

City of Wilsonville

City Council Meeting

December 18, 2017



AGENDA

**WILSONVILLE CITY COUNCIL MEETING
DECEMBER 18, 2017**

7:30 P.M.

**CITY HALL
29799 SW TOWN CENTER LOOP
WILSONVILLE, OREGON**

Mayor Tim Knapp

Council President Scott Starr
Councilor Susie Stevens

Councilor Kristin Akervall
Councilor Charlotte Lehan

CITY COUNCIL MISSION STATEMENT

To protect and enhance Wilsonville's livability by providing quality service to ensure a safe, attractive, economically vital community while preserving our natural environment and heritage.

Executive Session is held in the Willamette River Room, City Hall, 2nd Floor

- 5:00 P.M. EXECUTIVE SESSION [45 min.]**
A. Pursuant to: ORS 192.660(2)(h) Legal Counsel / Litigation
ORS 192.660(2)(a) Employment of Public Officers, Employees and Agents
- 5:45 P.M. REVIEW OF AGENDA [5 min.]**
- 5:50 P.M. COUNCILORS' CONCERNS [5 min.]**
- 5:55 P.M. PRE-COUNCIL WORK SESSION**
- A. Municipal Court Judge's Contract Renewal (Katko) [5 min.]
 - B. Contract for Technical Support on Battery Electric Bus Project (Simonton) [5 min.]
 - C. I-5 Pedestrian & Bikeway Bridge Funding Plan (CIP #4202) (Weigel) [20 min.] Page 1
 - D. Red Light Camera (Cole) [20 min.] Page 10
 - E. CIP 4196 -5th to Kinsman Extension Project Update (Adams) [20 min.]
 - F. Metro/WaCo/Wilsonville/Tualatin Basalt Creek IGA (Jacobson/Bateschell)[10 min.]
 - G. Congestion Improvements Contract Awards (Mende) [10 min.] Page 15
- 7:25 P.M. ADJOURN**
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CITY COUNCIL MEETING

The following is a summary of the legislative and other matters to come before the Wilsonville City Council a regular session to be held, Monday, December 18, 2017 at City Hall. Legislative matters must have been filed in the office of the City Recorder by 10 a.m. on December 5, 2017. Remonstrances and other documents pertaining to any matters listed in said summary filed at or prior to the time of the meeting may be considered therewith except where a time limit for filing has been fixed.

7:30 P.M. CALL TO ORDER

- A. Roll Call
- B. Pledge of Allegiance
- C. Motion to approve the following order of the agenda and to remove items from the consent agenda.

7:35 P.M. CITIZEN INPUT & COMMUNITY ANNOUNCEMENTS

This is an opportunity for visitors to address the City Council on items *not* on the agenda. It is also the time to address items that are on the agenda but not scheduled for a public hearing. Staff and the City Council will make every effort to respond to questions raised during citizens input before tonight's meeting ends or as quickly as possible thereafter. Please limit your comments to three minutes.

7:40 P.M. MAYOR'S BUSINESS

- A. Employment Contract Renewal (2 year extension) for Municipal Court Judge (Fred Weinhouse) **Page 20**
- B. Upcoming Meetings **Page 25**

7:50 P.M. COUNCILOR COMMENTS

- A. Council President Starr
- B. Councilor Stevens
- C. Councilor Lehan
- D. Councilor Akervall

8:00 P.M. CONSENT AGENDA

- A. **Resolution No. 2660** **Page 26**
A Resolution Of The City Of Wilsonville Authorizing South Metro Area Regional Transit (SMART) To Contract With The Center For Transportation And The Environment (CTE) For Consulting Work Associated With The Deployment Of Battery Electric Transit Buses. (Simonton)
- B. Minutes of the, November 20, 2017 and December 4, 2017 Council Meetings. **Page 43**

8:05 P.M. NEW BUSINESS

- A. **Resolution No. 2657** **Page 54**
A Resolution Of The City Of Wilsonville Authorizing The Mayor To Execute An Intergovernmental Agreement Between Metro, Washington County, And The Cities Of Tualatin And Wilsonville Seeking A Binding Non-Appealable Decision From Metro Concerning One Area, The Central Subarea, Of The Basalt Creek Planning Area. (Kraushaar / Bateschell)
- B. **Resolution No. 2658** **Page 67**
A Resolution Of The City Of Wilsonville Acting In Its Capacity As Its Local Contract Review Board Authorizing The City Manager To Execute A Construction Contract With 2KG Contractors Inc. For Construction Of The Library Improvements Project (CIP #8098). (Mende)

C. **Resolution No. 2661** **Page 94**
A Resolution Of The City Of Wilsonville Acting In Its Capacity As Its Local Contract Review Board Authorizing The City Manager To Execute A Construction Contract With Kerr Contractors Oregon, Inc. For Construction Of The I-5 Exit 283 Southbound Ramp Modification Project (CIP #4199SBR). (Mende)

D. **Resolution No. 2662** **Page 121**
A Resolution Of The City Of Wilsonville Acting In Its Capacity As Its Local Contract Review Board Authorizing The City Manager To Execute A Construction Contract With Brown Contracting, Inc. For Construction Of The Old Town Square Intersection Modification Project (CIP #4199FME). (Mende)

8:50 P.M. CITY MANAGER’S BUSINESS

8:55 P.M. LEGAL BUSINESS

9:00 P.M. ADJOURN

Time frames for agenda items are not time certain (i.e. Agenda items may be considered earlier than indicated.) Assistive Listening Devices (ALD) are available for persons with impaired hearing and can be scheduled for this meeting if required at least 48 hours prior to the meeting. The city will also endeavor to provide the following services, without cost, if requested at least 48 hours prior to the meeting: Qualified sign language interpreters for persons with speech or hearing impairments. Qualified bilingual interpreters. To obtain services, please contact the City Recorder, (503) 570-1506 or veliz@ci.wilsonville.or.us.



**CITY COUNCIL MEETING
STAFF REPORT**

Meeting Date: December 18, 2017		Subject: I-5 Pedestrian & Bikeway Bridge Funding Plan (CIP #4202)	
		Staff Member: Zachary Weigel, P.E. Civil Engineer	
		Department: Community Development	
Action Required		Advisory Board/Commission Recommendation	
<input type="checkbox"/> Motion <input type="checkbox"/> Public Hearing Date: <input type="checkbox"/> Ordinance 1 st Reading Date: <input type="checkbox"/> Ordinance 2 nd Reading Date: <input type="checkbox"/> Resolution <input checked="" type="checkbox"/> Information or Direction <input type="checkbox"/> Information Only <input type="checkbox"/> Council Direction <input type="checkbox"/> Consent Agenda		<input type="checkbox"/> Approval <input type="checkbox"/> Denial <input type="checkbox"/> None Forwarded <input checked="" type="checkbox"/> Not Applicable Comments: N/A	
Staff Recommendation: Staff recommends that Council provide direction on the I-5 Pedestrian & Bikeway Bridge funding plan.			
Recommended Language for Motion: N/A			
Project / Issue Relates To: <i>[Identify which goal(s), master plans(s) your issue relates to.]</i>			
<input checked="" type="checkbox"/> Council Goals/Priorities 9. Build fully interconnected and effective transportation modes.	<input checked="" type="checkbox"/> Adopted Master Plan(s) Transportation System Plan - Project BW-09	<input type="checkbox"/> Not Applicable	

ISSUE BEFORE COUNCIL:

Provide direction to staff on the following funding options for the I-5 Pedestrian & Bikeway Bridge:

1. Accept \$1.55 million Metro Regional Flexible Fund Allocation (RFFA) grant for the design phase based on the projected Transportation System Development Charge (TSDC) fund analysis that describes a local funding strategy option for design and construction (total project cost estimate is \$10.8 million).
2. Proceed with the project using local funds only based on the projected TSDC fund analysis that describes a local funding strategy option for design and construction (potential time and cost savings).
3. Do not proceed with the project at this time.

EXECUTIVE SUMMARY:

On February 10, 2017, the City of Wilsonville obtained a \$1.55 million Regional Flexible Fund Allocation (RFFA) grant through Metro for the design of the I-5 Pedestrian & Bikeway Bridge project (the City's local match commitment for design is \$700,000). Both Wilsonville and the region have identified the planned bridge as a high priority project.

The RFFA grant will utilize federal funds administered by the Oregon Department of Transportation (ODOT). The federally funded grant requires project construction within 10 years from when the grant funds are made available. Before work can proceed, the City must submit a funding plan to the Federal Highway Administration (FHWA) for their approval to make sure the project will be complete within the allotted time. The plan must show full funding of the project within 6 years of ODOT releasing the RFFA grant funds. This shortened timeframe is due to the construction dollars in total being due at the time of project bid and the allowance of some buffer in the event of future unanticipated complications.

Staff developed a TSDC fund analysis and financing plan (see **Attachment A**) that compares the planned transportation project expenditures with the projected TSDC revenues through Fiscal Year 24/25. Staff developed the plan to clarify how the City could pay for the project, provide guidance for future budgeting and fund programming, and to submit to FHWA for their approval.

The plan indicates that the TSDC budget can accommodate the anticipated \$10.8 million bridge project within the six-year timeframe (funds accrued by FY 23/24) with an estimated \$2.8 million ending fund balance at the end of that fiscal year. The City could accelerate the plan if project priorities change, other revenue sources become available, or if the City entered into a debt obligation to finance any portion of the project (recognizing that a debt obligation would bring additional costs to the project in terms of issuance costs and interest). Such financing would be paid from available Transportation SDCs, but would have to be guaranteed by the General Fund to reduce the risk to the bank of SDC revenue volatility.

Alternatively, if development does not occur as the City anticipates, causing the Transportation SDC revenue stream to falter, a re-prioritization of transportation projects may need to occur, or this project may need to be delayed. However, at this point in time with the current economic conditions, staff views this as a relatively low risk given the anticipated growth areas of Frog Pond, Coffee Creek and general development and re-development within the City.

When the City applied for the RFFA grant, staff anticipated further pursuit of future grant opportunities (\$2.0-\$3.0 million) to supplement bridge construction dollars. Since that time, the

outlook for grant funding within the next 5-10 years does not look as promising. If additional grant funds cannot be obtained within the 10-year timeframe, the City is responsible for developing a funding strategy to complete the bridge construction.

Federal transportation funding carries with it mandatory FHWA and ODOT oversight that typically translates to higher project costs and a longer overall project schedule. Use of federal funds typically represents 2 to 4 years of additional time for the administrative requirements and oversight. City staff anticipate that the use of the RFFA funds for the I-5 pedestrian and bikeway bridge project will result in at least \$1 million in additional costs over the life of the project. This includes considerable additional staff time (approximately 50%) and consultant time for project management and administrative costs.

If the City is not able to obtain additional grant funds to supplement construction, use of \$1.55 million RFFA grant funds for design may not justify the additional costs associated with a federal-funded project. Federal oversight can also result in mandates that supersede local design preferences.

If the City chooses to self-fund the entire project (not use the RFFA grant), the estimated TSDC fund requirement would increase by \$550,000. Benefits from this approach include allowing local control of most project decisions, the City setting its own schedule (depending on the funding plan and future budget processes), and more flexibility during design and construction due to less agency oversight.

EXPECTED RESULTS:

Provide a safe bike and pedestrian crossing of I-5 separated from vehicular traffic linking the east and west sides of Wilsonville.

TIMELINE:

Prior to the availability of the \$1.55 million RFFA grant funds, (anticipated in fiscal year 2018-19) the City would initiate an Intergovernmental Agreement (IGA) with ODOT. Once the IGA is in place, the consultant selection occurs followed by work scope and fee development for the consultant services, and approval by ODOT. Project design work likely would begin in approximately 1 1/2 to 2 years. City staff anticipate the soonest the project could be completed through the Federal process is 7 to 8 years (depending on how the funding is structured), and must be completed within 10 years.

If the City self-funds the project, project design work could begin immediately upon completion of the Town Center Plan (in approximately 6 months) and the project completed within 4 to 8 years; depending on the how the project funding is structured.

CURRENT YEAR BUDGET IMPACTS:

The budget for FY17/18 includes \$575,000 in Transportation System Development Charges for CIP Project #4202, as a funding set-aside, with an expenditure of approximately \$50,000 for City overhead to develop the IGA with ODOT and prepare the design Request for Proposals. The remaining budget is intended to begin to accrue funds to pay for project design and construction in future years.

FINANCIAL REVIEW / COMMENTS:

Reviewed by: SCole Date: 12/7/2017

The Finance Department worked with the Community Development Department on the Transportation SDC Fund analysis. This analysis is based on projections, and as such is subject to change.

LEGAL REVIEW / COMMENT:

Reviewed by: BAJ Date: 12/6/2017

I concur with staff that Federal funding can add a significant level of complexity, requirements, restrictions, time and costs. Additionally, accepting those funds now does commit the City to a project that there may not be additional outside funds available for, at the potential expense of other City projects that might otherwise have a higher priority.

COMMUNITY INVOLVEMENT PROCESS:

The pedestrian and bikeway bridge was identified as a high priority project through the last update to the Wilsonville Transportation System Plan, which included an extensive community involvement process. Likewise, the RFFA grant process included a public review and comment period in which the project garnered positive feedback from the community.

The design phase of the project will include a public involvement plan that provides for broad-based community involvement.

POTENTIAL IMPACTS or BENEFIT TO THE COMMUNITY (businesses, neighborhoods, protected and other groups):

The bridge will provide a safe bike and pedestrian crossing of I-5 that is separated from vehicular traffic with direct access to essential services in the Wilsonville Town Center, SMART Central Station and WES commuter rail, employment areas, and educational resources. The bridge will serve all populations within and around the project area.

ALTERNATIVES:

1. Proceed with the \$1.55 million in RFFA grant and begin working on IGA with ODOT to start bridge design work. City staff will continue to pursue additional grant funding opportunities to supplement project construction funds, but will prepare to construct the bridge project within the required 10 years from initial grant fund availability – initially based on the attached TSDC analysis and financing plan option.
2. Conclude that the project can be more efficiently completed through expenditure of City funds only. Pursue options to redirect the funds through the RFFA program. Begin design and construction the bridge project with City funds only – initially based on the attached TSDC analysis and financing plan option.
3. Do not proceed with the project at this time.

CITY MANAGER COMMENT:

ATTACHMENTS:

- A. I-5 Bike & Pedestrian Bridge Financing Plan

ATTACHMENT A

I-5 Bike & Pedestrian Bridge Financing Plan December 4, 2017

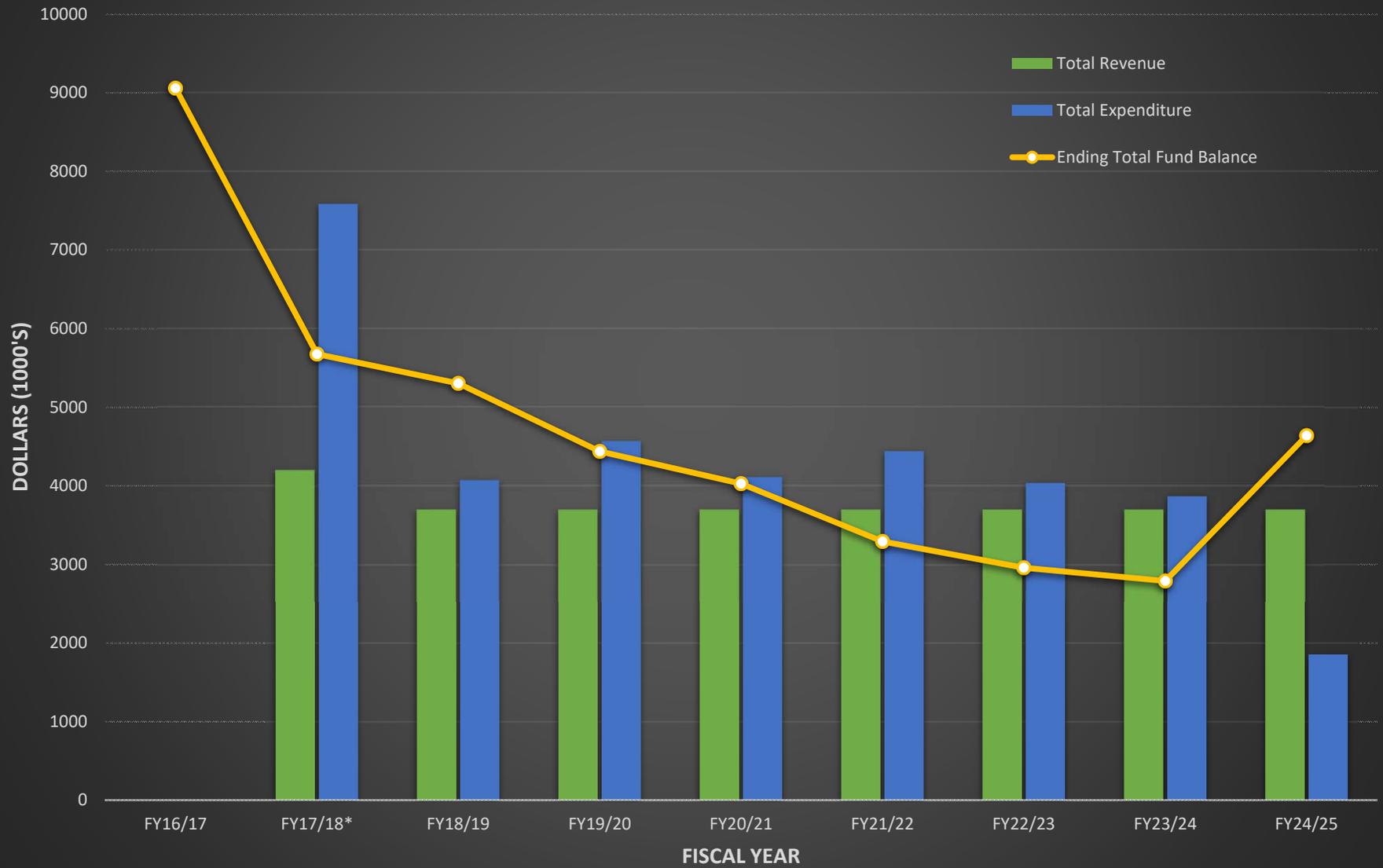
	Projected Amounts							
	FY17/18*	FY18/19	FY19/20	FY20/21	FY21/22	FY22/23	FY23/24	FY24/25
REVENUES**								
Street SDC Improvement Revenue	\$ 3,570,000	\$ 3,150,000	\$ 3,150,000	\$ 3,150,000	\$ 3,150,000	\$ 3,150,000	\$ 3,150,000	\$ 3,150,000
Street SDC Reimbursement Revenue	\$ 630,000	\$ 550,000	\$ 550,000	\$ 550,000	\$ 550,000	\$ 550,000	\$ 550,000	\$ 550,000
Undetermined Revenue Source	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Total Revenue	\$ 4,200,000	\$ 3,700,000						
EXPENDITURES								
Street SDC Projects	\$ 7,009,048	\$ 2,823,115	\$ 3,081,163	\$ 2,625,165	\$ 2,951,265	\$ 2,551,265	\$ 2,381,265	\$ 1,851,265
I-5 Bike Ped/Bridge	\$ 575,000	\$ 1,250,000	\$ 1,485,000	\$ 1,485,000	\$ 1,485,000	\$ 1,485,000	\$ 1,485,000	\$ -
Total Expenditure	\$ 7,584,048	\$ 4,073,115	\$ 4,566,163	\$ 4,110,165	\$ 4,436,265	\$ 4,036,265	\$ 3,866,265	\$ 1,851,265
Total Street SDC Fund Balance - Beginning	\$ 9,061,645	\$ 5,677,597	\$ 5,304,482	\$ 4,438,320	\$ 4,028,155	\$ 3,291,890	\$ 2,955,625	\$ 2,789,360
Total Street SDC Fund Balance - Ending	\$ 5,677,597	\$ 5,304,482	\$ 4,438,320	\$ 4,028,155	\$ 3,291,890	\$ 2,955,625	\$ 2,789,360	\$ 4,638,095

* Projections from FY 17/18 Budget

**Street SDC Revenue projection from 7 year historic average multiplied by approximate 50% fee increase in effect on July 1, 2017.

	Actual Amounts Budgetary Basis							
	FY10/11	FY11/12	FY12/13	FY13/14	FY14/15	FY15/16	FY16/17	Average
REVENUE HISTORY								
Street SDC Improvement Revenue	\$ 2,257,924	\$ 1,188,265	\$ 2,243,564	\$ 2,275,897	\$ 2,462,616	\$ 2,679,713	\$ 4,049,128	\$ 2,451,015

Transportation System Development Charge Budget Projection December 4, 2017



**Transportation System Development Charges
Expenditure Projection**
December 4, 2017

PLANNED PROJECTS		Projected Amounts							
		FY17/18	FY18/19	FY19/20	FY20/21	FY21/22	FY22/23	FY23/24	FY24/25
4002	I5 & Wilsonville Rd Interchange	\$ 263,750	-	-	-	-	-	-	-
4004	Kinsman Rd Extension - Barber to Boeckman	\$ 2,750,000	-	-	-	-	-	-	-
4118	Signal Improvements	\$ 124,643	\$ 95,340	\$ 95,340	\$ 95,340	\$ 95,340	\$ 95,340	\$ 95,340	\$ 95,340
4138	5yr Monitoring of Boeckman Wetland Mitigation	\$ 9,590	-	-	-	-	-	-	-
4146	Tooze Rd - 110th to Grahams Ferry Rd	\$ 200,000	-	-	-	-	-	-	-
4194	5 Year Monitoring: Barber Rd	\$ 23,915	\$ 11,350	\$ 11,350	-	-	-	-	-
4198	Kinsman/Wilsonville Truck Turning Improvements	-	-	-	\$ 42,900	-	-	-	-
4199	Exit 283 Congestion Improvements	\$ 415,000	\$ 45,000	-	-	-	-	-	-
TBD	Day Rd Improvements	-	-	\$ 168,548	\$ 681,000	-	-	-	-
TBD	Boeckman Rd/Frog Pond Bridge & CC Signal (UU-01)	-	-	-	\$ 500,000	\$ 500,000	-	-	-
TBD	Charbonneau Path Replacement	-	\$ 25,000	-	-	-	-	-	-
4200	Boones Ferry Road ROW Acquisition	\$ 39,200	-	-	-	-	-	-	-
4201	Garden Acres Road - Ridder to Day	\$ 817,000	\$ 1,000,000	\$ 500,000	-	-	-	-	-
4723	Annual - Sidewalk Infill Project	\$ 87,600	\$ 87,600	\$ 87,600	\$ 87,600	\$ 87,600	\$ 87,600	\$ 87,600	\$ 87,600
4799	Streetscape Project Design	\$ 2,270	\$ 2,270	\$ 2,270	\$ 2,270	\$ 2,270	\$ 2,270	\$ 2,270	\$ 2,270
4993	Annual - Closeout From Prior Years	\$ 6,750	\$ 6,750	\$ 6,750	\$ 6,750	\$ 6,750	\$ 6,750	\$ 6,750	\$ 6,750
4994	Annual - Streets SDC Reimbursements/Credits	\$ 2,173,525	\$ 454,000	\$ 113,500	\$ 113,500	\$ 113,500	\$ 113,500	\$ 113,500	\$ 113,500
4995	Annual - Early Planning-Future Street Projects	\$ 15,750	\$ 15,750	\$ 15,750	\$ 15,750	\$ 15,750	\$ 15,750	\$ 15,750	\$ 15,750
4998	Annual - 5-Year and Annual Budget Planning	\$ 8,550	\$ 8,550	\$ 8,550	\$ 8,550	\$ 8,550	\$ 8,550	\$ 8,550	\$ 8,550
4999	Annual - Project Design/Development	\$ 71,505	\$ 71,505	\$ 71,505	\$ 71,505	\$ 71,505	\$ 71,505	\$ 71,505	\$ 71,505
Planned Projects Subtotal		\$ 7,009,048	\$ 1,823,115	\$ 1,081,163	\$ 1,625,165	\$ 901,265	\$ 401,265	\$ 401,265	\$ 401,265
ADDED PROJECTS		Projected Amounts							
		FY17/18	FY18/19	FY19/20	FY20/21	FY21/22	FY22/23	FY23/24	FY24/25
TBD	French Prairie Bridge	-	\$ 500,000	\$ 500,000	\$ 500,000	\$ 500,000	\$ 500,000	\$ 500,000	\$ 500,000
TBD	Parkway Avenue Urban Upgrade (UU-05)	-	-	-	-	\$ 950,000	\$ 950,000	\$ 950,000	\$ 950,000
TBD	Java Road Connection & Signal	-	-	-	-	-	\$ 200,000	-	-
TBD	Stafford Road/65th Avenue (SI-03)	-	-	-	-	-	\$ 250,000	\$ 280,000	-
TBD	Boeckman Road Upgrade (UU-02)	-	\$ 500,000	\$ 1,500,000	-	-	-	-	-
TBD	Stafford Road Upgrade (UU-06)	-	-	-	-	-	\$ 250,000	\$ 250,000	-
TBD	Brown Road Upgrade (UU-03)	-	-	-	\$ 500,000	\$ 600,000	-	-	-
Added Projects Subtotal		-	\$ 1,000,000	\$ 2,000,000	\$ 1,000,000	\$ 2,050,000	\$ 2,150,000	\$ 1,980,000	\$ 1,450,000
Total Transportation System Development Charges		\$ 7,009,048	\$ 2,823,115	\$ 3,081,163	\$ 2,625,165	\$ 2,951,265	\$ 2,551,265	\$ 2,381,265	\$ 1,851,265



CITY COUNCIL MEETING STAFF REPORT

Meeting Date: December 18, 2017	Subject: Mounted Cameras to Capture Violations of Traffic Control Devices – Photo Red Light Enforcement Staff Member: Susan Cole, Finance Director Department: Finance	
Action Required	Advisory Board/Commission Recommendation	
<input type="checkbox"/> Motion <input type="checkbox"/> Public Hearing Date: <input type="checkbox"/> Ordinance 1 st Reading Date: <input type="checkbox"/> Ordinance 2 nd Reading Date: <input type="checkbox"/> Resolution <input checked="" type="checkbox"/> Information or Direction <input type="checkbox"/> Information Only <input type="checkbox"/> Council Direction <input type="checkbox"/> Consent Agenda	<input type="checkbox"/> Approval <input type="checkbox"/> Denial <input type="checkbox"/> None Forwarded <input checked="" type="checkbox"/> Not Applicable Comments: This is a work session to seek direction on how to proceed with enforcing driver compliance at select signalized intersections – red light cameras.	
Staff Recommendation: N/A		
Recommended Language for Motion: N/A		
Project / Issue Relates To: <i>[Identify which goal(s), master plans(s) your issue relates to.]</i>		
<input type="checkbox"/> Council Goals/Priorities	<input type="checkbox"/> Adopted Master Plan(s)	<input checked="" type="checkbox"/> Not Applicable

ISSUE BEFORE COUNCIL:

Staff has gone through a selection process and has selected a vendor to provide both cameras and services to enforce driver compliance at select signalized intersections. Staff is now seeking direction on the specific intersections, specific movements through the intersection, payment structure, and possible term of contract with the vendor.

