

RESOLUTION NO. 1199

A RESOLUTION OF THE CITY OF WILSONVILLE EXEMPTING THE CITY FROM COMPETITIVE BIDDING REQUIREMENTS AND AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH DAVID EVANS AND ASSOCIATES, INC. FOR AN ENGINEER'S REPORT AND FINANCIAL INVESTIGATION REPORT FOR CANYON CREEK NORTH, LOCAL IMPROVEMENT DISTRICT NO. 12-95-ST.

WHEREAS, the Wilsonville City Council has deemed it necessary to make Canyon Creek North public improvements; and

WHEREAS, City Council has stated its intention to make said improvements; and

WHEREAS, the owners of ninety percent of the property that will benefit by the Canyon Creek North public improvements petitioned Council to initiate said actions; and

WHEREAS, City Council has directed that engineering and financial technical reports be prepared at the expense of the petitioners; and

WHEREAS, staff wishes to utilize the past experience and expertise of David Evans and Associates in working to develop preliminary engineering data for the Canyon Creek North Local Improvement District; and

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

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

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

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

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

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

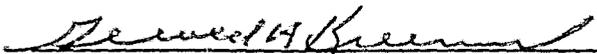
WHEREAS, these fees are not to exceed \$18,200.

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

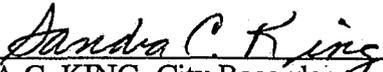
1. That the City Council, serving in its role as Local Contract Review Board, does hereby approve and authorize the execution of a Professional Services Agreement between the City of Wilsonville and David Evans and Associates, Inc., a copy of which is marked Exhibit "A", attached hereto and incorporated herein.

2. That the cost of the preparation of the local improvement district technical reports, as represented by Exhibit A, shall be borne by the LID petitioners.

ADOPTED, by the City Council of the City of Wilsonville at a special meeting thereof this 26th day of June, 1995 and filed with the Wilsonville City Recorder this date.


GERALD A. KRUMMEL, Mayor

ATTEST:



SANDRA C. KING, City Recorder

SUMMARY OF VOTES:

Mayor Krummel	<u>Yes</u>
Councilor Lehan	<u>Yes</u>
Councilor Leahy	<u>Yes</u>
Councilor Hawkins	<u>Yes</u>
Councilor Leo	<u>Yes</u>

EXHIBIT A

**CITY OF WILSONVILLE
PROFESSIONAL SERVICES AGREEMENT**

THIS AGREEMENT is made and entered into as of the date first indicated on the signature page, by and between the City of Wilsonville, Wilsonville, Oregon (hereinafter referred to as the "City"), and David Evans and Associates, Inc., 2828 SW Corbett Avenue, Portland, OR 97201 (hereinafter referred to as "Consultant").

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

WHEREAS, Consultant represents that it is qualified on the basis of specialized experience and technical competence and prepared to provide such services as City does hereinafter require;

NOW, THEREFORE, in consideration of those mutual promises and the terms and conditions set forth hereafter, the parties agreed as follows:

A. Term

The term of this Agreement shall be from the date of execution by both parties until tasks required hereunder are complete and accepted, unless earlier terminated in accordance herewith.

B. Consultant's Services

- B.1 The scope of Consultant's services and time of performance under this Agreement are set forth in Exhibit A. All provisions and covenants contained in Exhibit A are hereby incorporated by reference and shall become a part of this Agreement as if fully set forth herein.
- B.2 All written documents, drawings, and plans submitted by Consultant and intended to be relied on for the project shall bear the signature, stamp or initials of Consultant or Consultant's authorized Project Manager. Any documents submitted by Consultant which do not bear Consultant's signature, stamp or initials or those of the Consultant's authorized Project Manger shall not be relied upon by City. Interpretation of plans and answers to questions covering Plans given by Consultant or Consultant's Project Manager need not be put in writing unless requested by the City and may be relied upon by City.
- B.3 All agreements on the Consultant's part are contingent upon, and the Consultant shall not be responsible for damages or be in default or be deemed to be in default by reason of delays in performance due to third party: strikes, lockouts, accidents; acts of God; other delays unavoidable or beyond the Consultant's reasonable control, or due to shortages or unavailability of labor at established area wage rates or delays caused by failure of the City or City's

agents to furnish information or to approve or disapprove the Consultant's work promptly, or due to late or slow, or faulty performance by the City, other contractors, other consultants not under Consultant's control or governmental agencies, the performance of whose work is precedent to or concurrent with the performance of the Consultant's work. In the case of the happening of any such cause of delay, the time of completion shall be extended accordingly.

