



# REQUEST FOR PROPOSALS

## PROFESSIONAL SERVICES

### Basalt Creek Code Assessment and Infrastructure Funding Strategy

ADVERTISEMENT DATE: NOVEMBER 8, 2023

**Address Proposals to:**

City of Wilsonville  
Attn: Cindy Luxhoj AICP, Associate Planner  
29799 SW Town Center Loop East  
Wilsonville, OR 97070

**Proposals due: Wednesday, December 6, 2023, at 2:00 p.m., Pacific Time**

Proposals must be in pdf form, plainly marked as follows: "Request for Proposals – Basalt Creek Code Assessment and Infrastructure Funding Strategy," and sent to the attention of Cindy Luxhoj AICP, Associate Planner at [luxhoj@ci.wilsonville.or.us](mailto:luxhoj@ci.wilsonville.or.us). Include the name and address of the Proposer. The City of Wilsonville reserves the right to reject any or all Proposals.

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# Request for Proposals

The City of Wilsonville, Oregon (“City”) is requesting Proposals in order to select a qualified consultant to provide professional services for the Basalt Creek Code Assessment and Infrastructure Funding Strategy Project (“Project”). Proposers are invited to demonstrate their experience and qualifications in performing work directly related to the services required by responding to this **Request for Proposals (RFP)**. The anticipated negotiated fee for this Project is expected to exceed \$150,000; therefore, Proposals will be evaluated in accordance with the qualifications based selection procedures of OAR 137-047-0260.

## I. PROJECT DESCRIPTION

The City invites proposals from qualified individuals and consulting firms (“Proposer”) to support the Basalt Creek Code Assessment and Infrastructure Funding Strategy Project (“Project”) for Wilsonville’s portion of the Basalt Creek Concept Plan (BCCP) area. The Project’s overarching goal is to bring Wilsonville’s portion of the BCCP area to an industrial development-ready status, thereby realizing the vision and planning objectives of the Plan. The Project will build on the work of the BCCP to complete two remaining critical implementation actions for this area. The Project will assess Wilsonville’s Development Code and propose and prepare Code amendments, if needed, to assure that proposed zoning meets the overall planning objectives for the BCCP area and guides development toward the use categories envisioned in the plan – High Tech Employment, Craft Industrial, and Light Industrial. The Project will also complete a detailed analysis of urban services, including transportation/streets, water, sewer, and stormwater (wet infrastructure), and prepare an infrastructure study, infrastructure funding plan, and urban renewal feasibility study to support future development. The Project will accomplish both of these implementation actions, addressing the full spectrum of industrial land readiness in the City’s BCCP area, from an industry-wide, holistic perspective to a granular site-specific level, identifying barriers, as well as implementation measures, to achieve the envisioned development.

### About the City

The City of Wilsonville is a fast-growing urban area of approximately 27,414 residents located on the southern border of the Portland Metropolitan area near the North Willamette Valley, along the Willamette River. Wilsonville is supported by a diverse economy and has benefitted from thoughtful planning, high development standards, a beautiful natural environment, and excellent schools. The city is home to many high-tech companies, including Siemens (formerly Mentor Graphics), Collins Aerospace, TE Connectivity (formerly Tyco Electronics), Twist Bioscience, ESS Inc., Xerox Corporation, Teledyne FLIR, and DW Fritz. Wilsonville prides itself on the high quality of life enjoyed by residents, commuting workers, and those who visit the city.

Data compiled by Wilsonville’s Economic Development Manager, Matt Lorenzen, illustrates the strength of the City’s industrial workforce. The industry cluster in Wilsonville with the highest relative concentration is Electric/Electronics Manufacturing, which employs 2,210 workers in the region with an average wage of \$121,997. Employment in the Electric/Electronics Manufacturing cluster is projected to expand in the region about 0.9% per year over the next ten years. The largest sector in Wilsonville is Manufacturing, employing 3,915 workers. The next-largest sectors in the region are Wholesale Trade (2,803 workers) and Professional, Scientific, and Technical Services

(2,313). Due to its location, Wilsonville draws upon the laborshed of both the Portland and Salem Metropolitan Statistical Areas (MSAs).

### Project Area

The BCCP area was brought into the Urban Growth Boundary (UGB) in 2004 and the BCCP was adopted in 2018 to set the framework for future industrial development. The entire BCCP area, including Wilsonville's portion impacted by this Project, is designated Employment land on Metro's 2040 Growth Concept map and Industrial area on Metro's Title 4 Industrial and Other Employment Areas map. Wilsonville's portion includes roughly 255 gross acres, 137 developable acres, and a potential buildable area of 2.08 million square feet. It is bounded on the north by the Basalt Creek Parkway and Tualatin's portion of the BCCP area; to the east by Interstate-5; to the south by commercial and industrial uses in the Coffee Creek Industrial area; and to the west by the Coffee Creek Correctional Facility and West Railroad Industrial area. This unincorporated area is designated Industrial on Wilsonville's Comprehensive Plan map and zoned Washington County Future Development-20 Acre (FD-20). Current uses include a mix of low density residential, low intensity agriculture, outdoor industrial (contractor's establishments), an electrical substation, natural area (Basalt Creek canyon), and vacant land (greenfield).

### Budget

The budget for this Project is not to exceed \$270,000. This amount is to include all expenses incurred by the Proposer, including expenses for travel, supplies, and printing. Payment will be made upon completion of the work and within thirty (30) days of receipt of a final invoice.