EXECUTIVE SUMMARY:

The City Council directed staff to evaluate and pursue the installation of mounted cameras at two intersections along Wilsonville Road, near the I-5 interchange, to detect failure to obey traffic control devices, known as photo red light enforcement, or simply “red light cameras.” Staff conducted a “Request for Proposal” process in order to select a company that would be the best fit for the City. Four companies submitted proposals: American Traffic Solutions, Redflex, Gatso USA and Sensys America.

The City’s evaluation team consisted of staff from the Police Department, Engineering, Finance Department/Municipal Court, the City Manager’s Office, and the Legal Department. After evaluating the written proposals, the team invited American Traffic Solutions and Redflex to meet with the evaluation team in an interview format. After evaluating the proposals and interviews, the evaluation team feels that American Traffic Solutions (ATS) would be the best fit for the City.

ATS uses a system of cameras that capture both the front and rear image of the potential violator who ran a red light, including an image of the driver. The system is able to monitor four lanes per approach, and is able to capture multiple violations if a number of drivers fail to stop at a red light. The system captures both still photos as well as twelve-second videos.

To determine whether a violation has occurred, the City would first provide to ATS its business rules, including any “grace period” of the signal turning red before a violation is recorded. ATS staff first review the image to ensure that the City’s business rules are met, and then sends the images to the Wilsonville Police Department to review. For example, a business rule might be that emergency vehicles that are captured going through a red light with emergency lights activated would be rejected and not forwarded to the police for review.

The Police are able to access the image and the video from any internet-enabled device. The Police determine whether or not a violation has occurred, and confirms violations with an equivalent of an electronic check mark, and ATS then mails the confirmed violation, along with the image, to the driver. The driver also has the ability to watch the video, which may reduce challenges to the citation. The driver then can choose to pay the fine or go through the court process to possibly reduce the fine, go through diversion if qualified, or plead not guilty and speak with the Municipal Court Judge. ATS also provides evidence packets for the Court. The Oregon Revised Statutes (ORS) specifies that a jurisdiction has ten days from the time of the event to issue the citation, and ATS has stated that they will work with the City on turn-around times to ensure this timeline is met.

ATS would install and maintain the equipment. In order to recover their cost of the equipment, its installation and maintenance, as well as the cost of their back-office staff reviewing images and mailing out citations, ATS proposes to either charge the City a flat \$48 per paid citation, or 35% of the net citation paid, or a fixed amount of \$5,100 per month per system, assuming a five-year contract. If the City would like to pilot the program for a year, ATS would then sell the equipment to the City for an estimated cost of \$90,000 for the equipment, plus a monthly service fee of \$2,500 per month. A red light violation carries a fine of \$260.00. This may be lowered by a 20% good driver discount, and then a State assessment of \$61.00 is paid. The net fine paid to the City

therefore ranges from \$147 to \$199. The per-paid citation amount to ATS would be from this net amount.

A recent change to the ORS allows cities to issue speed violations with camera monitoring systems. ATS's red light cameras can also be programmed to capture speed violations, in excess of 11 miles per hour above the posted speed limit in accordance with the ORS.

The City is considering two possible intersections for the red light cameras: SW Wilsonville Road/SW Boones-Ferry Road, west of I-5; and SW Wilsonville Road/Town Center Loop W, to the east of I-5. However, the City has not narrowed down whether both intersections should be monitored to begin with, and then whether all approaches of these intersections should be monitored with Red Light Cameras. Each approach is considered a camera system, meaning that if all four approaches were monitored, then that would mean four camera systems would be installed. ATS has indicated that the City could scale up and add approaches over time – if done within the first two years of a five-year contract, the same prices would apply.

ATS will provide material to the City for public outreach. ATS will install signage at the intersections, and can work with the City to install signage at City boundaries notifying drivers that traffic laws are photo enforced. ATS will also provide training to staff.

Staff anticipates that Police Officers and the Municipal Court will see an uptick in their respective workloads due to red light cameras. At this time, it is difficult to quantify. If the volume of violations is too great, the Police Officers may not have time to review all of them. Other cities have estimated that Officers spend anywhere from 30 seconds to two minutes reviewing one violation. However, in the beginning of the program, Officers may spend more time until they are accustomed to the system. It is difficult to estimate how many violations red light cameras may generate in a day. Regarding the Court, if there is a large volume of violators who contest the ticket or plead not-guilty, the Court may decide to hold additional Court nights.

Direction staff is seeking includes:

1. Should the City enter into a contract with ATS to provide photo red light enforcement equipment and services?
2. Should the City monitor both intersections mentioned above with red light cameras?
3. Should the City monitor only one or two of the approaches at each intersection?
4. Is the Council comfortable with a 5-year contract, or should staff negotiate a shorter-term contract, perhaps three years? (Recognizing the pricing may change)
5. Should the City pay ATS based on a per-paid citation rate, or a monthly flat fee?
6. Should capturing speed violations be enabled with these cameras?

Staff recommends entering into a five-year contract with ATS with a per-paid citation payment structure, and to begin the program at one approach per intersection. However, staff would be interested in Council direction as to which approaches to monitor with the red-light cameras. Additionally, staff recommends enabling the capture of speeding violations at these two intersections at the selected approaches.

EXPECTED RESULTS:

If the Council decides to enter into a contract with ATS for the provision of red light camera equipment and services at the intersections and approaches suggested, it is expected that the two intersections will become safer as drivers modify their behavior and cease to run red lights. Safety would be additionally enhanced if the cameras were enabled to capture speeding violations.

TIMELINE:

After finalizing the contract and scope of work with ATS over the next several weeks, a public education campaign would begin. Additionally, the City would place signs on major routes at City limits notifying drivers that traffic laws are photo enforced. The City would also work with ATS on a testing and warning period once the cameras are installed. The total timeline before the cameras are operational and violations are issued could be six months.

CURRENT YEAR BUDGET IMPACTS:

The budget impacts are not known at this time. ATS installs the cameras at their expense and then assesses a flat fee on each citation, or charges the City a flat monthly fee. If mounting cameras requires ODOT approval, their process includes fees approximating \$10,000 per camera. At this time, the staffing impacts for Law Enforcement and Municipal Court would be absorbed within current resources.

FINANCIAL REVIEW / COMMENTS:

Reviewed by: SCole Date: 12/6/2017

Legal REVIEW / COMMENT:

Reviewed by: Amanda Guile-Hinman Date: 12/6/2017

COMMUNITY INVOLVEMENT PROCESS:

The City is required to conduct a public information campaign prior to the issuance of any citations from mounted red light cameras. The City must also place signs at the entrances into Wilsonville, and before the intersections, which have mounted cameras, to notify drivers that mounted cameras may be in operation.

POTENTIAL IMPACTS or BENEFIT TO THE COMMUNITY:

Mounted cameras may help reduce complaints of red-light running, and may help alleviate some of the congestion within the intersections at and near the Wilsonville Road/I-5 intersection by providing an incentive to drivers to not attempt to enter the intersection for fear of running a red light, but cannot be used to cite those who enter the intersection during a green or yellow light. The use of mounted cameras will require Wilsonville’s traffic officer to spend time reviewing photographs/citations and may also increase Court volume due to not-guilty pleas, which court staff will need to process and the judge may need to hear with officers in attendance.

ALTERNATIVES:

A possible alternative is to increase police presence at the intersections surrounding the Wilsonville Road/I-5 interchange to create the halo effect – the mere presence of officers causes individuals to obey traffic laws. An Officer staffing plan could be developed to outline how much time an Officer would need to spend at the intersections to create the halo effect.

CITY MANAGER COMMENT:

ATTACHMENTS:

None.



CITY COUNCIL STAFF REPORT

Meeting Date: December 18, 2017	Subject: I-5 Exit 283 – Wilsonville Road Congestion Improvements Contract Awards (CIP #4199) Staff Member: Eric Mende, Capital Projects Engineering Manager Department: Community Development	
Action Required	Advisory Board/Commission Recommendation	
<input type="checkbox"/> Motion <input type="checkbox"/> Public Hearing Date: <input type="checkbox"/> Ordinance 1 st Reading Date: <input type="checkbox"/> Ordinance 2 nd Reading Date: <input type="checkbox"/> Resolutions - TWO <input type="checkbox"/> Information or Direction <input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Council Direction <input type="checkbox"/> Consent Agenda	<input checked="" type="checkbox"/> Approval <input type="checkbox"/> Denial <input type="checkbox"/> None Forwarded <input type="checkbox"/> Not Applicable Comments: Please also see Contract Award Staff Reports and Resolutions 2661 and 2662 under the regular Council Agenda – New Business.	
Staff Recommendation: N/A		
Recommended Language for Motion: See Staff Reports under New Business.		
Project / Issue Relates To: <i>[Identify which goal(s), master plans(s) your issue relates to.]</i>		
<input checked="" type="checkbox"/> Council Goals/Priorities	<input type="checkbox"/> Adopted Master Plan(s)	<input type="checkbox"/> Not Applicable

ISSUE BEFORE COUNCIL:

Two separate resolutions are on the regular City Council Agenda under New Business to award construction contracts for a) the I-5 Exit 283 SB Ramp Modification, and b) Old Town Square (Fred Meyer) Intersection Modifications. Both of these projects are funded under CIP #4199 – Exit 283 Congestion Improvements. Staff will discuss both of these related projects during the Work Session and answer any questions that may arise.

Congestion Improvements – CIP# 4199 Staff Report

Page 1 of 4

EXECUTIVE SUMMARY:

Construction bids were opened on November 29, 2017 for the I-5 Exit 283 SB Ramp Modification and on November 30, 2017 for the Old Town Square (Fred Meyer) Intersection Modifications. Administratively, these two projects have been designated as CIP #4199SBR (South Bound Ramp) and CIP #4199 FME (Fred Meyer Exit) to facilitate management of the projects, although both projects roll up under CIP #4199.

CIP #4199SBR Summary

The Southbound Ramp project adds a third lane and new 3-position ramp meter to the southbound on-ramp. The approximately 1,100 foot long additional lane will allow approximately 25 additional vehicles to get off Wilsonville Road. The project is intended to reduce or delay congestion at the critical Boones Ferry Road/Wilsonville Road intersection when the ramp-metered flow onto I-5 causes backups onto Wilsonville Road.

All work is in ODOT right-of-way and therefore was/is subject to ODOT design criteria, inspection procedures, and ODOT design approvals, paperwork requirements, and administrative oversight. In October, Council executed an IGA between the City and ODOT outlining these criteria, including associated cost reimbursements for ODOT staff time.

Design fees (OBEC) to date are approximately \$89,000. The confirmed low bid for construction is \$562,578 from Kerr Contractors – which was slightly under the Engineers Estimate. Estimated (firm proposal) fee from OBEC for Construction Administration/Construction Engineering and Inspection (CA/CEI) is \$99,500. Due to the specialized nature of CA/CEI services required on ODOT jobs, the City typically contracts with a consultant with that specific expertise to perform those services. Additionally, ODOT oversight and administrative costs authorized by the IGA are \$25,000. All costs are being borne by the City, and there is no ODOT/Federal funding for the project.

CIP #4199FME Summary

The (Fred Meyer south exit) intersection modification removes the curb extension on the northeast corner of the intersection, allowing a second northbound travel lane through and past the intersection. The project modifies the sidewalk, crosswalks, handicap ramps, and storm drainage piping, maintains the bike lane, and relocates the traffic signal pole, requiring wiring and conduit extensions. The second travel lane will improve traffic flow from the other legs of the intersection and provide clarity and safer use of the intersection with some congestion relief along this section of Boones Ferry Road.

Design costs to date are \$40,000 (DKS). The confirmed low bid for construction is \$191,649 from Brown Contracting – which was \$47,000 over the Engineers Estimate. Since this project is not in ODOT right-of-way, Construction Administration/Construction Engineering and Inspection (CA/CEI) will be performed by City personnel, with minor support from DKS, estimated at \$18,000. All costs are being borne by the City, and there is no ODOT/Federal funding for the project.

EXPECTED RESULTS:

Both projects are intended to reduce, but will not eliminate, congestion on Wilsonville Road and Boones Ferry Road during peak travel times – generally from 4 pm to 7 pm on weekdays. The roads, intersection, and southbound ramp generally perform adequately at other times. Both

projects have significant limitations on hours of work in order to avoid creating additional congestion and delays during peak travel times. However, during construction, minor delays and congestion during off peak times should be expected, which could create generate additional complaints from the traveling public.

TIMELINE:

Both projects are scheduled to begin in early to mid-January and be substantially completed by May 30, 2018.

CURRENT YEAR BUDGET IMPACTS:

The FY 2017-18 budget for project #4199 is \$827,214. About \$50,000 has been spent so far on design and project management. After reviewing the bids, the expected project costs are anticipated to be just over \$1 million, exceeding the current FY 2017/18 budget by approximately \$250,000. Underspensing on other projects this year will allow transfers from those projects without exceeding current FY 2017/18 appropriations. CIP #4199 was originally budgeted using 50% Road Operations revenue and 50% Street SDCs. A lack of appropriated Road Operations money prevents the 50/50 split from being maintained, and the proposed revised budget reflects an approximate split of 44% Road Operations and 56% SDCs. Given that the more expensive Southbound Ramp project directly increases capacity, a higher usage of SDCs is reasonable. A summary of the Operating and SDC revenue and expected expenses for CIP #4199, including both projects and the proposed transfers is attached. The next supplemental budget adjustment, anticipated for March of 2018, will identify and incorporate these transfers.

FINANCIAL REVIEW / COMMENTS:

Reviewed by: SCole Date: 12/7/2017

LEGAL REVIEW / COMMENT:

Reviewed by: BAJ Date: 12/8/2017

COMMUNITY INVOLVEMENT PROCESS:

N/A

POTENTIAL IMPACTS or BENEFIT TO THE COMMUNITY (businesses, neighborhoods, protected and other groups):

The projects will partially mitigation congestion on Boones Ferry Road and Wilsonville Road by providing 1) storage on the southbound I-5 on-ramp, and 2) two lanes on Boones Ferry Road to receive traffic from the other intersection legs at the signalized access to the Old Town Square.

ALTERNATIVES:

Cancel one or both of the projects.

Canceling the (CIP #4199SBR) southbound ramp project avoids approximately \$700,000 in costs. However, progress will not be made on congestion relief caused primarily by traffic conditions on I-5 across the Boone Bridge.

Canceling the (CIP #4199FME) intersection modifications project avoids approximately \$220,000 in costs but does not provide congestion relief in the Old Town section of northbound Boone's

Ferry Road. The 5th Street to Kinsman Road project will offer additional congestion relief as an alternate route from the Old Town area to Wilsonville Road when constructed in approximately fall 2019.

CITY MANAGER COMMENT:

ATTACHMENTS:

- A. CIP #4199 Revenues and Expenses Summary

ATTACHMENT A CIP #4199 Revenues and Expenses Summary

CIP 4199 Revenue/Expense Summary and Proposed 17/18 Budget Revisions

17/18 Expenses	\$	FY 17/18 Revenue						
			16/17					
			17/18 Budgeted	Carryover	Total			
FM Exit - Engineering (spent)	\$15,494	Existing Revenue						
FM Exit - Engineering (encumbered)	\$2,000	Road Operations - CIP 4199 (50%)	\$379,750	\$33,857	\$413,607			
FM Exit - Const. Phase Svcs (est.)	\$20,000	Street SDC's - CIP 4199 (50%)	\$379,750	\$33,857	\$413,607			
FM Exit - Construction Bid	\$191,649		\$759,500	\$67,714	\$827,214			
Other Charges - Advert.	\$523	New Revenue						
FM Exit - GF Overhead	\$8,020	Transfer from CIP 4002 SDC	\$62,000		\$62,000	\$258,750	\$196,750	
FM Exit - CD Admin (est.)	\$20,000	Transfer from CIP 4118 Ops	\$20,000		\$20,000	\$46,470	\$26,470	
FM Exit Subtotal	\$257,686	Transfer from CIP 4118 SDC	\$60,000		\$60,000	\$108,430	\$48,430	
SB Ramp - Engineering (spent)	\$28,413	Transfer from CIP 4717 Ops	\$30,000		\$30,000	\$102,150	\$72,150	
SB Ramp - Engineering (encumbered)	\$3	Transfer from CIP 4999 Ops	\$7,000		\$7,000	\$7,945	\$945	
SB Ramp - Const. Phase Svcs (est.)	\$100,000	Transfer from CIP 4999 SDC	\$42,215		\$42,215	\$71,505	\$29,290	
SB Ramp - Construction Bid	\$562,578	NET - CIP 4199 Ops	\$221,215		\$221,215	\$413,607	\$470,607	45%
Other Charges- Advert.	\$519	NET - CIP 4199 SDC				\$413,607	\$577,822	55%
Other Charges - ODOT (est.)	\$20,000						\$1,048,429	
SB Ramp - GF Overhead	\$24,185	GRAND TOTAL	\$980,715	\$67,714	\$1,048,429			
SB Raqmp - CD Admin	\$10,000							
SB Ramp Subtotal	\$745,698							
Boone's Ferry Road Re-Stripping - spent	\$14,944							
Contingency	\$30,102	3%						
Revised Budget - 4199	\$1,048,429							
Deficit	\$221,215							



CITY COUNCIL MEETING STAFF REPORT

<p>Meeting Date: December 18, 2017</p>	<p>Subject: Employment Contract Renewal (2 year extension) for Municipal Court Judge (Fred Weinhouse)</p> <p>Staff Member: Keith Katko, Finance Operations Manager</p> <p>Department: Finance</p>
<p>Action Required</p>	<p>Advisory Board/Commission Recommendation</p>
<p><input checked="" type="checkbox"/> Motion</p> <p><input type="checkbox"/> Public Hearing Date:</p> <p><input type="checkbox"/> Ordinance 1st Reading Date:</p> <p><input type="checkbox"/> Ordinance 2nd Reading Date:</p> <p><input type="checkbox"/> Resolution</p> <p><input type="checkbox"/> Information or Direction</p> <p><input type="checkbox"/> Information Only</p> <p><input type="checkbox"/> Council Direction</p> <p><input type="checkbox"/> Consent Agenda</p>	<p><input checked="" type="checkbox"/> Approval</p> <p><input type="checkbox"/> Denial</p> <p><input type="checkbox"/> None Forwarded</p> <p><input type="checkbox"/> Not Applicable</p> <p>Comments:</p>
<p>Staff Recommendation: Staff recommends that Council renew the employment contract for City of Wilsonville Municipal Court Judge Fred Weinhouse to a period of two (2) years from an effective date of 01/01/18.</p>	
<p>Recommended Language for Motion: I move to approve the renewal of the employment contract for City of Wilsonville Municipal Court Judge Fred Weinhouse to a period of two (2) years from an effective date of 01/01/18.</p>	
<p>Project / Issue Relates To: [Identify which goal(s), master plans(s) your issue relates to.]</p>	
<p><input type="checkbox"/> Council Goals/Priorities</p>	<p><input type="checkbox"/> Adopted Master Plan(s)</p>
<p><input checked="" type="checkbox"/> Not Applicable</p>	

ISSUE BEFORE COUNCIL:

To renew the employment contract of Fred Weinhouse as Judge for the City of Wilsonville for a period of two (2) years from an effective date of 01/01/18. The existing one (1) year contract between the City and Judge Weinhouse expires 12/31/2017.

EXECUTIVE SUMMARY:

Municipal Court is the judicial branch of city government and exists to serve the citizens of this community. The Court is responsible for providing a local forum for adjudicating violations of City ordinances, parking infractions, and state traffic laws within its local jurisdiction.

Judge Fred Weinhouse has served in the capacity of Municipal Court Judge since 01/01/17 and has served the City well in the adjudication of cases in expeditious, impartial, and consistent manner. In this period, the Court under the direction of Judge Weinhouse has promoted public safety through public education, adjudication, and compliance programs.

Other than, the proposed contract duration of two (2) years, all other terms of the existing contract remain exactly as written.

EXPECTED RESULTS:

Continuation of Municipal Court operations.

TIMELINE:

Contract renewal is for a period of two (2) years from an effective date of 01/01/18.

CURRENT YEAR BUDGET IMPACTS:

None.

FINANCIAL REVIEW / COMMENTS:

Reviewed by: SCole Date: 11/30/2017

LEGAL REVIEW / COMMENT:

Reviewed by: BAJ Date: 11/30/2017

COMMUNITY INVOLVEMENT PROCESS:

POTENTIAL IMPACTS or BENEFIT TO THE COMMUNITY:

Continuation of Municipal Court Operations.

ALTERNATIVES:

CITY MANAGER COMMENT:

ATTACHMENT:

1. Employment Agreement

**CITY OF WILSONVILLE
EMPLOYMENT AGREEMENT
2018-2020**

This Employment Agreement (“Agreement”) is made and entered into effective the 1st day of January, 2018 (“Effective Date”), by and between the **City of Wilsonville**, a municipal corporation of the State of Oregon (the “City”), and **Fred Weinhouse** (“Employee”), both of whom understand and agree as follows:

WITNESSETH:

WHEREAS, the City desires to continue to employ the services of Employee as the Presiding Municipal Court Judge (“Judge”) for the City of Wilsonville, effective as of January 1, 2018; and

WHEREAS, it is the desire of the City to establish certain conditions of employment, establish certain benefits, and set working conditions for Employee; and

WHEREAS, Employee desires to continue employment as Judge of the City of Wilsonville;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

Section 1. Term

The term of this Agreement shall be for a period of two (2) years from the Effective Date.

Section 2. Work Hours

The City hereby employs Employee as Judge for the City of Wilsonville. Employment is part-time and is compensated on an hourly basis. Judicial services (including use of pro-tems) are not to exceed twenty (20) hours per month without prior written approval of the Finance Director. Due to the limited hours, unless a PERS eligible employee, the only fringe benefit provided is sick leave, earned at the rate of one (1) hour for every thirty (30) hours worked. More information concerning benefits may be obtained from the City’s Human Resources Manager. Employee’s normal work hours will be to preside over Municipal Court, currently held every other Tuesday afternoon. Employee shall submit a timesheet for actual hours worked, provided that Employee will be paid for a minimum of two (2) hours on each court day, even if Employee works less time on any given court day. Employee will also be paid for all hours spent reviewing and researching case files and for all time spent writing opinions, rulings, and correspondence related to Municipal Court and the like.

