



REQUEST FOR PROPOSALS

PROFESSIONAL SERVICES

PROGRAMMING ANALYSIS FOR ART TECH CAMPUS CIP #9176

ADVERTISEMENT DATE: November 9, 2022

**PROPOSALS DUE:
Friday, December 2, 2022, by 4:00 PM, Pacific Time**

Address Proposals to:

City of Wilsonville
Attn: Kris Ammerman, Parks and Recreation Director
29799 SW Town Center Loop East
Wilsonville, OR 97070

Proposals shall be submitted electronically to the following email address: kammerman@ci.wilsonville.or.us. Proposals shall contain the following information within the header, "PROPOSAL for Programming Analysis for Art Tech Campus." The email shall contain the Proposer's name and address and be accompanied by any required documents as a single PDF document.

The City of Wilsonville reserves the right to reject any or all Proposals.

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Table of Contents

Request for Proposals

I.	PROJECT DESCRIPTION	1
	Background	1
	Project	1
	Budget	2
II.	SCOPE OF WORK	2
III.	TERM OF PROJECT	3
IV.	RFP DOCUMENTS	3
V.	PROJECT MANAGER	4
VI.	PROPOSAL SUBMISSION	4
VII.	MINIMUM QUALIFICATIONS	5
VIII.	PROPOSAL REQUIREMENTS	5
	Proposal Format	5
	Proposal Content	5
IX.	PROPOSAL EVALUATION AND SELECTION	8
	Successful Proposer Determination	8
X.	SCHEDULE	9
XI.	RFP QUESTIONS	9
XII.	GENERAL RFP INFORMATION	10
	Contract Award	10
	Cancellation	10
	Changes to the RFP Solicitation by Addenda	10
	Confidentiality	10
	Late Proposals	11
	Disputes	11
	Proposer Certifications	11
	Nondiscrimination	12
	Competition	12
	Proposal Liability	12
	City Requests for Clarification, Additional Research, and Revisions	13
	Rejection of Proposals	13
	City’s Reservation of Rights	13
	Modification or Withdrawal of Proposal by Proposer	14
	Duration of Proposal	14

ATTACHMENT A

SAMPLE PROFESSIONAL SERVICES AGREEMENT	1
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Request for Proposals

(Intermediate Procurement)

The Parks and Recreation Department of the City of Wilsonville, Oregon (“City”) is requesting Proposals in order to select a qualified consultant for a Programming Analysis for the Art Tech Campus located at 29796 SW Town Center Loop East (“Project”). Interested consultants (“Proposers”) are invited to demonstrate their experience and qualifications in performing work directly related to the services required by responding to this **Request for Proposals (RFP)**. Proposals will be evaluated in accordance with the qualifications based selection procedures of OAR 137-047-0270. This Project does does not involve federal funds.

I. PROJECT DESCRIPTION

Background

The two adjoining buildings (Art Tech and Kiva, 10,762 and 7,280 square feet, respectively), located at 29796 SW Town Center Loop East are owned by the City of Wilsonville and, up until June 2021, were leased by West Linn/Wilsonville School District, at which time the School District vacated the buildings and relocated their Art Tech School. Since that time, the City has been inspecting/assessing facility conditions and performing light renovations as needed for future department/tenant use. During these inspections it was discovered that the entire truss system at the Kiva building has failed and will require complete removal and replacement. Due to this discovery, the building will be under construction for at least one year. The adjoining Art Tech building received light renovations and began housing Wilsonville Community Sharing as a tenant beginning July 1, 2022. Wilsonville Community Sharing is only occupying a portion of the first floor of the 10,672 sq. ft. building, which leaves the remaining parts of the building for the City to program. The priority of the programming analysis is to determine the highest and best use of these buildings combined, both currently and 5-10 years from now, taking into consideration Parks and Recreation Department programming and staffing needs as the City and Department grow.

Project

The City is seeking Proposals from highly qualified individuals, consulting firms, or teams of consultants (“Proposers”) to: 1) prepare an Art Tech Campus Programming Analysis that includes a phasing plan, cost estimates, and preliminary design; and 2) provide interim and final design of the buildings.

A successful Programming Analysis will:

- Address the current and future needs of the Parks and Recreation Department;
- Address programming needs based on data gathered during the 2018 Parks Master Planning Process;
- Provide options for expansion of programs and services provided to the community by the Parks and Recreation Department;
- Improve efficiency through consolidation, organization, and layout;
- Incorporate sustainability and green energy technology;
- Follow all City and State requirements;

- Provide information for funding decisions and project timing.

Budget

Funding for this Project will be provided by City funds. The total cost of programming analysis, including all project deliverables, is not to exceed \$150,000.

II. SCOPE OF WORK

The City of Wilsonville, Department of Parks and Recreation, is requesting qualifications from firms interested in completing a study to examine potential reuses of the Art Tech campus. The selected consultant will work with the City and stakeholders to identify and assess a wide variety of potential future building uses, including but not limited to:

- Parks and Recreation Administrative office space
- Recreation/Fitness class space
- Teen programming space
- Programmable community space
- Community Arts Center
- Potential to incorporate small scale performing arts space
- Phased combination of any of the above or other potential uses

The selected consultant will prepare a programming analysis, draft conceptual plans, phasing plans, cost estimates, and preliminary design for the campus. The key elements will guide decision makers regarding recommended layout and uses, budgets, necessary capital improvements, and recommended construction phasing.

The programming analysis should provide a clear understanding and vision of the site, including opportunities and challenges. The programming analysis should also create a "picture" of the interim and long-term layout, uses, and activities feasible for the property.

A. Project Orientation/Start Up

1. Coordinate with City of Wilsonville Parks and Recreation Department management, Project Manager, City Facility Projects Team, and other identified individuals.
2. Provide a schedule outlining milestones, projected timelines, and deliverables.
3. Modify Scope of Work as needed to meet needs of the Project.

B. Site Review

1. Review sites and facilities currently being used.
2. Review the 2018 Parks and Recreation Master Plan.
3. Conduct site visits to document and map existing conditions to prepare a site assessment.
4. Help to identify stakeholders.
5. Conduct interviews with stakeholders identified, including but not limited to Parks and Recreation Department personnel.
6. Determine area needs for adequate programming and event space, office space, meeting rooms, and breakrooms.
7. Other mutually agreed upon review subjects.

C. Conceptual Designs/Cost Estimates (maximum three alternative concepts)

1. Prepare report of findings from Section B. Site Review.
2. Prepare designs and management analysis, with phasing recommendations, timetables, and cost estimates for each concept. Cost estimates shall include soft cost and escalation, as well as assumptions for each.

D. Preliminary Design/Cost Estimate

1. Develop preliminary plans, construction phasing plan, and cost estimate for selected alternative based on results of Coordination and Stakeholder Meetings.
2. Create architectural renderings of selected alternative.

E. Coordination Meetings

1. Meeting with Parks and Recreation Department Staff and City Facility Projects Team to review results of study, conceptual drawings, and comments from interviews to determine next steps.

F. Stakeholder Meetings

1. Develop agenda(s) and desired meeting outcomes, prepare all materials for display and handouts, attend stakeholder meetings, and document outcome results from meeting and distribute findings.

G. Project Deliverables

1. Deliver final versions of all reports, plans, estimates, and supporting information.
2. Digital copies of all reports and supporting documentation to be delivered in Word format; copies of all conceptual and preliminary designs to be delivered in AutoCAD compatible format; copies of spreadsheets, budgets, and related supporting financial data to be delivered in Excel compatible format.

For more detailed information on the Scope of Work, see **Attachment A – Professional Services Agreement** and **Exhibit A** attached thereto.

The City reserves the right to modify the Scope of Work based on the Proposer’s Proposal.