## II. SCOPE OF WORK

City staff has identified nine key tasks to accomplish the overarching goal of bringing Wilsonville's portion of Basalt Creek to an industrial development-ready status. Tasks 1 through 6 will achieve the first critical Code assessment and Code amendment adoption steps, while Tasks 7 through 9 will achieve the second implementation piece of infrastructure analysis and a funding strategy to construct the necessary infrastructure to support the envisioned industrial development.

- Funded by Business Oregon Industrial Technical Assistance Grant with City Match for Project Management, budget not to exceed \$100,000 (to be expended by August 31, 2024):
  - Task 1: Assess Coffee Creek Form-based Code (FBC)
  - Task 2: Assess Planned Development Industrial (PDI) Code
  - Task 3: Conduct Community Outreach to Inform Code Assessment
  - Task 4: Determine Policy Direction
  - Task 5: Develop Draft Code Amendments
  
- Funded by Metro 2040 Industrial Land Readiness Grant with City Match for Project Management, budget not to exceed \$170,000 (to be expended within two years of IGA adoption, which is anticipated in late 2023 or early 2024):
  - Task 6: Adopt Final Code Amendments
  - Task 7: Conduct Infrastructure Study
  - Task 8: Develop Infrastructure Funding Plan
  - Task 9: Conduct Urban Renewal Feasibility Study

Task 1 involves two distinct sub-tasks. The City has already initiated the first sub-task, the Coffee Creek Code Assessment, which is outside the scope of work for this Project. This sub-task, being completed by City staff, evaluates the Coffee Creek FBC to determine whether it is achieving its desired outcomes five years after adoption in 2018. This will result in refinement of the Coffee Creek standards to better facilitate the land use review process for future industrial projects. Code amendment adoption is anticipated in March-April 2024.

The second Task 1 sub-task, to be completed as part of this Project, will apply lessons learned from the Coffee Creek Code Assessment project to a discussion of appropriate zoning for the BCCP. This will determine the suitability of adapting the Coffee Creek FBC and Pattern Book as a baseline for zoning in Basalt Creek. The key deliverable for this second sub-task is a memo summarizing the discussion and identifying key considerations of adapting a FBC to the BCCP area, if this is the chosen course of action (see additional discussion under Tasks 2 through 5, below).

Tasks 2 through 5 will be completed as part of this Project and funded through a Business Oregon grant. Task 2 will determine whether the vision of the BCCP, specifically High-Tech Employment, Light Industrial, and Craft Industrial designations, can be achieved using the City's existing Planned Development Industrial (PDI) zoning district to guide development toward of the use categories envisioned in the plan. A memo summarizing this assessment and identifying key considerations of using the PDI zone in the BCCP area, if this is the chosen course of action, is the deliverable for this task (see additional discussion under Tasks 3 through 5, below).

Task 3 will include stakeholder discussions and community outreach to inform the Code assessments in Tasks 1 and 2 following the guidance of the Wilsonville Framework for Inclusive Engagement. The Framework will provide a foundation for public outreach to engage with industrial users, property owners, business owners, entrepreneurs, and employees in conversations about how best to achieve employment opportunities for a diverse residential base and business opportunities for the wide range of industrial users envisioned in the BCCP area. In addition, this task will engage the City's Diversity, Equity and Inclusion (DEI) Committee, as well as invite participation by representatives of other partners, such as Business Oregon, Metro, Washington County, and the City of Tualatin, to further broaden the discussion. The key deliverable for this task is a memo outlining results of, and key recommendations developed based on, the engagement process.

Task 4 will analyze and synthesize information gathered in Tasks 1 through 3 to determine policy direction and whether the base PDI zone, a hybrid code that blends existing regulations and procedures with new zoning and design guidelines, or a FBC overlay zone is most appropriate to guide development toward the use categories envisioned in the BCCP. This assessment will also discuss approaches the City may want to consider to encourage the envisioned development, such as more stringent Code standards, providing incentives for desired development in the Code, or developing economic development initiatives to achieve the vision. The key deliverable is a memo outlining the results of this synthesis.

Task 5 will develop draft Code amendments, including compliance findings, to put the appropriate zoning in place in the Basalt Creek area. The key deliverable, a memo, will outline a complete package of recommended draft Code amendments and findings needed for adoption, including a Pattern Book, if a FBC is the chosen course of action.

Tasks 6 through 9 will be completed as part of this Project with funding from a Metro 2040 grant. Task 6 will prepare the final complete package of “hearings-ready” Code amendments and compliance findings, based on the draft amendments and findings developed in Task 5, needed take the Code through final adoption with hearings before the Planning Commission and City Council and integration into the City’s Development Code.

Task 7 will build on the Transportation Refinement Plan, transportation and wet infrastructure (water, sewer, stormwater) analyses in the Basalt Creek Concept Plan, and supporting studies, such as the Basalt Creek Utility Infrastructure Concept Plan, as well as the City’s Transportation System Plan, Water Master Plan, Wastewater Treatment Plant Master Plan Update, Stormwater Master Plan Update, and other applicable studies and plans. The key deliverable of this work will be an infrastructure study document that determines infrastructure location, alignment, and sizing needed to efficiently and effectively serve future industrial users in the BCCP area.

