



# **REQUEST FOR PROPOSAL**

## **PROFESSIONAL SERVICES**

### *Market Feasibility Study for Year-Round Sport/Event Facility with Possible Lodging Property*

**ADVERTISEMENT DATE: November 15, 2019**

**Proposals due: January 7, 2020 no later than 2:00 p.m.**

Proposals must be sealed in an opaque envelope, plainly marked as follows: "RFP – Market Feasibility Study" and sent to the address below. Include the name and address of the Proposer.

Proposers must submit eight (8) printed sets of the Proposal and one (1) digital, electronic-file version on either a compact disc (CD) or a flash "thumb" drive.

Electronically mailed or faxed Proposals will not be accepted.

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

**Address Proposals to:**

City of Wilsonville  
Attn: Brian Stevenson, Parks and Recreation Program Manager  
29600 SW Park Place  
Wilsonville, OR 97070



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**REQUEST FOR PROPOSAL**  
PROFESSIONAL SERVICES  
*Market Feasibility Study for Year-Round  
Sport/Event Facility  
with Possible Lodging Property*

**1. PROJECT DESCRIPTION**

**A. Summary of the Project**

The City of Wilsonville, Oregon, invites Proposals from qualified individuals or organizations (“Proposer”) to examine the feasibility of a hybrid facility capable of hosting sport tournaments, entertainment, events, and conferences. Consideration should also be given to the addition of lodging as part of event facility development. The study is part of the City’s ‘Explore Wilsonville’ tourism-development strategy.

As a City with a range of two- to four-star lodging-property options that provide approximately 600 hotel rooms located on the dual edge of the Portland metro area and “Oregon Agriculture/Bicycle/Wine Country”, Wilsonville provides easy access to both urban and rural attractions. Hotel demand peaks in the summer; however, there is significant opportunity for growth in the remaining three seasons.

In the Feasibility Study, the City is looking for well thought out projections of demand for indoor space that would result in new overnight transient visitors. This analysis should include recommendations of what sports, events, and conferences have the most potential (facility revenue, overnight visitors and overall economic impact), what resources would be required to attract these users, and what the projected direct and indirect rate of return is for each opportunity including economic impact. Anticipating that multiple sports, events and conferences will be cited as potential opportunities, insight regarding efficient use of space and resources is also welcomed.

**B. Scope of Work**

Following is a list of the desired services. The City will consider input from Proposer as to other suggested services to be included in the Feasibility Study Scope of Work. These services should be listed as *optional* and *additional* in the submission with associated costs clearly delineated separately in the budget.

***Market Demand Analysis***

1. Analyze regional economic and demographic characteristics. Include current and future growth market trends.
2. Review competitive facilities within the region to determine available market share.
3. Determine if an overnight lodging property will improve market position, occupancy and use of event facility and whether it is necessary to meet demand caused by venue. Evaluate the economic opportunity of a lodging property for the City.

4. Provide three case studies of successful projects in the western part of the United States in similarly sized cities.
5. Conduct demand analysis:
  - a. Conduct Primary Market Research for event facility as a stand-alone and with lodging.
  - b. Identify demand generators and potential users of a facility.

#### ***Economic Feasibility Study***

1. Financial projection:
  - a. Operating revenue and expense (include operations and maintenance)
  - b. Models of operation and ownership for similar facilities
  - c. Debt service
2. Identify financing constraints and opportunities in current market including specific uses of City Urban Renewal, general obligation bonds and other financing mechanisms.
3. Project economic impact:
  - a. Project impact on hotel room nights given current inventory
  - b. Project impact on hotel room nights with an added lodging property
  - c. Project tax revenue increase to the City and other jurisdictions
  - d. Project impact on city restaurants and retailers
  - e. Project impact on direct and indirect jobs created

#### ***Competitive Analysis***

1. Facility recommendation:
  - a. Determine what type and size of facility could be supported
2. Recommendations on the best potential sites for the facility which shall include analysis of location factors consistent with existing zoning plans and cohesion with existing or planned adjacent uses.
3. Project facility's potential utilization.
4. Determine cost of project.