Section 3. Employment Date and Status

Employment is at all times AT WILL, meaning Employee can resign and the City can terminate Employee’s employment at any time, with or without cause and with or without notice.

Section 4. Compensation

Employee shall be paid on an hourly basis for all hours worked, as outlined above at the rate of Ninety-Two Dollars (\$92) per hour (“Salary”).

Section 5. Assigned Duties

Employee will hear Municipal Court cases and render decisions. Employee will also respond, as required, to Municipal Court cases that may be appealed to a higher court. Employee will exercise supervision and control over court personnel when performing their in-court and Municipal Court responsibilities, including other judges and counter personnel, when Municipal Court is in session. A City Finance Department Manager will supervise the City’s Municipal Court program and is responsible for daily supervision and performance of City employees assigned to perform Municipal Court duties. In the event Employee has any cause for concern with any employee or other judge, Employee shall inform the Finance Department Manager of the concern and recommended action and the Finance Department Manager will then address the issue(s) raised. Employee agrees to perform these and other legally permissible and proper judicial duties and functions as the Wilsonville City Council (“Council”) assigns to Employee. Employee reports directly to the Wilsonville City Council.

Section 6. Professional Development

The City will reimburse Employee up to Five Hundred Fifty Dollars (\$550) per year for mileage, seminar tuition, bar dues, and travel accommodations to attend the Oregon Municipal Judge’s Association annual meeting, or similar training, if Employee elects to go, at Employee’s sole discretion. Employee is not paid for time spent at elective training. The City will also reimburse Employee up to Six Hundred Dollars (\$600) per year for membership in the Oregon State Bar, with proof of payment to the Oregon State Bar.

Section 7. Indemnification

The City shall defend, save harmless, and indemnify Employee against any tort, professional liability claim or demand, or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Employee’s duties as Municipal Court Judge. The City may compromise and settle any such claim or suit and shall pay the amount of any settlement or judgment rendered thereon. No indemnification shall apply to acts done outside the course and scope of employment.

Section 8. Other Terms and Conditions of Employment

City Council, in consultation with Employee, shall fix any such other terms and conditions of employment as it may determine from time to time, relating to the performance of Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the City Charter, or any other law.

Section 9. General Provisions

9.1. This Agreement shall constitute the entire agreement between the parties.

9.2. This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of Employee.

9.3. If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid, or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.

9.4. This Agreement may only be amended in writing, signed by both the City and Employee.

9.5. Waiver of any provision of this Agreement, either by the City or Employee, shall not constitute a future waiver of that or any other provision of this Agreement.

9.6. This Agreement shall be construed and interpreted in accordance with the laws of the State of Oregon, and venue for any dispute shall be in Clackamas County.

9.7. This Agreement, along with the City's employment policies (as they may be amended and expanded from time to time), which have been or will be provided to and signed by Employee, sets forth the entire Agreement between the parties with respect to the subject matter contained herein and supersedes all prior agreements, negotiations, promises, or communications that are not contained herein.

IN WITNESS WHEREOF, the City of Wilsonville has caused this Agreement to be signed and executed in its behalf by its Mayor. Employee has signed and executed this Agreement. This Agreement may be signed in counterpart and with duplicate originals so that the City and Employee will both have an original copy of this Agreement.

CITY OF WILSONVILLE

EMPLOYEE

By: _____
Tim Knapp
As Its: Mayor

Fred Weinhouse

APPROVED AS TO FORM:

Barbara Jacobson, City Attorney

CITY COUNCIL ROLLING SCHEDULE

Board and Commission Meetings 2017

Items known as of 12/13/17

January

DATE	DAY	TIME	EVENT	LOCATION
1/4	Thursday	7:00 p.m.	City Council Meeting	Council Chambers
1/8	Monday	6:30 p.m.	DRB Panel A	Council Chambers
1/10	Wednesday	1:00 p.m.	Wilsonville Community Seniors, Inc. Advisory Board	Community Center
1/10	Wednesday	6:00 p.m.	Planning Commission	Council Chambers
1/11	Thursday	4:30 p.m.	Parks and Recreation Advisory Board Meeting	Parks and Recreation Administrative Offices
1/17	Wednesday	6:00 p.m.	Wilsonville Citizens Academy	City Hall
1/18	Thursday	7:00 p.m.	City Council Meeting	Council Chambers
1/22	Monday	6:30 p.m.	DRB Panel B	Council Chambers
1/24	Wednesday	6:30 p.m.	Library Board Meeting	Library

Community Events:

- 12/25** City Offices Closed – Christmas Day
- 1/1** City Offices Closed – New Year's Day
- 1/6** Annual Cub Scout Tree Recycling Event at the City Hall parking lot.
- 1/15** City Offices Closed – Martin Luther King Day

All dates and times are tentative; check the City's online calendar for schedule changes at www.ci.wilsonville.or.us.



CITY COUNCIL MEETING STAFF REPORT

Meeting Date: December 18, 2017		Subject: Resolution No. 2660 Consultant contract with the Center for Transportation and the Environment (CTE), for technical assistance on battery electric bus deployment. Staff Member: Scott Simonton, Fleet Services Manager Department: Transit	
Action Required		Advisory Board/Commission Recommendation	
<input checked="" type="checkbox"/> Motion <input type="checkbox"/> Public Hearing Date: <input type="checkbox"/> Ordinance 1 st Reading Date: <input type="checkbox"/> Ordinance 2 nd Reading Date: <input checked="" type="checkbox"/> Resolution <input type="checkbox"/> Information or Direction <input type="checkbox"/> Information Only <input type="checkbox"/> Council Direction <input checked="" type="checkbox"/> Consent Agenda		<input type="checkbox"/> Approval <input type="checkbox"/> Denial <input type="checkbox"/> None Forwarded <input checked="" type="checkbox"/> Not Applicable Comments:	
Staff Recommendation: Staff recommends that Council adopt Resolution No. 2660.			
Recommended Language for Motion: I move to approve Resolution No. 2660.			
Project / Issue Relates To: <i>[Identify which goal(s), master plans(s) your issue relates to.]</i>			
<input type="checkbox"/> Council Goals/Priorities	<input checked="" type="checkbox"/> Adopted Master Plan(s)	<input type="checkbox"/> Not Applicable	

ISSUE BEFORE COUNCIL:

Staff plans to enter into a contract with CTE to assist with the deployment of battery electric buses in the SMART fleet.

Resolution No. 2660 Staff Report

Page 1 of 3

EXECUTIVE SUMMARY:

SMART has been awarded \$1.45M of Federal funding under section 5339 (c), “Low-No”, for the deployment of two 35’ battery electric buses. This was a unique application and award process, in that applicants were encouraged to collaborate with consultants and bus manufacturers during the application process. Once awarded, no further competitive procurement processes are required.

SMART’s application package named CTE as the consultant, and Proterra as the bus manufacturer.

CTE specializes in zero emissions vehicle deployment, and was instrumental in aiding in assembly of the successful application. CTE’s scope of work on this project includes the following:

- Route modeling- Analyze the selected routes, to determine the energy usage in best case/worst case scenarios.
- Bus specification assistance, specifically battery capabilities, based on the data gleaned from route modeling.
- Charging infrastructure design, again, based on route modeling data.
- Lifecycle cost projections (ROI)

The proposed contract includes a well-defined scope of work, as well as a list of deliverables. Also included, is a provision for additional work, should the need arise for technical assistance in any phase of the project. The contract amount is not to exceed \$120,000. The grant agreement with FTA includes varying match percentages, based on the goods or services charged to the grant. Consulting work and technical assistance is 100% covered by FTA, with no local match required. The City’s match requirements fall strictly under the areas of charging equipment, installation, and the buses themselves.

EXPECTED RESULTS:

With Council approval, the City will enter into a contract with CTE, officially beginning the work required to place zero emission buses in service in Wilsonville.

TIMELINE:

Work will begin in February 2018. Anticipated vehicle deployment is mid to late 2019.

CURRENT YEAR BUDGET IMPACTS:

Current year costs can be absorbed in SMART’s *Other Professional Service* expenditure line item budget. The majority of service costs are expected in fiscal year 2018-19 and will be budgeted as such in next year’s budget. Total contract amount is not to exceed \$120,000 and are 100% reimbursed under our FTA 5339(c) grant agreement.

FINANCIAL REVIEW / COMMENTS:

Reviewed by: SCole Date: 12/6/2017

LEGAL REVIEW / COMMENT:

Reviewed by: BAJ Date: 12/6/2017

COMMUNITY INVOLVEMENT PROCESS:

Replacement of aging buses and the use of alternative fueled vehicles was covered in the 2017 adoption of the Transit Master Plan. Public comment was solicited, and public workshops were held during the development of the TMP.

POTENTIAL IMPACTS or BENEFIT TO THE COMMUNITY (businesses, neighborhoods, protected and other groups):

Battery electric buses help reduce neighborhood noise, and will improve air quality in Wilsonville.

ALTERNATIVES:

Council could reject the contract with CTE, leaving staff responsible for all phases of development and deployment. Staff does not recommend this approach.

CITY MANAGER COMMENT:

NA

ATTACHMENTS:

1. Resolution No. 2660

RESOLUTION NO. 2660

A RESOLUTION OF THE CITY OF WILSONVILLE AUTHORIZING SOUTH METRO AREA REGIONAL TRANSIT (SMART) TO CONTRACT WITH THE CENTER FOR TRANSPORTATION AND THE ENVIRONMENT (CTE) FOR CONSULTING WORK ASSOCIATED WITH THE DEPLOYMENT OF BATTERY ELECTRIC TRANSIT BUSES.

WHEREAS, a goal of SMART is to replace aging buses with modern, low emission vehicles; and

WHEREAS, SMART has been awarded \$1.45M in federal funding, under FTA section 5339 (c) for low emission/no emission transit buses; and

WHEREAS, the grant agreement allows for partnership with a consulting firm at 100% federal coverage; and

WHEREAS, CTE partnered with SMART in the initial grant application, eliminating the need for further competitive procurements; and

WHEREAS, the not to exceed amount of the contract, \$120,000, was built into the grant application for grant reimbursement ; and

WHEREAS, the City Council has duly appointed itself as the Local Contract Review Board, and acting as the Local Contract Review Board, is authorized to award the contract as recommended by staff.

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

1. Based on the above recitals, which are incorporated herein, the City Council, acting as the Local Review Board, does hereby approve and authorize SMART to enter into a contract with CTE, in an amount not to exceed \$120,000, to perform consulting work.
2. This resolution becomes effective upon adoption.

ADOPTED by the Wilsonville City Council at a regular meeting thereof this 18th day of December, 2017, and filed with the Wilsonville City Recorder this date.

Tim Knapp, Mayor

ATTEST:

Kimberly Veliz, City Recorder

SUMMARY OF VOTES:

Mayor Knapp

Councilor Starr

Councilor Stevens

Councilor Lehan

Councilor Akervall

Attachments:

Exhibit A – Letter of Agreement for Scope of Work



December 20, 2017

Scott Simonton
 Fleet Services Manager
 City of Wilsonville
 29799 SW Town Center Loop Wilsonville, OR, 97070

Re: Letter Agreement for Scope of Work related to City of Wilsonville Zero Emission Bus Project

Dear Mr. Simonton,

This Letter Agreement between the Center for Transportation and the Environment (“CTE”), located at 730 Peachtree Street, Suite 760, Atlanta, GA 30308 and City of Wilsonville, located at 29799 SW Town Center Loop E, Wilsonville, OR 97070, both hereinafter referred to collectively as the “Parties” and individually as “Party,” serves as the contract for the scope of work that CTE agrees to provide under the City of Wilsonville 2017 Low No Award. In consideration of the mutual covenants contained herein, the parties agree as follows:

The following attachments are incorporated by reference and made part of this Letter Agreement herein:

- Attachment I:* CTE Statement of Work & Budget
- Attachment II:* Applicable Federal Terms & Conditions

1) STATEMENT OF SERVICES TO BE PERFORMED

By executing this Letter Agreement, CTE agrees to perform and comply with the scope of work set forth in the Statement of Work, attached and fully incorporated herein as *Attachment I*. CTE shall perform the scope of work specified in the time and manner described and in accordance with the terms and provisions of this Agreement. CTE agrees to perform the scope of work with that standard of professional care, skill, and diligence normally provided in the performance of similar services.

2) TERM OF AGREEMENT

The period of performance for this Agreement shall commence upon the execution of this Letter Agreement by both parties. Services, work products and/or deliverables defined in CTE’s Statement of Work shall be completed no later than December 31, 2019.

3) AGREEMENT AMOUNT

The total Agreement Amount to be paid CTE for the Milestone based scope of work defined under this Agreement shall not exceed One Hundred and Twenty Thousand Dollars (\$120,000.00). See Attachment I for the agreed upon Milestones and budget at the time of this Agreement. For any



additional work performed outside of the Milestones defined in Attachment I, CTE will be paid on an hourly basis, CTE will invoice City of Wilsonville for services provided based on hours worked and agreed allowable costs. For work performed on an hourly rate, CTE and City of Wilsonville will mutually agree on a scope, estimated or maximum budget, and deliverable(s) associated with the additional work prior to commencement.

4) **INVOICES**

CTE will submit invoices to City of Wilsonville upon completion and acceptance of each deliverable specified in the statement of work. The City of Wilsonville will review deliverables within 15 days of submission and either request revisions or indicate acceptance. Any requested revisions shall be made within 15 days, after which the deliverable will be resubmitted by CTE. The final invoice will be submitted by CTE within 30 days of the acceptance of the final deliverable or Termination of this Agreement. Invoices for agreed hourly costs beyond the milestones will be submitted not more than monthly. Invoices will be submitted to Scott Simonton, by mail, courier, or e-mail to simonton@ci.wilsonville.or.us.

5) **TERMINATION**

This agreement may be terminated in whole or in part as follows:

- A. By Either party, if the Other Party materially fails to comply with the terms and conditions of this Agreement and such failure is not corrected within fifteen (15) days following receipt of written notice from the non-breaching party.
- B. By CTE, upon thirty (30) days written notification to City of Wilsonville setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated.
- C. By City of Wilsonville, upon thirty (30) days written notification to CTE setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated.
- D. By City of Wilsonville, if City of Wilsonville's prime award supporting this Letter Agreement is terminated by the Federal Transit Administration.

Except in the case of a material breach by CTE, upon Termination, City of Wilsonville will reimburse CTE for the contract price of services performed in accordance with the manner of performance set forth in this Agreement prior to termination.

6) **INDEMNIFICATION**

- A. To the extent allowed by Oregon law, each Party (the "Indemnifying Party") agrees to, and will, indemnify, defend, and hold harmless the other Party (the "Indemnitee") and its Board Members, officers, agents, employees, and representatives against any liabilities, losses, claims, expenses (including attorney's fees) or damage they may suffer as a result of third party claims, demands, actions, costs or judgments resulting or alleged to have resulted



from the Indemnifying Party's negligence or willful misconduct related to performance under this contract, except to the extent that the liability, loss or damage results from (i) the non-Indemnifying Party's failure to substantially comply with any applicable law; or (ii) the negligence or willful malfeasance of any board member or employee of the non-Indemnifying Party.

- B. It is further agreed by and between the Parties that the Indemnitee shall (a) promptly notify the Indemnifying Party in writing of any claim for which indemnification is sought and (b) forward to the Indemnifying Party any other information available regarding the claim as promptly as is reasonably practicable; provided that the failure to provide such notice shall not release the Indemnifying Party from any of its obligations hereunder except to the extent that the Indemnifying Party is actually and materially prejudiced by such failure.
- C. The Indemnifying Party shall be entitled, at its option, to assume and control the defense of any third party claim under this section, at its expense and through counsel of its choice if it gives notice of its intention to do so to the Indemnitee within 45 days of the receipt of notice of the right to be indemnified.

7) INDEPENDENT CONTRACTOR

The Parties agree that CTE, as well as any individual working for CTE, is an independent contractor and not an employee of City of Wilsonville for any purpose. Nothing contained in this Agreement shall be construed to create the relationship of employer and employee, principal and agent, partnership, or joint venture. Both parties acknowledge that CTE is not an employee for state or federal tax purposes and is not entitled to any employee benefits of City of Wilsonville.

8) FORCE MAJEURE

Neither CTE nor City of Wilsonville shall be liable for or deemed to be in default for any delay or failure in performance under this Agreement or interruption of services resulting, directly or indirectly, from acts of God, civil or military authority, acts of public enemy or hostile governmental action, strikes, labor disputes, fire or other casualty, inability to obtain labor or materials or reasonable substitutes for labor or materials necessary for performance of the services, or other causes, except financial, that are beyond the reasonable control of CTE or City of Wilsonville. Notwithstanding the above, if the cause of the force majeure event is due to party's own action or inaction, then such cause shall not excuse that party from performance under this Agreement.

9) MISCELLANEOUS

- A. Subcontracting. CTE may subcontract with third party providers in performance of specific tasks included in CTE's Statement of Work. In the event that subcontractors are used, CTE will notify City of Wilsonville of the intent to use subcontractors and ensure subcontractor



- adherence to the same quality standards and assurances required of CTE, including adherence to applicable Federal Terms and Conditions.
- B. **Non-Exclusivity.** As an independent contractor, CTE may engage the services of any other individual or company that competes with City of Wilsonville or offers services similar to those offered by City of Wilsonville, and any such engagement shall not be considered a breach of this Agreement.
 - C. **Entire Agreement.** This Agreement constitutes the entire Agreement of the Parties with respect to the subject matter of the Agreement and supersedes all previous oral and written agreements, understandings, and communications of the Parties relating to such matters.
 - D. **Amendment or Waiver.** This Agreement may not be modified, amended or waived except by a written instrument executed by duly authorized representatives of both parties. No failure or delay in exercising any right shall operate as a waiver thereof.
 - E. **Counterparts.** This Agreement may be executed and delivered in any number of counterparts, each of which, when executed and delivered, shall be deemed an original, and all of which together shall constitute the same contract.
 - F. **Severability.** Should any part of this agreement be rendered or declared invalid or unenforceable by a court of competent jurisdiction, it shall not affect the validity of any other provision, which shall remain in full force and effect.
 - G. **Assignment.** Neither Party may assign its respective rights or duties under this agreement to a third Party (except to a successor in interest to substantially all of the business of the assignor) without the prior written consent of the other Party.
 - H. **Governing Law and Venue.** This Agreement will be governed by and constructed in accordance with the laws of the State of Oregon, USA, without regard to the conflict of laws principles thereof. Venue for any dispute will be in Clackamas County Circuit Court, State of Oregon.
 - I. **Headings.** Headings on the sections and paragraphs of this Agreement are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this Agreement.
 - J. **Survival of Terms.** The provision of section 6 (Indemnification) shall survive the expiration or termination of this Agreement.



Please indicate your acceptance of these terms by returning one signed copy of this letter agreement to CTE.

Center for Transportation & the Environment (CTE):

Read, agreed to, and accepted by City of Wilsonville:

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

Enclosures:

Attachment I: CTE Statement of Work & Budget

Attachment II: Applicable Federal Terms & Conditions



Attachment I
CTE Statement of Work & Budget



Attachment II **Applicable Federal Terms & Conditions**

GENERAL PROVISIONS REQUIRED FEDERAL CLAUSES

1. No Government Obligation to Third Parties

(1) Transit Agency and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to Transit Agency, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

2. Program Fraud and False or Fraudulent Statements and Related Acts

(1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § § 3801 *et seq.* and U.S. DOT regulations, “Program Fraud Civil Remedies”, 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

(2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

(3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

3. Access to Records and Reports

The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this

contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto. The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required.

4. Federal Changes

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the [Master Agreement](#) between Transit Agency and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

5. Civil Rights Requirements

The following requirements apply to the underlying contract:

- (1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- (2) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor", 41 C.F.R. Parts 60 *et seq.*, (which implement Executive Order No. 11246, "Equal Employment Opportunity", as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity", 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- (3) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of

age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

- (4) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act", 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

6. Energy Conservation Requirements

The contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

7. Government-Wide Debarment and Suspension (Nonprocurement)

Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)", 2 C.F.R. Part 180. As such, the contractor shall verify that none of the contractor, its principals, as defined at 2 CFR 1200, or affiliates, as defined at 2 CFR 1200, are not presently declared by any Federal department or agency to be:

- a) Debarred from participation in any federally assisted Award;
- b) Suspended from participation in any federally assisted Award;
- c) Proposed for debarment from participation in any federally assisted Award;
- d) Declared ineligible to participate in any federally assisted Award;
- e) Voluntarily excluded from participation in any federally assisted Award; or
- f) Disqualified from participation in any federally assisted Award.

The contractor is required to comply with 2 CFR 1200, and must include the requirement to comply with 2 CFR 1200 in any lower tier contract for \$25,000 or more.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by Transit Agency. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to Transit Agency, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder

or proposer agrees to comply with the requirements of 2 CFR 1200 while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

8. Lobbying

Contractor certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. Contractor will require that the language of this certification be included in the award documents for all sub-awards for more than \$100,000 at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification clause is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification clause is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

9. Recycled Products

The Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. part 247.

10. Safe Operation of Motor Vehicles

- a) **Seat Belt Use.** The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles. The terms “company-owned” and “company-leased” refer to vehicles owned or leased either by the Contractor or AGENCY.
- b) **Distracted Driving.** The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this agreement.

**CITY OF WILSONVILLE
CITY COUNCIL MEETING MINUTES**

A regular meeting of the Wilsonville City Council was held at the Wilsonville City Hall beginning at 7:00 p.m. on Monday, November 20, 2017. Mayor Knapp called the meeting to order at 7:03 p.m., followed by roll call and the Pledge of Allegiance.

The following City Council members were present:

- Mayor Knapp
- Council President Starr
- Councilor Stevens - Excused
- Councilor Lehan
- Councilor Akervall

Staff present included:

- Bryan Cosgrove, City Manager
- Jeanna Troha, Assistant City Manager
- Barbara Jacobson, City Attorney
- Kimberly Veliz, City Recorder
- Delora Kerber, Public Works Director
- Susan Cole, Finance Director
- Mark Ottenad, Public/Government Affairs Director
- Angela Handran, Assistant to the City Manager
- Mike Ward, Civil Engineer

Motion to approve the order of the agenda.

Motion: Councilor Starr moved to approve the order of the agenda. Councilor Lehan seconded the motion.

Vote: Motion carried 4-0.

SUMMARY OF VOTES

Mayor Knapp	Yes
Council President Starr	Yes
Councilor Stevens	Excused
Councilor Lehan	Yes
Councilor Akervall	Yes

CITIZEN INPUT & COMMUNITY ANNOUNCEMENTS

This is an opportunity for visitors to address the City Council on items not on the agenda. It is also the time to address items that are on the agenda but not scheduled for a public hearing. Staff and the City Council will make every effort to respond to questions raised during citizens input before tonight's meeting ends or as quickly as possible thereafter. Please limit your comments to three minutes.

CITY OF WILSONVILLE
CITY COUNCIL MEETING MINUTES

Three members of the public spoke collectively to Council about their concerns that the herbal supplement kratom is sold in Wilsonville. Speakers included Karl Mobbs Wilsonville resident and psychiatrist at the Oregon State Hospital; Andrew Cleary Wilsonville resident and trauma surgeon at Salem Hospital; and Carrie Sedano Salem resident and critical care nurse at Salem Hospital. A handout was distributed to Council that gave information on kratom and included the group's request to have sales of it banned in the City of Wilsonville.

Council and staff offered their support to the group and encouraged them to bring their concerns to the legislature. Staff additionally, suggested that the group reach out to the Oregon Medical Association with the concerns. The group was referred to the City's Public/Government Affairs Director Mark Ottenad, for the contact information of local state electives.

Staff informed they would look further in to this topic and keep Council in the loop of any findings.

MAYOR'S BUSINESS

A. Mayor Knapp

Mayor Knapp reported that the next Council meeting is scheduled for Monday, December 4. He additionally shared the meetings that he attended since the last Council meeting. Mayor Knapp read a letter and opened a present that was given to the City of Wilsonville from the Kitakata delegation. Mayor Knapp mentioned that next year is the 30th year of the sister-city relationship and that he would like to see a celebration planned for this anniversary.

COUNCILOR COMMENTS

A. Council President Starr

Reminded the audience that City Hall is closed Thursday, November 23 and Friday, November 24 of this week for the Thanksgiving Holiday. Also mentioned was the Tree Lighting Ceremony to take place Wednesday, November 29.