Based on the information collected in Task 7, Task 8 will develop an infrastructure funding plan document that identifies primary strategies and options to fund construction of the transportation and wet infrastructure required in the BCCP area, including alternatives, tools, and approaches that could be implemented over time to provide equitable distribution of the costs and benefits of essential infrastructure. Key components of the infrastructure funding plan include: a) identify infrastructure projects, based on the infrastructure study completed in Task 7, to include in the funding plan and their phasing/prioritization/timing for cash flow analysis; b) refine cost estimates and identify developer required contributions and City responsibility/cost share; c) confirm development assumptions to use in assessing and developing the funding plan; d) determine funding gap by infrastructure type; e) consider a range of tools to fill the funding gap, including the results of the urban renewal feasibility study completed in Task 9; f) select a preferred infrastructure funding plan; and g) provide implementation next steps for establishing the funding mechanisms needed to enable construction of the needed infrastructure.

Finally, Task 9 will explore the feasibility of urban renewal as a funding source, with the key deliverable being an urban renewal feasibility study document with the following components: a) assessment of existing conditions and documentation of blight; b) financial analysis including a forecast of tax increment revenues that accounts for anticipated development and project expenditures (those identified in Task 7) over the lifespan of the urban renewal area; c) recommended boundary alignment after exploration of two or more boundary alternatives; d) forecast of financial impacts on overlapping taxing districts; and e) recommended timeline and strategy for creation of a formal urban renewal plan and report under ORS 457. All of the subtasks under Task 9 will be completed through consultation with City staff and several meetings (up to five) with the City’s Urban Renewal Task Force. For Task 9, subcontracting with an urban renewal/public finance expert is allowed and encouraged.

All identified tasks will involve presentations to the Wilsonville Planning Commission and/or City Council at key points in the process to seek direction and guidance, as well as engaging the community and stakeholders to formulate recommendations and inform the process. The City is committed to engaging residents, businesses, property owners, and other stakeholders in planning and decision making that impacts them, and to increasing and supporting the involvement of historically underrepresented community members through consistent, fair, and accessible public engagement activities that encourage participation by all members of the community. The

consultants hired for this Project will be expected to apply the guidance of the Wilsonville Framework for Inclusive Engagement as a foundation for public outreach to engage with industrial users, property owners, business owners, entrepreneurs, and employees in conversations about how best to achieve employment opportunities for a diverse residential base and business opportunities for the wide range of industrial users envisioned in the BCCP area. In addition, the City's Diversity, Equity and Inclusion (DEI) Committee will be engaged to further broaden the discussion. Representatives of other partners, including Business Oregon, Metro, Washington County, and the City of Tualatin, also will be involved or invited to participate in various capacities throughout the Project.

Estimated timeline to completion for Tasks 2 through 5 is roughly five months, from February through July 2024, and for Tasks 6 through 9 is about 15 months, from July 2024 through September 2025, subject to staff and consultant workload and scheduling constraints. All funds awarded through the Business Oregon grant must be expended by August 31, 2024, and for the Metro 2040 grant award within two years of IGA adoption.

The City's adopted FY2023-24 Budget allocates up to \$85,000 to Basalt Creek planning and implementation, including City staff time to manage the efforts of the consultant team selected for this Project; however, consultant costs are expected to be funded through the Business Oregon and Metro 2040 grant awards. Desired consultant expertise includes, at a minimum, familiarity with:

- industrial land readiness and the needs of industrial users,
- industrial zoning assessment and drafting Development Code amendments, including familiarity with form-based codes, preferably in an industrial setting, and zoning for craft industrial uses
- creative economic development initiatives and tools,
- community outreach and stakeholder engagement, including applying diversity, equity, and inclusion principles to planning for employment uses and supporting WBE/MBE in industrial areas
- infrastructure evaluation and study preparation,
- identifying strategies and options to fund construction of transportation and wet infrastructure,
- infrastructure funding plan development, and
- urban renewal feasibility (subcontracting with an urban renewal expert is allowed and encouraged).

The City reserves the right to modify the Scope of Work based on the Proposer's Proposal. A Sample PSA is included in Attachment A.

### Term of Service

The contract resulting from this RFP shall have a preferred completion of September 2025, but not later than December 2025.

### III. MINIMUM QUALIFICATIONS

To be considered for award of the contract for this Project, each Proposer shall demonstrate the following minimum criteria as part of its Proposal.

1. Proposer's project team shall include as a minimum: a project manager with experience leading a large multi-disciplinary team, a land use planner(s) specializing in planning for new urban areas preferably with expertise in industrial development, form-based codes, and Development Code amendments, an architect(s)/urban designer and/or landscape architect(s) specializing in public realm design in industrial areas, an engineer(s) specializing in infrastructure planning including transportation and streets, water, sewer, and stormwater, an outreach specialist(s), a professional(s) with expertise in industrial market analyses, and a professional(s) with expertise in SDC's, infrastructure funding, and urban renewal feasibility analysis.
2. Proposer shall demonstrate a minimum of ten (10) years' experience providing the types of services described within the Scope of Work of this Request for Proposals for public agencies.
3. Proposers with a record of substandard workmanship, as verified by the City by communication with licensing authorities, former clients and references, and other means as the City deems appropriate, will not be considered.
4. Proposers shall be familiar with, or demonstrate ability to quickly become familiar with, the Oregon land use system and City of Wilsonville Development Code and Public Works Standards.
5. Proposers shall have demonstrated commitment to and experience engaging diverse communities and ensuring diverse needs and viewpoints have a tangible impact on project outcomes. Familiarity with the Wilsonville Framework for Inclusive Engagement is preferred, including applying its guidance as a foundation for public outreach for this Project to engage in conversations about how best to achieve employment opportunities for a diverse residential base and business opportunities for the wide range of industrial users envisioned in the BCCP area including BIPOC. The Proposer also shall have experience communicating detailed and sometimes complex standards in an approachable way to the public to garner valuable input.
6. Proposers shall have demonstrated commitment and ability to create novel and innovative solutions to complex issues, particularly around and balancing good design, development standards, and cost.

