

RESOLUTION NO. 3173

A RESOLUTION OF THE CITY OF WILSONVILLE AUTHORIZING THE CITY MANAGER TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH CENTURY WEST ENGINEERING FOR ENGINEERING CONSULTING SERVICES FOR THE FISCAL YEAR 2025-2028 (FY25-28) STREET MAINTENANCE PROJECT (CAPITAL IMPROVEMENT PROJECT NO. 4014).

WHEREAS, the City has planned and budgeted for engineering design for Capital Improvement Project No. 4014, known as the FY25-28 Street Maintenance project (the Project); and,

WHEREAS, the City solicited proposals from qualified consulting firms that duly followed State of Oregon Public Contracting Rules and the City of Wilsonville Municipal Code; and,

WHEREAS, Century West Engineering submitted a proposal on September 10, 2024, and was subsequently evaluated and determined to be the most qualified consultant to perform the work; and,

WHEREAS, following the qualifications based selection process and under the direction of the City, a detailed scope of work was prepared, and the fee for the scope was negotiated and found to be acceptable and appropriate for the services to be provided.

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

Section 1. The procurement process for the Project duly followed Oregon Public Contracting Rules, and Century West Engineering has provided a responsive and responsible proposal for engineering consulting services.

Section 2. The City Council, acting as the Local Contract Review Board, authorizes the City Manager to enter into and execute, on behalf of the City of Wilsonville, a Professional Services Agreement with Century West Engineering for a not-to-exceed amount of \$409,709.60, which is substantially similar to **Exhibit A** attached hereto.

Section 3. Effective Date. This Resolution is effective upon adoption.

ADOPTED by the Wilsonville City Council at a regular meeting thereof this 2nd day of December 2024 and filed with the Wilsonville City Recorder this date.

Signed by:
Julie Fitzgerald
8A974AF3ADE042E...

JULIE FITZGERALD, MAYOR

ATTEST:

DocuSigned by:
Kimberly Veliz
E781DE10276B498...

Kimberly Veliz, City Recorder

SUMMARY OF VOTES:

Mayor Fitzgerald	YES
Council President Akervall	YES
Councilor Linville	YES
Councilor Berry	YES
Councilor Dunwell	YES

EXHIBIT:

A. FY25-28 Street Maintenance Professional Services Agreement

**EXHIBIT A
RESOLUTION NO. 3173**

Contract No. 252810
CIP No. 4014

**CITY OF WILSONVILLE
PROFESSIONAL SERVICES AGREEMENT**

This Professional Services Agreement (“Agreement”) for the 2025-28 Street Maintenance Design Project (“Project”) is made and entered into on _____, 2024 (“Effective Date”) by and between the **City of Wilsonville**, a municipal corporation of the State of Oregon (hereinafter referred to as the “City”), and **Century West Engineering Corporation**, an Oregon corporation (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. Contract Documents

This Contract includes and incorporates by reference all of the foregoing Recitals, all of the following additional “Contract Documents,” and any and all terms and conditions set forth in such Contract Documents: Request for Proposals for the 2025-28 Street Maintenance Design Project, dated August 7, 2024, including Plans and Details bound separately; Contractor’s Proposal submitted in response thereto; 2017 City of Wilsonville Public Works Standards; City of Wilsonville Special Provisions; Project Specific Special Provisions; Oregon Department of Transportation 2018 Oregon Standard Specifications for Construction; Special Provisions to ODOT Standards; and the provisions of Oregon Revised Statutes (ORS) 279C, as more particularly set forth in this Contract. Contractor must be familiar with all of the foregoing and comply with them. Any conflict or inconsistency between the Contract Documents shall be called to the attention of the City by Contractor before proceeding with affected work. All Contract Documents should be read in concert and Contractor is required to bring any perceived inconsistencies to the attention of the City before executing this Contract. In the event a provision of this Contract conflicts with standards or requirements contained in any of the foregoing Contract Documents, the provision that is more favorable to the City, as determined by the City, will apply.