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

C. Compensation

- C.1 Except as otherwise set forth in this subsection C, City agrees to pay Consultant not more than \$18,200.00 for performance of those services provided hereunder. However, compensation may be less than such maximum amount and shall be actually determined on an hourly basis as shown on the Rate Schedule attached as Exhibit B which is attached hereto and incorporated herein. Compensation shall be only for actual hours worked on this project and related direct expenses. Consultant shall furnish with each bill for services an itemized statement showing the amount of hours devoted to the project by Consultant as well as any agents or employees of Consultant and any direct expenses.
- C.2 During the course of Consultant's performance, if City or its Project Manager specifically requests Consultant to provide additional services which are beyond the scope of the services described on Exhibit A, Consultant shall provide such additional services and bill the City at the hourly rates outlined on the attached Standard Hourly Rate Schedule, provided the parties comply with the requirements of Section Q. No compensation for additional services shall be paid or owing unless both parties specifically agree to such additional compensation and services.
- C.3 Unless expressly set forth on Exhibit A as a reimbursable expense item, Consultant shall only be entitled to the compensation amount specified in subsections C.1 and C.2. Only those reimbursable expenses which are set forth on Exhibit A and itemized on Consultant's bills for services shall be the basis for which payment of those expenses by City shall be owing.
- C.4 Except for amounts withheld by City pursuant to this agreement, Consultant will

be paid for services for which an itemized bill is received by City within 30 days.

- C.5 City shall be responsible for payment of required fees, payable to governmental agencies including, but not limited to plan checking, land use, zoning and all other similar fees resulting from this project, and not specifically covered by Exhibit A.
- C.6 Consultant's compensation rate includes but is not limited to salaries or wages plus fringe benefits and contributions including payroll taxes, workers' compensation insurance, liability insurance, pension benefits and similar contributions and benefits.
- C.7 In the event Consultant's responsibilities as described on Exhibit A have been separated into two or more phases, then Consultant shall not be entitled to any compensation for work performed directly on a later category of responsibilities unless and until City specifically directs that Consultant proceed with such work.

D. City's Project Manager

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

E. Consultant's Project Manager

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

F. Project Information

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

G. Duty to Inform

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

statement or claim, nor constitute a waiver of any of City's rights.

H. Consultant is Independent Contractor

- H.1 Consultant shall be and herein declares that it is an independent contractor for all purposes and shall be entitled to no compensation other than compensation provided for under paragraph C of this Agreement. Consultant binds itself, its partners, officers, successors, assigns and legal representatives to the City. Consultant shall be completely independent and solely determine the manner and means of accomplishing the end result of this Agreement, and City does not have the right to control or interfere with the manner or method of accomplishing said results. City, however, has the right to specify and control the results of the Consultant's responsibilities.
- H.2 Subcontracting: City understands and agrees that only those special consulting services identified on Exhibit A may be performed by those persons identified on Exhibit A and not by Consultant. Consultant acknowledges such services are provided to City pursuant to a subcontract(s) between Consultant and those who provide such services. Consultant may not utilize any subcontractors or in any way assign its responsibility under the Agreement without first obtaining the express written consent of the City.
- H.3 Consultant shall be responsible for and indemnify and defend City against any liability, cost or damage arising out of Consultant's use of such subcontractor(s) and subcontractor's negligent acts, omissions, or errors. Subcontractors will be required to meet the same insurance requirements of Consultant under this Agreement. Unless otherwise specifically agreed to by City, Consultant shall require that subcontractors also comply with and be subject to the provisions of this Section H.
- H.4 Consultant shall make prompt payment of any claim for labor, materials or services furnished to the Consultant by any person in connection with this Agreement as such claim becomes due. Consultant shall not permit any lien or claim to be filed or prosecuted against the City on account of any labor or material furnished to or on behalf of the Consultant. If the Consultant fails, neglects or refuses to make prompt payment of any such claim, the City may pay such claim to the person furnishing the labor, materials or services and charge the amount of the payment against funds due or to become due the Consultant under this Agreement.
- H.5 No person shall be employed under the terms of this agreement as described herein in violation of all wage and hour laws.
- H.6 Consultant shall make prompt payment as due to any person, co-partnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to the employees of such Consultant of all sums which the Consultant agrees to pay for such services and all monies and sums which the Consultant collected or deducted from the wages of employees pursuant to any law, contract or agreement for the

purpose of providing or paying for such service.