### IV. PROPOSAL REQUIREMENTS

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

## Proposal Format

Proposals shall be prepared with a standard body text font (e.g., Calibri, Times New Roman, Garamond) of at least 12-point. Proposals shall be combined into a single pdf file. One page is considered to be one side of a single 8½" x 11" sheet.

Proposals shall be organized in accordance with the listed Proposal contents and shall not exceed 10 total pages. **Supporting Information**, as defined below, shall be provided **in a separate section** at the end of the Proposal, **and not counted in the page limit requirements**. A front cover sheet and one-page table of contents (if included) are not counted in the page limit requirements.

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

## Introductory Letter

The introductory letter should address the consultant's willingness and commitment, if selected, to provide the services offered and a description of why the Proposer believes it should be selected.

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

The letter of interest shall specifically stipulate the following statements:

*"Proposer has received and examined, as part of the Proposal, Addenda No. \_\_\_ through \_\_\_. Proposer accepts all terms and conditions contained in the Request for Proposal and the Professional Services Agreement, except as otherwise specifically noted as an Exception in the Proposal."*

*"The submitted Proposal is valid for a period of ninety (90) days from the time and date Proposals are due."*

*"All materials and documents acquired or produced by the consultant in conjunction with the resulting contract shall be delivered to and become property of the City of Wilsonville, without restriction or limitation of future use."*

## Project Understanding

Proposals shall demonstrate the Proposer's understanding of the Project by providing a clear and concise description of the Project, discussion of the anticipated primary issues and milestones, and identification of key stakeholders, based on the information provided in the RFP.

## Project Approach

Proposals shall clearly define the tasks and activities necessary to meet the objectives outlined in the Scope of Work of the RFP. Each Proposer should demonstrate knowledge of the type of work requested, ability to solve the anticipated Project issues, and ability to offer innovative ideas. Proposer's ability to expeditiously complete the work should be made evident. The Proposal should include the following:

1. Describe overall approach to project management.
2. Describe approach to creating novel and innovative solutions related to industrial development standards and design, form-based codes, and transportation and infrastructure analyses and funding options including urban renewal feasibility.
3. Describe Proposer's approach and methodology for preparing project cost estimates, including the services being solicited by the RFP.
4. Describe approach to organize and accomplish each of the tasks and activities of this RFP, including addressing the anticipated primary issues and milestones.
5. Identify Proposer's specific team members, including key sub-consultants, and resources assigned to each task and activity of the RFP.
6. Describe Proposer's approach to complete the tasks and activities of this RFP in a timely manner and control costs.
7. Describe Proposer's approach to unanticipated issues that may arise during the Project.
8. Describe Proposer's quality assurance and quality control procedures to be implemented on this Project.
9. Describe Proposer's approach and abilities to interact and engage stakeholders.
10. Identify and describe the deliverables that will result from each task and activity.
11. Identify key points of input and review with City staff, Planning Commission, and/or City Council, key stakeholders as identified, and the public.

## Proposer Experience

Proposals shall provide a brief work history of Proposer's and any key sub-consultant's projects entailing the same type of work being requested. Emphasis should be placed on local projects for public agencies where possible. The Proposal should include the following:

1. Describe the Proposer's and key sub-consultant's firm size, office locations, and relevant capabilities and resources to be utilized on this Project.
2. Describe Proposer's and key sub-consultants' work experience that corresponds with the Project needs, as identified in this RFP.
3. Provide at least three (3) examples of projects completed by Proposer for public agencies that best characterize Proposer's experience with the work being requested, work quality, and cost control, describing each by project name, type, location, and date.
  - Include the public agency name and the name, address, telephone number, and email of the current contact person for each project, where possible.

- Identify what role, if any, each team member who is proposed for this City Project (see Project Team Experience, below) played in each listed project.
- Identify original and final contract costs for each listed project. Explain any cost overruns and corrective actions taken.

### Project Team Experience

Proposals shall identify the team to be assigned to the Project by name, describing each member's qualifications and experience with completed projects relative to the requested services, including expertise regarding all tasks associated with the Scope of Work. Each Proposal should include the following:

1. Identify by name and title the project principal, project manager, key supporting personnel, and any sub-consultants or subcontractors to be assigned to this Project.
2. Describe the lead Proposer/project manager's experience successfully working with the sub-consultants on complex projects. Provide specific examples.
3. Describe education, training, qualifications, registrations, certification, and relevant individual work experience of all key personnel, including sub-consultants, to be assigned to this Project.
4. Identify the Project roles and responsibilities of all key personnel.
5. Describe any attributes or expertise of key personnel uniquely situated for the requested services.
6. Describe the extent of principal and project manager involvement.
7. Describe current and anticipated assignments and location of key personnel, including percentage of time devoted to other projects during performance of this Project.
8. Estimate the percentage of time each listed key personnel will be devoted to this Project for the duration of the Project, based on a 40-hour work week as well as their overall availability.