Section 2. Scope of Work

Consultant shall diligently perform the design 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 3. 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, 2029, whichever occurs first, unless earlier terminated in accordance herewith or an extension of time is agreed to, in writing, by the City.

Section 4. Consultant’s Services

4.1. 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.

4.2. 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, but the City will not be responsible for any additional costs as a result of the Force Majeure event. Lack of labor, supplies, materials, or the cost of any of the foregoing shall not be deemed a Force Majeure event.

4.3. 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.

4.4. 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 5. Compensation

5.1. Except as otherwise set forth in this **Section 5**, the City agrees to pay Consultant on a time and materials basis, guaranteed not to exceed FOUR HUNDRED NINE THOUSAND SEVEN HUNDRED NINE DOLLARS AND SIXTY CENTS (\$409,709.60), 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.

5.2. 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 services beyond the Scope of Work, or any compensation above the amount shown in **Subsection 5.1**, requires a written Addendum executed in compliance with the provisions of **Section 18**.

5.3. 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.

5.4. 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**.

5.5. 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 Oregon Corporate Activity Tax (CAT).

Section 6. City’s Rights and Responsibilities

6.1. 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.

6.2. Award of this contract is subject to budget appropriation. Funds are approved for Fiscal Year 2024-25. 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 16**.

Section 7. City's Project Manager

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

Section 8. Consultant's Project Manager

Consultant's Project Manager is Joseph Jenkins. 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 9. 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 10. Duty to Inform

If at any time during the performance of this Agreement or any future phase of this Agreement for which Consultant has been retained, Consultant becomes aware of actual or potential problems, faults, or defects in the Project or Scope of Work, or any portion thereof; or of any nonconformance with federal, state, or local laws, rules, or regulations; or if Consultant has any objection to any decision or order made by the City with respect to such laws, rules, or regulations, Consultant shall give prompt written notice thereof to the City's Project Manager. Any delay or failure on the part of the City to provide a written response to Consultant shall neither constitute agreement with nor acquiescence to Consultant's statement or claim, nor constitute a waiver of any of the City's rights.

Section 11. Subcontractors and Assignments

11.1. Unless expressly authorized in **Exhibit A** or **Section 12** 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.

11.2. 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.

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

Section 12. Consultant Is Independent Contractor

12.1. Consultant is an independent contractor for all purposes and shall be entitled to no compensation other than the Compensation Amount provided for under **Section 5** 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.

12.2. 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 18** of this Agreement. In all cases, processing and payment of billings from subcontractors is solely the responsibility of Consultant.

12.3. 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 12** and meet the same insurance requirements of Consultant under this Agreement.

Section 13. Consultant Responsibilities

13.1. 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.

13.2. 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.

13.3. 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 14. Indemnity

14.1. 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 14.2**. For those claims based on professional liability (as opposed to general liability or automobile liability), Consultant shall not be required to provide the City's defense

but will be required to reimburse the City for the City's defense costs incurred in any litigation resulting from the negligent acts, omissions, errors, or willful or reckless misconduct by Consultant.

14.2. 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 15. Insurance

15.1. Insurance Requirements. Consultant must 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 or subcontractors with which Consultant contracts for any portion of 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 of this Agreement:

15.1.1. 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.

15.1.2. 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 work 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.

15.1.3. 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**.

15.1.4. 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.

15.1.5. 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.

15.1.6. 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 any of the Services contemplated under this Agreement.

15.1.7. 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.

15.2. 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 16. Early Termination; Default

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

16.1.1. By mutual written consent of the parties;

16.1.2. 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

16.1.3. 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.

16.2. 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, which agreed upon extension must be in writing and signed by the parties prior to the expiration of the cure period. Unless a written, signed extension has been fully executed by the parties, if Consultant fails to cure prior to expiration of the cure period, the Agreement is automatically terminated.

16.3. 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.

16.4. 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 20**, for which Consultant has received payment or the City has made payment.

Section 17. 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 18. 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 5** 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 19. 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 20. 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, tracings, maps, surveying records, mylars, modeling, data generation, papers, diaries, inspection reports, photographs, and any originals

or certified copies of the original work forms, if any, 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.