#### ***Community Engagement and Findings Presentations***

1. Complete outreach and information gathering from local sport organizations and community members.
2. Present the findings to the Wilsonville Tourism Promotion Committee and a similar presentation to Wilsonville City Council.

### **C. Term and Budget of Project**

The Contract awarded under this RFP is for an amount not to exceed \$100,000.

## **D. 'Explore Wilsonville' and Community Description**

Originally adopted by City Council in May 2014, the *Wilsonville Tourism Development Strategy Plan* provided fieldwork research and a general blueprint for local area tourism promotion and destination marketing services, together with a set of recommendations for both short- and long-term actions.

The Committee prioritized key components of the Strategy Plan and is working through those elements via annual approval of the Plan that provides a larger five-year action plan and a more specific one-year Plan targeted for implementation the following fiscal year. Thus, the Strategy Plan is updated annually via a *Five-Year Action Plan* and an *Annual One-Year Implementation Plan for the Wilsonville Tourism Development Strategy Plan*) that acts as a business plan approved by the Tourism Promotion Committee and adopted by the City Council. This study is a component of that adopted strategy.

Other recently adopted master plans, including the Wilsonville Town Center Plan, call for redevelopment and entertainment options.

As one of Oregon's fastest-growing cities for the past two decades, Wilsonville now has a population over 25,000 and hosts 21,000 jobs that generate a \$1.2 billion annual payroll, mostly in high-tech engineering and manufacturing jobs. Significant employers include Siemens, Mentor Graphics, Sysco Food Services, Collins Aerospace, TE Connectivity, SWIRE Coca Cola, Dealer Spike, DW Fritz Automation and FLIR. Notable residential developments include the 500-acre international-award winning Villebois urban village.

Education is a top community priority with the West Linn-Wilsonville School District rated as one of Oregon's top public school systems. Higher education facilities such as Clackamas Community College and Oregon Institute of Technology's "Oregon Tech" are also located in Wilsonville.

The City operates South Metro Area Regional Transit (SMART) which offers fixed-route, fare-free rides in town plus fare connections to TriMet's Westside Express Service (WES) commuter rail to Tualatin, Tigard and Beaverton and the entire Portland metro system to Canby and Salem/Keizer.

In a series of National Citizen Surveys conducted over the past six years, Wilsonville residents consistently score the quality of life and city services as some of the best in the U.S. Both residents and visitors rate Wilsonville's parks that include two regional parks featuring playing fields, recreation opportunities and natural areas, as attractive amenities. The Willamette River represents an incredible natural resource; approved plans include a new park development and improved river access. Currently, the City is planning for a new bike/pedestrian bridge over I-5 and the Willamette River that will connect with the Portland metro area Ice Age Tonquin Trail.

## **2. PROPOSER AND PROPOSAL REQUIREMENTS**

### **A. Developing Proposal**

Interested consultants shall prepare and submit Proposal in accordance with the requirements stated within this RFP. Adherence to these requirements will ensure a fair and objective analysis of submitted Proposals. Proposal 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.

## **B. Eligible Proposers**

The City of Wilsonville, Oregon, is requesting Proposals in order to select a qualified consultant, which may be individuals or organizations, to demonstrate their experience and qualifications in performing work directly related to the services required by responding to this Request for Proposal (RFP).

Technically, qualified Proposers are required:

1. To be able to demonstrate prior successful professional experience in multi-use facility feasibility studies and otherwise meet the requirements of this RFP.
2. If successful, a Proposer must acquire a City of Wilsonville business license.