### Project Schedule and Budget

Proposals shall include a proposed Project schedule and budget identifying the duration and completion date of all tasks and milestones, as well as the cost for each and what percentage of each task is allocated to each subcontractor on the Project team. The schedule should reflect the anticipated final completion date stated in the Scope of Work. If the schedule extends beyond the final completion date, the Proposal should include an explanation as to why the work cannot be completed within the proposed timeframe stated in the Scope of Work. The budget should include hourly rates for all staff working on the Project. For any travel that will be needed to complete the tasks, describe what is included and how it will be charged; travel costs incurred by the Proposer

are assumed to be included in the Project budget, below, as part of the Proposer’s overall cost for each task.

The Project budget by task is provided below as a guideline:

- Task 1: Assess Coffee Creek Form-based Code (FBC); \$10,000
- Task 2: Assess Planned Development Industrial (PDI) Code; \$5,000
- Task 3: Conduct Community Outreach to Inform Code Assessment; \$10,000
- Task 4: Determine Policy Direction; \$20,000
- Task 5: Develop Draft Code Amendments; \$55,000
- Task 6: Adopt Final Code Amendments; \$25,000
- Task 7: Conduct Infrastructure Study; \$40,000
- Task 8: Develop Infrastructure Funding Plan; \$55,000
- Task 9: Conduct Urban Renewal Feasibility Study; \$50,000

Total Project Budget Tasks 1 through 9: \$270,000

### Supporting Information

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

## V. PROPOSAL SUBMISSION

Proposers shall email their Proposals, with the subject line “Request for Proposals – Basalt Creek Code Assessment and Infrastructure Funding Strategy”, and include the name and address of the Proposer in the email body. Proposals shall be addressed and submitted to the following email address by **Wednesday, December 6, 2023, at 2:00 p.m., Pacific Time.**

City of Wilsonville  
Attn: Cindy Luxhoj AICP  
[luxhoj@ci.wilsonville.or.us](mailto:luxhoj@ci.wilsonville.or.us)

Proposals must arrive at the stated email address on or before the listed time and date due. Late Proposals will remain unopened and not reviewed.

## VI. PROPOSAL EVALUATION AND SELECTION

A Selection Review Committee of at least three members will be appointed to evaluate the Proposals received. Each committee member will independently evaluate each Proposal in accordance with the criteria stated in the Proposal Requirements section of this RFP.

The City may also seek expert advice to help review Proposals. Advisors to the Selection Review Committee may attend evaluation meetings and consultant presentations, evaluate the Proposals, and lend any such expertise to the process as requested by the City. However, any such person that is contacted by the City for their expert advice shall not, from first being contacted until the RFP

process is completed or otherwise brought to an end, have communications with any Proposers regarding Proposals or the RFP process.

At any point during the evaluation process, the City is permitted to seek clarification of any Proposal.

### Written Evaluation

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

#### **EVALUATION CRITERIA**

Criteria	Maximum Score
Proposal Quality	25
Equity: Prioritized and Integrated	15
Proposer's Experience/Demonstrated Results	25
Project Approach	25
Value of Services Provided for Cost	10
<hr/>	
Total Maximum Score	100 Points

In addition to the above weighted scoring criteria, information regarding COBID certified businesses, as explained below, and feedback from provided references will also be considered and may be determinative in the selection process. COBID certified businesses and references will not be scored but will be considered and may be a deciding factor.

### Explanation of Evaluation Criteria

Following are additional details on the proposal evaluation criteria:

- **Proposal Quality:** Quality and creativity of the Proposal, and the likelihood of achieving Project objectives. Key milestones and deliverables, and the Proposer's plan and process for reaching them, should be addressed in adequate detail in the Scope of Work. Proposal should be well written, thoughtfully organized, and presented clearly and concisely. The review team will consider the Proposal a reflection of the level of quality of the project team's deliverables.
- **Equity Prioritized and Integrated:** Evidence throughout the proposal that the Proposer prioritizes equity both in project approach and outcomes. This may include, but is not limited to, creating novel and innovative solutions related to including in the process and creating meaningful outcomes benefiting historically marginalized groups. Outreach with historically marginalized groups is expected to result in significant impact on final products. Equity is integrated into the entirety of the proposal as a key component rather than standalone task(s).
- **Proposer's Experience/Demonstrated Results:** Proposal team's experience and success with similar projects. This includes individual team members' experience, but more importantly it includes extent of experience of team members working together and the

project manager's experience leading the same or substantially similar team to a successful project. Past projects and references are relevant and reflect similar complexity to this project.

- **Project Approach:** Proposal reflects a holistic approach showing an understanding of the Project and the City's desired outcomes. Specifically, the Proposal presents a creative, innovative, thoughtful, and high-quality Scope of Work to meet those objectives; a clear plan for communication and coordination with the various team members and with the City; and a project team and process for successfully managing Project deliverables and timeline. Scope of work should also explain approach to quality control and reflect the complexity of the Project; among other things, integrating enough time for City review and consultant team refinements prior to needing to share with decision makers and/or public.
- **Value of Services Provided for Cost:** The maximum services provided in relation to the fee charged and the value of the overall Project; the budget is reasonable and appropriate.
- **COBID Certified Business:** The use of COBID certified minority-owned businesses, women owned businesses, businesses that service disabled veterans and emerging small businesses is encouraged to the maximum extent practical. Indicate if your firm is a COBID Certified Business, describe the diversity of demographics of the Proposal team including subcontractors (if applicable).