Section 21. 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: Jason Rice, P.E., Consulting Project Manager
29799 SW Town Center Loop East
Wilsonville, OR 97070

To Consultant: Century West Engineering
Attn: Joseph Jenkins
5500 Meadows Road, Suite 250
Lake Oswego, OR 97035

Section 22. Miscellaneous Provisions

22.1. 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.

22.2. 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.

22.3. 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.

22.4. 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.

22.5. 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.

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

22.7. 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.

22.8. 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.

22.9. 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.

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

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

22.12. 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.

22.13. 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.

22.14. 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.

22.15. 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.”

22.16. 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.

22.17. 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.

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

22.19. 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.

[Signatures on following page]

22.20. 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:

Century West Engineering Corporation

City of Wilsonville

By: _____

By: _____

Print Name: _____

Print Name: _____

As Its: _____

As Its: _____

EIN/Tax I.D. No. _____

APPROVED AS TO FORM:

Stephanie Davidson, Assistant City Attorney
City of Wilsonville, Oregon

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**EXHIBIT A
SCOPE OF WORK**

PROJECT UNDERSTANDING

The City of Wilsonville (City) requested the assistance of Century West Engineering (Century West/CWE) Team, including Central Geotechnical Services, to provide project management; survey; pavement investigation and recommendations; plans, estimates, and specifications (PS&E) for pavement rehabilitation and other improvements as part of the City’s Fiscal Year (FY) 2025-2028 Street Maintenance (please see attached project map).

Various roadway segments throughout the City will be maintained through grind and inlay. The roadway segments are listed below and shown in the attached project map. ADA curb ramp retrofits will be triggered as a part of this work.

- FY 2026
 - SW Parkway Ct, cul-de-sac/Town Center Park to Town Center Loop intersection
 - SW Parkway Ave, SW Thunderbird Dr to Town Center Loop intersection
 - SW Boones Ferry Rd, SW Ridder Rd to Boeckman Rd Connector
 - SW Nike Dr, SW 95th Ave to SW Boones Ferry Rd
 - SW Ridder Rd, SW 95th Ave to SW Boones Ferry Rd
- FY 2027
 - SW Chantilly, entire length
 - SW McKenzie Ct, entire length
 - SW Grahams Ferry Rd, SW Day Rd to Cahalin Rd
- FY 2028
 - SW Parkway Center Dr, SW Elligsen Rd to SW Burns Way
 - SW Sun Pl, entire length

The CWE Team will evaluate the pavement conditions and provide recommendations to the City. Pavement striping will be replaced along all corridors within the project limits. Traffic signal loop detection will be replaced on streets that require grind and inlay or full-depth reconstruction treatments. ADA ramps along the project corridors will be inspected and retrofitted/replaced to follow current ADA/PROWAG standards.

The scope and fee for the slurry and crack seal limits shown on the attached project map will include a limited windshield-level assessment from the CWE Team. The City will create and administer the PS&E and bidding for these locations, separate from this scope of work. Construction Services by the CWE Team are provided in this scope of work for slurry and crack seal limits.

TASK 1 – PROJECT MANAGEMENT

This task includes the overall planning, monitoring, and control of project efforts to meet the technical work efforts, quality control, project deliverables, cost, schedule, and communication objectives. Century West assumes that the project duration for the Management/Administration duties will be no longer than forty-eight (48) calendar months. The work will be accomplished under the following subtasks:

1.1 Administration

- a. Maintain project records, budgets, and communications for the project's duration.

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- b. Brief weekly email reports on project status as needed.
- c. Manage all sub-consultants.
- d. Process and submit monthly billing with a summary of project status by task.
- e. Create, monitor, and maintain project schedule.