III. TERM OF PROJECT

The City seeks to complete this project within a six month period. The successful Proposer should be ready to begin work within thirty (30) days of receiving notice of intent to award.

IV. RFP DOCUMENTS

Request for Proposal (RFP) documents will be available on November 9, 2022, after 8:00 a.m., at the City of Wilsonville Parks and Recreation Admin building, 29600 SW Park Place, Wilsonville, Oregon 97070. Request for Proposal (RFP) documents may be obtained electronically on the City website (www.ci.wilsonville.or.us) under “Business” by clicking on “Bids and RFPs.” To obtain an emailed copy of the Request for Proposals package, call or email the Project Manager, Kris Ammerman, at (503) 570-1579 or kammerman@ci.wilsonville.or.us. The City shall not be held responsible for the delivery of the documents.

V. PROJECT MANAGER

All requests for information and clarifications shall be made directly to the City's primary contact person, the City's Project Manager. In the absence of the City's Project Manager, respondents may contact the City's alternate contact person. Contact information is provided below. The City requests that potential respondents refrain from contacting City representatives other than the City's Project Manager. Direction of questions to other City staff or elected officials will not be viewed favorably.

The Primary Contact Person/Project Manager for this Project is:

Kris Ammerman, Parks and Recreation Director
City of Wilsonville
29600 SW Park Place
Wilsonville, OR 97070
(503) 570-1579
kammerman@ci.wilsonville.or.us

The Alternate Contact for this Project is:

Brian Stevenson, Program Manager
City of Wilsonville Community Center
7965 SW Wilsonville Road
Wilsonville, OR 97070
(503) 570-1523
stevenson@ci.wilsonville.or.us

VI. PROPOSAL SUBMISSION

Proposals shall be submitted electronically at the time and email address indicated below. Proposals shall contain the following information within the header, "PROPOSAL for Programming Analysis for Art Tech Campus." The email shall contain the Proposer's name and address and be accompanied by any required documents as a single PDF document. Any Proposal not so submitted may be considered non-conforming.

The Proposer shall assume full and complete responsibility for timely delivery of the Proposal to the location designated for receipt of Proposals. Electronic Proposals shall be submitted on or before **4:00 p.m., Pacific Time, on Friday, December 2, 2022** to:

kammerman@ci.wilsonville.or.us

The submitter is urged to submit the electronic Proposal at least two business hours prior to the deadline for submission. If a "reply confirmation" of receipt of Proposal is not received by the submitter one business hour prior to the deadline for submission, it is the submitter's responsibility to telephone the person named above to assure receipt of the Proposal.

Proposals must arrive at the issuing inbox on or before the listed time and date due. Late Proposals will be returned unopened and without review.

VII. MINIMUM QUALIFICATIONS

Individuals and firms replying to this RFP must have prior and relevant work experience in providing Programming Analyses. Any firms replying to this RFP must be licensed businesses registered within the State of Oregon.

1. Proposers shall demonstrate a minimum of 5 years' experience providing the types of services described within the Scope of Work of this Request for Proposals for public agencies.
2. Proposers with a record of substandard workmanship, as verified by the City by communication with licensing authorities, former clients and references, and other means as the City deems appropriate, will not be considered.

VIII. PROPOSAL REQUIREMENTS

Proposers shall prepare and submit Proposals in accordance with the requirements stated within this RFP. Adherence to these requirements will ensure a fair and objective analysis of submitted Proposals. Proposals should provide a clear, concise description of the Proposer's capabilities to satisfy the requirements of this RFP. Emphasis should be placed on completeness, brevity, and clarity of content. Failure to comply with or complete any part of the RFP may result in rejection of the Proposal. The ability to follow these instructions demonstrates attention to detail.

Proposals are made at the Proposer's sole risk and expense. This RFP may be suspended or delayed if it is determined to be in the best interest of the City to do so. The City is not liable to any Proposer for any loss or expense caused by, or resulting from, any cancellation, suspension, delay, or rejection.

Proposal Format

1. Proposals shall be clear and concise.
2. Proposals shall be in an electronic format: single PDF format files.
3. Proposals shall be in a standard body text font (e.g., Calibri, Times New Roman, Garamond) and shall be in a minimum font size of 11-point.
4. Proposals may include a Letter of Intent: Maximum two (2) pages.
5. Proposals shall be a maximum of **ten (10) pages**. One page is considered to be one side of a single 8½" x 11" sheet.
 - a. **Included in the page count:** Evaluation Criteria responses, charts, graphs, pictures, and all other text or graphics.
 - b. **Not Included in the page count:** One-page table of contents and Letter of Intent.

Proposal Content

Proposals shall be organized in accordance with the listed Proposal contents set forth in the Evaluation Criteria section. Supporting Information, as defined below, shall be provided in a separate section at the end of the Proposal, and not counted in the page limit requirements.

Proposals exceeding the specified number of pages or text font size may be considered non-responsive and the Proposal may be rejected. Pages exceeding the maximum page limit may not be reviewed.

All qualification Proposals shall be evaluated on the following criteria:

Letter of Intent (maximum 2 pages) [pass/fail]

Proposers may include a letter of intent with their proposals. If included, the introductory letter should address the Proposer's willingness and commitment, if selected, to provide the services offered and a brief description of why the Proposer believes it should be selected.

The letter should be addressed to the City's Project Manager and include the name of the firm, as well as the printed name, title, telephone number, and email address of the officer authorized to represent the consultant in any correspondence, negotiations, and signing of any contract that may result. Include the address of the office that will be providing the service and the project manager's name, title, telephone number, and e-mail address. The Proposer's federal and state tax ID numbers and the state of incorporation, if applicable, shall also be included. The letter must be signed by the Proposer, if an individual, or by a legal representative of the Proposer's entity, authorized to bind the entity in contractual matters.

Proposer and Personnel Qualifications [Maximum 25 points]

Describe each member of the Proposer's team, including the proposed role for each firm or person on the Project, qualifications, expertise, and previous related experience, and experience of the firms collaborating together.

- Identify the day-to-day project manager and other key project team members, including subcontractors who will be involved with each major service or task element of the Work.
- Provide name, title, brief description of duties, and years of pertinent experience of staff and subcontractors' staff that will provide required services and complete tasks to complete the Work.
- Full resumes may be added in an appendix and will not be counted as part of the page limit.
- Upon selection, key staff cannot be changed without written approval of the City.

Capabilities and Approach [Maximum 30 points]

This section should layout how Proposer intends to ensure a successful Project, including Project milestones, meetings, and deliverables. After reviewing the proposed Scope of Work included in this RFP, provide a detailed explanation of Proposer's approach to the Work and the process Proposer plans to use. Each Proposer should demonstrate knowledge of the type of work requested, ability to solve the anticipated Project issues, and ability to offer innovative ideas.

The Proposal should include the following:

- Describe your team's unique approach to providing Programming Analyses for public buildings.
- Describe the proposed approach to accomplishing the Work, as demonstrated through clear and concise articulation of the services, tasks, and major issues presented in completing the Work, based upon existing information, and how the Proposer would resolve any major identified issues.
- Services that may not have been mentioned and that should be considered for inclusion in a final Scope of Work for the benefit of the Project.
- A delineation of the services, tasks, and deliverables necessary to complete the Work.
- Proposer's approach to working with City staff to develop and deliver the Project.
- Describe Proposer's quality assurance and quality control procedures to be implemented on this Project.

- Provide a list of best practices your firm utilizes when making design and budgetary modifications recommendations.
- Describe Proposer’s approach to unanticipated issues that may arise during the Project.