### Interview Evaluation

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

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

### Successful Proposer Determination

The Proposer with the highest overall ranking, as determined by the Selection Review Committee, based on the written evaluation, will be identified as the Successful Proposer. Depending on the number of Proposers and the point spread among Proposals, the Selection Review Committee may determine that an interview evaluation is needed to determine the Successful Proposer. Those Proposers selected for interviews will be based on the Proposals with the highest overall ranking based on the written evaluation.

If interviews are conducted, the Successful Proposer will be determined based on the adjusted post-interview score and ranking in accordance with the Evaluation Criteria. The Proposer with the highest overall adjusted ranking, as determined by the Selection Review Committee, will be identified as the Successful Proposer.

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

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

The City reserves the right to negotiate a final contract that is in the best interest of the City. With regards to the Professional Services Agreement, the City will only negotiate those provisions that were noted as Exceptions in the Proposal. The City will attempt to reach a final agreement with the Successful Proposer. The City may, in its sole discretion, terminate negotiations and reject the Proposal in the event agreement cannot be reached. The City may then attempt to reach final agreement with the next highest ranked Proposer, and so on with the remaining Proposers, until an agreement is reached. In the alternative, the City may at any time elect to reject all Proposals and begin the RFP process over.

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

#### Award Protest

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

City of Wilsonville

Attn: Cindy Luxhoj AICP

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

Award protests shall include "Basalt Creek Code Assessment and Infrastructure Funding Strategy – Award Protest" in the subject line of the email. The written protest must be received by the City no later than seven (7) calendar days after the date the Notice of Intent to Award letter was issued. The protest should demonstrate that all higher ranked Proposers failed to meet the requirements of the RFP or are not qualified to perform the services described in the RFP. Protests received after the submittal deadline will not be considered.

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

## VII. SCHEDULE

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

Advertise Request for Proposals	Wednesday, November 8, 2023
RFP Change Request Deadline	Wednesday, November 22, 2023, 5:00 p.m.
RFP Question Submission Deadline	Wednesday, November 22, 2023, 5:00 p.m.
Addenda Issuance Deadline	Wednesday, November 29, 2023, 5:00 p.m.
Proposals Due	Wednesday, December 6, 2:00 p.m.
Evaluation of Proposals Complete	Friday December 15, 2023
Interviews Scheduled ( <i>if deemed necessary by City</i> )	Week of December 18, 2023
Notice of Intent to Award	Friday, December 29, 2023
Award Protest Deadline	Friday, January 5, 2024, 5:00 p.m.
City Council Award	Monday, January 18, 2024, 7:00 p.m.
Notice of Award	Wednesday, February 7, 2024

## VIII. PRE-PROPOSAL MEETING

There will be no pre-submittal meeting or site visit scheduled for this RFP.

## IX. RFP DOCUMENTS

Request for Proposal (RFP) documents may be obtained by emailing Cindy Luxhoj AICP at [luxhoj@ci.wilsonville.or.us](mailto:luxhoj@ci.wilsonville.or.us), or may be obtained on the City's website ([www.ci.wilsonville.or.us](http://www.ci.wilsonville.or.us)) under "Business" by clicking on "Bids and RFPs". The City of Wilsonville shall not be held responsible for the delivery of the documents.

## X. PROJECT MANAGER

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

Cindy Luxhoj AICP  
Associate Planner

Contact at:  
503-570-1572  
[luxhoj@ci.wilsonville.or.us](mailto:luxhoj@ci.wilsonville.or.us)

## XI. RFP QUESTIONS

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

City of Wilsonville  
Attn: Cindy Luxhoj AICP  
[luxhoj@ci.wilsonville.or.us](mailto:luxhoj@ci.wilsonville.or.us)

All questions shall include “Basalt Creek Code Assessment and Infrastructure Funding Strategy – RFP Questions” in the subject line and be submitted by **5:00 p.m., Pacific Time, on Wednesday, November 22, 2023**. Questions and answers will be provided by email to all firms on the RFP holders list.

Access to the City’s Project Manager for telephone calls, emails, or other communication will be unrestricted during the RFP preparation period up until 5:00 p.m., Pacific Time, on Wednesday, November 22, 2023. During this time, Proposers are encouraged to ask as many questions as needed to prepare a viable Proposal. Questions submitted after 5:00 p.m., Pacific Time, on Wednesday, November 22, 2023, will not be addressed.

For the sake of fairness, and to avoid the appearance of undue influence, Proposers are *not* to contact any City staff, City official, or Committee member other than the Project Manager concerning this RFP. Contact with any other City staff, City official, or Committee member concerning this RFP will be grounds for disqualification.

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

## XII. GENERAL RFP INFORMATION

### Changes to the RFP Solicitation by Addenda

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

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

No addenda will be issued later than **Wednesday, November 29, 2023**, except by an addendum, if necessary, postponing the date for receipt of Proposals or withdrawing the RFP altogether.