1.2 Meetings

- a. Kickoff Meeting (Virtual): Century West will organize and attend a project kickoff meeting to accomplish the items below. Attendees will include CWE PM, CWE PE, Geotechnical PM, and City PM. The meeting is assumed to be up to one (1) hour in duration.
 - i. Establish clear lines of communication and procedures to be followed.
 - ii. Confirm understanding of project scope, schedule, level of plan detail, etc.
 - iii. CWE will provide meeting notes and action items following the meeting.
- b. Milestone Review Meetings (Virtual): Century West will coordinate with City of Wilsonville for post-milestone review meetings to discuss any redline comments or general project feedback. CWE has budgeted to attend up to twelve (12), one (1) hour meetings to discuss the project. CWE attendees will include CWE PM, CWE PE, and Geotechnical PM as needed.
- c. Biweekly Meetings (Virtual): CWE PM will organize and conduct project meetings biweekly with City PM. Geotechnical PM will attend these meetings as needed. Meetings are assumed to be up to thirty (30) minutes.

TASK 2 – SURVEY & DATA GATHERING

2.1 ADA Ramp Topographic Survey

- a. Establishing a horizontal and vertical survey control network
- b. Reference the network and all mapping to City of Wilsonville approved vertical datum, NAVD 88.
- c. NOTE: for ADA Ramp Improvements, survey shall include:
 - i. 3D surface to extend from 10' behind sidewalk to 25' out from face of curb.
 - ii. 3D line work for top of curb, gutter, sidewalks, walls etc.
 - iii. Any structures in the street within 6' of curb (valves, manholes, catch basins, etc.)
 - iv. Any structures or utilities within 2' of back of walk including walls, junction boxes, water meters, fire hydrants, stop signs, streetlights, power poles, etc.).
 - v. Limits of line work shall extend to at least 20' past curb returns.
 - vi. Topographic survey data packages will be gathered for fiscal years 2026, 2027, and 2028 simultaneously to reduce mobilization costs.
- d. Prepare 3D drawing - survey information is to be given to the City in current AutoCAD (DWG) format.
- e. NOT included in this scope of work (these can be added if required)
 - i. Underground utilities outside of ROW
 - ii. Wetland mapping
 - iii. Boundary or right-of-way surveying
 - iv. Easement mapping
 - v. Trees: Mapping individual trees
- f. DATUM:
 - i. Horizontal: Oregon State Plane
 - ii. Vertical: NAVD88

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2.2 Monument Preservation

- a. Locate all monuments that will be disturbed by Grind/Overlay, Grind/Inlay operations, and by ADA Ramp Improvement Construction
 - iii. Assumption: fifty-eight (58) monuments will potentially be disturbed throughout all three fiscal years
- b. Referenced to the Oregon North State Plane Coordinates
- c. Establish control points in each of the above-mentioned area(s) with GPS and/or Conventional Surveying Techniques – minimum of three (3) control points per area
- d. Double occupy all monuments
- e. Report Grid Coordinate Values of each found monument
- f. Draft & File Survey Record(s):
 - iv. Survey to be drafted to County standards and filed with Clackamas County or Washington County
- g. S&F will reset found monuments at previously reported position (if monument disturbed)
 - v. Set 5/8" Iron Rods w/ yellow plastic caps where applicable.

TASK 3 – PAVEMENT INVESTIGATION & RECOMMENDATIONS

3.1 Field Investigation

3.2 Analysis, Recommendations, Project Management

Pavement rehabilitation design recommendations will be provided based on analysis and the City's pavement design standards. The scope of work will be separated into two sections, one is crack seal and slurry seal street windshield pavement condition review and the second is project-level pavement rehabilitation analysis streets slated for grind and inlay.

The proposed scope of work for slurry seal and crack seal projects is as follows:

- a. Complete a windshield survey of each street on the project list and provide the following:
 - i. An opinion of any road sections which may not be appropriate for crack and slurry treatment.
 - ii. An estimation of total pavement area which may require patching or additional maintenance prior to global rehabilitation.
- b. Provide a summary of our findings in a short memorandum.