B. Councilor Lehan

Told the viewers about events occurring on Saturday December 2, 2017. Events listed were:

- Reindeer Romp and Bullwinkle Bash
- Wilsonville Garden Club Swag Sale

C. Councilor Akervall

Announced today (November 20, 2017) was the last day to register for the Reindeer Romp to guarantee a t-shirt.

Councilor Akervall mentioned that she attended the Prepare Out Loud event. She encouraged others to go to the event if they get a chance. Councilor Akervall pointed out that the City's Toy Drive is in progress and those that want to participate can drop off new unwrapped toys at the Parks and Recreation Administration Building.

**CITY OF WILSONVILLE
CITY COUNCIL MEETING MINUTES**

CONSENT AGENDA

Ms. Jacobson read the titles of the Consent Agenda items into the record.

A. Minutes of the November 20, 2017 Council Meeting.
(The minutes included in the packet were the minutes of November 6, 2017. However, the minutes were read and listed in the agenda as November 20, 2017. The November 6, 2017 minutes will be resubmitted for approval at the next Council meeting.)

Motion: Councilor Starr moved to approve the Consent Agenda. Councilor Starr Akervall Lehan seconded the motion.

Vote: Motion carried 4-0.

SUMMARY OF VOTES

Mayor Knapp	Yes
Council President Starr	Yes
Councilor Stevens	Excused
Councilor Lehan	Yes
Councilor Akervall	Yes

CONTINUING BUSINESS

A. **Ordinance No. 810** – 2nd Reading
An Ordinance Of The City Of Wilsonville Adopting The Old Town Single-Family Design Standards And Related Development Code Changes To WC Code Section 4.138 - Old Town Overlay Zone.

Ms. Jacobson read the title of Ordinance No. 810 into the record for second reading.

Ms. Jacobson then shared updates to Section 4.138. Old Town (O) Overlay Zone (.03) Review Process in the “O” Overlay zone A.3. This change occurred today and was not provided in the packet; however, two handouts were given to Council one handout with the final language for Section 4.138. (.03) A. and 4.138. (.03) A.3 See update language below:

- (.03) Review Process in the “O” Overlay zone.
 - A. The following shall be reviewed using Site Design Review through the Development Review Board for conformance with the standards in Subsection (.05) as well the Site Design Review standards (Sections 4.421) and other applicable standards:
 - 3. Any design for a new single-family home (including duplexes) and accessory buildings, or remodeling thereof, that does not conform to the Old Town Single-Family Design Standards Book (with the same standard for ADUs set forth in Subsection (.04) C below continuing to apply).

CITY OF WILSONVILLE
CITY COUNCIL MEETING MINUTES

Councilor Akervall informed the reason for contacting staff was that she desired to have the language in Section 4.138 altered. She felt the language was missing some detail and the process should be further spelled out. A point discussed during at the first reading of the ordinance at the previous council meeting.

City Manager Cosgrove recalled from the first reading of the ordinance that if you decide to build something that does not fit in those period pieces; you would have to go through the DRB process, and then make a case as to why that design makes sense in the neighborhood. The argument would be based on the fact that the goal is to make the homes look like the other homes in the neighborhood.

City Attorney Jacobson added that owners do not have a to have a new ranch or craftsman house in this neighborhood. They can deviate from those styles however, to do so the burden is on the owner to prove that the home would maintain the look and feel of the neighborhood.

Councilor Lehan concurred with this recollection, and added that the owner would have to make the argument to how their home would fit in the neighborhood. Additionally, the neighbors would have the opportunity to make public comments on the chosen home style.

City Attorney Jacobson disclosed to Council that the Old Town Single-Family Design Standards and Related Development Code was a neighborhood initiative with a lot of input from the neighbors. She added that owners can still go thru the former process of review or they can streamline the process by utilizing the Old Town Single-Family Design Standards.

Councilor Lehan described the review process in the overlay zone more of an incentive program. You can do it the old way or you can do the fast way. She added that the neighborhood has been working on this a long time and they have been refining this from many years.

Council President Starr remarked that this feels that it is a bit of government overreach. Moreover, it may limit some of the residents' freedoms. Furthermore, he questioned if there had been any old town residents that disagree.

Staff replied that the only issue that came up at the public hearing of the ordinance was the issue of duplexes however; the area has always been zoned for that.

Mayor Knapp perceives that the language in Section 4.138. Old Town (O) Overlay Zone to be unclear and suspects homeowners will be confused.

Motion: Councilor Lehan moved to approve Ordinance No. 810 on second reading. Councilor Starr Akervall Lehan seconded the motion.

Vote: Motion carried 3-1.

**CITY OF WILSONVILLE
CITY COUNCIL MEETING MINUTES**

SUMMARY OF VOTES

Mayor Knapp	No
Council President Starr	Yes
Councilor Stevens	Excused
Councilor Lehan	Yes
Councilor Akervall	Yes

CITY MANAGER'S BUSINESS

No Report.

LEGAL BUSINESS

No Report.

ADJOURN

Mayor Knapp adjourned the meeting at 8:17 p.m.

Respectfully submitted,

Kimberly Veliz, City Recorder

ATTEST:

Tim Knapp, Mayor

**CITY OF WILSONVILLE
CITY COUNCIL MEETING MINUTES**

A regular meeting of the Wilsonville City Council was held at the Wilsonville City Hall beginning at 7:00 p.m. on Monday, December 4, 2017. Mayor Knapp called the meeting to order at 7:08 p.m., followed by roll call and the Pledge of Allegiance.

The following City Council members were present:

- Mayor Knapp
- Council President Starr
- Councilor Stevens
- Councilor Lehan
- Councilor Akervall

Staff present included:

- Bryan Cosgrove, City Manager
- Jeanna Troha, Assistant City Manager
- Barbara Jacobson, City Attorney
- Kimberly Veliz, City Recorder
- Nancy Kraushaar, Community Development Director
- Susan Cole, Finance Director
- Mark Ottenad, Public/Government Affairs Director
- Angela Handran, Assistant to the City Manager
- Pat Duke, Library Director
- Eric Mende, Capital Projects Engineering Manager
- Jordan Vance, Economic Development Manager
- Matt Baker, Facilities Supervisor

Motion to approve the order of the agenda.

Motion: Councilor Starr moved to approve the order of the agenda. Councilor Lehan seconded the motion.

Vote: Motion carried 5-0.

SUMMARY OF VOTES

Mayor Knapp	Yes
Council President Starr	Yes
Councilor Stevens	Yes
Councilor Lehan	Yes
Councilor Akervall	Yes

COMMUNICATIONS

None.

**CITY OF WILSONVILLE
CITY COUNCIL MEETING MINUTES**

CITIZEN INPUT & COMMUNITY ANNOUNCEMENTS

This is an opportunity for visitors to address the City Council on items not on the agenda. It is also the time to address items that are on the agenda but not scheduled for a public hearing. Staff and the City Council will make every effort to respond to questions raised during citizens input before tonight's meeting ends or as quickly as possible thereafter. Please limit your comments to three minutes.

There were none.

MAYOR’S BUSINESS

A. **Tourism Promotion Committee Appointment**

Appoint Brandon Roben, Executive Director of the Evergreen Aviation & Space Museum, to the Tourism Promotion Committee, Position No. 2, with term ending June 30, 2019. (Ottenad)

Motion: Councilor Lehan moved to ratify the appointment of Brandon Roben to the Tourism Promotion Committee, Position No. 2, with term ending June 30, 2019. Councilor Starr Akervall seconded the motion.

Vote: Motion carried 5-0.

SUMMARY OF VOTES

Mayor Knapp	Yes
Council President Starr	Yes
Councilor Stevens	Yes
Councilor Lehan	Yes
Councilor Akervall	Yes

B. Upcoming meetings were announced by the Mayor as well as the regional meetings he attended on behalf of the City. Mayor Knapp reminded that the next Council meeting is scheduled for Monday, December 18, 2017.

COUNCILOR COMMENTS

A. Council President Starr

Announced the following upcoming events:

- 12/16 Curiosity Café - Holiday Stories with Ken Iverson 1:00 p.m. to 3:00 p.m. at Library
- 12/18, 12/19 and 12/20 Holiday Light Drive to PRI “Winter Wonderland”

B. Councilor Stevens

Thanked staff for their work on the Tree Lighting Ceremony and the Reindeer Romp events.

**CITY OF WILSONVILLE
CITY COUNCIL MEETING MINUTES**

C. Councilor Lehan

Recounted her encounter with a businessperson who recently moved to Wilsonville from Tigard. Councilor Lehan shared that businessperson only had wonderful things to say about the City of Wilsonville.

D. Councilor Akervall

Appreciates and enjoyed some of the holiday events hosted by the City.

CONSENT AGENDA

Ms. Jacobson read the titles of the Consent Agenda items into the record.

C. **Resolution No. 2659**

A Resolution Of The City Of Wilsonville Acting In Its Capacity As Its Local Contract Review Board Authorizing The Execution Of A Professional Services Agreement With Murraysmith, Inc. To Provide Engineering And Consulting Services For The Memorial Park Pump Station Replacement Project (CIP #2065)

D. Minutes of the November 6, 2017 Council Meeting.

Motion: Councilor Stevens moved to approve the Consent Agenda. Councilor Starr seconded the motion.

Vote: Motion carried 5-0.

SUMMARY OF VOTES

Mayor Knapp	Yes
Council President Starr	Yes
Councilor Stevens	Yes
Councilor Lehan	Yes
Councilor Akervall	Yes

NEW BUSINESS

A. Library Improvements Additional Funding (CIP# 8098)

Eric Mende, Capital Projects Engineering Manager, and Pat Duke, Library Director requested Council provided direction concerning additional funding for the Library Improvements project, as to whether a “Notice of Intent to Award” should proceed. Finance Director Susan Cole assisted in providing financial background on the Library Improvements project.

Beginning of staff report executive summary.

Construction Bids were opened for the Library Improvements project on November 16th. Construction items include new paint and carpet throughout, architectural changes and

CITY OF WILSONVILLE
CITY COUNCIL MEETING MINUTES

reprogramming/relocating various spaces within the library, bringing the restrooms in the non-fiction area up to ADA code, and replacement of the majority of HVAC units which will extend the equipment's life approximately 20 years, and provide more consistent and efficient heating and cooling, especially since the Library is used for a warming and cooling center in the winter and summer. After evaluating all seven bids, staff determined the lowest responsible bid to be \$1,054,000. To this amount, permitting and engineering need to be added. Additionally, the construction bid does not include security gates to enable the radio frequency identification system, or any other furniture or fixtures. When adding these additional items to the construction bid, the total project cost is estimated to be \$1,350,000. The City received \$1 million in grant funds from Clackamas County and added \$30,000 from the General Fund for items such as overhead, but the total project cost is short by approximately \$320,000.

There are two alternatives for Council to consider for proceeding with the project: a) Proceed with the project as described above with additional funding for the project to be included in the upcoming March, 2018 budget supplemental, or, b) Reduce the scope of the project to bring it within the defined budget.

Staff's original intent was for the \$1M grant to fund all improvements at the library, including upgrades to the HVAC and controls. To reduce the scope of the project to bring it within budget, staff evaluated the various cost drivers contained within the bids. Reductions in architectural improvements, furniture, or the square footage of carpet and paint are inadequate to reduce the dollars needed to meet the current budget. The only feasible deductions are the 6 new HVAC units and associated electrical work and digital controls for the existing "old" side of the building. Deleting these items will save approximately \$300K to \$350K. However, the existing HVAC equipment will still need to be replaced - likely within the next 5 years, based on previous evaluations. If deleted now, the HVAC and controls improvements would be re-budgeted in a future year using other funds.

Based on having a valid bid in-hand, the real near term needs for HVAC improvements, and to avoid a second disruption to the library within the next few years, staff recommends proceeding with the current project, issuing a "Notice of Intent to Award", and including a budget adjustment in the March, 2018 budget supplemental of \$320,000, from General Fund Contingency.

End of staff report executive summary.

Beginning of staff report current year budget impacts.

The FY 17/18 budget for CIP project 8098 is \$1,030,000, with \$1M of that amount coming from a Clackamas County library district grant, and \$30,000 from the General Fund. If the Council decides to proceed with the project as described an additional \$320,000 from the General Fund would be necessary. This would be accomplished through the March, 2018 supplemental budget process. The General Fund began this fiscal year with \$2.9 million in contingency. Of that amount, approximately \$387,000 was transferred in September as part of a supplemental budget adjustment to correct budgeting errors, add master planning for Boones-Ferry Park, add fiber connectivity to the undercrossing trail project, and allocate funding per labor contracts that were not complete at the time the budget was completed. If the Council decides to proceed with this project and allocate

**CITY OF WILSONVILLE
CITY COUNCIL MEETING MINUTES**

an additional \$320,000 from the General Fund contingency, the remaining balance in the General Fund contingency would be \$2,238,164.

The Council could scale back the \$320,000 by not including approximately \$50,000 in furniture or \$15,000 for the security gates.

In the event a supplemental budget adjustment does not pass in March of 2018, other General Fund projects could be reduced or delayed to fund the contract for the Library improvements, such as the financial systems replacement project, replacing City monuments due to the change in logo, and/or sound-proofing the Human Resources office.

End of staff report current year budget impacts.

Motion: Councilor Akervall moved to proceed with “Notice of Intent to Award” a construction contract to make improvements to the Library. Councilor Stevens seconded the motion.

Vote: Motion carried 5-0.

SUMMARY OF VOTES

Mayor Knapp	Yes
Council President Starr	Yes
Councilor Stevens	Yes
Councilor Lehan	Yes
Councilor Akervall	Yes

CITY MANAGER’S BUSINESS

No Report.

LEGAL BUSINESS

No Report.

ADJOURN

Mayor Knapp adjourned the meeting at 7:35 p.m. With an Urban Renewal meeting to directly follow.

Respectfully submitted,

Kimberly Veliz, City Recorder

ATTEST:

**CITY OF WILSONVILLE
CITY COUNCIL MEETING MINUTES**

Tim Knapp, Mayor



**CITY COUNCIL MEETING
STAFF REPORT**

<p>Meeting Date: December 18, 2017</p>	<p>Subject: Resolution No. 2657 Intergovernmental Agreement (IGA) between Metro, Washington County, and the Cities of Tualatin and Wilsonville Seeking a Binding Non-Appealable Decision from Metro Concerning One Area, the Central Subarea, of the Basalt Creek Planning Area</p> <p>Staff Member: Nancy Kraushaar, Community Development Director, and Miranda Bateschell, Planning Manager</p> <p>Department: Community Development</p>	
	<p>Advisory Board/Commission Recommendation</p>	
<p><input checked="" type="checkbox"/> Motion <input type="checkbox"/> Public Hearing Date: <input type="checkbox"/> Ordinance 1st Reading Date: <input type="checkbox"/> Ordinance 2nd Reading Date: <input checked="" type="checkbox"/> Resolution <input type="checkbox"/> Information or Direction <input type="checkbox"/> Information Only <input type="checkbox"/> Council Direction <input type="checkbox"/> Consent Agenda</p>	<p><input type="checkbox"/> Approval <input type="checkbox"/> Denial <input type="checkbox"/> None Forwarded <input type="checkbox"/> Not Applicable</p>	
	<p>Comments:</p>	
<p>Staff Recommendation: Staff recommends that Council adopt Resolution No. 2657.</p>		
<p>Recommended Language for Motion: I move to approve Resolution No. 2657.</p>		
<p>Project / Issue Relates To: <i>[Identify which goal(s), master plans(s) your issue relates to.]</i></p>		
<p><input checked="" type="checkbox"/> Council Goals/Priorities Basalt Creek Concept Plan</p>	<p><input type="checkbox"/> Adopted Master Plan(s)</p>	<p><input type="checkbox"/> Not Applicable</p>

ISSUE BEFORE COUNCIL:

A City of Wilsonville Resolution to enter into an Intergovernmental Agreement (IGA) between Metro, Washington County, and the cities of Tualatin and Wilsonville to resolve the narrow issue of the land use designation for area commonly known as the central subarea of the Basalt Creek Planning Area.

EXECUTIVE SUMMARY:

Since 2011, the Cities of Wilsonville and Tualatin, Washington County, and Metro have been working together to implement an Intergovernmental Agreement (IGA) to concept plan the Basalt Creek Planning Area. After five joint Council work sessions and two Public Open Houses, a preferred Basalt Creek Land Use Concept Plan was completed in September 2016, presenting a proposed jurisdictional boundary in conjunction with ten considerations for success. As a result of the September meeting the City of Wilsonville understood there was agreement between Wilsonville and Tualatin to designate the area known as the Central Subarea as employment lands.

On February 13, 2017, the Tualatin City Council, at a council work session, provided Tualatin city staff with direction to change the previously agreed upon preferred Basalt Creek Land Use Concept Plan for the Basalt Creek “Central Subarea” from the prior employment designation to residential on the Tualatin side of the conditional jurisdictional boundary. On March 20, 2017, Wilsonville City Council expressed strong concern over the residential designation and commissioned a development feasibility analysis for the Central Subarea to determine what types of employment uses, if any, would be reasonably achievable.

At the May 1 City Council work session, City staff and KPFF Consulting Engineers presented the completed Basalt Creek Concept Plan Feasibility Study with three different schemes for employment development. With concerns for placing residential uses in the middle of the employment area and confidence employment can be achieved in the Central Subarea, City Council remained committed to the land use designation of the Central Subarea as providing employment opportunities and proposed that if Tualatin did not believe use as employment land was achievable, Wilsonville would be willing to take responsibility for planning the area and adjusting the Wilsonville boundary north of Tonquin Rd (along parcel lines) to include the Central Subarea.

At the June 24 Tualatin City Council work session, Wilsonville City staff and KPFF Consulting Engineers presented the completed Basalt Creek Concept Plan Feasibility Study. In addition, Mayor Knapp conveyed during public comment at the Tualatin City Council meeting a summary of the Wilsonville City Council’s concerns and position regarding employment in the Basalt Creek Concept planning area.

On September 14, representatives from Wilsonville, Tualatin, and Washington County met to discuss the following options:

1. Agree to the Preferred Basalt Creek Land Use Map (dated September 2016), retaining Tualatin’s requested employment land and not adding any residential land to the Central Subarea.

2. Move the boundary back to an earlier configuration, giving Wilsonville the responsibility to preserve and develop the Title 4 lands in the Central Subarea as intended by the 2004 UGB decision.
3. Agree to a formal dispute resolution process through Metro, wherein Metro would make the final decision as to the land use designation for the Central Subarea, with all three parties (Wilsonville, Tualatin and Washington County) committing to a binding agreement that Metro's decision will be final and non-appealable.

The parties have now agreed to have Metro make the final decision on land use for the Central Subarea of the Basalt Creek Planning Area in order to enable completion of the Concept Plan. The subject IGA commits all parties to Metro assuming the decision maker role.

EXPECTED RESULTS:

City Council adoption of Resolution 2657, followed by entry into an IGA with the Basalt Creek planning partners, which would allow Metro to set up a decision-making process for resolving the disagreement over the Central Subarea and lead to the completion of the Basalt Creek Concept Plan.

TIMELINE:

The City of Tualatin, Washington County, and Metro are expected to sign the IGA within the next month. Metro's decision-making process is estimated to occur over the next 3 to 6 months after which the Concept Plan can be completed.

CURRENT YEAR BUDGET IMPACTS:

The City of Tualatin received approximately \$350,000 from Metro's Construction Excise Tax (CET) grant program to perform concept planning. The current scope of work and budget with the consultant and as outlined with Metro under the CET grant program does not include additional funds for analysis of additional land use alternatives. The City paid for the work performed by KPFF Consulting Engineers, which was just under \$20,000 and was paid with funds from the Planning Division. The City of Wilsonville has, and will continue to, invest staff time into the process. The decision making process with Metro is expected to draw on staff time and not require other disbursement of City funds. Whether additional costs, beyond staff time, will be needed to complete the concept plan has not been determined at this time.

FINANCIAL REVIEW / COMMENTS:

Reviewed by: SCole Date: 12/06/2017

LEGAL REVIEW / COMMENT:

Reviewed by: BAJ - comments included Date: 12/05/2017

COMMUNITY INVOLVEMENT PROCESS:

The project includes participation from affected residents, businesses, and property owners. Two open houses were held to engage and inform the public about the project. Additionally, the website is updated to reflect the most recent work and staff sends out monthly updates to an interested parties list and property owners via email and U.S. postal mail. Additional council work sessions have been open to the public.

POTENTIAL IMPACTS or BENEFIT TO THE COMMUNITY:

The Basalt Creek area is important for the long-term growth of Tualatin, Wilsonville, Washington County and the Metro region as a whole. Conducting a thorough and thoughtful planning process will identify and resolve each city's vision for the area and potential impacts on the community. The Basalt Creek area presents an opportunity to maximize assessed property value, integrate jobs and housing, develop efficient transportation and utility systems, create an attractive residential and business community, incorporate natural resource areas, and provide recreational opportunities as community amenities and assets.

ALTERNATIVES:

Do not adopt Resolution No. 2657 and provide staff with alternative direction for the Basalt Creek Planning Area.

CITY MANAGER COMMENT:

ATTACHMENTS:

1. Resolution No. 2657

RESOLUTION NO. 2657

A RESOLUTION OF THE CITY OF WILSONVILLE AUTHORIZING THE MAYOR TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT BETWEEN METRO, WASHINGTON COUNTY, AND THE CITIES OF TUALATIN AND WILSONVILLE SEEKING A BINDING NON-APPEALABLE DECISION FROM METRO CONCERNING ONE AREA, THE CENTRAL SUBAREA, OF THE BASALT CREEK PLANNING AREA.

WHEREAS, in 2004 the Metro Council added two areas, known as the Basalt Creek and West Railroad Planning Areas, to the Urban Growth Boundary (UGB) via Metro Ordinance No. 04-1040B; and

WHEREAS, Metro conditioned that these UGB expansion areas undergo Title 11 concept planning, as defined in Metro Code Chapter 3.07, cited as the Urban Growth Management Functional Plan (UGMFP); and

WHEREAS, in 2011, Metro, Washington County (County) and the cities of Tualatin and Wilsonville (Parties) entered into an Intergovernmental Agreement (2011 IGA) for concept planning the Basalt Creek Planning Area; and

WHEREAS, in 2013, the cities of Tualatin and Wilsonville began concept planning the Basalt Creek Planning Area; and

WHEREAS, in 2016-2017, disagreement arose with respect to what land use designation should be assigned to an area within the Basalt Creek Planning Area referred to as the Central Subarea; and

WHEREAS, representatives from the cities of Tualatin and Wilsonville and the County jointly met in an attempt to identify a process to move forward and complete the Basalt Creek land use Concept Plan map; and

WHEREAS, the governing bodies for the CITIES and COUNTY agreed to ask Metro to settle the disagreement and to make a final, binding, non-appealable decision on the sole issue of designation of the land use for the Central Subarea; and

WHEREAS, this direction is set forth in **Exhibit 1**, Intergovernmental Agreement between Metro, Washington County, and the Cities of Tualatin and Wilsonville, attached hereto and incorporated herein.

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

1. The City of Wilsonville City Council authorizes the Mayor to enter into and execute, on behalf of the City of Wilsonville, the subject Intergovernmental Agreement between Metro, Washington County, and the Cities of Tualatin and Wilsonville seeking a final, binding, non-appealable decision from Metro concerning one area, the Central Subarea, of the Basalt Creek Planning Area.
2. This resolution becomes effective upon adoption.

ADOPTED by the Wilsonville City Council at a regular meeting thereof this 18th day of December, 2017, and filed with the Wilsonville City Recorder this date.

Tim Knapp, Mayor

ATTEST:

Kim Veliz, City Recorder,

SUMMARY OF VOTES:

Mayor Knapp

Council President Starr

Councilor Lehan

Councilor Akervall

Councilor Stevens

Attachments:

Exhibit 1 - Intergovernmental Agreement (IGA) between Metro, Washington County, and the Cities of Tualatin and Wilsonville Seeking a Final, Binding, Non-Appealable Decision from Metro Concerning One Area, the Central Subarea, of the Basalt Creek Planning Area

**INTERGOVERNMENTAL AGREEMENT
BETWEEN METRO, WASHINGTON COUNTY, AND THE CITIES OF
TUALATIN AND WILSONVILLE SEEKING A BINDING NON-APPEALABLE
DECISION FROM METRO CONCERNING ONE AREA, THE CENTRAL SUBAREA,
OF THE BASALT CREEK PLANNING AREA**

This Intergovernmental Agreement (IGA) is entered into by the following parties: Metro, a metropolitan service district organized under the laws of the State of Oregon (hereinafter referred to as "Metro"), Washington County, a political subdivision in the State of Oregon (hereinafter referred to as "County"), and the City of Tualatin ("Tualatin") and City of Wilsonville ("Wilsonville"), incorporated municipalities of the State of Oregon (hereinafter referred to as "Cities").