- H.7 Should Consultant elect to utilize employees on any aspect of this Agreement, Consultant shall be fully responsible for payment of all withholding required by law, including but not limited to taxes, including payroll, income, Social Security (FICA) and Medicaid. Consultant shall also be fully responsible for payment of salaries, benefits, taxes, Industrial Accident Fund contributions and all other charges on account of any employees. Consultant shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. All costs incident to the hiring of assistants or employees shall be Consultant's responsibility. Consultant shall indemnify, defend and hold City harmless from claims for payment of all such expenses. Unless otherwise expressly set forth on Exhibit A as a reimbursable expense item, specific costs associated with items set forth in this paragraph shall be deemed as fully and conclusively included in the rate upon which consultants compensation is based.
- H.8 No person shall be denied or subjected to discrimination in receipt of the benefits of any services or activities made possible by or resulting from this Agreement on the grounds of sex, race, color, creed, marital status, age, disability or national origin. Any violation of this provision shall be grounds for cancellation, termination or suspension of the Agreement in whole or in part by the City.

I. Indemnity and Insurance

- I.1 Consultant acknowledges responsibility for liability arising out of the performance of this Agreement and the attachments thereto, and all liability resulting from or incidental to the acts, performance or errors or omissions of the Consultant or anyone acting on behalf of Consultant in connection with or incidental to the work performed under the contract. Consultant shall hold City harmless from and indemnify City of any and all liability, settlements, loss, costs, expenses, attorney's fees and damages in connection with any action, suit, or claim resulting or allegedly resulting from Consultant's negligent acts, omissions, errors or willful misconduct provided pursuant to this Agreement or from Consultant's failure to perform its responsibilities as set forth in this agreement. The review, approval or acceptance by City, its Project manager or City of Wilsonville employees of documents or other work prepared or submitted by Consultant shall not relieve Consultant of its responsibility to provide such materials in full conformity with City's requirements as set forth in this Agreement and to indemnify City from any and all costs and damages resulting from Consultant's failure to adhere to the standard of performance described in Section I.2.3. The provisions of this section shall survive termination of this Agreement.
- I.2 Insurance Requirements and Consultant's Standard of Care.
- I.2.1 Consultant shall provide City with evidence of the following insurance coverages prior to the commencement of the work. A copy of each insurance policy, issued by a company currently licensed in the State of Oregon, and certified as a true copy by an authorized representative of

the issuing company or at the discretion of the City, in lieu thereof, a certificate in a form satisfactory to City certifying to the issuance of such insurance shall be furnished to City. Unless specifically set forth on Exhibit A, expenses relating to the cost of insurance shall not be the basis for additional reimbursement to Consultant.

- 1.2.2 The City agrees that in accordance with generally accepted construction practices, the construction contractor will be required to assume sole and complete responsibility for job site conditions during the course of construction of the project, including safety of all persons and property.
- 1.2.3 In the performance of its professional services, the Consultant shall use that degree of care and skill ordinarily exercised under similar circumstances by reputable members of its profession practicing in the Portland Metropolitan Area. The Consultant will reperform any services not meeting this standard without additional compensation. Consultant's reperformance of any services, even if done at City's request, shall not be considered as a limitation or waiver by City of any other remedies or claims it may have arising out of consultant's failure to perform in accordance with the applicable standard of care or this Agreement.
- 1.2.4 Consultant shall furnish the City a certificate evidencing the date, amount and type of insurance that has been procured pursuant to this Agreement. All policies shall be written on an "occurrence basis," except for Consultant's Professional Liability Insurance which may be written on a "claims made" basis, provided it shall endeavor to be maintained in full force for not less than four (4) years following Consultant's performance under this Agreement. All policies shall provide for not less than 30 days' written notice to the City before they may be revised, non-renewed, or canceled. The Consultant shall endeavor to provide for not less than 30 days' written notice to the City before the policy coverage may be reduced. Excepting professional liability and worker's compensation coverage, all policies shall provide an endorsement naming the City, its officers, employees and agents as additional insureds. In the event the policy lapses during performance, the City may: treat said lapse as a breach; terminate this Agreement and seek damages; withhold progress payments without impairing obligations of Consultant to proceed with work; pay an insurance carrier (either Consultants' or a substitute) the premium amount and withhold that amount from payments; and, use any other remedy provided by this Agreement or by law.
- 1.2.5 Insurance Requirements. The Consultant, its subcontractors, if any, and all employers working under this Agreement are subject employers under the Oregon Worker's Compensation Law and shall comply with ORS 656.017 which requires them to provide workers' compensation coverage for all their subject workers. The Consultant will maintain throughout this Agreement the following insurance:

- 1.2.5.1 Workers' compensation and employers liability insurance as

required by the State where the work is performed.

- 1.2.5.2 Comprehensive automobile and vehicle liability insurance covering claims for injuries to members of the public and/or damages to property of others arising from the use of motor vehicles, including on-site and off-site operations, and owned, non-owned, or hired vehicles, with \$500,000 combined single limits.
- 1.2.5.3 Commercial general liability insurance covering claims for injuries to members of the public or damage to property of others arising out of any covered negligent act or omission of the Consultant or of any of its employees, agents or subcontractors, with \$1,000,000 per occurrence and in the aggregate.
- 1.2.5.4 Professional liability insurance of \$500,000 per occurrence and in the aggregate, including contractual liability coverage. If Consultant proposes using subcontractors, in addition to any other requirements of this Agreement, City may require subcontractors to provide Professional Liability Insurance, provided the amount and form of coverage complies with the requirements of paragraphs 1.2.1, 1.2.2, 1.2.3, 1.2.4 and 1.2.5.4.
- 1.2.5.5 City will be named as an additional insured with respect to Consultant's liabilities hereunder in insurance coverages identified in items 1.2.5.2 and 1.2.5.3.
- 1.2.6 The coverage provided by these policies shall be primary and any other insurance carried by City is excess. Consultant shall be responsible for any deductible amounts payable under all policies of insurance. In the event a dispute arises between City and Consultant for which Consultant has obtained insurance, the maximum amount which may be withheld by City for all such claims shall be no more than the amount of the applicable insurance deductible.

J. Early Termination

- J.1 This Agreement may be terminated prior to the expiration of the agreed upon terms:
 - J.1.1 By mutual written consent of the parties;
 - J.1.2 By City for any reason within its sole discretion, effective upon delivery of written notice to Consultant by mail or in person, or at such later date as may be established by the City; and
 - J.1.3 By Consultant, effective upon seven days prior written notice in the event

of substantial failure by the City to perform in accordance with the terms through no fault of the Consultant.

- J.2 If City terminates the Agreement in whole or in part due to default or failure of Consultant to perform services in accordance with this Agreement, City may procure, upon reasonable terms and in a reasonable manner, services similar to those so terminated. In addition to any other remedies the City may have, Consultant shall be liable for all costs and damages incurred by City in procuring such similar service, and the Contract shall be in full force to the extent not terminated.
- J.3 If City terminates the Agreement for its own convenience, payment of Consultant shall be prorated to and include the day of termination and shall be in full satisfaction of all claims by Consultant against City under this Agreement.
- J.4 Termination under any provision of this paragraph shall not affect any right, obligation or liability of Consultant or City which accrued prior to such termination. Consultant shall surrender to City items of work or portions thereof, referred to in Paragraph O for which Consultant has received payment, or City has made payment. City retains the right to elect whether or not to proceed with actual construction of the project.