Our proposed scope of work for grind and inlay rehabilitation streets is as follows:

- a. Complete a generalized distress survey of the road sections. Provide recommendations for pavement areas that may require repair prior to rehabilitation.
- b. Provide traffic control and traffic control plans when required for testing. It is assumed permitting requirements and fees will be managed by City personnel.
- c. Complete ground penetrating radar (GPR) testing for each street segment in the outside wheel track of the main travel lanes.
- d. Complete falling weight deflectometer (FWD) testing in the outside wheel track of the main travel lanes on the following collector and arterial streets:
 - i. SW Parkway Ct
 - ii. SW Parkway Ave
 - iii. SW Boones Ferry Rd

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- iv. SW Ridder Rd
- v. SW Grahams Ferry Rd
- vi. SW Parkway Center Dr
- e. Explore subsurface conditions in the proposed sections by completing pavement borings to depths of up to three (3) feet below ground surface (BGS). The following number of explorations for each road section are recommended:
 - i. SW Parkway Ct – 2 explorations
 - ii. SW Parkway Ave – 2 explorations
 - iii. SW Boones Ferry Rd – 5 explorations
 - iv. SW Nike Dr – 1 exploration
 - v. SW Ridder Rd – 1 exploration
 - vi. SW Chantilly – 4 explorations
 - vii. SW McKenzie Ct – 2 explorations
 - viii. SW Grahams Ferry Rd – 3 explorations
 - ix. SW Parkway Center Dr – 4 explorations
 - x. SW Sun Pl – 1 exploration
- f. Maintain a detailed log of the explorations. Obtain samples of the pavement, base, and subgrade materials encountered and perform laboratory testing including up to 20 moisture content tests, up to 8 tests for Atterberg limits, and up to 8 tests for material passing a U.S. Standard No. 200 sieve. Total assumed
- g. Patch pavement borings with polymer modified asphalt patch.
- h. Obtain 48-hour traffic classification counts through subcontractor at a total of seven locations: one at SW Parkway Center Drive, one at SW Parkway Avenue, one at SW Grahams Ferry Road, one at SW Parkway Court, one at SW Ridder Road, and two at SW Boones Ferry Road.
- i. Evaluate pavement thickness and distress based GPR and pavement core data.
- j. Provide a summary of the GPR data results within the report.
- k. Estimate pavement thickness from a review of subsurface explorations and GPR data analysis.
- l. Analyze FWD, GPR, and subsurface data to estimate existing pavement capacity.
- m. Calculate estimated pavement equivalent single axle loads (ESAL) based on the traffic classification count data.
- n. Provide recommendations for pavement preservation based on existing pavement condition, pavement capacity, and required pavement capacity based on ESAL results.
- o. Provide a DRAFT and FINAL Pavement Design Report summarizing our findings and recommendations.

TASK 4 – ENGINEERING & DESIGN (60%, 90%, 100%/FINAL & BID DOCUMENTS)

4.1 60% Design & Estimate

Unless otherwise noted, the following items shall be completed for each fiscal year.

- a. **Field Reconnaissance:**
 - i. Conduct field reconnaissance of roadway rehabilitation locations. The team will verify existing conditions and provide photo documentation of pavement conditions prior to design efforts.
 - ii. CWE will not assess ramps that are clearly out of compliance based on visual observation. CWE will limit curb ramp assessment to those facilities that the field team determines, based on visual observation, have the potential to be compliant. Assessment information will be collected in accordance with ODOT standard forms.
- b. Provide layouts for pavement improvements based on the DRAFT Pavement Design Report, Field

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Reconnaissance, and discussions with City staff.