## **C. Minimum Qualifications**

Qualities sought in the successful Proposer for the Feasibility Study of a hybrid facility capable of hosting sport tournaments, events, and conferences with a potential hotel addition include demonstrating skills and experience in the following:

1. Multi-Use Facility Development and Operation
2. Economic, Market & Financial Analysis
3. Strong understanding of current trends in the sport, conference and event industry.
4. Projects responsible for increased overnight lodging occupancy. Experience within the sport tourism industry is preferred.
5. Previous work with local government on tourism development and economic development.
6. Other Qualifications:
  - a. Possess a valid driver's license and ability to operate a motor vehicle;
  - b. Pass a criminal background check;
  - c. Acquire all required insurance coverage;
  - d. Provide documentation of ability to work weekends, holidays, and evening hours as business demands. Some overnight travel is required.

## **D. Proposal Format**

Proposals shall be typewritten, with a standard body text font (e.g., Calibri, Times New Roman, Garamond) of at least 12-point. Proposal shall be preferably double-sided and stapled once or bound in the upper left-hand corner. The City requests that submittal materials contain post-consumer recycled content and are readily recyclable. The City discourages the use of materials that cannot be readily recycled, such as PVC binders, spiral bindings, and plastic or glossy covers or dividers. One page is considered to be one side of a single 8 ½" x 11" sheet.

## **E. Proposal Content Specifications**

The Proposal should be organized to include the following information in the following order:

1. A signed cover letter stating the consultant/firm Proposer's desire to make an offer responsive to the RFP.
2. Consultant/firm name, address and specialty of the consultant/firm. Include the same for any sub-consultants included in the Proposal and provide a contact person for each one.
3. Names and descriptions of relative experience of each individual who will be assigned to this Proposal; resumes showing relevant experience are preferred.
4. Three (3) references for each individual or firm listed in the Proposal, including name, email address, and telephone number for one direct contact person for each reference.
5. A work plan explaining how the Proposer intends to address all of the tasks listed in the Scope of Work. Proposers are encouraged to suggest modifications or additions to the Scope of Work, but the Proposal should at least address all of the tasks defined in the Scope of Work. Specific items to consider addressing include:
  - a. The Proposer's understanding of the goals and objectives of the RFP and requested tasks and activities based on existing information.
  - b. Discuss the approach the Proposer will use to perform the tasks and activities identified in the Scope of Work.
6. Cost estimate for completing the Scope of Work. Include billable rates, also known as "Consultant's Rate Schedule" for any consultant proposed to work on the Project, along with any additional charges that might be incurred. Suggested additions or modifications to the Scope of Work should be budgeted separately as adds or deducts.
7. Listing of any exceptions to the City of Wilsonville Professional Services Agreement. *Please review the draft Professional Services Agreement, paying special attention to the City's insurance requirements.*
8. Additionally, the Proposal should include at least three (3) samples of tourism focused multi-use facilities, preferably facilities containing sports, events and conference capabilities that were prepared by the Proposer or members of the consultant team, along with a note of explanation about each sample product.

## **3. PROPOSAL SUBMISSION**

### **A. Proposal Due Date and Submission Requirements**

Interested Proposers shall submit eight (8) printed copies of their written Proposals and one (1) digital, electronic-file version on compact disc (CD) or flash "thumb drive" sealed in an opaque envelope, plainly marked "RFP - Market Feasibility Study" and include the name and address of the Proposer. Proposals shall be addressed and submitted to the following location by **2:00 p.m.** local time on **Tuesday, January 7, 2020:**

City of Wilsonville  
Attn: Brian Stevenson, Parks and Recreation Program Manager  
29600 SW Park Place  
Wilsonville, OR 97070

Proposals must arrive at the issuing office on or before the listed time and date due. Late Proposals will be returned unopened and without review. Electronically mailed or faxed Proposals will not be accepted.

## **B. RFP Questions or Change Requests**

A prospective Proposer may ask questions and/or request a change to any provision, specification, or contract term contained in the RFP documents by submitting a written request to either Mike McCarty, Parks & Recreation Director, or Brian Stevenson, Parks & Recreation Program Manager:

City of Wilsonville  
Attn: Mike McCarty  
29600 SW Park Place  
Wilsonville, OR 97070

OR via e-mail to

[mccarty@ci.wilsonville.or.us](mailto:mccarty@ci.wilsonville.or.us)

City of Wilsonville  
Attn: Brian Stevenson  
29600 SW Park Place  
Wilsonville, OR 97070

OR via e-mail to

[stevenson@ci.wilsonville.or.us](mailto:stevenson@ci.wilsonville.or.us)

All questions or change requests shall include “RFP Request – Tourism Services” in the subject line or written on the front of the envelope and submitted, in writing, by **2:00 p.m.** local time on **Friday, December 6, 2019**. Each question or request for change must specify the provisions, specifications, or contract terms of the RFP in question and contain reasons for the requested change and any proposed modifications in writing.