K. Suspension of Work

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

L. Subconsultants and Assignments

- L.1 Consultant shall not enter into any subcontracts for any of the work scheduled under this contract without obtaining prior written approval from the Project manager. The Consultant shall ensure that in all subcontracts entered into by the Consultant pursuant to this contract, the City is named as an express third party beneficiary of such subcontracts with full rights as such. Consultant acknowledges such services are provided to City pursuant to a subcontract(s) between Consultant and subcontractor(s). City incurs no liability to third persons for payment of any compensation provided herein to Consultant. Any attempted assignment of this contract without the written consent of City shall be void. Except as otherwise specifically agreed, all costs for services performed by others on behalf of Consultant shall not be subject to additional reimbursement by City.
- L.2 City shall have the right to let other agreements be coordinated with this Agreement. Consultant shall cooperate with other firms, engineers or subconsultants on the project and the City so that all portions of the project may be completed in the least possible time within normal working hours. Consultant

shall furnish other engineers and subconsultants and affected public utilities, whose designs are fitted into Consultant's design, detail drawings giving full information so that conflicts can be avoided.

M. Access to Records

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

N. Work is Property of City

- A. Originals or Certified copies of the original work forms, including but not limited to documents, drawings, tracings, surveying records, mylars, papers, diaries, inspection reports and photographs, performed or produced by Consultant under this Agreement shall be the exclusive property of City and shall be delivered to City prior to completion or termination of this contract and prior to final payment. Any statutory or common law rights to such property held by Consultant as creator of such work shall be conveyed to City upon request without additional compensation. Upon City's approval and provided City is identified in connection therewith Consultant may include Consultant's work in its promotional materials.
- B. Consultant shall not be held liable for any damage, loss, increased expenses or otherwise caused by or attributed to the reuse, by City or their designees, of all work performed by Consultant pursuant to this contract without the express written permission of the Consultant.
- C. City agrees it will indemnify and hold Consultant harmless for all losses or damages that may arise out of the reuse of specific engineering designs incorporated into extensions, enlargements or other projects, without the express written permission of the Consultant.

O. Law of Oregon

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

obtained and maintained throughout the term of this Agreement.

P. Adherence to Law

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

Q. Modification

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

R. Other Conditions

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

R.1.1 Subsurface Investigations. In soils, foundation, ground water, and other subsurface investigations, the actual characteristics may vary significantly between successive test points and sample intervals and at

locations other than where observations, exploration, and investigations have been made. Because of the inherent uncertainties in subsurface evaluations, changed or unanticipated underground conditions may occur that could affect total Project cost and/or execution. These conditions and cost/execution effects are not the responsibility of the Consultant.

R.1.2 Opinions of Cost, Financial Considerations, and Schedules. In providing opinions of cost, financial analyses, economic feasibility projections, and schedules for the Project, Consultant has no control over cost or price of labor and materials; unknown or latent conditions of existing equipment or structures that may affect operation or maintenance costs; competitive bidding procedures and market conditions; time or quality of performance by third parties; quality, type, management, or direction of operating personnel; and other economic and operational factors that may materially affect the ultimate Project cost or schedule. Therefore, Consultant makes no warranty that Owner's actual Project costs, financial aspects, economic feasibility, or schedules will not vary from Engineer's opinions, analyses, projections, or estimates.

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

firms employed by the Consultant under the terms of the contract as stated therein that is incorporated into the record drawings.

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

S. Assignments of Products Rights

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

T. Integration

This agreement constitutes the entire agreement between the parties. No waiver, consent, modification or change of terms of this agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or

written, not specified herein regarding this agreement. Consultant, by the signature below of its authorized representative, hereby acknowledges that he/she has read this agreement, understands it and agrees to be bound by its terms and conditions.

U. Miscellaneous / General

Consultant binds itself, its partners, officers, successors, assigns and legal representatives to the City under the terms and conditions of this agreement as described herein.

The CONSULTANT and the CITY hereby agree to all provisions of this AGREEMENT.

IN WITNESS WHEREOF, the parties by their signatures below enter into this Agreement this _____ day of _____, 19____

CONSULTANT:

David Evans and Associates, Inc.
Name of Firm

By _____
Typed or
Printed Name: _____

Title: _____

Mailing
Address: 2828 SW Corbett Avenue
Portland, OR 97201-4830

Employer ID. No. _____

CITY OF WILSONVILLE:

By _____
Constance J. Sylvester
Project Manager

Attest:

Sandra C. King
City Recorder

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

Approved as to form:

Michael E. Kohlhoff
City Attorney

EXHIBIT A

CONSULTANT'S SCOPE OF WORK

I. General

The City is interested in making street, sanitary sewer, water and storm drain capital improvements along the Canyon Creek North alignment between Boeckman and Elligsen Roads. An Engineer's Report and Financial Investigation Report are necessary to identify the technical issues associated with formation of a Local Improvement District to accomplish this task.