Experience and References

Provide an overview of Proposer’s organization size and experience; major clients; areas of expertise; unique qualifications of Proposer; and other matters that Proposer feels would assist the City in the evaluation process. Identify the Proposer’s qualifications, including the following:

- Experience in project management and building repurposing projects for public entities.
- Experience in presenting project designs and project financials to major stakeholders.
- Demonstrated leadership skills.
- Excellent written, oral, and presentation skills.
- Strong computer skills, including a working knowledge of MS Project, Word, and Excel.
- **Identify at least three (3) successful comparable projects completed by the project team within the past 5 years** that demonstrate the Proposer’s abilities to accomplish this Work in a professional, timely, and cost-effective manner.
 - The following information is required for each such project: client name, description of project, services provided, and when the project was completed, along with a reference from each of those comparable projects. Also briefly explain the relevance, lessons learned, or key tasks that apply to your Proposal for this Project.

Fee [Maximum 15 points]

- Provide a Not-to-Exceed Fee, including expenses for services as described in the Scope of Work.
- If the Proposer’s approach to the Work has identified additional services not identified in the Scope of Work that would be beneficial to the success of this Project, include the associated costs as a separate line item in the proposed fee.

Acknowledgement of Personal Services Agreement [Pass/Fail]

Attachment A to this RFP is the Professional Services Agreement (PSA) the City intends to use for this Project. The PSA identifies the standard contract terms, minimum types and amounts of insurance that the successful Proposer is required to carry, and other City contracting requirements. You must identify any objections or questions concerning the form and content of the PSA in your Proposal. Any objection or proposed modification to contract language must be taken as a part of the submitted Proposal or the change will not be considered during negotiations. Making such an objection will put the term on the table for discussion purposes, but the City reserves the right to reject any Proposal based on a requirement to change any contract terms.

Supporting Information

Supporting materials may include graphs, full resumes, other references, charts, sample documents, and photos. However, pertinent information should be covered in the body of the Proposal. Supporting Information will not count toward the page limit, but brevity is encouraged. If there is no additional information to present in the Supporting Information, then state: *“There is no additional information we wish to present.”*

IX. PROPOSAL EVALUATION AND SELECTION

Submittals will be evaluated by a Selection Review Committee. The Selection Review Committee will be comprised of City staff. Each committee member will independently evaluate each Proposal in accordance with the criteria stated in the Proposal Requirements section of this RFP.

PROPOSAL EVALUATION CRITERIA

Proposer and Personnel Qualifications	Maximum 25 points
Capabilities and Approach	Maximum 30 points
Experience and References	Maximum 30 points
Fee	Maximum 15 points
Personal Services Agreement Acknowledgement	Pass/Fail

Total	100 points
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In addition to the above weighted scoring criteria, feedback from provided references will also be considered and may be determinative in the selection process.

At any point during the evaluation process, the City is permitted to seek clarification of any Proposal. The City retains the right to accept any or no Proposal that is deemed to best fit the needs of the City.

At its sole discretion, the Selection Review Committee may reconvene and collectively review the scoring, making changes as the committee as a whole deems appropriate. Though original scoring is done on an independent member-by-member basis, the committee members may change their scores, as they deem appropriate, as a result of the discussions during any collective meeting.

The City reserves the right to perform additional investigations of any Proposer, including communication with licensing authorities, former clients, and references, and other means as the City deems appropriate, and may reject any Proposal upon finding a record of the Proposer's substandard workmanship.

Successful Proposer Determination

The Proposer with the highest overall ranking, as determined by the Selection Review Committee, will be identified as the Successful Proposer.

The Selection Review Committee will determine the final ranking of Proposers, and the Committee's decision is final. Upon determination of the Successful Proposer and performance of additional investigations, the City will issue a Notice of Intent to Award letter notifying all Proposers of the City's selection of a Successful Proposer and protest procedures.

The City reserves the right to negotiate a final contract that is in the best interest of the City. The City will only negotiate those provisions of the contract that were noted as Exceptions in the Proposal. The City will attempt to reach a final agreement with the Successful Proposer. The City may, in its sole discretion, terminate negotiations and reject the Proposal in the event agreement

cannot be reached. The City may then attempt to reach final agreement with the next highest ranked Proposer, and so on with the remaining Proposers, until an agreement is reached. In the alternative, the City may at any time elect to reject all Proposals and begin the RFP process over.

After the City has reached final agreement with the Successful Proposer, the Selection Review Committee will make a recommendation to the Wilsonville City Council. The Wilsonville City Council will then make the final contract award decision.

X. SCHEDULE

The following is the anticipated timeline for receiving and evaluating Proposals and awarding a contract to the most qualified firm or individual. This schedule is subject to change as additional time is needed.

Advertise Request for Proposals	November 9, 2022
RFP Question Submission Deadline	November 14, 2022, 5:00 p.m.
Addenda Issuance Deadline	November 21, 2022
Proposals Due	December 2, 2022, 4:00 p.m.
Evaluation of Proposals Complete	December 9, 2022
Notice of Intent to Award	December 9, 2022
City Council Award	January 5, 2003, 7:00 p.m.
Notice of Award	January 6, 2023

XI. RFP QUESTIONS

Proposers shall direct all questions regarding RFP documents in writing or by email to:

Kris Ammerman, Parks and Recreation Director
City of Wilsonville
29600 SW Park Place
Wilsonville, OR 97070
(503) 570-1579
kammerman@ci.wilsonville.or.us

All questions shall include “RFP QUESTIONS for Programming Analysis for Art Tech Campus” in the subject line and be submitted in writing by **5:00 p.m., Pacific Time, on Monday, November 14, 2022**. Questions and answers will be provided by email to all firms on the RFP holders list. Additionally, responses will be posted on the City’s website by November 14, 2022 to share clarifying information with all potential Proposers.

Access to the City’s Project Manager for telephone calls, emails, or other communication will be unrestricted during the RFP preparation period up until 5:00 p.m., Pacific Time, on Monday, November 14, 2022. During this time, Proposers are encouraged to ask as many questions as needed to prepare a viable Proposal. Questions submitted after 5:00 p.m., Pacific Time, on Monday, November 14, 2022, will not be addressed.

For the sake of fairness, Proposers are not allowed to contact any City staff or official, other than the Project Manager, concerning this RFP. Contact with any other City staff or official concerning this RFP will be grounds for disqualification.

Proposers are hereby notified that verbal communication may not be relied upon as official communication concerning this RFP. Only answers to those questions responded to by the Project Manager via email or by written addendum may be relied upon.

XII. GENERAL RFP INFORMATION

Contract Award

The City may elect to award the contract to the highest ranked Proposer based on successful negotiation of scope, price, and terms. However, the City may, in its sole discretion, terminate negotiations and reject the Proposal if it appears agreement cannot be reached. The City may then attempt to reach a final agreement with the next highest scoring Proposer and may continue on, in the same manner, with remaining Proposers until an agreement is reached.

The City will only negotiate those provisions of the contract that were noted as Exceptions in the Proposal.

Cancellation

The City reserves the right to cancel this RFP or the contract award or reject any or all Proposals at any time before execution of the contract by both parties if such cancellation or rejection is deemed to be in the best interest of the City. In no event shall the City have any liability for the cancellation of a contract award.

Changes to the RFP Solicitation by Addenda

The City reserves the right to make changes to the RFP by written addendum, which will be issued by email format only to all those who have obtained the RFP documents by pick-up or standard mail, and will also be made available for download at <http://www.ci.wilsonville.or.us/rfps>.

All addenda shall have the same binding effect as though contained in the main body of the RFP and Scope of Work.

No addenda will be issued later than **Monday, November 21, 2022**, except by an addendum, if necessary, postponing the date for receipt of Proposals or withdrawing the RFP altogether.

Each Proposer is responsible for obtaining all addenda prior to submitting a Proposal and shall acknowledge in the Proposal receipt of each addendum as part of the Proposal. Failure to acknowledge receipt of all addenda as part of the Proposal may result in rejection of the Proposal.