Whereas, in 2004 the Metro Council added two areas, known as the Basalt Creek and West Railroad Planning Areas, located generally between the Cities, to the Urban Growth Boundary (UGB) via Metro Ordinance No. 04-1040B; and

Whereas, Metro conditioned that these UGB expansion areas undergo Title 11 concept planning, as defined in Metro Code Chapter 3.07, cited as the Urban Growth Management Functional Plan (UGMFP); and

Whereas, County and Cities agreed to consider the Basalt Creek and the West Railroad areas in a single concept planning effort and to refer to the two areas generally as the Basalt Creek Planning Area; and

Whereas, located within the Basalt Creek Planning Area is a distinct subarea consisting of the following parcels identified by Washington County tax lot identification 2S135CB00400, 2S135CB00500, 2S135CC00300, 2S135CC00100, 2S135CC00800, 2S135CC00900, 2S135CC00500, 2S135CC00600, 2S135CC00700, as reflected in Exhibit 1, attached hereto and incorporated by reference herein, which subarea is hereinafter referred to as the "Central Subarea"; and

Whereas, in 2011, Metro, County, and Cities entered into an Intergovernmental Agreement (2011 IGA) for concept planning the Basalt Creek Planning Area; and

Whereas, in 2013, Metro, County, and Cities entered into the First Addendum to the 2011 IGA, acknowledging the Basalt Creek Transportation Refinement Plan; and

Whereas, in 2013, Cities began concept planning the Basalt Creek Planning Area; and

Whereas, a disagreement has arisen with respect to what the land use designation should be for the Central Subarea; and

Whereas, Tualatin wants the land use in the Central Subarea to be designated for housing; and

Whereas, Wilsonville wants the land use in the Central Subarea to be designated for employment; and

Whereas, representatives from the Cities jointly met with County representatives in an attempt to identify a process to move forward and complete the Basalt Creek land use Concept Plan map, but were unable to do so; and

Whereas, the governing bodies for the Cities and County agreed to ask Metro to settle the dispute and to make a final, binding, non-appealable decision on the sole issue of designation of the land use for the Central Subarea; and

Whereas, Metro has agreed to accommodate this request, based on the Cities' joint assertion that they cannot agree, with the clear understanding that this is not a role Metro intended, wanted, or asked for itself, but is willing to take on at the request of the Cities and the County;

Now, therefore, incorporating the above Recitals as if fully set forth below, the Cities, County, and Metro agree as follows:

1. FINAL BINDING AND NON-APPEALABLE DECISION BY METRO

Metro will act as the decision-maker to resolve the issue of the land use designation for the area known as the Central Subarea. In that capacity, Metro will have sole discretion to determine what to call this decision making process, where and when to hold the process, who Metro will appoint to make the decision, a briefing schedule, whether or not to hear oral argument, and ground rules that must be adhered to by the Cities and County throughout the process. Metro may require the Cities and County to sign ground rules and decision protocol, as determined solely by Metro. Once designated by Metro, the Parties agree that the Central Subarea will be designated in the final Concept Plans and in the Urban Planning Area Agreement between the Parties, as determined by Metro.

2. CITIES AND COUNTY AGREEMENT

The Cities agree to follow whatever decision-making process and rules are created by Metro, including timelines for submitting evidence and argument. The County may participate and advocate for its preference or may elect to be neutral. Cities and County agree that Metro's decision will be binding and non-appealable by any of them and, once made, all of their respective governing bodies and staff will support the decision to move the Basalt Creek Planning effort to completion without delay and in accordance with the decision of Metro. Each City agrees that it will prepare concept plans for the Basalt Creek Planning Area consistent with Metro's final decision and with Title 11 of Metro's Urban Growth Management Functional Plan. Each City agrees to adopt a resolution accepting the concept plan, reflecting the Metro decision, within 120 days after the date Metro's decision becomes final and effective, and to adopt an ordinance amending each City's comprehensive plan to include and/or reflect the concept plan within one year after the Metro decision. Cities and County further agree that if the designation is appealed by any third party, each will vigorously defend and support the

decision and will not support or assist in the appeal of the designation determined by Metro through this process. At the conclusion of Metro’s decision, a binding agreement will be signed by all Parties to this effect, with any future disputes or violations with respect to the agreement to be resolved in accordance with the specified requirements of that binding decision. Hereafter the Parties will work in good faith to reach agreement on all other issues so that the final Concept Plans and Urban Planning Area Agreement can be finalized.

This Agreement is effective the _____ day of _____, 2017.

Exhibit 1 – Map

CITY OF WILSONVILLE, OREGON

By: _____

Tim Knapp

As Its: Mayor

Date: _____

ATTEST:

By: _____

[Signatures continue on following pages]

CITY OF TUALATIN, OREGON

By: _____

Lou Ogden

As Its: Mayor

Date: _____

ATTEST:

By: _____

[Signatures continue on following pages]

WASHINGTON COUNTY, OREGON

By: _____

Andy Duyck

As Its: Chair, Board of County Commissioners

Date: _____

ATTEST:

By: _____

[Signatures continued on following page]

ACCEPTED AND AGREED TO BY METRO:

By: _____

Martha Bennett

As Its: Chief Operating Officer

Date: _____

ATTEST:

By: _____

Exhibit 1: Central Sub Area



Central Sub Area



This map is derived from various digital database sources. While an attempt has been made to provide an accurate map, the City of Tualatin, OR assumes no responsibility or liability for any errors or omissions in the information. This map is provided "as is".



CITY COUNCIL STAFF REPORT

Meeting Date: December 18, 2017	Subject: Resolution No. 2658 Library Improvements Contract Award (CIP #8098) Staff Member: Eric Mende, Capital Projects Engineering Manager Department: Community Development	
Action Required	Advisory Board/Commission Recommendation	
<input checked="" type="checkbox"/> Motion <input type="checkbox"/> Public Hearing Date: <input type="checkbox"/> Ordinance 1 st Reading Date: <input type="checkbox"/> Ordinance 2 nd Reading Date: <input checked="" type="checkbox"/> Resolution <input type="checkbox"/> Information or Direction <input type="checkbox"/> Information Only <input type="checkbox"/> Council Direction <input type="checkbox"/> Consent Agenda	<input checked="" type="checkbox"/> Approval <input type="checkbox"/> Denial <input type="checkbox"/> None Forwarded <input type="checkbox"/> Not Applicable Comments:	
Staff Recommendation: Staff recommends that Council adopt Resolution No. 2658.		
Recommended Language for Motion: I move to approve Resolution No. 2658.		
Project / Issue Relates To: <i>[Identify which goal(s), master plans(s) your issue relates to.]</i>		
<input checked="" type="checkbox"/> Council Goals/Priorities	<input type="checkbox"/> Adopted Master Plan(s)	<input type="checkbox"/> Not Applicable

ISSUE BEFORE COUNCIL:

Staff is requesting Council approve Resolution No. 2658 authorizing the City Manager to execute a Construction Contract with 2KG Contractors Inc. for \$1,054,000 to complete the Library Improvements project.

Resolution No. 2658 Staff Report

Page 1 of 4

EXECUTIVE SUMMARY:

Construction bids were opened for the Library Improvements project on November 16, 2017. Construction items include new paint and carpet throughout, architectural changes and reprogramming/relocating various spaces within the library, bringing the restrooms in the non-fiction area up to ADA code, and replacement of the majority of HVAC units which will extend the equipment's life approximately 20 years, and provide more consistent and efficient heating and cooling, especially since the Library is used for a warming and cooling center in the winter and summer. After evaluating all seven bids, staff determined the lowest responsible bid to be \$1,054,000 as submitted by 2KG Contractors Inc. The selected alternatives include two "deletion" alternatives (alternate bid items 1 and 2) plus upgraded HVAC controls (alternative bid item 5) highly desired by Public Works for long term system monitoring and management.

As discussed at the December 4, 2017 City Council meeting, total project costs, including the construction bid, engineering, permitting, staff overhead, and expected expenditures for new furniture, service desks, security gates and other equipment for the library, exceed the current budget for CIP 8098 by approximately \$320,000. Being over budget, the normal contract award process was stopped pending Council input. As directed by Council on December 4th, a Notice of Intent to Award was issued on December 5th, in order to start the required 7 day protest period, and allowing a contract to be brought to Council at their December 18 meeting. The City has received no protests as of the preparation of this staff report.

EXPECTED RESULTS:

Construction will proceed on the long-planned Library improvements.

TIMELINE:

Pending receipt of the Building Permit(s), construction is scheduled to begin in mid- January and be completed by June 30, 2018.

CURRENT YEAR BUDGET IMPACTS:

The FY 17/18 budget for CIP project 8098 is \$1,030,000, with \$1M of that amount coming from a Clackamas County library district grant, and \$30,000 from the General Fund. As discussed at the December 4, 2017 Council meeting, an additional \$320,000 from General Fund contingency will be proposed for appropriation to the project as part of the March, 2018 Supplemental Budget. The revised project amount of \$1,350,000 is adequate to fund all project expenses. A breakdown of revenues versus expected expenses is attached (see **Attachment A**).

FINANCIAL REVIEW / COMMENTS:

Reviewed by: SCole Date: 12/7/2017

LEGAL REVIEW / COMMENT:

Reviewed by: BAJ Date: 12/8/2017

COMMUNITY INVOLVEMENT PROCESS:

N/A

POTENTIAL IMPACTS or BENEFIT TO THE COMMUNITY (businesses, neighborhoods, protected and other groups):

A fresh look and feel to the library and a more efficient heating and cooling system for the long term.

ALTERNATIVES:

Do not award the bid or complete the project at this time.

CITY MANAGER COMMENT:

ATTACHMENTS:

1. Attachment A – 2KG Contractors Bid
2. Resolution No. 2658

ATTACHMENT A

<u>EXPENSES</u>	<u>2KG Contractors</u>
Bid Item No. Description	
1 Bonds & Insurance	\$ 15,000.00
2 Mobilization/Demob	\$ 40,000.00
3 General Requirements (div 1)	\$ 50,000.00
4 Existing Conditions (div 2)	\$ 80,000.00
5 General Construction (div 3-8)	\$ 124,000.00
6 Int. Finishes (div 9)	\$ 260,000.00
14 Specialties (div 10)	\$ 12,000.00
15 Plumbing (div 22)	\$ 16,000.00
16 HVAC (div 23)	\$ 350,000.00
17 Electrical (div 26)	\$ 85,000.00
18 Communications (div 27)	\$ 28,000.00
19 Electronic Security (div28)	\$ 5,000.00
Calculated Base Bid Total	\$ 1,065,000.00
20 Alt 1 - Vestibule	\$ (7,000.00)
21 Alt 2 - Patio Door	\$ (30,000.00)
22 Alt 3 - Admin Office Wall	\$ 7,000.00
23 Alt 4 - Tile	\$ 52,000.00
24 Alt 5 - controls	\$ 26,000.00
Calculated Grand Total All Bid Items	\$ 1,113,000.00
SELECTED Base Bid plus Alts 1, 2, and 5	\$ 1,054,000.00
Other Project Costs (estimated)	
Furniture Allowance	\$50,000
Service Desks Allowance	\$50,000
Security Gates Allowance	\$15,000
Permits (Building, Plumbing, Electrical)	\$31,000
Engineering & Inspection (encumbered)	\$74,000
Admin and Overhead (est)	\$24,000
Contingency	\$52,000
All - in TOTAL PROJECT Cost	\$ 1,350,000.00
REVENUE / BUDGET	
Library District Grant (Budgeted)	\$1,000,000
General Fund (Budgeted)	\$30,000
General Fund (Proposed Supplemental)	\$ 320,000.00
Total Revenue	\$1,350,000

RESOLUTION NO. 2658

A RESOLUTION OF THE CITY OF WILSONVILLE ACTING IN ITS CAPACITY AS ITS LOCAL CONTRACT REVIEW BOARD AUTHORIZING THE CITY MANAGER TO EXECUTE A CONSTRUCTION CONTRACT WITH 2KG CONTRACTORS INC. FOR CONSTRUCTION OF THE LIBRARY IMPROVEMENTS PROJECT (CIP #8098).

WHEREAS, the City has planned, designed, and budgeted for the completion of Capital Improvement Project #8098, known as the Library Improvements project (the Project); and

WHEREAS, the City solicited bids from qualified contractors for the Project that duly followed the State of Oregon Public Contracting Rules and the City of Wilsonville Municipal Code; and

WHEREAS, 2KG Contractors, Inc. submitted a bid for the Project on November 16, 2017 for ONE MILLION FIFTY-FOUR THOUSAND DOLLARS (\$1,054,000) for the Base Bid plus City selected Alternate Bid Items 1, 2, and 5, which, upon evaluation, was determined the lowest responsive and responsible bid.

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

1. The City of Wilsonville, acting as the Local Contract Review Board, authorizes the City Manager to enter into, on behalf of the City of Wilsonville, a Construction Contract with 2KG Contractors, Inc., attached as **Exhibit A** hereto and incorporated herein, for a stated value of ONE MILLION FIFTY-FOUR THOUSAND DOLLARS (\$1,054,000).
2. This resolution is effective upon adoption.

ADOPTED by the Wilsonville City Council at a regular meeting thereof this 18th day of December 2017, and filed with the Wilsonville City Recorder this date.

Tim Knapp, Mayor

ATTEST:

Kimberly Veliz, City Recorder

SUMMARY OF VOTES:

Mayor Knapp

Councilor Starr

Councilor Stevens

Councilor Lehan

Councilor Akervall

Attachments:

Exhibit A – Construction Contract

**CITY OF WILSONVILLE
CONSTRUCTION CONTRACT (CIP #8098)
LIBRARY IMPROVEMENTS**

This Construction Contract for the Library Improvements Project (“Contract”) is made and entered into on this 19th day of December, 2017 (“Effective Date”) by and between the **City of Wilsonville**, a municipal corporation of the State of Oregon (hereinafter referred to as the “City”), and **2KG Contractors Inc.**, an Oregon corporation (hereinafter referred to as “Contractor”).

RECITALS

WHEREAS, the City issued a formal Invitation to Bid for the Project described herein; and

WHEREAS, Contractor represents that Contractor is qualified to perform the services described in the Invitation to Bid on the basis of specialized experience and technical expertise; and

WHEREAS, after reviewing all bids submitted in accordance with the Invitation to Bid, the City has determined this Contract shall be awarded to Contractor; and

WHEREAS, Contractor is prepared to perform this Contract in accordance with all the terms and conditions as set forth below, as the City does hereinafter require.

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

AGREEMENT

Section 1. Contract Documents

This Contract includes and incorporates by reference all of the foregoing recitals and all of the following additional “Contract Documents”: Contract Documents for the Library Improvements Project, dated October 5, 2017, including Specifications, General Conditions, Special Provisions, Supplemental Conditions, and Plans and Details bound separately; Contractor’s Bid submitted in response thereto; 2015 City of Wilsonville Public Works Standards; 2010 ADA Standards for Accessible Design; 2004 Americans with Disabilities Act Accessibility Guidelines (“ADAAG”), as amended; 2006 International Building Code (“IBC”); and the provisions of Oregon Revised Statutes (ORS) 279C, as more particularly set forth in this Contract. Contractor must be familiar with all of the foregoing and comply with them. Any conflict or inconsistency between the Contract Documents shall be called to the attention of the City by Contractor before proceeding with affected work. All Contract Documents should be read in concert and Contractor is required to bring any perceived inconsistencies to the attention of the City before executing this Contract. In the event a provision of this Contract conflicts with standards or requirements contained in any of the foregoing Contract Documents, the provision that is more favorable to the City, as determined by the City, will apply.

Section 2. Term

The term of this Contract shall be from the Effective Date until all work required to be performed hereunder (“Work”) is completed and accepted, or no later than June 30, 2018, whichever occurs first, unless earlier terminated in accordance herewith or an extension of time is agreed to, in writing, by the City. Contractor shall diligently perform the Work according to the requirements and deliverable dates identified in the Contract Documents. All Work must be at Substantial Completion by no later than May 31, 2018 and at Final Completion by June 30, 2018. See **Section 22** for the definitions of Substantial Completion and Final Completion.

Section 3. Contractor’s Work

3.1. Contractor will perform the Work as more particularly described herein and in the other Contract Documents for the Library Improvements Project (“Project”). It is important to note that the Work includes ADA projects, and ADA measurement standards are strict, with very little margin for error. Therefore, Contractor must take great care to know the exact standards and meet them precisely. If the finished product is not within ADA allowances, as published, Contractor will be required to re-work or remove and replace, at Contractor’s sole expense, so that the ADA specifications are fully complied with, at Contractor’s expense.

3.2. All written documents, drawings, and plans submitted by Contractor in conjunction with the Work shall bear the signature, stamp, or initials of Contractor’s authorized Project Manager. Any documents submitted by Contractor which do not bear the signature, stamp, or initials of Contractor’s authorized Project Manager, will not be relied upon by the City. Interpretation of plans and answers to questions regarding the Work given by Contractor’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, Contractor’s Project Manager will provide such written documentation.

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

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

Section 4. Contract Sum, Retainage, and Payment

4.1. Except as otherwise set forth in this **Section 4**, the City agrees to pay Contractor for performance of the Work on a time and materials basis, guaranteed not to exceed ONE MILLION FIFTY-FOUR THOUSAND DOLLARS (\$1,054,000), comprising the Base Bid plus Alternate items 1, 2, and 5 only (“Contract Sum”). Any compensation in excess of the Contract Sum will require an express written Change Order between the City and Contractor.

4.2. During the course of Contractor's performance, if the City, through its Project Manager, specifically requests Contractor to provide additional services beyond the Work described in the Contract Documents, Contractor shall provide such additional services and bill the City a reasonable agreed upon fee, pursuant to a written Change Order, executed in compliance with the provisions of **Section 23**.

4.3. Contractor will be paid for Work for which an itemized invoice is received by the City within thirty (30) days of receipt, unless the City disputes such invoice, less a five percent (5%) withholding for retainage. Retainage shall be as outlined in the Contract Documents and as specified under ORS 279C.550 to 279C.570. If the City disputes an invoice, the undisputed portion of the invoice will be paid by the City within the above timeframe, less the retainage. The City will set forth its reasons for the disputed claim amount and make good faith efforts to resolve the invoice dispute with Contractor as promptly as is reasonably possible. Final payment will be held until completion of the final walkthrough, as described in **Section 22**.

4.4. Except as provided in **Section 8.2**, the Contract Price includes the cost of all required fees payable to governmental agencies, including but not limited to plan checking, land use, zoning, and all other similar fees required to perform the Work on the Project.

4.5. 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, and all other similar fees resulting from this Project that are not specifically otherwise provided for in the Contract Documents.

4.6. Contractor's unit prices and Contract Sum 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 all other contributions and benefits.

4.7. Contract provisions regarding payment policies, progress payments, interest, etc. are as outlined in the Contract Documents and in ORS 279C.570.

Section 5. Prevailing Wages

This is a Contract for a Public Works Project, subject to ORS 279C.800 to 279C.870. Therefore, 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 1, 2017, 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/WHD/PWR/Pages/pwr_state.aspx. Because this is a public works contract subject to payment of prevailing wages, each worker in each trade or occupation employed in the performance of the Work, either by Contractor, a subcontractor, or other person doing or contracting to do, or contracting for the whole or any part of the Work, 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. Contractor must comply with all public contracting wages required by law. Contractor 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 Contractor 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. Contractor 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). Contractor shall include a contract provision in compliance with this paragraph in every subcontract and shall require each subcontractor to include it in subcontract(s).

See **Contractor's Responsibilities** below and other Contract Documents for additional requirements and responsibilities regarding compliance with wage and hour laws and regulations.

Section 6. Filing of Certified Statement

As required in ORS 279C.845(7), the City will retain twenty-five percent (25%) of any amount earned by Contractor under the Contract until Contractor has filed the certified statements required in ORS 279C.845(1). The City will pay to Contractor the amount withheld within fourteen (14) days after Contractor files the required certified statements. As required in ORS 279C.845(8), Contractor shall retain twenty-five percent (25%) of any amount earned by a first-tier subcontractor on the Project until the first-tier subcontractor has filed with the City the certified statements required in ORS 279C.845(1). Before paying any amount withheld, Contractor shall verify that the first-tier subcontractor has filed the certified statement. Within fourteen (14) days after the first-tier subcontractor files the required certified statement, Contractor shall pay the first-tier subcontractor any amount withheld. Contractor shall require all other sub-subcontractors to file certified statements regarding payment of prevailing wage rates with the City.

Section 7. Reports to Department of Revenue

When a public contract is awarded to a nonresident bidder and the contract price exceeds Ten Thousand Dollars (\$10,000), Contractor shall promptly report to the Department of Revenue, on forms to be provided by the Department, the total contract price, terms of payment, length of contract, and such other information as the Department may require, before the City will make final payment on the Contract.

Section 8. City's Rights and Responsibilities

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

8.2. If applicable, the City will pay the required Bureau of Labor and Industries fee of one-tenth of one percent (0.1%) of the Contract Sum, or as required by statute.

8.3. The City reserves the right to reject any bid or to refuse delivery of materials or services at or from any manufacturer, supplier, or contractor with which the City has reasonable grounds to believe is or may be operating in violation of any local, state, or federal law or which is the subject of pending litigation.

8.4. If Contractor fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to Contractor or a subcontractor by any person in connection with the

Contract as such claim becomes due, the City may, but shall not be obligated to, pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due Contractor by reason of the Contract. The payment of a claim in the manner authorized hereby shall not relieve Contractor or its surety from the obligation with respect to any unpaid claim. If the City is unable to determine the validity of any claim for labor or services furnished, the City may withhold from any current payment due Contractor an amount equal to said claim until its validity is determined, and the claim, if valid, is paid by Contractor or the City. There shall be no final acceptance of the Work under the Contract until all such claims have been resolved.

Section 9. City's Project Manager

The City's Project Manager is Eric Mende, P.E. The City shall give Contractor prompt written notice of any re-designation of its Project Manager.

Section 10. Contractor's Project Manager

Contractor's Project Manager is Kevin Folker. In the event that Contractor's Project Manager is changed, Contractor shall give the City prompt written notification of such re-designation. Recognizing the need for consistency and knowledge in the administration of the Project, Contractor'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 Contractor that is not from Contractor's Project Manager, the City may request verification by Contractor's Project Manager, which verification must be promptly furnished.

Section 11. Project Information

Except for confidential information designated by the City as information not to be shared, Contractor agrees to share Project information with, and to fully cooperate with, those corporations, firms, contractors, public utilities, governmental entities, and persons involved in 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 12. Duty to Inform

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

Section 13. Subcontractors and Assignments

13.1. Unless expressly authorized in writing by the City, pursuant to **Subsection 14.2**, Contractor shall neither subcontract with others for any of the Work prescribed herein nor assign any of Contractor's rights acquired hereunder without obtaining prior written approval from the City. Some Work may be performed by persons other than Contractor, provided Contractor advises the City of the names of such subcontractors and the services which they intend to provide, and the City specifically agrees, in writing, to such subcontracting. Contractor acknowledges such services will be provided to the City pursuant to a subcontract(s) between Contractor and subcontractor(s) and no privity of contract exists between the City and the subcontractor(s). Unless otherwise specifically provided by this Contract, the City incurs no liability to third persons for payment of any compensation provided herein to Contractor. Any attempted assignment of this Contract without the written consent of the City shall be void. Except as otherwise specifically agreed, all costs for services performed by others on behalf of Contractor shall not be subject to additional reimbursement by the City.

13.2. The City shall have the right to enter into other agreements for the Project, to be coordinated with this Contract. Contractor 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. Contractor shall furnish other engineers, subcontractors, and affected public utilities, whose designs are fitted into Contractor's design, detail drawings giving full information so that conflicts can be avoided.

Section 14. Contractor's Responsibilities

Except as otherwise provided under ORS 30.265, the performance under this Contract is at Contractor's sole risk. The service or services to be rendered under the Contract are those of an independent contractor who is not an officer, employee, or agent of the City, as those terms are used in ORS 30.265. Notwithstanding the Oregon Tort Claims Act or provisions of any other contract, Contractor is acting as and assumes liability of an independent contractor as to claims between the City and Contractor. Contractor is solely liable for any workers compensation coverage, social security, unemployment insurance or retirement payments, and federal or state taxes due as a result of payments under the Contract. Any subcontractor hired by Contractor shall be similarly responsible. Contractor shall be liable to the City for any failure of any subcontractor(s) to comply with the terms of the Contract. This Contract is a public works contract governed by the laws found at ORS Chapter 279C, which Contractor must be familiar with and adhere to. Additional Contractor's Responsibilities are set forth in the Contract Documents, and specifically the Special Provisions.