II. Engineer's Report

Consultant shall develop a project specific Engineer's Report including, at a minimum, the following information:

- A. A map or plat showing the general nature, location and extent of the proposed improvements and the land to be assessed for payment of the cost. The map or plat shall include all existing and future improvements reasonably believed necessary to insure the proper functioning of the improvements proposed.
- B. Street improvements are identified in the city's Transportation Master Plan as design standard CI-1, commercial industrial with bikeways. The city is interested in providing a bicycle and pedestrian friendly environment along the length of these improvements with wetlands, mature significant trees and street plantings contributing to the urban fabric.
- C. Schematic documents describing preferred sewer alignment, street alignment identifying significant trees, and intersections at Elligsen and Boeckman Roads.
- D. An estimate of the probable cost of the improvements, including property acquisition, mitigation, tree survey, aesthetic sound barrier at existing residences, engineering, legal and administrative costs.
- E. An estimate of the probable cost of the improvement to the benefited properties per square foot, per front foot, or another unit, or combination of units, of cost.
- F. A recommendation concerning the method of assessment to be used to arrive at a fair apportionment of the whole or a portion of the cost of the improvement to benefited properties.
- G. A description of each lot, parcel of land, or portion of land to be benefited with names of the record owners and, when readily available, names of contract purchasers as shown on books and records of the Washington and Clackamas County Tax Departments. To describe each lot or parcel of land under provisions of

this section, it shall be sufficient to use the tax account number or the map and tax lot numbers assigned to the property by the tax departments of Washington and Clackamas Counties.

II. Financial Investigation Report

Consultant shall develop a project specific Financial Investigation Report including, at a minimum, the following information:

- A. A list of the tax assessed real market value of each tax lot, and a statement that the tax assessed real market value of each lot is equal to at least two (2) times the pro rata share of the assessment to be assessed each tax lot for its share of the cost of the improvement.
- B. Number of vacant lots or description of unused land in affected area.
- C. Number of similar lots held by the city through foreclosure.
- D. Delinquency rate of assessments and taxes in the area.
- E. Real estate value trends in the area.
- F. Tax levy trends and potential financial impact on improvement district.
- G. Conformance of the project to the City's Comprehensive Plan.
- H. Attitude of property owners toward the project.
- I. Status of municipal debt.
- J. Credit worthiness of petitioners.
- K. Analysis of alternative financing mechanisms and recommendation regarding the most efficient construction and long term project financing while limiting City exposure.
- L. Cost of financing.

IV. Reports

- A. Six copies of each draft report shall be provided for City review and comment.
- B. Final reports shall incorporate City modifications to the draft reports. Fifteen copies of each final report shall be provided plus one unbound, reproducible master.

June 15, 1995

DEAX0030

EXHIBIT B

Ms. Constance J. Sylvester
Project Manager
City of Wilsonville
30000 S.W. Town Center Loop E.
Wilsonville, OR 97070



RE: CANYON CREEK NORTH LOCAL IMPROVEMENT DISTRICT (LID)

Dear Ms. Sylvester:

Thank you for meeting with us and outlining your requirements for the Engineer's Report and the Financial Investigation Report. We sincerely appreciate the opportunity to work with the City of Wilsonville in assembling these reports and obtaining their approval. Since our meeting, we have reviewed Exhibit A, the Consultant's Scope of Work, a draft copy of the City of Wilsonville's Professional Services Agreement, an Engineer's Report and Financial Investigation Report for the City's LID No. 11-94-ST, and background information for work previously prepared by the City in the vicinity of this project. This proposal is based on our review and understanding of this information.

David Evans and Associates, Inc. (DEA) is pleased to present this proposal letter to you for the furnishing of professional consulting engineering services for the proposed **Canyon Creek North Local Improvement District**. Generally, the work is to provide the City of Wilsonville with an Engineer's Report and a Financial Investigation Report for this project, to provide assistance with obtaining acceptance of these reports at City Council, and to provide assistance during the public hearing process. DEA proposes that this letter be an attachment to the Professional Services Agreement, and identified as Exhibit B.