Confidentiality

All information submitted by Proposers shall become and remain the property of the City and, as such, is considered public information and subject to disclosure pursuant to the Oregon Public Records Act, except such portions of the Proposals for which the Proposer requests exception from disclosure as being proprietary information exempt from disclosure, consistent with Oregon law.

If a Proposal contains any information that is considered a trade secret under ORS 192.501(2), each sheet of such information must be marked with the following legend:

“This data constitutes a trade secret and shall not be disclosed except in accordance with the Oregon Public Records Law, ORS Chapter 192.”

Identifying the Proposal in whole as a trade secret is not acceptable. Failure to identify a portion of the Proposal as a trade secret shall be deemed a waiver of any future claim of that information as a trade secret. Nondisclosure of documents or any portion of a document submitted as part of a Proposal may depend upon official or judicial determinations made pursuant to the Oregon Public Records Law.

The City will make available to any person requesting information through the City processes for disclosure of public records, any and all information submitted as a result of this RFP not exempted from disclosure without obtaining permission from any Proposer to do so after the Notice of Intent to Award has been released.

The City accepts no liability for the inadvertent or unavoidable release of any confidential information submitted. If a public record request is made for material marked as proprietary, the City will attempt to notify the impacted Proposer prior to the deadline for release of the material but will not defend against any legal challenge for release. Therefore, claims arising out of any public record request for such information shall be at the Proposer’s sole expense, if the Proposer wishes to deny or withhold the information.

Late Proposals

All Proposals that are not received by the Proposal Due Date and Time will not be considered and will be returned unopened to the Proposer. Faxed Proposals will not be accepted. Delays due to mail and/or delivery handling, including but not limited to delays within the City’s internal distribution systems, do not excuse the Proposer’s responsibility for submitting the Proposal to the correct location by the Proposal Due Date.

Disputes

In case of any doubt or differences of opinion as to the items or services to be furnished hereunder, or the interpretation of the provisions of the RFP, the decision of the City shall be final and binding upon all parties.

Proposer Certifications

By the act of submitting a Proposal in response to this RFP, the Proposer certifies that:

1. The Proposer has carefully examined all RFP documents, including the draft Professional Services Agreement (**attached as Attachment A**), all addenda, and all other attachments, fully understands the RFP intent, is able to perform all tasks as described in the Scope of Work of this RFP, and the Proposal is made in accordance therewith. Except as otherwise noted as part of the Proposal, the Proposer certifies that Proposer is ready, willing, and able to comply with all terms of the attached contract.
2. The Proposer is familiar with the local conditions under which the work will be performed.

3. The Proposal is based upon the requirements described in the RFP, without exception, unless clearly stated in the response.
4. The Proposer accepts all of the terms of the City's Professional Services Agreement and warrants that Proposer will fully meet all of the insurance requirements contained therein. If the Proposer wishes to amend or modify any terms of the Professional Services Agreement, such amendment or modification must be stated in particularity in the Proposal. Proposed changes to the draft Professional Services Agreement not stated at the time of Proposal submission will not be considered. Changes stated will be considered but may not be agreed upon by the City for contract award. If the City does not agree with such noted changes, the Proposer may withdraw the proposed change or the entire Proposal and the City may elect to award the contract to the next highest ranked Proposer.
5. The Proposer certifies, and in the case of sole proprietorship, partnership, or corporation, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of Proposer's knowledge and belief, no elected official, employee, or person whose salary is payable, in whole or in part, by the City has a direct or indirect financial interest in the Proposal or in the services to which it relates, or in any of the profits thereof, other than as fully described in the Proposer's response to this solicitation.
6. The Proposer has examined all parts of the RFP, including all requirements and contract terms and conditions thereof, and if its Proposal is accepted, the Proposer shall accept the contract documents thereto, unless substantive changes are made in same without the approval of the Proposer.
7. The Proposer, if an individual, is of lawful age; is the only one interested in this Proposal; and no person, firm, or corporation, other than that named, has any interest in the Proposal, or in the proposed contract.
8. The Proposer has quality experience providing the types of services and duties as described within the Scope of Work of this RFP.

Nondiscrimination

By the act of submitting a Proposal in response to this RFP, the Proposer certifies, under penalty of perjury, that ***the Proposer has not discriminated, and will not discriminate, against minorities, women, emerging small business enterprises, or business enterprises that are owned or controlled by or that employ a disabled veteran, in obtaining any required subcontracts.***

Competition

Prospective Proposers are encouraged to comment, either with their Proposals or at any other time, in writing, on any specification or requirement within this RFP which the Proposer believes will inordinately limit competition.

Proposal Liability

Proposers responding to this RFP do so solely at their expense, and the City is not responsible for any Proposer expenses associated with the RFP. By proposing, Proposers agree that doing so is at their own risk and the City shall have no liability related thereto.

City Requests for Clarification, Additional Research, and Revisions

The City reserves the right to obtain clarification of any portion of a Proposal or to obtain additional information necessary to properly evaluate a particular Proposal. Failure of a Proposer to timely respond to such a request for additional information or clarification may result in a finding that the Proposer is non-responsive and consequent rejection of the Proposal.

The City may obtain information from any legal source for clarification of any Proposal. The City need not inform the Proposer of any intent to perform additional research in this respect or of any information thereby received.

The City may perform, at its sole option, investigations of any Proposer. Information may include, but shall not necessarily be limited to, current litigation and contracting references. All such documents, if requested by the City, become part of the public record and may be disclosed accordingly.

The City reserves the right to request revisions of any Proposal after the date and time due and before award for the purpose of obtaining best and final offers.

Rejection of Proposals

The City reserves the right to reject any or all irregularities or omissions in Proposals submitted in response to this RFP to the extent it is determined to be in the best interest of the City to do so. Furthermore, the City reserves the right to reject any or all Proposals or portions thereof submitted in response to this RFP. Proposals may be rejected for one or more of the following reasons, including but not limited to:

1. Failure of the Proposer to adhere to one or more of the provisions established in the RFP.
2. Failure of the Proposer to submit a Proposal in the format specified herein.
3. Failure of the Proposer to submit a Proposal within the time requirements established herein.
4. Failure of the Proposer to adhere to ethical and professional standards before, during, or following the Proposal process.
5. Failure to provide information that is specifically requested in this RFP.

The City may reject any Proposal not in compliance with all prescribed public procurement procedures and requirements, and may reject for good cause any or all Proposals upon a finding by the City that it is in the public interest to do so.

City's Reservation of Rights

The City reserves the right to waive minor irregularities or omissions in compliance with the requirements of this RFP to the extent the Selection Review Committee and Project Manager determine it is in the best interest of the City to do so. The City also reserves the right to cancel this RFP at any time if it determines it is in the best interest of the City to do so. Therefore, by proposing, Proposers agree that doing so is at their own risk and the City shall have no liability related thereto.

Modification or Withdrawal of Proposal by Proposer

A Proposal may not be modified, withdrawn, or canceled by the Proposer following the time and date the Proposals are due. Proposals submitted early may be modified or withdrawn only by notice to the City at the Proposal submittal location prior to the time and date the Proposals are due. Such notice shall be submitted to the Project Manager, in writing, executed and signed by a duly authorized representative of the firm/individual submitting the Proposal. All such communication shall be worded so as not to reveal the contents of the original Proposal.

Withdrawn Proposals may be resubmitted prior to the time and date the Proposals are due, provided that they are then fully in conformance with the RFP.

Duration of Proposal

Proposal prices, terms, and conditions shall be firm for a period of at least ninety (90) days from the time and date Proposals are due. Proposals shall not be subject to future price escalation or changes of terms during the ninety (90) day period.