The City will evaluate questions and resolve all change requests submitted before the listed time and date due by **Friday, December 6, 2019**. Changes that are accepted by the City shall be issued in the form of an addendum to the RFP on **Friday, December 13, 2019**, which shall be published on the City website RFP section at [www.ci.wilsonville.or.us/rfps](http://www.ci.wilsonville.or.us/rfps).

## **4. PROPOSAL EVALUATION AND SELECTION**

### **A. Selection Review Committee**

All written Proposals received at the Parks and Recreation Admin Office by the deadline will be reviewed by a Selection Review Committee. The Selection Review Committee will be comprised of City staff. One or more finalists may be invited to an interview after the written Proposals have been reviewed. Each committee member will independently evaluate each Proposal in accordance with the criteria stated in the Proposal Requirements section of this RFP.

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’s tourism program.

## B. Written Evaluation

Based on his or her evaluation, each member of the Selection Review Committee will score each Proposal according to the following scoring criteria. Each member will rank, in descending order, each Proposal by total score.

### Written Proposal Evaluation Criteria and Scoring

<u>Criteria</u>	<u>Maximum Score</u>
Proposal Quality	25
Proposer's Experience/Demonstrated Results	25
Qualifications of Personnel	25
Value of Services Provided for Cost	25
Total Maximum Score	100 Points

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

## C. Explanation of Evaluation Criteria

Following are additional details on the Proposal evaluation criteria:

- **Proposal Quality:** Quality and creativity of the Proposal and points addressed in the Scope of Work, and the likelihood of achieving program objectives.
- **Proposer's Experience/Demonstrated Results:** Proposal team's experience and success with developing creative tourism-promotion and destination-marketing plans for other communities.
- **Qualifications of Personnel:** Prior professional experiences and work-products of consultant team members and how relevant to this Project.
- **Value of Services Provide for Cost:** The maximum services provided in relation to the fee charged and the value of the overall Project; the budget is reasonable and appropriate.

## D. Interview Evaluation

If determined to be necessary or desirable by the City, finalists from the written evaluation may be invited to participate in an additional interview evaluation process. The number of finalists will be determined by the Selection Review Committee. The interview evaluation process will provide an opportunity for Proposers to make a presentation to clarify their Proposal and for the Selection Review Committee to ask additional questions related to the Proposal and the Scope of Work. The City will notify finalists of the interview evaluation time and location and allow for a reasonable period of time for finalists to prepare presentations.

After the interviews, each member of the Selection Review Committee will re-evaluate and re-score each finalist interviewed according to the Evaluation Criteria. Each member will rank, in descending order, each interview by total score. 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 Proposer's substandard workmanship.

## **E. Successful Proposer Determination**

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

The Selection Review Committee shall 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 Tourism Services 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 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.

## **F. Award Protest**

A Proposer believing to have been adversely affected or aggrieved by the selection of the Successful Proposer may submit a protest to the City in accordance with OAR 137-047-0740. The protest must be in writing and submitted to:

City of Wilsonville  
Attn: Brian Stevenson, Parks and Recreation Program Manager  
29600 SW Park Place  
Wilsonville, OR 97070

OR via e-mail to

[steveson@ci.wilsonville.or.us](mailto:steveson@ci.wilsonville.or.us)

Award protests shall include "RFP Award Protest – Tourism Services" in the subject line or written on the front of the envelope. The written protest must be received by the City no later than **5:00 p.m.** local time on **January 28, 2020**. The protest should demonstrate that all higher ranked Proposers failed to meet the requirements of the RFP or are not qualified to perform the services described in the RFP. Protests received after the submittal deadline will not be considered.