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

### Confidentiality

All information submitted by Proposers shall become and remain the property of the City and, as such, is considered public information and subject to disclosure pursuant to the Oregon Public Records Act, except such portions of the Proposals for which the Proposer requests exception from disclosure as being proprietary information exempt from disclosure, consistent with Oregon law. If a Proposal contains any information that is considered a trade secret under ORS 192.501(2), each sheet of such information must be marked with the following legend:

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

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

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

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

### Cancellation

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

### Late Proposals

All Proposals that are not received by the Proposal Due Date and Time will not be considered and will be returned unopened to the Proposer. Delays due to such things as technology issues do not excuse the Proposer's responsibility for submitting the Proposal to the correct location by the Proposal Due Date.

### Disputes

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

### Proposer Certifications

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

1. Proposer has carefully examined all RFP documents, including the draft Professional Services Agreement (attached as Attachment A), all addenda, and all other attachments, fully understands the RFP intent, is able to perform all tasks as described in the Scope of Work of this RFP, and the Proposal is made in accordance therewith. Except as otherwise noted as part of the Proposal, Proposer certifies that Proposer is ready, willing, and able to comply with all terms of the attached Professional Services Agreement.
2. Proposer is familiar with the local conditions under which the work will be performed.
3. The Proposal is based upon the requirements described in the RFP, without exception, unless clearly stated in the response.
4. Proposer accepts all of the terms of the City's Professional Services Agreement and warrants that Proposer will fully meet all of the insurance requirements contained therein. If Proposer wishes to amend or modify any terms of the Professional Services Agreement, such amendment or modification must be stated in particularity in the Proposal. Proposed changes to the draft Professional Services Agreement not stated at the time of Proposal submission will not be considered. Changes stated will be considered but may not be agreed upon by the City for contract award. If the City does not agree with such noted changes, Proposer may withdraw the proposed change or the entire Proposal and the City may elect to award to the next highest ranked Proposer.
5. Proposer certifies, and in the case of sole proprietorship, partnership, or corporation, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of Proposer's knowledge and belief, no elected official, employee, or person whose salary is payable, in whole or in part, by the City has a direct or indirect financial interest in the Proposal, or in the services to which it relates, or in any of the profits thereof, other than as fully described in the Proposer's response to this solicitation.
6. Proposer has examined all parts of the RFP, including all requirements and contract terms and conditions thereof, and if its Proposal is accepted, the Proposer shall accept the contract

documents thereto, unless substantive changes are made in same without the approval of the Proposer.

7. Proposer, if an individual, is of lawful age; is the only one interested in this Proposal; and no person, firm, or corporation, other than that named, has any interest in the Proposal, or in the proposed contract.
8. Proposer has quality experience providing the types of services and duties as described within the Scope of Work of this RFP.

Proposer shall also certify Proposer's state of residence.

### Nondiscrimination

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

### Competition

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

### RFP Protests and Change Requests

A prospective Proposer may protest anything contained in the RFP documents and request a supporting change to any provision, specification, or contract term contained in the RFP documents by submitting a written request via email to:

City of Wilsonville  
Attn: Cindy Luxhoj AICP  
[luxhoj@ci.wilsonville.or.us](mailto:luxhoj@ci.wilsonville.or.us)

All change requests shall include "Basalt Creek Code Assessment and Infrastructure Funding Strategy – RFP Protest" in the subject line and be submitted by **5:00 p.m., Pacific Time, on Wednesday, November 22, 2023**. Each protest and request for change must specify the provisions, specifications, or contract terms of the RFP in question and contain reasons for the requested change and any proposed changes.

The City will evaluate and resolve all protests and related change requests submitted before the listed time and date due within a reasonable time following receipt of the protest. The City will issue a written decision on the protest to the Proposer who submitted the protest. Changes that are accepted by the City shall be issued in the form of an addendum to the RFP.

### Proposal Liability

Proposers responding to this RFP do so solely at their expense, and the City is not responsible for any Proposer expenses associated with the RFP. By proposing, Proposers agree that doing so is at their own risk and the City shall have no liability related thereto. Finalists invited to participate in interview evaluations are responsible for scheduling and paying for their own travel arrangements.

The City is not liable for any cost incurred by a Proposer in protesting any portion of the RFP documents or the City's selection decision.

#### City Requests for Clarification, Additional Research, and Revisions

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

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

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

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

#### Rejection of Proposals

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

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

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

#### Modification or Withdrawal of Proposal by Proposer

A Proposal may not be modified, withdrawn, or canceled by the Proposer following the time and date the Proposals are due. Proposals submitted early may be modified or withdrawn only by notice to the City, at the Proposal submittal location, prior to the time and date the Proposals are due. Such notice shall be submitted to the Project Manager, in writing, executed and signed by a duly

authorized representative of the firm/individual submitting the Proposal. All such communication shall be worded so as not to reveal the contents of the original Proposal.

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

#### Duration of Proposal

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

#### Local and Federal Requirements

The City of Wilsonville intends to select a consultant in accordance with OAR 137-047-0260 and the City's municipal Code. Selection of a consultant under this process is not a guarantee of a contract award, nor is the award of a contract for any portion of the Work a guarantee of award of a contract for any subsequent work. All work is subject to budgetary and funding constraints of the City of Wilsonville.

The selected consultant shall comply with all federal, state, and local laws, regulations, executive orders, and ordinances applicable to the work under this contract, including, without limitation, the provisions of: (i) Title VI of the Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations.