ATTACHMENT A

SAMPLE PROFESSIONAL SERVICES AGREEMENT

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**CITY OF WILSONVILLE
PROFESSIONAL SERVICES AGREEMENT**

This Professional Services Agreement (“Agreement”) for the Art Tech Campus Programming Analysis Project (“Project”) is made and entered into on this ____ day of _____ 2022 (“Effective Date”) by and between the **City of Wilsonville**, a municipal corporation of the State of Oregon (hereinafter referred to as the “City”), and _____, a(n) _____ [e.g., Oregon corporation/Delaware limited liability company] (hereinafter referred to as “Consultant”).

RECITALS

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

WHEREAS, Consultant represents that Consultant is qualified to perform the services described herein on the basis of specialized experience and technical expertise; and

WHEREAS, Consultant is prepared to provide such services as the City does hereinafter require.

NOW, THEREFORE, in consideration of these mutual promises and the terms and conditions set forth herein, the parties agree as follows:

AGREEMENT

Section 1. Scope of Work

Consultant shall diligently perform the study, analysis, and planning services according to the requirements identified in the Scope of Work for the Project, attached hereto as **Exhibit A** and incorporated by reference herein (the “Services”).

Section 2. Term

The term of this Agreement shall be from the Effective Date until all Services required to be performed hereunder are completed and accepted, or no later than June 30, 2023, whichever occurs first, unless earlier terminated in accordance herewith or an extension of time is agreed to, in writing, by the City.

Section 3. Consultant’s Services

3.1. All written documents, drawings, and plans submitted by Consultant in conjunction with the Services shall bear the signature, stamp, or initials of Consultant’s authorized Project Manager. Any documents submitted by Consultant that do not bear the signature, stamp, or initials of Consultant’s authorized Project Manager, will not be relied upon by the City. Interpretation of plans and answers to questions regarding the Services or Scope of Work given by Consultant’s Project

Manager may be verbal or in writing, and may be relied upon by the City, whether given verbally or in writing. If requested by the City to be in writing, Consultant's Project Manager will provide such written documentation.

3.2. Consultant will not be deemed to be in default by reason of delays in performance due to circumstances beyond Consultant's reasonable control, including but not limited to strikes, lockouts, severe acts of nature, or other unavoidable delays or acts of third parties not under Consultant's direction and control ("Force Majeure"). In the case of the happening of any Force Majeure event, the time for completion of the Services will be extended accordingly and proportionately by the City, in writing. Lack of labor, supplies, materials, or the cost of any of the foregoing shall not be deemed a Force Majeure event.

3.3. The existence of this Agreement between the City and Consultant shall not be construed as the City's promise or assurance that Consultant will be retained for future services beyond the Scope of Work described herein.

3.4. Consultant shall maintain the confidentiality of any confidential information that is exempt from disclosure under state or federal law to which Consultant may have access by reason of this Agreement. Consultant warrants that Consultant's employees assigned to the Services provided in this Agreement shall be clearly instructed to maintain this confidentiality. All agreements with respect to confidentiality shall survive the termination or expiration of this Agreement.

Section 4. Compensation

4.1. Except as otherwise set forth in this **Section 4**, the City agrees to pay Consultant on a time and materials basis, guaranteed not to exceed _____ DOLLARS (\$_____), for performance of the Services ("Compensation Amount"). Any compensation in excess of the Compensation Amount will require an express written Addendum to be executed between the City and Consultant. Consultant's Rate Schedule is set forth in **Exhibit B**, attached hereto and incorporated by reference herein.

4.2. During the course of Consultant's performance, if the City, through its Project Manager, specifically requests Consultant to provide additional services that are beyond the Scope of Work described on **Exhibit A**, Consultant shall provide such additional services and bill the City at the hourly rates outlined on Consultant's Rate Schedule, as set forth in **Exhibit B**. Any Additional work beyond the Scope of Work, or any compensation above the amount shown in **Subsection 4.1**, requires a written Addendum executed in compliance with the provisions of **Section 16**.

4.3. Except for amounts withheld by the City pursuant to this Agreement, Consultant will be paid for Services for which an itemized invoice is received by the City within thirty (30) days of receipt, unless the City disputes such invoice. In that instance, the undisputed portion of the invoice will be paid by the City within the above timeframe. The City will set forth its reasons for the disputed claim amount and make good faith efforts to resolve the invoice dispute with Consultant as promptly as is reasonably possible.

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

4.5. Consultant's Compensation Amount and Rate Schedule are all inclusive and include, but are not limited to, all work-related costs, expenses, salaries or wages, plus fringe benefits and contributions, including payroll taxes, workers compensation insurance, liability insurance, profit, pension benefits and similar contributions and benefits, technology and/or software charges, licensing, trademark, and/or copyright costs, office expenses, travel expenses, mileage, and all other indirect and overhead charges, including, but not limited to, the recently enacted Oregon Corporate Activity Tax (CAT).

Section 5. City's Rights and Responsibilities

5.1. The City will designate a Project Manager to facilitate day-to-day communication between Consultant and the City, including timely receipt and processing of invoices, requests for information, and general coordination of City staff to support the Project.

5.2. Award of this contract is subject to budget appropriation. Funds are approved for Fiscal Year 2022-23. If not completed within this fiscal year, funds may not be appropriated for the next fiscal year. The City also reserves the right to terminate this contract early, as described in **Section 14**.

Section 6. City's Project Manager

The City's Project Manager is Kris Ammerman. The City shall give Consultant prompt written notice of any re-designation of its Project Manager.

Section 7. Consultant's Project Manager

Consultant's Project Manager is _____. In the event that Consultant's designated Project Manager is changed, Consultant shall give the City prompt written notification of such re-designation. Recognizing the need for consistency and knowledge in the administration of the Project, Consultant's Project Manager will not be changed without the written consent of the City, which consent shall not be unreasonably withheld. In the event the City receives any communication from Consultant that is not from Consultant's designated Project Manager, the City may request verification by Consultant's Project Manager, which verification must be promptly furnished.

Section 8. Project Information

Except for confidential information designated by the City as information not to be shared, Consultant agrees to share Project information with, and to fully cooperate with, those corporations, firms, contractors, public utilities, governmental entities, and persons involved in or associated with the Project. No information, news, or press releases related to the Project, whether made to representatives of newspapers, magazines, or television and radio stations, shall be made without the written authorization of the City's Project Manager.

Section 9. Subcontractors and Assignments

9.1. Unless expressly authorized in **Exhibit A** or **Section 10** of this Agreement, Consultant shall not subcontract with others for any of the Services prescribed herein. Consultant shall not assign any of Consultant's rights acquired hereunder without obtaining prior written approval from the City, which approval may be granted or denied in the City's sole discretion. Some Services may be performed by persons other than Consultant, provided Consultant advises the City of the names of such subcontractors and the work which they intend to perform, and the City specifically agrees in writing to such subcontracting. Consultant acknowledges such work will be provided to the City pursuant to a subcontract(s) between Consultant and subcontractor(s) and no privity of contract exists between the City and the subcontractor(s). Unless otherwise specifically provided by this Agreement, the City incurs no liability to third persons for payment of any compensation provided herein to Consultant. Any attempted assignment of this Agreement without the written consent of the City shall be void. Except as otherwise specifically agreed, all costs for work performed by others on behalf of Consultant shall not be subject to additional reimbursement by the City.

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

9.3. Consultant shall include this Agreement by reference in any subcontract and require subcontractors to perform in strict compliance with this Agreement.

Section 10. Consultant Is Independent Contractor

10.1. Consultant is an independent contractor for all purposes and shall be entitled to no compensation other than the Compensation Amount provided for under **Section 4** of this Agreement. Consultant will be solely responsible for determining the manner and means of accomplishing the end result of Consultant's Services. The City does not have the right to control or interfere with the manner or method of accomplishing said Services. The City, however, will have the right to specify and control the results of Consultant's Services so such Services meet the requirements of the Project.