14.1. Except as otherwise mandated by state law, the performance of Work under this Contract is at Contractor's sole risk. All damages or loss to Work, equipment, or materials incurred during the performance of the Work shall be at Contractor's sole risk. Any injury to persons or property incurred during the performance of the Work shall be at Contractor's sole risk. Contractor is an independent contractor for all purposes and shall be entitled to no compensation other than the Contract Sum provided for under **Section 4** of this Contract. Contractor will be solely responsible for determining the manner and means of accomplishing the end result of Contractor's Work. The City does not have the right to control or interfere with the manner or

method of accomplishing said Work. The City, however, will have the right to specify and control the results of Contractor's Work so such Work meets the requirements of the Project.

14.2. The City understands that Contractor may request that some Work be performed on the Project by persons or firms other than Contractor, through a subcontract with Contractor. Contractor acknowledges that if such Work is to be provided to the City pursuant to a subcontract(s) between Contractor and those who provide such services, Contractor may not utilize any subcontractor(s), or in any way assign its responsibility under this Contract, without first obtaining the express written consent of the City. In all cases, processing and payment of billings from subcontractors is solely the responsibility of Contractor. References to "subcontractor" in this Contract mean a subcontractor at any tier.

14.3. Contractor shall be responsible for, and defend, indemnify, and hold the City harmless against, any liability, cost, or damage arising out of Contractor's use of such subcontractor(s) and subcontractor's negligent acts, errors, or omissions. Unless otherwise agreed to, in writing, by the City, Contractor shall require that all of Contractor's subcontractors also comply with and be subject to the provisions of this **Section 14** and meet the same insurance requirements of Contractor under this Contract.

14.4. Contractor shall make prompt payment for any claims for labor, materials, or services furnished to Contractor by any person in connection with this Contract, as such claims become due. Contractor 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 Contractor. If Contractor fails, neglects, or refuses to make prompt payment of any such claim, the City may pay such claim to the subcontractor furnishing the labor, materials, or services, and offset the amount of the payment against funds due, or to become due, to Contractor under this Contract. The City may also recover any such amounts directly from Contractor.

14.5. Contractor must comply with all Oregon and federal wage and hour laws, including BOLI wage requirements, if applicable. Contractor shall make all required workers compensation and medical care payments on time. Contractor 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. Contractor shall also be fully responsible for payment of salaries, benefits, taxes, and all other charges due on account of any employees. Contractor shall pay all contributions or amounts due the Industrial Accident Fund from Contractor or subcontractor incurred in the performance of this Contract. Contractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. All costs incident to the hiring of subcontractors or employees shall be Contractor's responsibility. Contractor shall defend, indemnify, and hold the City harmless from claims for payment of all such expenses. Unless otherwise expressly set forth in the Contract Documents as a reimbursable expense item not included in the Contract Sum, specific costs associated with items set forth in this subsection shall be deemed as fully and conclusively included in the rate upon which Contractor's Contract Sum is based.

14.6. No person shall be discriminated against by Contractor or any subcontractor in the performance of this Contract 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 Contract, in whole or

in part, by the City. Contractor shall comply with all federal, state, and local laws, regulations, executive orders, and ordinances applicable to the Contract or to the implementation of the Project. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with the following laws, regulations, and executive orders to the extent they are applicable to the Contract or the implementation of the Project: (a) all applicable requirements of state civil rights and rehabilitation statutes, rules, and regulations; (b) Titles VI and VII of the Civil Rights Act of 1964, as amended; (c) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (d) the Americans with Disabilities Act of 1990, as amended, and ORS 659A.142; (e) Executive Order 11246, as amended; (f) the Health Insurance Portability and Accountability Act of 1996; (g) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (h) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (i) all regulations and administrative rules established pursuant to the foregoing laws; and (j) all other applicable requirements of federal civil rights and rehabilitation statutes, rules, and regulations.

14.7. Contractor certifies that Contractor has not discriminated against minority, women, or small business enterprises in obtaining any subcontract.

14.8. Pursuant with ORS 279C.505(2), by execution of this Contract, Contractor agrees to have an employee drug testing program in place at the time of executing the Contract, acknowledges that such a program will be maintained throughout the Contract period, including any extensions, and shall demonstrate to the City that such drug testing program is in place. The failure of Contractor to have, or to maintain, such a drug-testing program is grounds for immediate termination of the Contract. Contractor shall require each subcontractor providing labor for the Project to also comply with this drug testing program requirement.

14.9. Contractor agrees that the City shall not be liable, either directly or indirectly, in any dispute arising out of the substance or procedure of Contractor's drug testing program. Nothing in this drug testing provision shall be construed as requiring Contractor to violate any legal, including constitutional, rights of any employee, including but not limited to selection of which employees to test and the manner of such testing. The City shall not be liable for Contractor's negligence in establishing or implementing, or failure to establish or implement, a drug testing policy or for any damage or injury caused by Contractor's employees acting under the influence of drugs while performing Work covered by the Contract. These are Contractor's sole responsibilities, and nothing in this provision is intended to create any third party beneficiary rights against the City.

14.10. Contractor is solely responsible for ensuring that any subcontractor selection and substitution is in accordance with all legal requirements. The City shall not be liable, either directly or indirectly, in any dispute arising out of Contractor's actions with regard to subcontractor selection and/or substitution.

14.11. Contractor shall make payment promptly, as due, to all parties supplying to such Contractor labor or material for the prosecution of the Work provided for in the Contract Documents, and shall be responsible for payment to such persons supplying labor or material to any subcontractor.

14.12. By execution of this Contract, as required by ORS 305.385(6), Contractor certifies under penalty of perjury that to the best of Contractor's knowledge, Contractor is not in violation of any tax laws described in ORS 305.380(4).

14.13. Contractor agrees that if Contractor or a first-tier subcontractor fails, neglects, or refuses to make payment to a person furnishing labor or materials in connection with this Contract within thirty (30) days after receiving payment from the City or a contractor, Contractor or the first-tier subcontractor shall owe the person the amount due plus interest charges commencing at the end of the ten (10) day period within which payment is due under ORS 279C.580(3)(a) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest on the amount due shall be calculated in accordance with ORS 279C.515(2). The amount of interest may not be waived.

14.14. Contractor agrees that if Contractor or a subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with this Contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580.

14.15. Contractor shall make payment promptly, as due, to any party furnishing medical, surgical, hospital, or other needed care and attention, incident to sickness or injury, to the employees of Contractor, of all sums which Contractor agreed to pay for the services or collected or deducted from the wages of employees pursuant to any law, contract, or agreement for the purpose of providing or paying for such service.

14.16. Contractor and all subcontractors shall comply with the provisions of ORS 279C.540 pertaining to maximum hours, holidays, and overtime. With certain exceptions listed below, Contractor shall not require or permit any person to work more than ten (10) hours in any one (1) day, or forty (40) hours in any one (1) week, except in case of necessity, emergency, or where public policy requires it, and in such cases the person shall be paid at least time and a half for:

14.16.1. All overtime in excess of eight (8) hours in any one (1) day or forty (40) hours in any one (1) week when the work week is five (5) consecutive days, Monday through Friday; or

14.16.2. All overtime in excess of ten (10) hours in any one (1) day or forty (40) hours in any one (1) week when the work week is four (4) consecutive days, Monday through Friday; and

14.16.3. All work performed on the days specified in ORS 279C.540(1)(b) for public improvement contracts.

14.17. Contractor and all subcontractors shall comply with the provisions of ORS 279C.545 pertaining to time limitation on claims for overtime and requirements for posting circulars containing said provisions.

14.18. For personal/professional service contracts, as designated under ORS 279A.055, instead of 14.16.1, 14.16.2, and 14.16.3 above, a laborer shall be paid at least time and a half for

all overtime worked in excess of forty (40) hours in any one (1) week, except for individuals under these contracts who are excluded under ORS 653.010 to 653.261 or under 29 USC §§ 201 to 209 from receiving overtime.

14.19. Contractor shall follow all other exceptions, pursuant to ORS 279B.235 (for non-public improvement contracts) and ORS 279C.540 (for public improvement contracts), including contracts involving a collective bargaining agreement, contracts for services, and contracts for fire prevention or suppression.

14.20. Contractor must give notice to employees who work on a public contract, in writing, either at the time of hire or before commencement of Work on the Contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.

14.21. The hourly rate of wage to be paid by any Contractor or subcontractor to employed workers or other persons doing or contracting to do all or part of the work contemplated by a public contract shall be not less than the applicable wage required by law.

14.22. Contractor, its subcontractors, and all employers working under the Contract are subject employers under the Oregon Workers Compensation Law and shall comply with ORS 656.017 and provide the required workers compensation coverage, unless otherwise exempt under ORS 656.126. Contractor shall ensure that each of its subcontractors complies with these requirements.

14.23. In the performance of this Contract, Contractor shall comply with all applicable federal, state, and local laws, municipal codes, regulations, rules, and ordinances, including but not limited to those dealing with public contracts (ORS Chapter 279C) and with the prevention of environmental pollution and the preservation of natural resources (and avoidance of natural resource damages) in the performance of the Contract, including but not limited to ORS 279C.525. To the extent that known environmental and natural resource risks are specifically noted, shown, or specified in the Contract Documents or on the construction drawings, such risks are allocated to Contractor pursuant with ORS 279C.525(8)(a). If new or amended statutes, ordinances, rules, or regulations are adopted, or Contractor encounters a condition not referred to in this Contract, not caused by Contractor, and that was not discoverable by reasonable site inspection which requires compliance with federal, state, or local laws, codes, or regulations dealing with the preservation of the environment, both the City and Contractor shall have all the rights and obligations set forth in ORS 279C.525.

14.24. Contractor shall be liable for any fine imposed against Contractor, the City or the 'Project' as a result of a violation of any laws or permitting requirements by Contractor or any of its subcontractors or their sub-subcontractors or any suppliers.

14.25. Pursuant to ORS 279B.055, Contractor shall use recyclable products to the maximum extent economically feasible, and in full conformance with the Contract Document Specifications, in the performance of the Work.

Section 15. Subcontractor Requirements

15.1. If subcontractors are permitted, Contractor's relations with subcontractors shall comply with ORS 279C.580. Pursuant with ORS 279C.580(3), each subcontract for property or services that Contractor enters into with a first-tier subcontractor, including a material supplier, for the purpose of performing a construction contract, shall include:

15.1.1. A payment clause that obligates Contractor to pay the first-tier subcontractor for satisfactory performance under the subcontract within ten (10) days out of such amounts as are paid to Contractor by the City under the public improvement contract; and

15.1.2. An interest penalty clause that obligates Contractor, if payment is not made within 30 days after receipt of payment from the City, to pay to the first-tier subcontractor an interest penalty on amounts due in the case of each payment not made in accordance with the payment clause outlined in (a) above. A contractor or first-tier subcontractor may not be obligated to pay an interest penalty if the only reason that the contractor or first-tier subcontractor did not make payment when payment was due is that the contractor or first-tier subcontractor did not receive payment from the City or contractor when payment was due. The interest penalty period shall begin on the day after the required payment date and end on the date on which payment of the amount due is made and shall be computed at the rate specified in ORS 279C.515(2).

15.2. Contractor shall include in each subcontract, as a condition of performance of such contract, a provision requiring the first-tier subcontractor to include a payment clause and interest penalty clause, conforming to the standards set forth in **Subsection 15.1(a) and (b)** above, in each of its subcontracts and requiring that the same clauses be included in any of the first-tier subcontractors' subcontracts with a lower-tier subcontractor or supplier.

15.3. Contractor shall certify that all subcontractors, as described in ORS 701.005(2), will be registered with the Construction Contractors Board or licensed by the State Landscape Contractors Board in accordance with ORS 701.035 or 701.026, respectively, before the subcontractors commence Work under the Contract.

15.4. In no event shall any subcontract be awarded to any person or entity debarred, suspended, or disqualified from federal, state, or municipal contracting.

Section 16. Environmental Laws

16.1. Although the City is not aware of any of the following, before beginning construction, Contractor shall determine if there is any asbestos, lead paint, or other hazardous materials that will be removed or disturbed as a part of the Project. If disturbance or removal is required, Contractor will advise the City, in writing, and will provide the City with a detailed written supplemental Scope of Work concerning how such disturbance or removal will be accomplished and how materials, if any, will be disposed of, all in accordance with State and Federal environmental laws. Work required due to the finding of any such hazardous materials will require a written Change Order.

16.2. Pursuant with ORS 279C.510(1), if this Contract calls for demolition work, Contractor shall salvage or recycle construction and demolition debris, if feasible and cost-effective.

16.3. Pursuant with ORS 279C.510(2), if this Contract calls for lawn or landscape maintenance, Contractor shall compost or mulch yard waste material at an approved site, if feasible and cost-effective.

16.4. Contractor shall be responsible for the immediate clean-up, remediation, reporting, and payment of fines, if any, related to the release of any hazardous substance or material by Contractor or any subcontractor.

Section 17. Indemnity and Insurance

17.1. Indemnification. Contractor acknowledges responsibility for liability arising out of the performance of this Contract, 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 Contractor's negligent acts, omissions, errors, or willful or reckless misconduct pursuant to this Contract, or from Contractor's failure to perform its responsibilities as set forth in this Contract. 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 Contractor 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 Contractor of its responsibility to perform in full conformity with the City's requirements, as set forth in this Contract, 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 Contractor's negligent performance of this Contract, failure of performance hereunder, violation of state or federal laws, or failure to adhere to the standards of performance and care described in **Subsection 17.2**. Contractor 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 Contractor.

17.2. Standard of Care. In the performance of the Work, Contractor agrees to use that degree of care and skill exercised under similar circumstances by reputable members of Contractor's profession, practicing in the Portland metropolitan area. Contractor will re-perform any services not meeting this standard without additional compensation. Contractor'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 Contractor's failure to perform in accordance with the applicable standard of care of this Contract and within the prescribed timeframe.

17.3. Insurance Requirements. Contractor must maintain insurance coverage acceptable to the City in full force and effect throughout the term of this Contract. Such insurance shall cover all risks arising directly or indirectly out of Contractor's activities or work hereunder. The amount of insurance carried is in no way a limitation on Contractor's liability hereunder. The policy or policies of insurance maintained by Contractor shall provide at least the following minimum limits and coverages at all times during performance of this Contract:

17.3.1. Commercial General Liability Insurance. Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this Contract, 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 Contract 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, 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 Contract.

17.3.2. Business Automobile Liability Insurance. If Contractor will be using a motor vehicle in the performance of the Work herein, Contractor shall provide the City a certificate indicating that Contractor has 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**.

17.3.3. Pollution Liability Coverage. Contractor shall carry sudden and accidental and gradual release pollution liability coverage that will cover, among other things, any spillage of paints, fuels, oils, lubricants, de-icing, anti-freeze or other hazardous materials, or disturbance of any hazardous materials, as that term is defined under Oregon law, during the performance of this Contract. Contractor will be fully responsible for the cost of any clean-up of any released materials or disturbance, in accordance with Oregon Department of Environmental Quality ("DEQ") and Federal Environmental Protection Agency ("EPA") clean-up requirements. The coverage shall be in the amount of **\$2,000,000** for each occurrence and **\$2,000,000** general aggregate.

17.3.4. Workers Compensation Insurance. Contractor and all employers providing work, labor, or materials under this Contract 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. Contractors 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.

17.3.5. Insurance Carrier Rating. Coverages provided by Contractor 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.

17.3.6. Additional Insured & Termination Endorsements. Additional Insured coverage under Contractor's Commercial General Liability, Automobile Liability, and Excess Liability Policy(ies), as applicable, will be provided by endorsement. Additional insured coverage shall be for both ongoing operations via ISO Form CG 2010 or its

equivalent, and products and completed operations via ISO Form CG 2037 or its equivalent. Coverage shall be Primary and Non-Contributory. Waiver of Subrogation endorsement via ISO Form CG 2404 or its equivalent shall be provided. The following is included as additional insured: “The City of Wilsonville, its elected and appointed officials, officers, agents, employees, and volunteers.” An endorsement shall also be provided requiring the insurance carrier to give the City at least thirty (30) days’ written notification of any termination or major modification of the insurance policies required hereunder.

17.3.7. Certificates of Insurance. As evidence of the insurance coverage required by this Contract, Contractor shall furnish a Certificate of Insurance to the City. This Contract shall not be effective until the required certificates and the Additional Insured Endorsements have been received and approved by the City. Contractor agrees that it will not terminate or change its coverage during the term of this Contract without giving the City at least thirty (30) days’ prior advance notice and Contractor 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.

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

Section 18. Bonding Requirements

18.1. Payment and Performance Bonds. Contractor shall obtain a Payment Bond and a Performance Bond, each in a form acceptable to the City and from a surety acceptable to the City, and each in the full amount of the Contract Sum.

18.2. Maintenance/Warranty Bond. Contractor shall maintain a two (2) year Maintenance/Warranty Bond, in a form acceptable to the City and from a surety acceptable to the City, in the amount of ten percent (10%) of the Contract Sum.

18.3. Public Works Bond. Pursuant to ORS 279C.830(2), in addition to the Payment and Performance bonds, before starting work on this Contract or any subcontract hereunder, Contractor and all subcontractors, unless exempt under ORS 279C.836(4), (7), (8), or (9), must have on file with the Construction Contractors Board a public works bond with a corporate surety authorized to do business in the State of Oregon in the minimum amount of **\$30,000**. The bond must provide that the Contractor or subcontractor will pay claims ordered by the Bureau of Labor and Industries to workers performing labor upon public works projects. The bond must be a continuing obligation, and the surety’s liability for the aggregate of claims that may be payable from the bond may not exceed the penal sum of the bond. The bond must remain in effect continuously until depleted by claims paid under ORS 279C.836, unless the surety sooner cancels the bond. Contractor further certifies that Contractor will include in every subcontract a provision requiring a subcontractor to have a public works bond filed with the Construction Contractors Board before starting work on the Project, unless exempt under ORS 279C.836(4), (7), (8), or (9).

18.4. Completion Bond. If any portion of Contractor's Work is financed by a third party, Contractor shall also maintain a Completion Bond for the duration of the Project, plus six (6) months after the date of Final Acceptance, in a form acceptable to the City and from a surety acceptable to the City, in the full amount of the Contract Sum.

18.5. Bond Claims. Any notice of claim on a payment or performance bond or public works bond shall comply with the requirements of ORS 279C.605.

Section 19. Warranty

19.1. Contractor shall fully warranty all Work for a period of two (2) years from the date of Final Acceptance of all Work. As set forth above, Contractor understands that ADA specifications are exact and, if exact compliance is not met, Contractor will be required to repair or redo the Work to bring all Work into compliance with ADA requirements.

19.2. In addition to, and not in lieu of, any other warranties provided by various manufacturers and suppliers, Contractor fully warrants all Work for a period of two (2) years from the date of Final Acceptance of the Work and shall make all necessary repairs and replacements to remedy, in a manner satisfactory to the City's Project Manager and at no cost to the City, any and all defects, breaks, or failures of the Work occurring within two (2) years following the date of completion due to faulty or inadequate materials or workmanship. Repair of damage or disturbances to other improvements under, within, or adjacent to the Work, whether or not caused by settling, washing, or slipping, when such damage or disturbance is caused, in whole or in part, from activities of Contractor in performing his/her duties and obligations under this Contract, is also covered by the warranty when such defects or damage occur within the warranty period. The two (2) year warranty period shall, with relation to such required repair, be extended two (2) years from the date of completion of such repair.

19.3. If Contractor, after written notice, fails within **ten (10) days** to proceed to comply with the terms of this section, the City may have the defects corrected, and Contractor and Contractor's surety shall be liable for all expense incurred. In case of an emergency where, in the opinion of the City's Project Manager, delay would cause serious loss or damage, repairs may be made without notice being given to Contractor, and Contractor or Contractor's surety shall pay the cost of repairs. Failure of the City's Project Manager to act in case of an emergency shall not relieve Contractor or Contractor's surety from liability and payment of all such costs.

19.4. Current State Law (ORS 12.135) provides for a ten (10) year period, from the time of Substantial Completion, for the City to file a claim for repairs of defective Work due to Contractor's improper use of materials and/or workmanship, and Contractor agrees it is bound thereby.

Section 20. Early Termination; Default

20.1. This Contract may be terminated prior to the expiration of the agreed upon terms:

20.1.1. By mutual written consent of the parties;

20.1.2. By the City, for any reason, and within its sole discretion, effective upon delivery of written notice to Contractor by mail or in person. The City retains the right to elect whether or not to proceed with actual construction of the Project; or

20.1.3. By the City if Contractor breaches this Contract and fails to cure the breach within ten (10) days of receipt of written notice of the breach from the City.

20.2. If the City terminates this Contract in whole or in part, due to default or failure of Contractor to perform Work in accordance with the Contract, 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, Contractor shall be liable for all costs and damages incurred by the City as a result of the default by Contractor, including, but not limited to all costs incurred by the City in procuring services from others as needed to complete this Contract. This Contract shall be in full force to the extent not terminated by written notice from the City to Contractor. In the event of a default, the City will provide Contractor with written notice of the default and a period of ten (10) days to cure the default. If Contractor notifies the City that it wishes to cure the default but cannot, in good faith, do so within the ten (10) day cure period provided, then the City may elect, in its sole discretion, to extend the cure period to an agreed upon time period, or the City may elect to terminate this Contract and seek remedies for the default, as provided above.

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

20.4. Termination under any provision of this section shall not affect any right, obligation, or liability of Contractor or the City that accrued prior to such termination. Contractor shall surrender to the City items of work or portions thereof, referred to in **Section 26**, for which Contractor has received payment or the City has made payment.

Section 21. Suspension of Work

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

Section 22. Substantial Completion, Final Completion, and Liquidated Damages

22.1. Contractor's Project Manager and City's Project Manager shall conduct a final inspection of the Project when Contractor believes the Work is substantially complete, and create a project corrections list ("punch list") of items to be completed before final payment will be made. Substantial Completion means that the Work is completed and the facilities and premises are fully functional and may be occupied with a temporary certificate of occupancy, with only minor punch list items remaining that do not significantly impact public use and occupancy. Unless otherwise agreed to, in writing, by both parties, the punch list items will be completed

within thirty (30) days thereof, and then a final walk-through will occur to confirm all punch list items have been completed. Final payment will occur upon completion of all punch list items ("Final Completion") as determined by final acceptance by the City ("Final Acceptance"). Substantial Completion must occur on or before May 31, 2018 or liquidated damages will apply. The parties agree that delay damages can be significant but are often difficult to quantify and costly to litigate; therefore the Contractor and the City agree that the sums set forth below in **Section 22.3** and **Section 22.4** shall apply as liquidated damages for every day the Project is not completed beyond the Substantial Completion and Final Completion dates.

22.2. The City and Contractor recognize that time is of the essence of this Contract and that the City will suffer financial loss and public detriment if the Work is not substantially completed within the time specified in the paragraph above, plus any extensions thereof granted, in writing, by the City. Both parties also recognize the delays, expenses, and difficulties involved in proving in a legal proceeding the actual loss suffered by the City if the Work is not substantially completed on time. Accordingly, instead of requiring any such proof, the City and Contractor agree that, as liquidated damages for delay (but not as a penalty), Contractor shall pay the City the amounts listed below for each and every day that expires after the time specified for Substantial and Final Completion.

22.3. Liquidated damages shall apply against Contractor and accrue to the City at the rate of One Hundred Dollars (\$100) for each day that expires after the time specified for Substantial Completion of all Work until the Work reaches Substantial Completion.

22.4. If Contractor shall neglect, fail, or refuse to complete the remaining Work on the punch list by the Final Completion date of June 30, 2018, or any proper extension thereof granted by the City, Contractor shall pay the City Five Hundred Dollars (\$500) for each day that expires after the time specified above for the Work to reach Final Completion and be ready for final payment. Retainage will not be released before Final Completion is established.

22.5. The parties further agree that this amount of liquidated damages is a reasonable forecast of just compensation for the harm caused by any breach and that this harm is one which is impossible or very difficult to estimate. In addition to the liquidated damages above, Contractor shall reimburse the City for all costs incurred by the City for engineering, inspection, and project management services required beyond the time specified for Substantial Completion. Contractor shall also reimburse the City for all costs incurred for inspection and project management services required due to punch list items not completed within the time allotted for Final Acceptance. If Contractor fails to reimburse the City directly, the City will deduct the cost from Contractor's final pay request.