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

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# Attachment A

## Sample Professional Services Agreement

## CITY OF WILSONVILLE PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (“Agreement”) for the Basalt Creek Code Assessment and Infrastructure Funding Strategy Project (“Project”) is made and entered into on this \_\_\_\_ day of \_\_\_\_\_ 2023 (“Effective Date”) by and between the **City of Wilsonville**, a municipal corporation of the State of Oregon (hereinafter referred to as the “City”), and \_\_\_\_\_, a(n) \_\_\_\_\_ *[corporation/LLC]* (hereinafter referred to as “Consultant”).

### RECITALS

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

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

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

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

### AGREEMENT

#### **Section 1. Scope of Work**

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

#### **Section 2. Term**

The term of this Agreement shall be from the Effective Date until all Services required to be performed hereunder are completed and accepted, or no later than December 31, 2025, whichever occurs first, unless earlier terminated in accordance herewith or an extension of time is agreed to, in writing, by the City.

#### **Section 3. Consultant’s Services**

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

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

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

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

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

#### **Section 4. Compensation**

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

4.2. During the course of Consultant's performance, if the City, through its Project Manager, specifically requests Consultant to provide additional services that are beyond the Scope of Work described on **Exhibit A**, Consultant shall provide such additional services and bill the City at the hourly rates outlined on Consultant's Rate Schedule, as set forth in **Exhibit B**. Any additional services beyond the Scope of Work, or any compensation above the amount shown in **Subsection 4.1**, requires a written Addendum executed in compliance with the provisions of **Section 17**.

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

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

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

## **Section 5. Prevailing Wages**

This is a contract for a Public Works Project subject to ORS 279C.800 to 279C.870. Therefore, for those employees and/or subcontractors working on this Project who are subject to prevailing wage rates on public works contracts, not less than the current applicable state prevailing wage must be paid on this Project. Wage rates for this Project are those published by the Bureau of Labor and Industries (BOLI), effective July 5, 2023, and all subsequent amendments. The BOLI prevailing wage rate for public works contracts can be found at the following website: <http://www.oregon.gov/boli/employers/pages/prevailing-wage-rates.aspx>. Because this is a public works contract subject to payment of prevailing wages, each worker in each applicable trade or occupation employed in the performance of the Services, either by Consultant, a subcontractor, or other person doing or contracting to do, or contracting for the whole or any part of the Services, must be paid not less than the applicable state prevailing wage for an hour's work in the same trade or occupation in the locality where such labor is performed, in accordance with ORS 279C.838 and 279C.840, if applicable. Consultant must comply with all public contracting wages required by law. If applicable, Consultant and any subcontractor, or their sureties, shall file a certificate of rate of wage as required by ORS 279C.845. If the City determines at any time that the prevailing rate of wages has not been or is not being paid as required herein, it may retain from the moneys due to Consultant an amount sufficient to make up the difference between the wages actually paid and the prevailing rate of wages, and may also cancel the contract for breach. Consultant shall be liable to the workers affected for failure to pay the required rate of wage, including all fringe benefits under ORS 279C.840(5). If applicable, Consultant shall include a contract provision in compliance with this paragraph in every subcontract and shall require each subcontractor to include it in subcontract(s).

## **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 2023-24. 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 15**.

## **Section 7. City's Project Manager**

The City's Project Manager is Daniel Pauly. 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 \_\_\_\_\_. 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. Subcontractors and Assignments**

10.1. Unless expressly authorized in **Exhibit A** or **Section 11** 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.

10.2. 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.

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

## **Section 11. Consultant Is Independent Contractor**

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

11.2. 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 17** of this Agreement. In all cases, processing and payment of billings from subcontractors is solely the responsibility of Consultant.

11.3. 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 11** and meet the same insurance requirements of Consultant under this Agreement.

## **Section 12. Consultant Responsibilities**

12.1. 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.

12.2. 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.

12.3. 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 13. Indemnity**

13.1. 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 13.2**. Consultant shall defend the City (using legal counsel reasonably acceptable to the City) against any claim that alleges negligent acts, omissions, errors, or willful or reckless misconduct by Consultant. As used herein, the term "Consultant" applies to Consultant and its own agents, employees, and suppliers, and to all of Consultant's subcontractors, including their agents, employees, and suppliers.

13.2. 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 14. Insurance**

14.1. 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 Services 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:

14.1.1. 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.

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

14.1.3. 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**.

14.1.4. 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.

14.1.5. 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.

14.1.6. 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.

14.1.7. 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.

14.2. 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 15. Early Termination; Default**

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

15.1.1. By mutual written consent of the parties;

15.1.2. 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

15.1.3. 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.

15.2. 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.

15.3. 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.

15.4. 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 19**, for which Consultant has received payment or the City has made payment.

## **Section 16. 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 17. Modification/Addendum**

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

## **Section 18. 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 19. 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 20. 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: Daniel Pauly, Planning Manager  
29799 SW Town Center Loop East  
Wilsonville, OR 97070

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

**Section 21. Miscellaneous Provisions**

21.1. 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.

21.2. 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.

21.3. 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.

21.4. 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.

21.5. 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.

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

21.7. 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.

21.8. 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.

21.9. 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.

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

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

21.12. 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.

21.13. 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.

21.14. 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.

21.15. 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.”

21.16. 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.

21.17. 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.

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

21.19. 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.

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

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

**CONSULTANT:**

**CITY:**

\_\_\_\_\_

CITY OF WILSONVILLE

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

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

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

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

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

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

EIN/Tax I.D. No. \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Stephanie Davidson, Assistant City Attorney  
City of Wilsonville, Oregon

#241930

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# Attachment B

## Supporting Information

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