10.2. Consultant may request that some consulting services be performed on the Project by persons or firms other than Consultant, through a subcontract with Consultant. Consultant acknowledges that if such services are provided to the City pursuant to a subcontract(s) between Consultant and those who provide such services, Consultant may not utilize any subcontractor(s), or in any way assign its responsibility under this Agreement, without first obtaining the express written consent of the City, which consent may be given or denied in the City's sole discretion. For all Services performed under subcontract to Consultant, as approved by the City, Consultant shall only charge the compensation rates shown on the approved Rate Schedule (**Exhibit B**). Rate schedules for named or unnamed subcontractors, and Consultant markups of subcontractor billings, will only be recognized by the City as set forth in Consultant's Rate Schedule, unless documented and

approved, in writing, by the City pursuant to a modification to Consultant's Rate Schedule, per **Section 16** of this Agreement. In all cases, processing and payment of billings from subcontractors is solely the responsibility of Consultant.

10.3. Consultant shall be responsible for, and defend, indemnify, and hold the City harmless against, any liability, cost, or damage arising out of Consultant's use of such subcontractor(s) and subcontractor's negligent acts, errors, or omissions. Unless otherwise agreed to, in writing, by the City, Consultant shall require that all of Consultant's subcontractors also comply with, and be subject to, the provisions of this **Section 10** and meet the same insurance requirements of Consultant under this Agreement.

Section 11. Consultant Responsibilities

11.1. Consultant must make prompt payment for any claims for labor, materials, or services furnished to Consultant by any person in connection with this Agreement as such claims become due. Consultant shall not permit any liens or claims to be filed or prosecuted against the City on account of any labor or material furnished to or on behalf of Consultant. If Consultant fails, neglects, or refuses to make prompt payment of any such claim, the City may, but shall not be obligated to, pay such claim to the person furnishing the labor, materials, or services and offset the amount of the payment against funds due or to become due to Consultant under this Agreement. The City may also recover any such amounts directly from Consultant.

11.2. Consultant must comply with all applicable Oregon and federal wage and hour laws, including BOLI wage requirements, if applicable. Consultant shall make all required workers compensation and medical care payments on time. Consultant shall be fully responsible for payment of all employee withholdings required by law, including but not limited to taxes, including payroll, income, Social Security (FICA), and Medicaid. Consultant shall also be fully responsible for payment of salaries, benefits, taxes, Industrial Accident Fund contributions, and all other charges on account of any employees. Consultant shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. All costs incident to the hiring of assistants or employees shall be Consultant's responsibility. Consultant shall defend, indemnify, and hold the City harmless from claims for payment of all such expenses.

11.3. No person shall be discriminated against by Consultant or any subcontractor in the performance of this Agreement on the basis of sex, gender, race, color, creed, religion, marital status, age, disability, sexual orientation, gender identity, or national origin. Any violation of this provision shall be grounds for cancellation, termination, or suspension of the Agreement, in whole or in part, by the City. References to "subcontractor" mean a subcontractor at any tier.

Section 12. Indemnity

12.1. Indemnification. Consultant acknowledges responsibility for liability arising out of the performance of this Agreement, and shall defend, indemnify, and hold the City harmless from any and all liability, settlements, loss, costs, and expenses in connection with any action, suit, or claim resulting or allegedly resulting from Consultant's negligent acts, omissions, errors, or willful or reckless misconduct pursuant to this Agreement, or from Consultant's failure to perform its

responsibilities as set forth in this Agreement. The review, approval, or acceptance by the City, its Project Manager, or any City employee of documents or other work performed, prepared, or submitted by Consultant shall not be considered a negligent act, error, omission, or willful misconduct on the part of the City, and none of the foregoing shall relieve Consultant of its responsibility to perform in full conformity with the City's requirements, as set forth in this Agreement, and to indemnify the City as provided above and to reimburse the City for any and all costs and damages suffered by the City as a result of Consultant's negligent performance of this Agreement, failure of performance hereunder, violation of state or federal laws, or failure to adhere to the standards of performance and care described in **Subsection 12.2**. Consultant shall defend the City (using legal counsel reasonably acceptable to the City) against any claim that alleges negligent acts, omissions, errors, or willful or reckless misconduct by Consultant. As used herein, the term "Consultant" applies to Consultant and its own agents, employees, and suppliers, and to all of Consultant's subcontractors, including their agents, employees, and suppliers.

12.2. Standard of Care. In the performance of the Services, Consultant agrees to use at least that degree of care and skill exercised under similar circumstances by reputable members of Consultant's profession practicing in the Portland metropolitan area. Consultant will re-perform any Services not meeting this standard without additional compensation. Consultant's re-performance of any Services, even if done at the City's request, shall not be considered as a limitation or waiver by the City of any other remedies or claims it may have arising out of Consultant's failure to perform in accordance with the applicable standard of care of this Agreement and within the prescribed timeframe.

Section 13. Insurance

13.1. Insurance Requirements. Consultant shall maintain insurance coverage acceptable to the City in full force and effect throughout the term of this Agreement. Such insurance shall cover all risks arising directly or indirectly out of Consultant's activities or work hereunder. Any and all agents, contractors, or subcontractors with which Consultant contracts to work on the Services must have insurance that conforms to the insurance requirements in this Agreement. Additionally, if a subcontractor is an engineer, architect, or other professional, Consultant must require the subcontractor to carry Professional Errors and Omissions insurance and must provide to the City proof of such coverage. The amount of insurance carried is in no way a limitation on Consultant's liability hereunder. The policy or policies maintained by Consultant shall provide at least the following minimum limits and coverages at all times during performance under this Agreement:

13.1.1. Commercial General Liability Insurance. Consultant and all subcontractors shall obtain, at each of their own expense, and keep in effect during the term of this Agreement, comprehensive Commercial General Liability Insurance covering Bodily Injury and Property Damage, written on an "occurrence" form policy. This coverage shall include broad form Contractual Liability insurance for the indemnities provided under this Agreement and shall be for the following minimum insurance coverage amounts: The coverage shall be in the amount of **\$2,000,000** for each occurrence and **\$3,000,000** general aggregate and shall include Products-Completed Operations Aggregate in the minimum amount of **\$2,000,000** per occurrence, Fire Damage (any one fire) in the minimum amount of **\$50,000**, and Medical

Expense (any one person) in the minimum amount of **\$10,000**. All of the foregoing coverages must be carried and maintained at all times during this Agreement.

13.1.2. Professional Errors and Omissions Coverage. Consultant agrees to carry Professional Errors and Omissions Liability insurance on a policy form appropriate to the professionals providing the Services hereunder with a limit of no less than **\$2,000,000** per claim. Consultant shall maintain this insurance for damages alleged to be as a result of errors, omissions, or negligent acts of Consultant. Such policy shall have a retroactive date effective before the commencement of any work by Consultant on the Services covered by this Agreement, and coverage will remain in force for a period of at least three (3) years after termination of this Agreement.

13.1.3. Business Automobile Liability Insurance. If Consultant or any subcontractors will be using a motor vehicle in the performance of the Services herein, Consultant shall provide the City a certificate indicating that Consultant and its subcontractors have business automobile liability coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than **\$2,000,000**.

13.1.4. Workers Compensation Insurance. Consultant, its subcontractors, and all employers providing work, labor, or materials under this Agreement that are subject employers under the Oregon Workers Compensation Law shall comply with ORS 656.017, which requires them to provide workers compensation coverage that satisfies Oregon law for all their subject workers under ORS 656.126. Out-of-state employers must provide Oregon workers compensation coverage for their workers who work at a single location within Oregon for more than thirty (30) days in a calendar year. Consultants who perform work without the assistance or labor of any employee need not obtain such coverage. This shall include Employer's Liability Insurance with coverage limits of not less than **\$500,000** each accident.