No contract associated with the RFP will be awarded until any protests have been resolved. The City will evaluate and resolve all award protests submitted before the deadline within a reasonable time following receipt of the protest. The City will promptly issue a written decision on the protest to the Proposer who submitted the protest. If the City's written decision on the protest results in a change to the RFP, the City shall cancel the Notice of Intent to Award, revise the RFP documents accordingly, and solicit for new Proposals. The City's decision regarding the protest is final and concludes the administrative appeals process.

## 5. RFP SCHEDULE

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

Advertise Request for Proposals (RFP)	November 15, 2019
RFP Question or Change-Request Deadline	December 6, 2019 - 2:00 p.m.
RFP Addenda Issuance Deadline (if needed)	December 13, 2019
Proposals Due	January 7, 2020 - 2:00 p.m.
Evaluation of Proposals Complete	January 21, 2020
Notice of Intent to Award	January 22, 2020
Award Protest Deadline	January 28, 2020 - 2:00 p.m.
City Council Award Public Hearing	February 20, 2020 - 7:00 p.m.
Notice of Award	February 21, 2020

## 6. GENERAL RFP AND PROPOSAL INFORMATION

### A. RFP Documents

Request for Proposal (RFP) documents may be obtained at Wilsonville City Hall, located at 29799 SW Town Center Loop East, Wilsonville, Oregon 97070, or may be obtained electronically on the City website RFP section at [www.ci.wilsonville.or.us/rfps](http://www.ci.wilsonville.or.us/rfps). The City of Wilsonville shall not be held responsible for the delivery of the documents.

### B. Project Manager; City Contact

The City's Project Manager is the sole RFP point of contact for all questions, concerns, and protests. The Project Manager for this Project is:

Brian Stevenson  
Parks and Recreation Program Manager  
503-570-1525  
[stevenson@ci.wilsonville.or.us](mailto:stevenson@ci.wilsonville.or.us)

Access to the City's Project Manager for telephone calls, emails, or other communication will be unrestricted during the RFP preparation period up until **2:00 p.m.** local time on **December 6, 2019**. During this time Proposers are encouraged to ask as many questions as needed to prepare a viable Proposal. Questions submitted after **2:00 p.m.** local time on **December 6, 2019**, will not be addressed.

For the sake of fairness and to avoid the appearance of undue influence, Proposers are *not* to contact any City staff, City official or Committee member other than the Project Manager concerning this RFP. Contact with any other City staff, City official or Committee member 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 in writing via email or by addendum may be relied upon.

### **C. Changes to the RFP Solicitation by Addenda**

The City reserves the right to make changes to the RFP by written addendum by **December 13, 2019**, which shall be published on the City website RFP section at [www.ci.wilsonville.or.us/rfps](http://www.ci.wilsonville.or.us/rfps) and at the City's website Tourism Promotion Committee section at [www.ci.wilsonville.or.us/tourism](http://www.ci.wilsonville.or.us/tourism).

Prospective Proposers who have contacted the Project Manager and received confirmation of their interest in the RFP by email will be notified of changes to the RFP solicitation by addenda or the provision of answers to questions.

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 **December 13, 2019**, 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.

### **D. 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 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.

#### **E. Cancellation**

The City reserves the right to cancel this RFP or the contract award at any time before execution of the contract by both parties, if cancellation 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.

#### **F. 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. Electronically mailed or 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.

#### **G. 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.

#### **H. Proposer Certifications**

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

1. Proposer has carefully examined all RFP documents, including Appendix A – Tourism Promotion and Destination Marketing Professional Services Agreement, 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, Proposer certifies that Proposer is ready, willing, and able to comply with all terms of the attached Tourism Consultant Contract.
2. 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. Proposer accepts all of the terms of the City's Tourism Consultant Contract and warrants that Proposer will fully meet all of the insurance requirements contained therein. If Proposer wishes to amend or modify any terms of the Tourism Consultant Contract, such amendment or modification must be stated in particularity in the Proposal. Proposed changes to the draft Tourism Consultant Contract 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, 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. 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 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. 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. 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. Proposer has quality experience providing the types of services and duties as described within the Scope of Work of this RFP.
9. Proposer shall also certify Proposer's state of residence.