- i. Pavement reconstruction and grind/inlay limits.
 - ii. Pavement section details.
 - iii. Roadway and driveway grading are not included.
 - iv. Design/improvements will be shown in plan view on Metro aerials only. It is assumed that no profiles will be developed/provided.
 - v. It is assumed no walls will be impacted by the design/no wall design will be needed.
 - vi. The striping will not be modified on these segments; it will only be replaced in the same configuration.
- c. Provide designs and layouts for proposed ADA curb ramps (twenty (20) corners/medians, twenty-seven (27) ramps total, are assumed to be retrofitted).
- d. Prepare construction drawings at each milestone using AutoCAD Civil 3D 2022 or later software, including the following estimated sheets (22x34):
- i. FY 25/26
 - i. Cover (1 sheet)
 - ii. Sheet Layout (1 sheet)
 - iii. General Notes & Legend (1 sheet)
 - iv. Erosion and Sediment Control Notes (1 sheet)
 - v. Typical Sections (2 sheets)
 - vi. Pavement Improvement & Erosion Control Plan (13 sheets)
 - vii. Grading Details 1:10 Scale (3 sheets)
 - viii. Signing and Striping Plans 1:20 Scale (13 sheets)
 - ix. Standard Details (4 sheets)
 - ii. FY 26/27
 - i. Cover (1 sheet)
 - ii. Sheet Layout (1 sheet)
 - iii. General Notes & Legend (1 sheet)
 - iv. Erosion and Sediment Control Notes (1 sheet)
 - v. Typical Sections (1 sheet)
 - vi. Pavement Improvement & Erosion Control Plan (4 sheets)
 - vii. Grading Details 1:10 Scale (16 sheets)
 - viii. Signing and Striping Plans 1:20 Scale (4 sheets)
 - ix. Standard Details (4 sheets)
 - iii. FY 27/28
 - i. Cover (1 sheet)
 - ii. Sheet Layout (1 sheet)
 - iii. General Notes & Legend (1 sheet)
 - iv. Erosion and Sediment Control Notes (1 sheet)
 - v. Typical Sections (1 sheet)
 - vi. Pavement Improvement & Erosion Control Plan (3 sheets)
 - vii. Grading Details 1:10 Scale (8 sheets)
 - viii. Signing and Striping Plans 1:20 Scale (3 sheets)
 - ix. Standard Details (4 sheets)
- e. Prepare engineer's estimate of the project construction cost at each milestone submittal.
- f. Assumptions:

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- i. No additional exhibits and materials are necessary to support the City with notification/coordination of adjacent homeowners and businesses.
- ii. No coordination with other agencies nor other project stakeholders will be necessary.
- iii. No Traffic Control Plans are included in this scope. Traffic Control Plans to be provided by Contractor.
- iv. The striping will not be modified on these segments; it will only be replaced in the same configuration.
- v. Any permitting will be managed by the City of Wilsonville.
- vi. Clackamas County will review any impacted loops and provide feedback.
- vii. Oregon DEQ permit will be handled by the Contractor.

4.2 90% PS&E

- a. Incorporate any comments received during the 60% milestone review meeting.
- b. Prepare draft specifications and project special provisions based on ODOT 2018 Standard Specifications and the latest City Public Works Standards. City to provide standard Special Provisions for inclusion in the project special provisions. The project special provision shall clearly document deletions from, additions to, and modifications to the ODOT standard specifications. City to provide/complete "front end" specifications.
- c. Prepare bid schedule and bid item descriptions.
- d. Prepare and provide 90% plans, estimate, bid schedule and descriptions, and project special provisions for City review.