13.1.5. Insurance Carrier Rating. Coverages provided by Consultant and its subcontractors must be underwritten by an insurance company deemed acceptable by the City, with an AM Best Rating of A or better. The City reserves the right to reject all or any insurance carrier(s) with a financial rating that is unacceptable to the City.

13.1.6. Additional Insured and Termination Endorsements. The City will be named as an additional insured with respect to Consultant's liabilities hereunder in insurance coverages. Additional Insured coverage under Consultant's Commercial General Liability, Automobile Liability, and Excess Liability Policies, as applicable, will be provided by endorsement. Additional insured coverage shall be for both ongoing operations via ISO Form CG 2010 or its equivalent, and products and completed operations via ISO Form CG 2037 or its equivalent. Coverage shall be Primary and Non-Contributory. Waiver of Subrogation endorsement via ISO Form CG 2404 or its equivalent shall be provided. The following is included as additional insured: "The City of Wilsonville, its elected and appointed officials, officers, agents, employees, and volunteers." An endorsement shall also be provided requiring the insurance carrier to give the City at least thirty (30) days' written notification of any termination or major modification of the insurance policies required

hereunder. Consultant must be an additional insured on the insurance policies obtained by its subcontractors performing work on the Services contemplated under this Agreement.

13.1.7. Certificates of Insurance. As evidence of the insurance coverage required by this Agreement, Consultant shall furnish a Certificate of Insurance to the City. This Agreement shall not be effective until the required certificates and the Additional Insured Endorsements have been received and approved by the City. Consultant agrees that it will not terminate or change its coverage during the term of this Agreement without giving the City at least thirty (30) days' prior advance notice and Consultant will obtain an endorsement from its insurance carrier, in favor of the City, requiring the carrier to notify the City of any termination or change in insurance coverage, as provided above.

13.2. Primary Coverage. The coverage provided by these policies shall be primary, and any other insurance carried by the City is excess. Consultant shall be responsible for any deductible amounts payable under all policies of insurance. If insurance policies are "Claims Made" policies, Consultant will be required to maintain such policies in full force and effect throughout any warranty period.

Section 14. Early Termination; Default

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

14.1.1. By mutual written consent of the parties;

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

14.1.3. By Consultant, effective upon seven (7) days' prior written notice in the event of substantial failure by the City to perform in accordance with the terms through no fault of Consultant, where such default is not cured within the seven (7) day period by the City. Withholding of disputed payment is not a default by the City.

14.2. If the City terminates this Agreement, in whole or in part, due to default or failure of Consultant to perform Services in accordance with the Agreement, the City may procure, upon reasonable terms and in a reasonable manner, services similar to those so terminated. In addition to any other remedies the City may have, both at law and in equity, for breach of contract, Consultant shall be liable for all costs and damages incurred by the City as a result of the default by Consultant, including, but not limited to all costs incurred by the City in procuring services from others as needed to complete this Agreement. This Agreement shall be in full force to the extent not terminated by written notice from the City to Consultant. In the event of a default, the City will provide Consultant with written notice of the default and a period of ten (10) days to cure the default. If Consultant notifies the City that it wishes to cure the default but cannot, in good faith, do so within the ten (10) day cure period provided, then the City may elect, in its sole discretion, to extend the cure period to an agreed upon time period, or the City may elect to terminate this Agreement and seek remedies for the default, as provided above.

14.3. If the City terminates this Agreement for its own convenience not due to any default by Consultant, payment of Consultant shall be prorated to, and include the day of, termination and shall be in full satisfaction of all claims by Consultant against the City under this Agreement.

14.4. Termination under any provision of this Section shall not affect any right, obligation, or liability of Consultant or the City that accrued prior to such termination. Consultant shall surrender to the City items of work or portions thereof, referred to in **Section 18**, for which Consultant has received payment or the City has made payment.

Section 15. Suspension of Services

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

Section 16. Modification/Addendum

Any modification of the provisions of this Agreement shall not be enforceable unless reduced to writing and signed by both the City and Consultant. A modification is a written document, contemporaneously executed by the City and Consultant, which increases or decreases the cost to the City over the agreed Compensation Amount in **Section 4** of this Agreement, or changes or modifies the Scope of Work or the time for performance. No modification shall be binding or effective until executed, in writing, by both Consultant and the City. In the event Consultant receives any communication of whatsoever nature from the City, which communication Consultant contends gives rise to any modification of this Agreement, Consultant shall, within five (5) days after receipt, make a written request for modification to the City's Project Manager in the form of an Addendum. Consultant's failure to submit such written request for modification in the form of an Addendum shall be the basis for refusal by the City to treat said communication as a basis for modification or to allow such modification. In connection with any modification to this Agreement affecting any change in price, Consultant shall submit a complete breakdown of labor, material, equipment, and other costs. If Consultant incurs additional costs or devotes additional time on Project tasks, the City shall be responsible for payment of only those additional costs for which it has agreed to pay under a signed Addendum. To be enforceable, the Addendum must describe with particularity the nature of the change, any delay in time the Addendum will cause, or any increase or decrease in the Compensation Amount. The Addendum must be signed and dated by both Consultant and the City before the Addendum may be implemented.

Section 17. Access to Records

The City shall have access, upon request, to such books, documents, receipts, papers, and records of Consultant as are directly pertinent to this Agreement for the purpose of making audit, examination,

excerpts, and transcripts during the term of this Agreement and for a period of four (4) years after termination of the Agreement, unless the City specifically requests an extension. This clause shall survive the expiration, completion, or termination of this Agreement.

Section 18. Property of the City

18.1. Originals or certified copies of the original work forms, including but not limited to documents, drawings, tracings, surveying records, mylars, spreadsheets, charts, graphs, modeling, data generation, papers, diaries, inspection reports, and photographs, performed or produced by Consultant under this Agreement shall be the exclusive property of the City and shall be delivered to the City prior to final payment. Any statutory or common law rights to such property held by Consultant as creator of such work shall be conveyed to the City upon request without additional compensation.

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

Section 19. Notices

Any notice required or permitted under this Agreement shall be in writing and shall be given when actually delivered in person or forty-eight (48) hours after having been deposited in the United States mail as certified or registered mail, addressed to the addresses set forth below, or to such other address as one party may indicate by written notice to the other party.

To City: City of Wilsonville
Attn: Kris Ammerman, Parks & Recreation Director
29799 SW Town Center Loop East
Wilsonville, OR 97070

To Consultant: _____
Attn: _____

Section 20. Miscellaneous Provisions

20.1. Integration. This Agreement, including all exhibits attached hereto, contains the entire and integrated agreement between the parties and supersedes all prior written or oral discussions, representations, or agreements. In case of conflict among these or any other documents, the provisions of this Agreement shall control, and the terms most favorable to the City, within the City’s sole discretion, will apply.

20.2. Legal Effect and Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors, and assigns. This Agreement may be enforced by an action at law or in equity.

20.3. No Assignment. Consultant may not assign this Agreement, nor delegate the performance of any obligations hereunder, unless agreed to in advance and in writing by the City.

20.4. Adherence to Law. In the performance of this Agreement, Consultant shall adhere to all applicable federal, state, and local laws (including the Wilsonville Code and Public Works Standards), including but not limited to laws, rules, regulations, and policies concerning employer and employee relationships, workers compensation, and minimum and prevailing wage requirements. Any certificates, licenses, or permits that Consultant is required by law to obtain or maintain in order to perform the Services described on **Exhibit A**, shall be obtained and maintained throughout the term of this Agreement.