#### **I. 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 against minorities, women, or emerging small business enterprises in obtaining any required subcontracts.

#### **J. 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.

#### **K. 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. Finalists invited to participate in interview evaluations are responsible for scheduling and paying for their own travel arrangements. The City is not liable for any cost incurred by a Proposer in protesting any portion of the RFP documents or the City's selection decision.

#### **L. 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.

#### **M. 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.

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.

#### **N. 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 so worded 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.

#### **O. 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.

#### **P. Local and Federal Requirements**

The City of Wilsonville intends to select a consultant in accordance with Oregon law and the City's municipal code. Selection of a consultant under this process is not a guarantee of a contract award, nor is the award of a contract for any portion of the Work a guarantee of award of a contract for any subsequent work. All work is subject to budgetary and funding constraints of the City of Wilsonville.

The selected consultant shall comply with all federal, state, and local laws, regulations, executive orders, and ordinances applicable to the work under this contract, including, without limitation, the provisions of: (i) Title VI of the Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659.425; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations.

Proposer is subject to the Oregon Workers Compensation Law and shall comply with ORS 656.017, which requires the provision of Workers Compensation coverage for all employees working under this contract. The City of Wilsonville's programs, services, employment opportunities, and volunteer positions are open to all persons without regard to race, religion, color, national origin, sex, sexual orientation, gender identity, age, marital status, disability, or political affiliation.

Appendix A – City of Wilsonville standard professional services agreement (PSA)

Following is the City of Wilsonville's standard Professional Services Agreement (PSA) for contracting with a successful Proposer. A final negotiated Scope of Work (SOW) between City and Proposer is attached to the PSA as Exhibit A.

## Appendix A

### CITY OF WILSONVILLE

## PROFESSIONAL SERVICES AGREEMENT

### Market Feasibility Study for Year-Round Sport/Event Facility with Possible Lodging Property

This Professional Services Agreement for the Market Feasibility Study for Year-Round Sport/Event Facility with Possible Lodging Property (“Agreement”) is made and entered into on this \_\_\_\_ day of \_\_\_\_\_ (“Effective Date”) by and between the **City of Wilsonville**, a municipal corporation of the State of Oregon (hereinafter referred to as the “City”), and **Name of Proposer**, an Oregon list type of 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 1.1. Scope of Work

Contractor will perform the Market Feasibility Study (“Services”) as more particularly described in the Scope of Work attached hereto as Exhibit A and incorporated by reference herein, for the Market Feasibility Study for Year-Round Sport/Event Facility with Possible Lodging Property (“Project”).

##### Section 1.2. Term

The term of this Agreement shall be from the Effective Date until all services required to be performed hereunder (“Services”) are completed and accepted, or no later than June 30, 2021, whichever occurs first, unless earlier terminated in accordance herewith or an extension of time is agreed to, in writing, by the City.

##### Section 1.3. Consultant’s Services

1.4. Consultant shall diligently perform the Feasibility Study according to the requirements identified in the Scope of Work, attached hereto as **Exhibit A** and incorporated by reference herein.

1.5. All written documents prepared by Consultant in conjunction with the Services shall bear the signature, stamp, or initials of Consultant’s authorized Project Manager.

1.6. 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 for 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 1.7. Compensation**

1.8. Except as otherwise set forth in this Section, the City agrees to pay Consultant on a time and materials basis, guaranteed not to exceed ONE HUNDRED THOUSAND DOLLARS (\$100,000), for performance of the Services for the term of the Agreement ("Compensation Amount"). Any compensation in excess of the Compensation Amount will require an express written Addendum between the City and Consultant, executed in compliance with the provisions of Section 6.