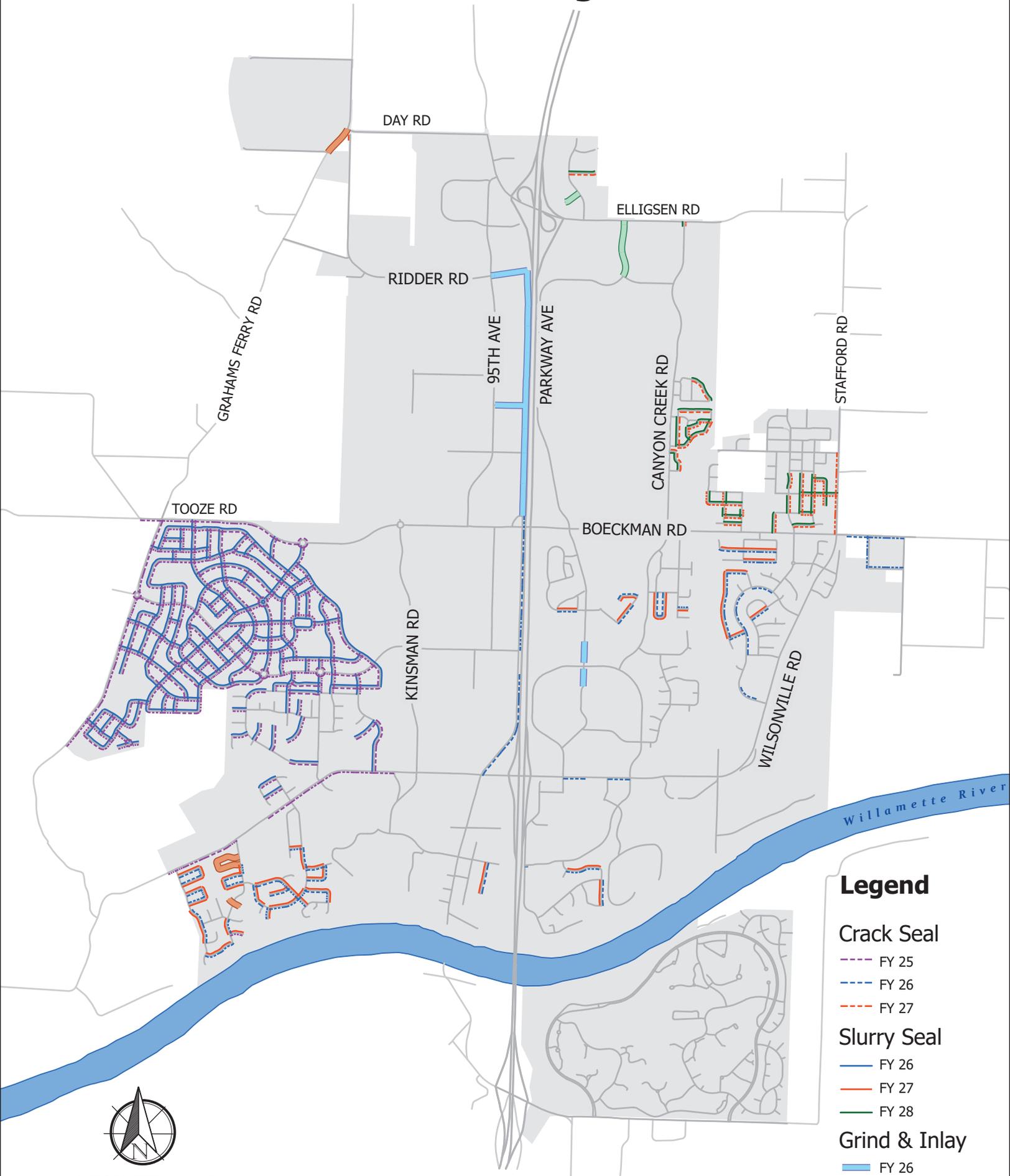
4.3 100%/Final PS&E and Bid Documents

- a. Incorporate any comments received during the 90% milestone review meeting.
- b. Prepare and provide final plans, estimate, bid schedule and descriptions, and project special provisions.
- c. Prepare ADA Design Exceptions on City standard forms.

Escalation Clause—The CWE Team reserves the right to increase hourly rates as shown in the fee schedule each fiscal year based on the Consumer Price Index (CPI) or on the negotiated on-call hourly rates with the City of Wilsonville, whichever is greater, and increase the budget accordingly.

Bidding Assistance and Construction Support are not included in this scope and fee.

Street Maintenance Program FY 25-28



VICINITY MAP
NTS

to Salem

Legend

Crack Seal

- FY 25 (purple dashed line)
- FY 26 (blue dashed line)
- FY 27 (orange dashed line)

Slurry Seal

- FY 26 (solid blue line)
- FY 27 (solid orange line)
- FY 28 (solid green line)

Grind & Inlay

- FY 26 (solid blue line)
- FY 27 (solid orange line)
- FY 28 (solid green line)