20.5. Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Oregon, regardless of any conflicts of laws. All contractual provisions required by ORS Chapters 279A, 279B, 279C, and related Oregon Administrative Rules to be included in public agreements are hereby incorporated by reference and shall become a part of this Agreement as if fully set forth herein.

20.6. Jurisdiction. Jurisdiction and venue for any dispute will be in Clackamas County Circuit Court.

20.7. Legal Action/Attorney Fees. If a suit, action, or other proceeding of any nature whatsoever (including any proceeding under the U.S. Bankruptcy Code) is instituted in connection with any controversy arising out of this Agreement or to interpret or enforce any rights or obligations hereunder, the prevailing party shall be entitled to recover attorney, paralegal, accountant, and other expert fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, as determined by the court or body at trial or on any appeal or review, in addition to all other amounts provided by law. If the City is required to seek legal assistance to enforce any term of this Agreement, such fees shall include all of the above fees, whether or not a proceeding is initiated. Payment of all such fees shall also apply to any administrative proceeding, trial, and/or any appeal or petition for review.

20.8. Nonwaiver. Failure by either party at any time to require performance by the other party of any of the provisions of this Agreement shall in no way affect the party's rights hereunder to enforce the same, nor shall any waiver by the party of the breach hereof be held to be a waiver of any succeeding breach or a waiver of this nonwaiver clause.

20.9. Severability. If any provision of this Agreement is found to be void or unenforceable to any extent, it is the intent of the parties that the rest of the Agreement shall remain in full force and effect, to the greatest extent allowed by law.

20.10. Modification. This Agreement may not be modified except by written instrument executed by Consultant and the City.

20.11. Time of the Essence. Time is expressly made of the essence in the performance of this Agreement.

20.12. Calculation of Time. Except where the reference is to business days, all periods of time referred to herein shall include Saturdays, Sundays, and legal holidays in the State of Oregon, except that if the last day of any period falls on any Saturday, Sunday, or legal holiday observed by the City, the period shall be extended to include the next day which is not a Saturday, Sunday, or legal holiday. Where the reference is to business days, periods of time referred to herein shall exclude Saturdays, Sundays, and legal holidays observed by the City. Whenever a time period is set forth in days in this Agreement, the first day from which the designated period of time begins to run shall not be included.

20.13. Headings. Any titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

20.14. Number, Gender and Captions. In construing this Agreement, it is understood that, if the context so requires, the singular pronoun shall be taken to mean and include the plural, the masculine, the feminine and the neuter, and that, generally, all grammatical changes shall be made, assumed, and implied to individuals and/or corporations and partnerships. All captions and paragraph headings used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Agreement.

20.15. Good Faith and Reasonableness. The parties intend that the obligations of good faith and fair dealing apply to this Agreement generally and that no negative inferences be drawn by the absence of an explicit obligation to be reasonable in any portion of this Agreement. The obligation to be reasonable shall only be negated if arbitrariness is clearly and explicitly permitted as to the specific item in question, such as in the case of where this Agreement gives the City “sole discretion” or the City is allowed to make a decision in its “sole judgment.”

20.16. Other Necessary Acts. Each party shall execute and deliver to the other all such further instruments and documents as may be reasonably necessary to carry out this Agreement in order to provide and secure to the other parties the full and complete enjoyment of rights and privileges hereunder.

20.17. Interpretation. As a further condition of this Agreement, the City and Consultant acknowledge that this Agreement shall be deemed and construed to have been prepared mutually by each party and it shall be expressly agreed that any uncertainty or ambiguity existing therein shall not be construed against any party. In the event that any party shall take an action, whether judicial or otherwise, to enforce or interpret any of the terms of the Agreement, the prevailing party shall be entitled to recover from the other party all expenses which it may reasonably incur in taking such action, including attorney fees and costs, whether incurred in a court of law or otherwise.

20.18. Entire Agreement. This Agreement and all documents attached to this Agreement represent the entire agreement between the parties.

20.19. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original Agreement but all of which together shall constitute one and the same instrument.

20.20. Authority. Each party signing on behalf of Consultant and the City hereby warrants actual authority to bind their respective party.

The Consultant and the City hereby agree to all provisions of this Agreement.

CONSULTANT:

CITY:

CITY OF WILSONVILLE

By: _____

By: _____

Print Name: _____

Print Name: _____

As Its: _____

As Its: _____

EIN/Tax I.D. No. _____

APPROVED AS TO FORM:

Ryan Adams, Assistant City Attorney
City of Wilsonville, Oregon

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EXHIBIT A SCOPE OF WORK

Consultant will: 1) prepare an Art Tech Campus Programming Analysis that includes a phasing plan, cost estimates, and preliminary design; 2) provide interim and final design of building.

A successful Programming Analysis will:

- Address the current and future needs of the Parks and Recreation Department
- Address programming needs based on data gathered during the 2018 Parks Master Planning Process
- Provide options for expansion of programs and services provided to the community by the Parks and Recreation Department
- Improve efficiency through consolidation, organization, and layout
- Incorporate sustainability and green energy technology
- Follow all City and State requirements
- Provide information for funding decisions and project timing

Consultant will complete a study to examine potential reuses of the Art-Tech campus. Consultant will work with the City and stakeholders to identify and assess a wide variety of potential future building uses including but not limited to:

- Parks and Recreation Administrative office space
- Recreation/Fitness class space
- Teen programming space
- Programmable community space
- Community Arts Center
- Potential to incorporate small scale performing arts space
- Phased combination of any of the above or other potential uses

Consultant will prepare a programming analysis, draft conceptual plans, phasing plans, cost estimates, and preliminary design for the campus. The key elements will guide decision makers regarding recommended layout and uses, budgets, necessary capital improvements, and recommended construction phasing.

The programming analysis must provide a clear understanding and vision of the site, including opportunities, and challenges. The programming analysis must also create a "picture" of the interim and long-term layout, uses, and activities feasible for the property.

A. Project Orientation/Start Up

1. Coordinate with City of Wilsonville Parks and Recreation Department management, Project Manager, City Facility Projects Team, and other identified individuals.
2. Provide a schedule outlining milestones, projected timelines, and deliverables.
3. Modify Scope of Work as needed to meet needs of the Project.

B. Site Review

1. Review sites and facilities currently being used.
2. Review the 2018 Parks and Recreation Master Plan.
3. Conduct site visits to document and map existing conditions to prepare a site assessment.
4. Help to identify stakeholders.
5. Conduct interviews with stakeholders identified, including but not limited to Parks and Recreation Department personnel.
6. Determine area needs for adequate programming and event space, office space, meeting rooms, breakrooms,
7. Other mutually agreed upon review subjects.

C. Conceptual Designs/Cost Estimates (maximum three alternative concepts)

1. Prepare report of findings from Section B. Site Review.
2. Prepare designs and management analysis with phasing recommendations, timetables, and cost estimates for each concept. Cost estimates shall include soft cost and escalation as well as assumptions for each.

D. Preliminary Design/Cost Estimate

1. Develop preliminary plans, construction phasing plan, and cost estimate for selected alternative based on results of Coordination and Stakeholder Meetings.
2. Create architectural renderings of selected alternative.

E. Coordination Meetings

1. Meeting with Parks and Recreation Department Staff and City Facility Projects Team to review results of study, conceptual drawings, and comments from interviews to determine next steps.

F. Stakeholder Meetings

1. Develop agenda(s) and desired meeting outcomes, prepare all materials for display and handouts, attend stakeholder meetings, and document outcome results from meeting and distribute findings.

G. Project Deliverables

1. Deliver final versions of all reports, plans, estimates, and supporting information.
2. Digital copies of all reports and supporting documentation to be delivered in Word format; copies of all conceptual and preliminary designs to be delivered in AutoCAD compatible format; copies of spreadsheets, budgets, and related supporting financial data to be delivered in Excel compatible format.