22.6. Contractor will not be responsible for liquidated damages or be deemed to be in default by reason of delays in performance due to reasons beyond Contractor's reasonable control, including but not limited to strikes, lockouts, severe acts of nature, or actions of unrelated third parties not under Contractor's direction and control that preclude Contractor from performing the Work ("Force Majeure"). In the case of the happening of any Force Majeure event, the time for completion of the Work will be extended accordingly and proportionately by the City, in writing. Poor weather conditions, unless extreme, lack of labor, supplies, materials, or the cost of any of the foregoing shall not be deemed a Force Majeure event.

Section 23. Contract Modification/Change Orders

Any modification of the provisions of this Contract shall not be enforceable or binding unless reduced to writing and signed by both the City and Contractor. A modification is a written document, contemporaneously executed by the City and Contractor, which increases or decreases the cost to the City over the agreed Contract Sum in **Section 4** of this Contract, or changes or modifies the Work or the time for performance. In the event Contractor receives any communication of whatsoever nature from the City, which communication Contractor contends gives rise to any modification of this Contract, Contractor shall, within five (5) days after receipt, make a written request for modification to the City's Project Manager in the form of a Change Order. Contractor's failure to submit such written request for modification in the form of a Change Order 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 Contract affecting any change in price, Contractor shall submit a complete breakdown of labor, material, equipment, and other costs. If Contractor 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 Change Order. To be enforceable, the Change Order must describe with particularity the nature of the change, any delay in time the Change Order will cause, or any increase or decrease in the Contract Sum. The Change Order must be signed and dated by both Contractor and the City before the Change Order may be implemented.

Section 24. Dispute Resolution

In the event of a dispute concerning performance of this Contract, the parties agree to meet to negotiate the problem. If such negotiation fails, the parties will mediate the dispute using a professional mediator, and the parties will split the cost. If the dispute cannot be resolved in either of the foregoing ways within thirty (30) days, either party may file suit in Clackamas County Circuit Court. In the alternative, at the City's election, the parties may follow the dispute resolution procedures found in the Special Provisions.

Section 25. Access to Records

The City shall have access, upon request, to such books, documents, receipts, papers, and records of Contractor as are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts for a period of four (4) years, unless within that time the City specifically requests an extension. This clause shall survive the expiration, completion, or termination of this Contract.

Section 26. As-Builts

Contractor must provide redlined as-builts prior to Final Acceptance. As-builts should be provided in electronic format.

Section 27. Notices

Any notice required or permitted under this Contract 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: Eric Mende, P.E.
29799 SW Town Center Loop East
Wilsonville, OR 97070

To Contractor: 2KG Contractors Inc.
Attn: Kevin Folker
4917 NE 185th Drive
Portland, OR 97230

Section 28. Miscellaneous Provisions

28.1. Integration. This Contract contains the entire and integrated agreement between the parties and supersedes all prior written or oral discussions, representations, or agreements. In case of conflict among these documents, the provisions of this Contract shall control.

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

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

28.4. Adherence to Law. Contractor shall adhere to all applicable federal and state laws, including but not limited to laws, rules, regulations, and policies concerning employer and employee relationships, workers compensation, and minimum and prevailing wage requirements. Any certificates, licenses, or permits that Contractor is required by law to obtain or maintain in order to perform the Work shall be obtained and maintained throughout the term of this Contract.

28.5. Governing Law. This Contract shall be construed in accordance with and governed by the laws of the State of Oregon. All contractual provisions required by ORS Chapters 279A and 279C to be included in public agreements are hereby incorporated by reference and shall become a part of this Contract as if fully set forth herein.

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

28.7. 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 Contract 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 Contract, 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.

28.8. Nonwaiver. Failure by either party at any time to require performance by the other party of any of the provisions of this Contract 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.

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

28.10. Modification. This Contract may not be modified except by written instrument executed by Contractor and the City.

28.11. Time of the Essence. Time is expressly made of the essence in the performance of this Contract.

28.12. 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 Contract, the first day from which the designated period of time begins to run shall not be included.

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

28.14. Number, Gender and Captions. In construing this Contract, 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 Contract.

28.15. Good Faith and Reasonableness. The Parties intend that the obligations of good faith and fair dealing apply to this Contract generally and that no negative inferences be drawn by the absence of an explicit obligation to be reasonable in any portion of this Contract. 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 Contract gives the City "sole discretion" or the City is allowed to make a decision in its "sole judgment."

28.16. 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 Contract in order to provide and secure to the other parties the full and complete enjoyment of rights and privileges hereunder.

28.17. Interpretation. As a further condition of this Contract, the City and Contractor acknowledge that this Contract 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 contract, 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.

28.18. Defined Terms. Capitalized terms not otherwise defined herein shall have the meaning given to them in the Contract Documents.

28.19. Entire Agreement. This Contract, all documents attached to this Contract, and all Contract Documents and laws and regulations incorporated by reference herein, represent the entire agreement between the parties.

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

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

The Contractor and the City hereby agree to all provisions of this Contract.

CONTRACTOR:

CITY:

2KG CONTRACTORS INC.

CITY OF WILSONVILLE

By: _____

By: _____

Kevin Folker

Bryan Cosgrove

As Its: President

As Its: City Manager

Employer I.D. No. 93-1075828

APPROVED AS TO FORM:

Barbara A. Jacobson, City Attorney
City of Wilsonville, Oregon



CITY COUNCIL STAFF REPORT

Meeting Date: December 18, 2017	Subject: Resolution No. 2661 I-5 Exit 283 Southbound Ramp Modification Contract Award (CIP #4199) Staff Member: Eric Mende, Capital Projects Engineering Manager Department: Community Development	
Action Required	Advisory Board/Commission Recommendation	
<input checked="" type="checkbox"/> Motion <input type="checkbox"/> Public Hearing Date: <input type="checkbox"/> Ordinance 1 st Reading Date: <input type="checkbox"/> Ordinance 2 nd Reading Date: <input checked="" type="checkbox"/> Resolution <input type="checkbox"/> Information or Direction <input type="checkbox"/> Information Only <input type="checkbox"/> Council Direction <input type="checkbox"/> Consent Agenda	<input checked="" type="checkbox"/> Approval <input type="checkbox"/> Denial <input type="checkbox"/> None Forwarded <input type="checkbox"/> Not Applicable Comments: See Congestion Improvements Work Session Staff Report for discussion of the scope and financial issues associated with this project.	
Staff Recommendation: Staff recommends that Council adopt Resolution No. 2661.		
Recommended Language for Motion: I move to approve Resolution No. 2661.		
Project / Issue Relates To: <i>[Identify which goal(s), master plans(s) your issue relates to.]</i>		
<input checked="" type="checkbox"/> Council Goals/Priorities	<input type="checkbox"/> Adopted Master Plan(s)	<input type="checkbox"/> Not Applicable

ISSUE BEFORE COUNCIL:

To approve Resolution No. 2661 authorizing the City Manager to execute a Construction Contract with Kerr Contractors Oregon Inc. for \$562,578 to complete the Southbound Ramp Modification project.

Resolution No. 2661 Staff Report

Page 1 of 3

EXECUTIVE SUMMARY:

Construction bids were opened for the I-5 Exit 283 Southbound Ramp Modification project on November 29, 2017. Construction items include an approximately 1,100-foot long third lane and a new 3-position ramp meter. The City received six bids, with Kerr Contractors Oregon Inc. determined to be the lowest responsive and responsible bid at \$562,578.

This project is administratively designated as CIP #4199SBR (Southbound Ramp) in order to distinguish it from other sub-projects also funded by CIP #4199 – Exit 283 Congestion Improvements.

EXPECTED RESULTS:

Adding a third lane to the southbound ramp will improve or mitigate congestion on Wilsonville Road and Boones Ferry Road by allowing more vehicle storage on the ramp instead of on Wilsonville Road and Boones Ferry Road.

TIMELINE:

Pending receipt of signed contracts, bonds, and insurance certificates, construction will begin in early January and be substantially completed by May 30, 2018.

CURRENT YEAR BUDGET IMPACTS:

This is a sub-project to CIP project #4199, which has a total budget of \$827,214. The FY 2017/18 budget for CIP #4199 is inadequate to fund both this project and the companion Old Town Square Intersection Modifications project, which are now estimated to cost just over \$1 million. Transfer from existing appropriated budgets for other transportation projects can allow both projects to move forward without additional FY 2017/18 appropriations.

FINANCIAL REVIEW / COMMENTS:

Reviewed by: SCole Date: 12/7/2017

LEGAL REVIEW / COMMENT:

Reviewed by: BAJ Date: 12/8/2017

COMMUNITY INVOLVEMENT PROCESS:

N/A

POTENTIAL IMPACTS or BENEFIT TO THE COMMUNITY (businesses, neighborhoods, protected and other groups):

Short-term delays on the ramp during off peak travel times will occur during construction. Long term, congestion issues on Wilsonville Road and Boones Ferry Road will be improved.

ALTERNATIVES:

Do not award the contract or construct the project at this time.

CITY MANAGER COMMENT:

ATTACHMENTS:

1. Resolution No. 2661

RESOLUTION NO. 2661

A RESOLUTION OF THE CITY OF WILSONVILLE ACTING IN ITS CAPACITY AS ITS LOCAL CONTRACT REVIEW BOARD AUTHORIZING THE CITY MANAGER TO EXECUTE A CONSTRUCTION CONTRACT WITH KERR CONTRACTORS OREGON, INC. FOR CONSTRUCTION OF THE I-5 EXIT 283 SOUTHBOUND RAMP MODIFICATION PROJECT (CIP #4199SBR).

WHEREAS, the City has planned, designed, and budgeted for the completion of Capital Improvement Project (CIP) #4199, known as the Exit 283 Congestion Improvements Project, of which the I-5 Exit 283 Southbound Ramp Modifications Project (the Project) is a sub-project thereof, to be administered as CIP Project 4199SBR; and

WHEREAS, the City solicited bids from qualified contractors for the Project that duly followed the State of Oregon Public Contracting Rules and the City of Wilsonville Municipal Code; and

WHEREAS, Kerr Contractors Oregon, Inc. submitted a bid for the Project on November 29, 2017 for FIVE HUNDRED SIXTY-TWO THOUSAND, FIVE HUNDRED SEVENTY-EIGHT DOLLARS (\$562,578), which, upon evaluation, was determined the lowest responsive and responsible bid.

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

1. The City of Wilsonville, acting as the Local Contract Review Board, authorizes the City Manager to enter into, on behalf of the City of Wilsonville, the Construction Contract, attached hereto and incorporated herein, with Kerr Contractors Oregon, Inc. for a stated value of FIVE HUNDRED SIXTY-TWO THOUSAND, FIVE HUNDRED SEVENTY-EIGHT DOLLARS (\$562,578).
2. This resolution is effective upon adoption.

ADOPTED by the Wilsonville City Council at a regular meeting thereof this 18th day of December 2017, and filed with the Wilsonville City Recorder this date.

Tim Knapp, Mayor

ATTEST:

Kimberly Veliz, City Recorder

SUMMARY OF VOTES:

Mayor Knapp
Councilor Starr
Councilor Stevens
Councilor Lehan
Councilor Akervall

Attachments:

Exhibit A – Construction Contract

**CITY OF WILSONVILLE
CONSTRUCTION CONTRACT (CIP #4199)
I-5 EXIT 283 SOUTHBOUND ENTRANCE RAMP MODIFICATION**

This Construction Contract for the I-5 Exit 283 Southbound Entrance Ramp Modification Project (“Contract”) is made and entered into on this 19th day of December, 2017 (“Effective Date”) by and between the **City of Wilsonville**, a municipal corporation of the State of Oregon (hereinafter referred to as the “City”), and **Kerr Contractors Oregon, Inc.**, an Oregon corporation (hereinafter referred to as “Contractor”).

RECITALS

WHEREAS, the City issued a formal Invitation to Bid for the Project described herein; and

WHEREAS, Contractor represents that Contractor is qualified to perform the services described in the Invitation to Bid on the basis of specialized experience and technical expertise; and

WHEREAS, after reviewing all bids submitted in accordance with the Invitation to Bid, the City has determined this Contract shall be awarded to Contractor; and

WHEREAS, Contractor is prepared to perform this Contract in accordance with all the terms and conditions as set forth below, as the City does hereinafter require.

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

AGREEMENT

Section 1. Contract Documents

This Contract includes and incorporates by reference all of the foregoing recitals and all of the following additional “Contract Documents”: Specifications and Contract Documents for the I-5 Exit 283 Southbound Entrance Ramp Modification Project, dated November 6, 2017, including General Conditions, Special Provisions, Supplemental Conditions, and Plans and Details bound separately; Contractor’s Bid submitted in response thereto; 2015 City of Wilsonville Public Works Standards and Special Provisions; Oregon Department of Transportation 2015 Oregon Standard Specifications for Construction; Special Provisions to ODOT Standards; and the provisions of Oregon Revised Statutes (ORS) 279C, as more particularly set forth in this Contract. Contractor must be familiar with all of the foregoing and comply with them. Any conflict or inconsistency between the Contract Documents shall be called to the attention of the City by Contractor before proceeding with affected work. All Contract Documents should be read in concert and Contractor is required to bring any perceived inconsistencies to the attention of the City before executing this Contract. In the event a provision of this Contract conflicts with standards or requirements contained in any of the foregoing Contract Documents, the provision that is more favorable to the City, as determined by the City, will apply.

Section 2. Term

The term of this Contract shall be from the Effective Date until all work required to be performed hereunder (“Work”) is completed and accepted, or no later than June 30, 2018, whichever occurs first, unless earlier terminated in accordance herewith or an extension of time is agreed to, in writing, by the City. Contractor shall diligently perform the Work according to the requirements and deliverable dates identified in the Contract Documents. All Work must be at Substantial Completion by no later than May 31, 2018 and at Final Completion by June 30, 2018. See **Section 22** for the definitions of Substantial Completion and Final Completion.

Section 3. Contractor’s Work

3.1. Contractor will perform the Work as more particularly described herein and in the other Contract Documents for the I-5 Exit 283 Southbound Entrance Ramp Modification Project (“Project”).

3.2. All written documents, drawings, and plans submitted by Contractor in conjunction with the Work shall bear the signature, stamp, or initials of Contractor’s authorized Project Manager. Any documents submitted by Contractor which do not bear the signature, stamp, or initials of Contractor’s authorized Project Manager, will not be relied upon by the City. Interpretation of plans and answers to questions regarding the Work given by Contractor’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, Contractor’s Project Manager will provide such written documentation.

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

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

Section 4. Contract Sum, Retainage, and Payment

4.1. Except as otherwise set forth in this **Section 4**, the City agrees to pay Contractor on a time and materials basis, guaranteed not to exceed FIVE HUNDRED SIXTY-TWO THOUSAND FIVE HUNDRED SEVENTY-EIGHT DOLLARS (\$562,578) for performance of the Work (“Contract Sum”). Any compensation in excess of the Contract Sum will require an express written Change Order between the City and Contractor.

4.2. During the course of Contractor’s performance, if the City, through its Project Manager, specifically requests Contractor to provide additional services beyond the Work described in the Contract Documents, Contractor shall provide such additional services and bill

the City a reasonable agreed upon fee, pursuant to a written Change Order, executed in compliance with the provisions of **Section 23**.

4.3. Contractor will be paid for Work for which an itemized invoice is received by the City within thirty (30) days of receipt, unless the City disputes such invoice, less a five percent (5%) withholding for retainage. Retainage shall be as outlined in the Contract Documents and as specified under ORS 279C.550 to 279C.570. If the City disputes an invoice, the undisputed portion of the invoice will be paid by the City within the above timeframe, less the retainage. The City will set forth its reasons for the disputed claim amount and make good faith efforts to resolve the invoice dispute with Contractor as promptly as is reasonably possible. Final payment will be held until completion of the final walkthrough, as described in **Section 22**.

4.4. Except as provided in **Section 8.2**, the Contract Price includes the cost of all required fees payable to governmental agencies, including but not limited to plan checking, land use, zoning, and all other similar fees required to perform the Work on the Project.

4.5. 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, and all other similar fees resulting from this Project that are not specifically otherwise provided for in the Contract Documents.

4.6. Contractor's unit prices and Contract Sum 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 all other contributions and benefits.

4.7. Contract provisions regarding payment policies, progress payments, interest, etc. are as outlined in the Special Provisions included in the Contract Documents, and in ORS 279C.570.

Section 5. Prevailing Wages

This is a Contract for a Public Works Project, subject to ORS 279C.800 to 279C.870. Therefore, 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 1, 2017, 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/WHD/PWR/Pages/pwr_state.aspx. Because this is a public works contract subject to payment of prevailing wages, each worker in each trade or occupation employed in the performance of the Work, either by Contractor, a subcontractor, or other person doing or contracting to do, or contracting for the whole or any part of the Work, 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. Contractor must comply with all public contracting wages required by law. Contractor 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 Contractor 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.

Contractor 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). Contractor shall include a contract provision in compliance with this paragraph in every subcontract and shall require each subcontractor to include it in subcontract(s).

See **Contractor's Responsibilities** below and other Contract Documents for additional requirements and responsibilities regarding compliance with wage and hour laws and regulations.

Section 6. Filing of Certified Statement

As required in ORS 279C.845(7), the City will retain twenty-five percent (25%) of any amount earned by Contractor under the Contract until Contractor has filed the certified statements required in ORS 279C.845(1). The City will pay to Contractor the amount withheld within fourteen (14) days after Contractor files the required certified statements. As required in ORS 279C.845(8), Contractor shall retain twenty-five percent (25%) of any amount earned by a first-tier subcontractor on the Project until the first-tier subcontractor has filed with the City the certified statements required in ORS 279C.845(1). Before paying any amount withheld, Contractor shall verify that the first-tier subcontractor has filed the certified statement. Within fourteen (14) days after the first-tier subcontractor files the required certified statement, Contractor shall pay the first-tier subcontractor any amount withheld. Contractor shall require all other sub-subcontractors to file certified statements regarding payment of prevailing wage rates with the City.

Section 7. Reports to Department of Revenue

When a public contract is awarded to a nonresident bidder and the contract price exceeds Ten Thousand Dollars (\$10,000), Contractor shall promptly report to the Department of Revenue, on forms to be provided by the Department, the total contract price, terms of payment, length of contract, and such other information as the Department may require, before the City will make final payment on the Contract.

Section 8. City's Rights and Responsibilities

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

8.2. If applicable, the City will pay the required Bureau of Labor and Industries fee of one/tenth of one percent (0.1%) of the Contract Sum, or as required by statute.

8.3. The City reserves the right to reject any bid or to refuse delivery of materials or services at or from any manufacturer, supplier, or contractor with which the City has reasonable grounds to believe is or may be operating in violation of any local, state, or federal law or which is the subject of pending litigation.

8.4. If Contractor fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to Contractor or a subcontractor by any person in connection with the Contract as such claim becomes due, the City may, but shall not be obligated to, pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds

due or to become due Contractor by reason of the Contract. The payment of a claim in the manner authorized hereby shall not relieve Contractor or its surety from the obligation with respect to any unpaid claim. If the City is unable to determine the validity of any claim for labor or services furnished, the City may withhold from any current payment due Contractor an amount equal to said claim until its validity is determined, and the claim, if valid, is paid by Contractor or the City. There shall be no final acceptance of the Work under the Contract until all such claims have been resolved.

Section 9. City's Project Manager

The City's Project Manager is Eric Mende, P.E. The City shall give Contractor prompt written notice of any re-designation of its Project Manager.

Section 10. Contractor's Project Manager

Contractor's Project Manager is Alan Aplin. In the event that Contractor's Project Manager is changed, Contractor shall give the City prompt written notification of such re-designation. Recognizing the need for consistency and knowledge in the administration of the Project, Contractor'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 Contractor that is not from Contractor's Project Manager, the City may request verification by Contractor's Project Manager, which verification must be promptly furnished.

Section 11. Project Information

Except for confidential information designated by the City as information not to be shared, Contractor agrees to share Project information with, and to fully cooperate with, those corporations, firms, contractors, public utilities, governmental entities, and persons involved in 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 12. Duty to Inform

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

Section 13. Subcontractors and Assignments

13.1. Unless expressly authorized in writing by the City, pursuant to **Subsection 14.2**, Contractor shall neither subcontract with others for any of the Work prescribed herein nor assign any of Contractor's rights acquired hereunder without obtaining prior written approval from the

City. Some Work may be performed by persons other than Contractor, provided Contractor advises the City of the names of such subcontractors and the services which they intend to provide, and the City specifically agrees, in writing, to such subcontracting. Contractor acknowledges such services will be provided to the City pursuant to a subcontract(s) between Contractor and subcontractor(s) and no privity of contract exists between the City and the subcontractor(s). Unless otherwise specifically provided by this Contract, the City incurs no liability to third persons for payment of any compensation provided herein to Contractor. Any attempted assignment of this Contract without the written consent of the City shall be void. Except as otherwise specifically agreed, all costs for services performed by others on behalf of Contractor shall not be subject to additional reimbursement by the City.

13.2. The City shall have the right to enter into other agreements for the Project, to be coordinated with this Contract. Contractor 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. Contractor shall furnish other engineers, subcontractors, and affected public utilities, whose designs are fitted into Contractor's design, detail drawings giving full information so that conflicts can be avoided.

Section 14. Contractor's Responsibilities

Except as otherwise provided under ORS 30.265, the performance under this Contract is at Contractor's sole risk. The service or services to be rendered under the Contract are those of an independent contractor who is not an officer, employee, or agent of the City, as those terms are used in ORS 30.265. Notwithstanding the Oregon Tort Claims Act or provisions of any other contract, Contractor is acting as and assumes liability of an independent contractor as to claims between the City and Contractor. Contractor is solely liable for any workers compensation coverage, social security, unemployment insurance or retirement payments, and federal or state taxes due as a result of payments under the Contract. Any subcontractor hired by Contractor shall be similarly responsible. Contractor shall be liable to the City for any failure of any subcontractor(s) to comply with the terms of the Contract. This Contract is a public works contract governed by the laws found at ORS Chapter 279C, which Contractor must be familiar with and adhere to. Additional Contractor's Responsibilities are set forth in the Construction Specifications and Special Provisions included in the Contract Documents.

14.1. Except as otherwise mandated by state law, the performance of Work under this Contract is at Contractor's sole risk. All damages or loss to Work, equipment, or materials incurred during the performance of the Work shall be at Contractor's sole risk. Any injury to persons or property incurred during the performance of the Work shall be at Contractor's sole risk. Contractor is an independent contractor for all purposes and shall be entitled to no compensation other than the Contract Sum provided for under **Section 4** of this Contract. Contractor will be solely responsible for determining the manner and means of accomplishing the end result of Contractor's Work. The City does not have the right to control or interfere with the manner or method of accomplishing said Work. The City, however, will have the right to specify and control the results of Contractor's Work so such Work meets the requirements of the Project.

14.2. The City understands and agrees that Contractor may request that some Work be performed on the Project by persons or firms other than Contractor, through a subcontract with Contractor. Contractor acknowledges that if such Work is provided to the City pursuant to a

subcontract(s) between Contractor and those who provide such services, Contractor may not utilize any subcontractor(s), or in any way assign its responsibility under this Contract, without first obtaining the express written consent of the City. In all cases, processing and payment of billings from subcontractors is solely the responsibility of Contractor. References to “subcontractor” in this Contract mean a subcontractor at any tier. References to “subcontractor” mean a subcontractor at any tier.

14.3. Contractor shall be responsible for, and defend, indemnify, and hold the City harmless against, any liability, cost, or damage arising out of Contractor’s use of such subcontractor(s) and subcontractor’s negligent acts, errors, or omissions. Unless otherwise agreed to, in writing, by the City, Contractor shall require that all of Contractor’s subcontractors also comply with and be subject to the provisions of this **Section 14** and meet the same insurance requirements of Contractor under this Contract.

14.4. Contractor shall make prompt payment for any claims for labor, materials, or services furnished to Contractor by any person in connection with this Contract, as such claims become due. Contractor 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 Contractor. If Contractor fails, neglects, or refuses to make prompt payment of any such claim, the City may pay such claim to the subcontractor furnishing the labor, materials, or services, and offset the amount of the payment against funds due, or to become due, to Contractor under this Contract. The City may also recover any such amounts directly from Contractor.

14.5. Contractor must comply with all Oregon and federal wage and hour laws, including BOLI wage requirements, if applicable. Contractor shall make all required workers compensation and medical care payments on time. Contractor 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. Contractor shall also be fully responsible for payment of salaries, benefits, taxes, and all other charges due on account of any employees. Contractor shall pay all contributions or amounts due the Industrial Accident Fund from Contractor or subcontractor incurred in the performance of this Contract. Contractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. All costs incident to the hiring of subcontractors or employees shall be Contractor’s responsibility. Contractor shall defend, indemnify, and hold the City harmless from claims for payment of all such expenses. Unless otherwise expressly set forth in the Contract Documents as a reimbursable expense item not included in the Contract Sum, specific costs associated with items set forth in this subsection shall be deemed as fully and conclusively included in the rate upon which Contractor’s Contract Sum is based.