1.9. Consultant's Compensation Amount is 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, office expenses, and all other indirect and overhead charges.

1.10. 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 Services described on Exhibit A, a written Addendum to this Agreement must be executed in compliance with the provisions of Section 6.

1.11. 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.

### **Section 1.12. City's Responsibilities**

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.

### **Section 1.13. City's Project Manager**

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

### **Section 1.14. 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 2. Subcontractors and Assignments**

2.1. Unless expressly authorized in **Exhibit A** or **Section 2.3** 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. References to "subcontractor" mean a subcontractor at any tier.

2.2. 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 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.

## **Section 2.3. Consultant Is Independent Contractor**

Consultant is an independent contractor for all purposes and shall be entitled to no compensation other than the Compensation Amount provided for under **Section 1.7** 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.

2.4. Consultant has requested 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. In all cases, processing and payment of billings from subcontractors is solely the responsibility of Consultant.

2.5. 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 2.3** and meet the same insurance requirements of Consultant under this Agreement.

### **Section 2.6. Consultant Responsibilities**

2.7. Consultant shall 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 subcontractor 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.

2.8. Consultant must comply with all applicable Oregon and federal wage and hour laws, including Bureau of Labor and Industries (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. Unless otherwise expressly set forth on **Exhibit A** as a reimbursable expense item not included in the Compensation Amount, specific costs associated with items set forth in this subsection shall be deemed as fully and conclusively included in the rate upon which Consultant's Compensation Amount is based.

2.9. 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.

### **Section 3. Indemnity and Insurance**

3.1. 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 3.2**. 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.

3.2. Standard of Care. In the performance of professional 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.

3.3. 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. The amount of insurance carried is in no way a limitation on Consultant's liability hereunder. The policy or policies of insurance maintained by Consultant shall provide at least the following minimum limits and coverages at all times during performance under this Agreement:

3.3.1. 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.

3.3.2. 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 thereafter.

3.3.3. 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**.

3.3.4. 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.

3.3.5. 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.

3.3.6. Additional Insured and Termination Endorsements. Additional Insured coverage under Consultant's Commercial General Liability, Automobile Liability, and Excess Liability Policy(ies), 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.

3.3.7. 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.

3.4. 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 4. Early Termination; Default**

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

4.1.1. By mutual written consent of the parties;

4.1.2. 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

4.1.3. 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.

4.2. 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.

4.3. 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.

4.4. 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 8**, for which Consultant has received payment or the City has made payment.

#### **Section 5. 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 6. 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 1.7** 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. 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 this Agreement.

**Section 7. 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 for a period of four (4) years, unless within that time the City specifically requests an extension. This clause shall survive the expiration, completion, or termination of this Agreement.

**Section 8. Property of the City**

All documents, reports, and research gathered or prepared by Consultant under this Agreement, including but not limited to spreadsheets, charts, graphs, drawings, modeling, maps, data generation, papers, diaries, and inspection reports, 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. Upon the City’s approval, and provided the City is identified in connection therewith, Consultant may include Consultant’s work in its promotional materials.

**Section 9. 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: Brian Stevenson  
29600 SW Park Place  
Wilsonville, OR 97070

To Consultant: \_\_\_\_\_  
Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## **Section 10. Miscellaneous Provisions**

10.1. 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 documents, the provisions of this Agreement shall control.

10.2. 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.

10.3. 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.

10.4. 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.

10.5. 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.

10.6. Jurisdiction. Venue for any dispute will be in Clackamas County Circuit Court.

10.7. 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.

10.8. 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.

10.9. 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.

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

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

10.12. 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.

10.13. 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.

10.14. 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.

10.15. 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.”

10.16. 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.

10.17. 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.

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

10.19. 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.

10.20. 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:**

\_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

As Its: \_\_\_\_\_

Employer I.D. No. \_\_\_\_\_

**CITY:**

CITY OF WILSONVILLE

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

As Its: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Amanda Guile-Hinman, Asst. City Attorney  
City of Wilsonville, Oregon