

Attest:

\_\_\_\_\_  
Sandy C. King  
City Recorder

Mailing  
Address: 30000 SW Town Center Loop East  
Wilsonville, OR 97070

Approved as to form:

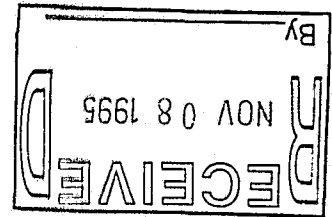
\_\_\_\_\_  
Michael E. Kohlhoff  
City Attorney

Planning  
Urban Design  
Landscape Architecture

**Walker & Macy**

111 SW Oak, Suite 200  
Portland, Oregon 97204  
Phone: 503-228-3122  
Fax: 503-273-8878

AGREEMENT EXHIBIT A



November 6, 1995

Ms. C.J. Sylvester  
City of Wilsonville  
30000 SW Town Center Loop E  
Wilsonville, OR 97070

RE: Memorial Park Trail

Dear Ms. Sylvester:

The following proposal is based on our site visit, the 9/6/95 scope of work you sent to me, and our subsequent telephone conversations and meetings.

**Scope of Work**

- 1.0 **Basic Services**  
Provide civil engineering and landscape architectural services in the design, documentation, bidding and construction administration of an accessible trail from the park entry to the lower activity areas.
- 2.0 **Additional Service Tasks**  
The following items will be contracted in addition to the basic services as requested by the City.
  - 2.1 **Permitting With Outside Agencies**  
Conduct permitting processes with Oregon Division of State Lands, U.S. Army Corps of Engineers, and other agencies having jurisdiction over the project.
  - 2.2 **Construction Management Services**  
It is our understanding that given the City's current work load, providing central coordination of the construction project may be necessary. Scope of services beyond those typically associated with consultant construction administration services include:
    - Central coordination of construction
    - Monitor all expenditures and manage the Contract
    - Obtain samples and analyze results of testing
    - Prepare weekly working day statements
- 3.0 **Available Data**
  - 3.1 City Parks and Recreation Master Plan
  - 3.2 City Memorial Park Master Plan
  - 3.3 City Bicycle and Pedestrian Master Plan

- 3.4 Memorial Drive as-built documentation
- 3.5 City topographic surveys
- 3.6 Contract document forms for inclusion in final specifications

4.0 Time of Completion

- 4.1 Design Tasks  
Walker and Macy shall submit conceptual alternatives and cost estimates within 60 days of Contract execution.

Following selection of preferred alternative and authorization from the City to proceed, preliminary design documents and cost estimates shall be submitted within 30 calendar days.

Upon receipt of comments, final construction documents, consisting of drawings, specifications, complete contract documents and estimates suitable for bidding shall be submitted within 60 calendar days.

All construction engineering management tasks, (if added to the scope), shall be complete within 30 days after project acceptance.

- 4.2 Additional Service  
Scope and schedule of additional service tasks to be determined on a case by case basis, depending upon need.

5.0 Definitions

- 5.1 Tasks  
Scope of work shall include all services necessary for preparation of final, complete and comprehensive plans, specifications, and cost estimates; and construction administration services for the Open Space Bond Measure Memorial Park Trail including but not limited to the following items of work:
  - A. Three conceptual alternative alignments and cost estimates based on the mutually agreed upon program shall be submitted to the City for approval. Following City approval, these documents will serve as the basis for presentation to the Parks and Recreation Advisory Board.
  - B. Preliminary Design Documents, consisting of drawings and other documents to fix and describe the size and character of the project as to civil engineering, landscape architectural, materials, and such other elements as may be appropriate, and cost estimates shall be submitted to the City for approval prior to the preparation of Construction documents and cost estimates.
  - C. Prepare Contract Documents consisting of topographic survey information as needed, plans, specifications, contract forms, and construction estimates in collaboration with the City. Design services shall include landscape architectural, urban planning and civil engineering services necessary for the project. The project shall be designed utilizing materials and equipment to minimize future maintenance expenditures.



- D. Meet with City staff (maximum 4 meetings) to discuss current status of the proposed project. Meet with Parks and Recreation Advisory Board to evaluate conceptual alternatives and develop preferred alignment (two meetings).
- E. Furnish to City reproducible plans drawn on 24" x 36" 3-mil double mat mylar sheets and one set of special conditions specifications, bid documents and cost estimates in hard copy and on diskette utilizing Microsoft Word 6.0.
- F. Furnish City with forty (40) sets of blueprint plans. The City will furnish the specifications, bid forms, etc..
- G. Plans, specifications, cost estimates, computations, and other data prepared or obtained under this Agreement shall be furnished to the City in a form acceptable to the City Engineer.
- H. Respond to technical questions from bidders and assist in analysis of bids.
- I. Perform weekly on site job inspections and evaluate conformance with construction drawings and specifications.
- J. Review and approve, or take other appropriate action on, all shop drawings as submitted by the Contractor.
- K. Review and approve, or take other appropriate action on, all submittals submitted by the Contractor.
- L. Prepare and/or review Change Orders as submitted by the Contractor. Submit Contract Change Orders for all cost increases, major changes in construction time, or contract conditions to the City for approval.
- M. Review any claims for extra work submitted by the Contractor. Evaluate such claims and provide written recommendations for the disposition of said claims.
- N. Review and approve, or take other appropriate action on, all payment documents as submitted by the Contractor.
- O. Prepare field reports on a weekly basis.
- P. Conduct a final inspection along with the City and submit a final "punch list" to the City for approval.
- Q. Prepare a set of "as-builts" based on contractor supplied redline drawings.

**Fees**

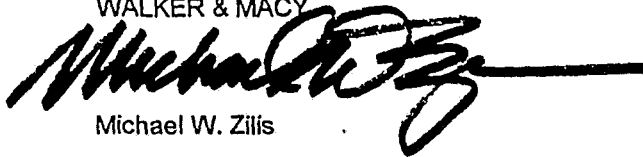
Basic Service	\$13,500.00
Survey	4,000.00
Estimated Expenses	<u>1,450.00</u>
<b>TOTAL</b>	<b>\$18,950.00</b>

**Additional Services - Range of Fees**

Permitting	\$2,000 - \$4,000
Construction Management	\$6,000 - \$8,000

We appreciate the opportunity to propose on the project and look forward to its successful implementation. Please call me if I can be of further assistance.

Regards,  
WALKER & MACY



Michael W. Zilis

MWZ/ch

AGREEMENT EXHIBIT B

1995 HOURLY BILLING RATES\*

Principal	\$95.00
Associate	\$75.00
Project Manager	\$50.00 - \$75.00
Landscape Architect	\$50.00 - \$75.00
Technican	\$30.00 - \$50.00
Clerical	\$32.00