SCOPE OF WORK

Exhibit A, entitled the Consultant's Scope of Work, describes information required to be contained in the Engineer's Report and the Financial Investigation Report. DEA has divided the work necessary to provide this information into six general tasks, as follows.

DAVID EVANS AND ASSOCIATES, INC.
A PROFESSIONAL SERVICES CONSULTING FIRM
OFFICES IN OREGON, WASHINGTON, CALIFORNIA AND ARIZONA
2828 S.W. CORBETT AVENUE
PORTLAND, OREGON 97201-4830
(503) 223-6663 FAX (503) 223-2701

Ms. Constance J. Sylvester
June 15, 1995
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- Task 1:** Coordinate and attend meetings with City staff and property owners as necessary to ensure that each report, when presented to City Council, is an accurate representation of the proposed project. This task also includes attendance at two City Council meetings, one for acceptance of the two reports and for setting a date for a public hearing, and the other for holding the public hearing.
- Task 2:** Gather information beyond what has been previously assembled, to include:
- a. City record information for work already performed in the project vicinity.
 - b. Field survey of a rough road centerline of the present alignment for purposes of locating trees or other critical items that will need to be addressed.
 - c. Identification of significant trees along the present alignment.
 - d. Field survey to obtain supplemental topography at the Boeckman Road and Elligsen Road intersections for the purpose of addressing sight distance.
- Task 3:** Provide analysis and preliminary design of the current envisioned project, to include an evaluation of roadway geometry, roadway alignment relative to existing features, sanitary sewer trunk sewer extension, area storm drainage system, water system improvements, sound attenuation and roadway/bikeway section.
- Task 4:** Update estimates of cost for the proposed improvements and provide a recommendation for distribution of costs to the benefitted properties.
- Task 5:** Update the previously prepared base map to show significant trees, any alignment modifications, intersection improvements, Canyon Creek South alignment, additional properties south of Boeckman Road and north of Elligsen Road, and other new information as may be obtained in Task 2.
- Task 6:** With the assistance of a financial and investment advisor, prepare a project specific Financial Investigation Report. This report will address the twelve pieces of information as outlined in Exhibit A.

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Hourly Rate Schedule

Principle In Charge	\$110.00
Project Manager	80.00
Project Engineer	70.00
Project Designer	60.00
Senior Planner	80.00
Traffic Engineer	70.00
Wetland Biologist	65.00
Project Surveyor	65.00
Survey Technician	50.00
3-person Survey Crew	130.00
CADD Technician	45.00
Clerical Staff	35.00
Subconsultant	Cost + 10%



SCHEDULE

DEA can commence immediately with all work described in the six tasks. We will submit draft copies of each report to you for your review on or before July 17, 1995. Once comments are received by you, we will finalize each report and submit them to you on or before July 24, 1995. This schedule is required in order to be on the City Council's agenda for their regularly scheduled meeting on August 7, 1995. At this meeting, it is intended that the City Council will accept the two reports and set a date for the public hearing. It is anticipated that the public hearing will be held at the regularly scheduled City Council meeting on September 18, 1995.

DAVID EVANS AND ASSOCIATES, INC.
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AGREEMENT

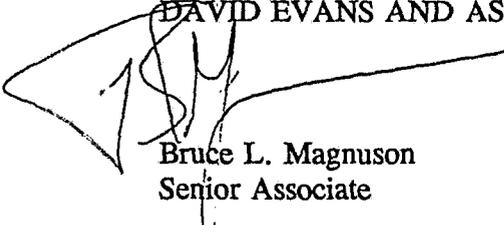
We have reviewed the draft copy of the Professional Services Agreement prepared by the City. This agreement is acceptable to DEA as our agreement for the services proposed within Exhibit A and within this letter.

If you have any questions regarding this proposal, please do not hesitate to call me.

DEA

Sincerely,

DAVID EVANS AND ASSOCIATES, INC.



Bruce L. Magnuson
Senior Associate

BLM:sjg

DEAX30:caacrock.pro

DAVID EVANS AND ASSOCIATES, INC.
A PROFESSIONAL SERVICES CONSULTING FIRM