14.6. No person shall be discriminated against by Contractor or any subcontractor in the performance of this Contract 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 Contract, in whole or in part, by the City. Contractor shall comply with all federal, state, and local laws, regulations, executive orders, and ordinances applicable to the Contract or to the implementation of the Project. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with the following laws, regulations, and executive orders to the extent they are applicable to the Contract or the implementation of the Project: (a) all applicable requirements of state civil rights

and rehabilitation statutes, rules, and regulations; (b) Titles VI and VII of the Civil Rights Act of 1964, as amended; (c) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (d) the Americans with Disabilities Act of 1990, as amended, and ORS 659A.142; (e) Executive Order 11246, as amended; (f) the Health Insurance Portability and Accountability Act of 1996; (g) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (h) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (i) all regulations and administrative rules established pursuant to the foregoing laws; and (j) all other applicable requirements of federal civil rights and rehabilitation statutes, rules, and regulations.

14.7. Contractor certifies that Contractor has not discriminated against minority, women, or small business enterprises in obtaining any subcontract.

14.8. Pursuant with ORS 279C.505(2), by execution of this Contract, Contractor agrees to have an employee drug testing program in place at the time of executing the Contract, acknowledges that such a program will be maintained throughout the Contract period, including any extensions, and shall demonstrate to the City that such drug testing program is in place. The failure of Contractor to have, or to maintain, such a drug-testing program is grounds for immediate termination of the Contract. Contractor shall require each subcontractor providing labor for the Project to also comply with this drug testing program requirement.

14.9. Contractor agrees that the City shall not be liable, either directly or indirectly, in any dispute arising out of the substance or procedure of Contractor's drug testing program. Nothing in this drug testing provision shall be construed as requiring Contractor to violate any legal, including constitutional, rights of any employee, including but not limited to selection of which employees to test and the manner of such testing. The City shall not be liable for Contractor's negligence in establishing or implementing, or failure to establish or implement, a drug testing policy or for any damage or injury caused by Contractor's employees acting under the influence of drugs while performing Work covered by the Contract. These are Contractor's sole responsibilities, and nothing in this provision is intended to create any third party beneficiary rights against the City.

14.10. Contractor is solely responsible for ensuring that any subcontractor selection and substitution is in accordance with all legal requirements. The City shall not be liable, either directly or indirectly, in any dispute arising out of Contractor's actions with regard to subcontractor selection and/or substitution.

14.11. Contractor shall make payment promptly, as due, to all parties supplying to such Contractor labor or material for the prosecution of the Work provided for in the Contract Documents, and shall be responsible for payment to such persons supplying labor or material to any subcontractor.

14.12. By execution of this Contract, as required by ORS 305.385(6), Contractor certifies under penalty of perjury that to the best of Contractor's knowledge, Contractor is not in violation of any tax laws described in ORS 305.380(4).

14.13. Contractor agrees that if Contractor or a first-tier subcontractor fails, neglects, or refuses to make payment to a person furnishing labor or materials in connection with this Contract

within thirty (30) days after receiving payment from the City or a contractor, Contractor or the first-tier subcontractor shall owe the person the amount due plus interest charges commencing at the end of the ten (10) day period within which payment is due under ORS 279C.580(3)(a) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest on the amount due shall be calculated in accordance with ORS 279C.515(2). The amount of interest may not be waived.

14.14. Contractor agrees that if Contractor or a subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with this Contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580.

14.15. Contractor shall make payment promptly, as due, to any party furnishing medical, surgical, hospital, or other needed care and attention, incident to sickness or injury, to the employees of Contractor, of all sums which Contractor agreed to pay for the services or collected or deducted from the wages of employees pursuant to any law, contract, or agreement for the purpose of providing or paying for such service.

14.16. Contractor and all subcontractors shall comply with the provisions of ORS 279C.540 pertaining to maximum hours, holidays, and overtime. With certain exceptions listed below, Contractor shall not require or permit any person to work more than ten (10) hours in any one (1) day, or forty (40) hours in any one (1) week, except in case of necessity, emergency, or where public policy requires it, and in such cases the person shall be paid at least time and a half for:

14.16.1. All overtime in excess of eight (8) hours in any one (1) day or forty (40) hours in any one (1) week when the work week is five (5) consecutive days, Monday through Friday; or

14.16.2. All overtime in excess of ten (10) hours in any one (1) day or forty (40) hours in any one (1) week when the work week is four (4) consecutive days, Monday through Friday; and

14.16.3. All work performed on the days specified in ORS 279C.540(1)(b) for public improvement contracts.

14.17. Contractor and all subcontractors shall comply with the provisions of ORS 279C.545 pertaining to time limitation on claims for overtime and requirements for posting circulars containing said provisions.

14.18. For personal/professional service contracts, as designated under ORS 279A.055, instead of 14.16.1, 14.16.2, and 14.16.3 above, a laborer shall be paid at least time and a half for all overtime worked in excess of forty (40) hours in any one (1) week, except for individuals under these contracts who are excluded under ORS 653.010 to 653.261 or under 29 USC §§ 201 to 209 from receiving overtime.

14.19. Contractor shall follow all other exceptions, pursuant to ORS 279B.235 (for non-public improvement contracts) and ORS 279C.540 (for public improvement contracts), including

contracts involving a collective bargaining agreement, contracts for services, and contracts for fire prevention or suppression.

14.20. Contractor must give notice to employees who work on a public contract, in writing, either at the time of hire or before commencement of Work on the Contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.

14.21. The hourly rate of wage to be paid by any Contractor or subcontractor to employed workers or other persons doing or contracting to do all or part of the work contemplated by a public contract shall be not less than the applicable wage required by law.

14.22. Contractor, its subcontractors, and all employers working under the Contract are subject employers under the Oregon Workers Compensation Law and shall comply with ORS 656.017 and provide the required workers compensation coverage, unless otherwise exempt under ORS 656.126. Contractor shall ensure that each of its subcontractors complies with these requirements.

14.23. In the performance of this Contract, Contractor shall comply with all applicable federal, state, and local laws, municipal codes, regulations, rules, and ordinances, including but not limited to those dealing with public contracts (ORS Chapter 279C) and with the prevention of environmental pollution and the preservation of natural resources (and avoidance of natural resource damages) in the performance of the Contract, including but not limited to ORS 279C.525. To the extent that known environmental and natural resource risks are specifically noted, shown, or specified in the Contract Documents or on the construction drawings, such risks are allocated to Contractor pursuant with ORS 279C.525(8)(a). If new or amended statutes, ordinances, rules, or regulations are adopted, or Contractor encounters a condition not referred to in this Contract, not caused by Contractor, and that was not discoverable by reasonable site inspection which requires compliance with federal, state, or local laws, codes, or regulations dealing with the preservation of the environment, both the City and Contractor shall have all the rights and obligations set forth in ORS 279C.525.

14.24. Contractor shall be liable for any fine imposed against Contractor, the City or the 'Project' as a result of a violation of any laws or permitting requirements by Contractor or any of its subcontractors or their sub-subcontractors or any suppliers.

14.25. Pursuant to ORS 279B.055, Contractor shall use recyclable products to the maximum extent economically feasible, and in full conformance with the Contract Document Specifications, in the performance of the Work.

Section 15. Subcontractor Requirements

15.1. If subcontractors are permitted, Contractor's relations with subcontractors shall comply with ORS 279C.580. Pursuant with ORS 279C.580(3), each subcontract for property or services that Contractor enters into with a first-tier subcontractor, including a material supplier, for the purpose of performing a construction contract, shall include:

15.1.1. A payment clause that obligates Contractor to pay the first-tier subcontractor for satisfactory performance under the subcontract within ten (10) days out of such amounts as are paid to Contractor by the City under the public improvement contract; and

15.1.2. An interest penalty clause that obligates Contractor, if payment is not made within 30 days after receipt of payment from the City, to pay to the first-tier subcontractor an interest penalty on amounts due in the case of each payment not made in accordance with the payment clause outlined in (a) above. A contractor or first-tier subcontractor may not be obligated to pay an interest penalty if the only reason that the contractor or first-tier subcontractor did not make payment when payment was due is that the contractor or first-tier subcontractor did not receive payment from the City or Contractor when payment was due. The interest penalty period shall begin on the day after the required payment date and end on the date on which payment of the amount due is made and shall be computed at the rate specified in ORS 279C.515(2).

15.2. Contractor shall include in each subcontract, as a condition of performance of such contract, a provision requiring the first-tier subcontractor to include a payment clause and interest penalty clause, conforming to the standards set forth in **Subsection 15.1(a) and (b)** above, in each of its subcontracts and requiring that the same clauses be included in any of the first-tier subcontractors' subcontracts with a lower-tier subcontractor or supplier.

15.3. Contractor shall certify that all subcontractors, as described in ORS 701.005(2), will be registered with the Construction Contractors Board or licensed by the State Landscape Contractors Board in accordance with ORS 701.035 or 701.026, respectively, before the subcontractors commence Work under the Contract.

15.4. In no event shall any subcontract be awarded to any person or entity debarred, suspended, or disqualified from federal, state, or municipal contracting.

Section 16. Environmental Laws

16.1. In compliance with the provisions of ORS 279C.525, the following is a list of federal, state, and local agencies, of which the City has knowledge, that have enacted ordinances or regulations dealing with the prevention of environmental pollution and the preservation of natural resources that may affect the performance of the Contract:

FEDERAL AGENCIES:

Forest Service	Agriculture, Department of
Defense, Department of	Soil Conservation Service
Environmental Protection Agency	Army Corps of Engineers
Bureau of Sport Fisheries and Wildlife	Interior, Department of
Bureau of Land Management	Bureau of Outdoor Recreation
Bureau of Reclamation	Bureau of Indian Affairs
Occupational Safety and Health Administration	Labor, Department of
Coast Guard	Transportation, Department of
	Federal Highway Administration

STATE AGENCIES:

Environmental Quality, Department of
 Forestry, Department of
 Human Resources, Department of
 Soil and Water Conservation Commission
 State Land Board

Agriculture, Department of
 Fish and Wildlife, Department of
 Geology and Mineral Industries, Department of
 Land Conservation and Development Commission
 National Marine Fisheries Service (NMFS)
 State Engineer
 Water Resources Board

LOCAL AGENCIES:

County Courts
 Port Districts
 County Service Districts
 Water Districts

City Council
 County Commissioners, Board of
 Metropolitan Service Districts
 Sanitary Districts
 Fire Protection Districts

This list may not be all inclusive, and it is the responsibility of Contractor to know all applicable laws and to comply with them in the performance of this Contract.

16.2. Pursuant with ORS 279C.510(1), if this Contract calls for demolition work, Contractor shall salvage or recycle construction and demolition debris, if feasible and cost-effective.

16.3. Pursuant with ORS 279C.510(2), if this Contract calls for lawn or landscape maintenance, Contractor shall compost or mulch yard waste material at an approved site, if feasible and cost-effective.

16.4. Contractor shall be responsible for the immediate clean-up, remediation, reporting, and payment of fines, if any, related to the release of any hazardous substance or material by Contractor or any subcontractor.

Section 17. Indemnity and Insurance

17.1. Indemnification. Contractor acknowledges responsibility for liability arising out of the performance of this Contract, and shall defend, indemnify, reimburse, and hold the City and the Oregon Department of Transportation (ODOT) harmless from any and all liability, settlements, loss, costs, and expenses in connection with any action, suit, or claim resulting or allegedly resulting from Contractor's negligent acts, omissions, errors, or willful or reckless misconduct pursuant to this Contract, or from Contractor's failure to perform its responsibilities as set forth in this Contract. 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 Contractor 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 Contractor of its responsibility to perform in full conformity with the City's requirements, as set forth in this Contract, 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 Contractor's negligent performance of this Contract, failure of performance hereunder, violation of state or federal laws, or failure to adhere to the standards of performance and care described in **Subsection 17.2**. Contractor shall defend the City and ODOT, if named (using legal counsel reasonably acceptable to the City), against any claim that alleges negligent acts, omissions, errors, or willful or reckless misconduct by Contractor. Contractor will be liable for any damage to property, including ODOT property, caused by Contractor.

17.2. Standard of Care. In the performance of the Work, Contractor agrees to use that degree of care and skill exercised under similar circumstances by reputable members of Contractor's profession, practicing in the Portland metropolitan area. Contractor will re-perform any services not meeting this standard without additional compensation. Contractor'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 Contractor's failure to perform in accordance with the applicable standard of care of this Contract and within the prescribed timeframe.

17.3. Insurance Requirements. Contractor must maintain insurance coverage acceptable to the City in full force and effect throughout the term of this Contract. Such insurance shall cover all risks arising directly or indirectly out of Contractor's activities or work hereunder. The amount of insurance carried is in no way a limitation on Contractor's liability hereunder. The policy or policies of insurance maintained by Contractor shall provide at least the following minimum limits and coverages at all times during performance of this Contract:

17.3.1. Commercial General Liability Insurance. Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this Contract, 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 Contract 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 Contract.

17.3.2. Business Automobile Liability Insurance. If Contractor will be using a motor vehicle in the performance of the Work herein, Contractor shall provide the City a certificate indicating that Contractor has 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**.

17.3.3. Pollution Liability Coverage. Contractor shall carry sudden and accidental and gradual release pollution liability coverage that will cover, among other things, any spillage of paints, fuels, oils, lubricants, de-icing, anti-freeze or other hazardous materials, or disturbance of any hazardous materials, as that term is defined under Oregon law, during the performance of this Contract. Contractor will be fully responsible for the cost of any clean-up of any released materials or disturbance, in accordance with Oregon Department of Environmental Quality ("DEQ") and Federal Environmental Protection Agency ("EPA") clean-up requirements. The coverage shall be in the amount of **\$2,000,000** for each occurrence and **\$2,000,000** general aggregate.

17.3.4. Workers Compensation Insurance. Contractor and all employers providing work, labor, or materials under this Contract 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. Contractors 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.

17.3.5. Insurance Carrier Rating. Coverages provided by Contractor 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.

17.3.6. Additional Insured & Termination Endorsements. Additional Insured coverage under Contractor's Commercial General Liability, Automobile Liability, Pollution Liability, and Excess Liability Policy(ies), as applicable, will be provided by endorsement. Additional insured coverage shall be for both ongoing operations via ISO Form CG 2010 or its equivalent, and products and completed operations via ISO Form CG 2037 or its equivalent. Coverage shall be Primary and Non-Contributory. Waiver of Subrogation endorsement via ISO Form CG 2404 or its equivalent shall be provided. The following is included as additional insured: "The City of Wilsonville and the Oregon Department of Transportation, including their elected and appointed officials, officers, agents, and employees." 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.

17.3.7. Certificates of Insurance. As evidence of the insurance coverage required by this Contract, Contractor shall furnish a Certificate of Insurance to the City. This Contract shall not be effective until the required certificates and the Additional Insured Endorsements have been received and approved by the City. Contractor agrees that it will not terminate or change its coverage during the term of this Contract without giving the City at least thirty (30) days' prior advance notice and Contractor 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.

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

Section 18. Bonding Requirements

18.1. Payment and Performance Bonds. Contractor shall obtain a Payment Bond and a Performance Bond, each in a form acceptable to the City and from a surety acceptable to the City, and each in the full amount of the Contract Sum.

18.2. Maintenance/Warranty Bond. Contractor shall maintain a two (2) year Maintenance/Warranty Bond, in a form acceptable to the City and from a surety acceptable to the City, in the amount of ten percent (10%) of the Contract Sum.

18.3. Landscaping Bond. Contractor shall also maintain a two (2) year Landscape Warranty Bond, in a form acceptable to the City and from a surety acceptable to the City, for maintenance and replacement of all landscaping material in accordance with *Public Works Standards Section 201.10.03*. The landscape maintenance bond shall be for 10% of the amount required to maintain and replace the landscaping installed with the Project. At the one-year time frame in the maintenance period, the City shall perform an inspection of the landscaping and provide Contractor with a landscape replacement list. Contractor shall have 30 days to replace landscaping, as directed, and warranty all new landscaping for an additional two (2) year maintenance period.

18.4. Public Works Bond. Pursuant to ORS 279C.830(2), in addition to the Payment and Performance bonds, before starting work on this Contract or any subcontract hereunder, Contractor and all subcontractors, unless exempt under ORS 279C.836(4), (7), (8), or (9), must have on file with the Construction Contractors Board a public works bond with a corporate surety authorized to do business in the State of Oregon in the minimum amount of **\$30,000**. The bond must provide that the Contractor or subcontractor will pay claims ordered by the Bureau of Labor and Industries to workers performing labor upon public works projects. The bond must be a continuing obligation, and the surety's liability for the aggregate of claims that may be payable from the bond may not exceed the penal sum of the bond. The bond must remain in effect continuously until depleted by claims paid under ORS 279C.836, unless the surety sooner cancels the bond. Contractor further certifies that Contractor will include in every subcontract a provision requiring a subcontractor to have a public works bond filed with the Construction Contractors Board before starting work on the Project, unless exempt under ORS 279C.836(4), (7), (8), or (9).

18.5. Bond Claims. Any notice of claim on a payment or performance bond or public works bond shall comply with the requirements of ORS 279C.605.

Section 19. Warranty

19.1. Contractor shall fully warranty all Work, including but not limited to all plant material, for a period of two (2) years from the date of Final Acceptance of all Work.

19.2. In addition to, and not in lieu of, any other warranties provided by various manufacturers and suppliers, Contractor fully warrants all Work for a period of two (2) years from the date of Final Acceptance of the Work and shall make all necessary repairs and replacements to remedy, in a manner satisfactory to the City's Project Manager and at no cost to the City, any and all defects, breaks, or failures of the Work occurring within two (2) years following the date of completion due to faulty or inadequate materials or workmanship. Repair of damage or disturbances to other improvements under, within, or adjacent to the Work, whether or not caused by settling, washing, or slipping, when such damage or disturbance is caused, in whole or in part, from activities of Contractor in performing his/her duties and obligations under this Contract, is also covered by the warranty when such defects or damage occur within the warranty period. The two (2) year warranty period shall, with relation to such required repair, be extended two (2) years from the date of completion of such repair.

19.3. If Contractor, after written notice, fails within **ten (10) days** to proceed to comply with the terms of this section, the City may have the defects corrected, and Contractor and Contractor's surety shall be liable for all expense incurred. In case of an emergency where, in the opinion of the City's Project Manager, delay would cause serious loss or damage, repairs may be made without notice being given to Contractor, and Contractor or Contractor's surety shall pay the cost of repairs. Failure of the City's Project Manager to act in case of an emergency shall not relieve Contractor or Contractor's surety from liability and payment of all such costs.

19.4. Current State Law (ORS 12.135) provides for a ten (10) year period, from the time of Substantial Completion, for the City to file a claim for repairs of defective Work due to Contractor's improper use of materials and/or workmanship, and Contractor agrees it is bound thereby.

Section 20. Early Termination; Default

20.1. This Contract may be terminated prior to the expiration of the agreed upon terms:

20.1.1. By mutual written consent of the parties;

20.1.2. By the City, for any reason, and within its sole discretion, effective upon delivery of written notice to Contractor by mail or in person. The City retains the right to elect whether or not to proceed with actual construction of the Project; or

20.1.3. By the City if Contractor breaches this Contract and fails to cure the breach within ten (10) days of receipt of written notice of the breach from the City.

20.2. If the City terminates this Contract in whole or in part, due to default or failure of Contractor to perform Work in accordance with the Contract, 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, Contractor shall be liable for all costs and damages incurred by the City as a result of the default by Contractor, including, but not limited to all costs incurred by the City in procuring services from others as needed to complete this Contract. This Contract shall be in full force to the extent not terminated by written notice from the City to Contractor. In the event of a default, the City will provide Contractor with written notice of the default and a period of ten (10) days to cure the default. If Contractor notifies the City that it wishes to cure the default but cannot, in good faith, do so within the ten (10) day cure period provided, then the City may elect, in its sole discretion, to extend the cure period to an agreed upon time period, or the City may elect to terminate this Contract and seek remedies for the default, as provided above.

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

20.4. Termination under any provision of this section shall not affect any right, obligation, or liability of Contractor or the City that accrued prior to such termination. Contractor

shall surrender to the City items of work or portions thereof, referred to in **Section 26**, for which Contractor has received payment or the City has made payment.

Section 21. Suspension of Work

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

Section 22. Substantial Completion, Final Completion, and Liquidated Damages

22.1. Contractor's Project Manager and City's Project Manager shall conduct a final inspection of the Project when Contractor believes the Work is substantially complete, and create a project corrections list ("punch list") of items to be completed before final payment will be made. Substantial Completion means that the Work is completed and facilities/roads are fully functional and ready to use with only minor punch list items remaining that do not significantly impact road use. Unless otherwise agreed to, in writing, by both parties, the punch list items will be completed within thirty (30) days thereof, and then a final walk-through will occur to confirm all punch list items have been completed. Final payment will occur upon completion of all punch list items ("Final Completion") as determined by final acceptance by the City ("Final Acceptance"). Substantial Completion must occur on or before May 31, 2018 or liquidated damages will apply. The parties agree that delay damages can be significant but are often difficult to quantify and costly to litigate; therefore the Contractor and the City agree that the sums set forth below in **Section 22.3** and **Section 22.4** shall apply as liquidated damages for every day the Project is not completed beyond the Substantial Completion and Final Completion dates.

22.2. The City and Contractor recognize that time is of the essence of this Contract and that the City will suffer financial loss and public detriment if the Work is not substantially completed within the time specified in the paragraph above, plus any extensions thereof granted, in writing, by the City. Both parties also recognize the delays, expenses, and difficulties involved in proving in a legal proceeding the actual loss suffered by the City if the Work is not substantially completed on time. Accordingly, instead of requiring any such proof, the City and Contractor agree that, as liquidated damages for delay (but not as a penalty), Contractor shall pay the City the amounts listed below for each and every day that expires after the time specified for Substantial and Final Completion.

22.3. Liquidated damages shall apply against Contractor and accrue to the City at the rate of One Hundred Dollars (\$100) for each day that expires after the time specified for Substantial Completion of all Work until the Work reaches Substantial Completion.

22.4. If Contractor shall neglect, fail, or refuse to complete the remaining Work on the punch list by the Final Completion date of June 30, 2018, or any proper extension thereof granted by the City, Contractor shall pay the City Five Hundred Dollars (\$500) for each day that expires after the time specified above for the Work to reach Final Completion and be ready for final payment. Retainage will not be released before Final Completion is established.

22.5. The parties further agree that this amount of liquidated damages is a reasonable forecast of just compensation for the harm caused by any breach and that this harm is one which is impossible or very difficult to estimate. In addition to the liquidated damages above, Contractor shall reimburse the City for all costs incurred by the City for engineering, inspection, and project management services required beyond the time specified for Substantial Completion. Contractor shall also reimburse the City for all costs incurred for inspection and project management services required due to punch list items not completed within the time allotted for Final Acceptance. If Contractor fails to reimburse the City directly, the City will deduct the cost from Contractor's final pay request.

22.6. Contractor will not be responsible for delay damages or be deemed to be in default by reason of delays in performance due to reasons beyond Contractor's reasonable control, including but not limited to strikes, lockouts, severe acts of nature, or actions of unrelated third parties not under Contractor's direction and control that preclude Contractor from performing the Work ("Force Majeure"). In the case of the happening of any Force Majeure event, the time for completion of the Work will be extended accordingly and proportionately by the City, in writing. Poor weather conditions, unless extreme, lack of labor, supplies, materials, or the cost of any of the foregoing shall not be deemed a Force Majeure event.

Section 23. Contract Modification/Change Orders

Any modification of the provisions of this Contract shall not be enforceable or binding unless reduced to writing and signed by both the City and Contractor. A modification is a written document, contemporaneously executed by the City and Contractor, which increases or decreases the cost to the City over the agreed Contract Sum in **Section 4** of this Contract, or changes or modifies the Work or the time for performance. In the event Contractor receives any communication of whatsoever nature from the City, which communication Contractor contends gives rise to any modification of this Contract, Contractor shall, within five (5) days after receipt, make a written request for modification to the City's Project Manager in the form of a Change Order. Contractor's failure to submit such written request for modification in the form of a Change Order 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 Contract affecting any change in price, Contractor shall submit a complete breakdown of labor, material, equipment, and other costs. If Contractor 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 Change Order. To be enforceable, the Change Order must describe with particularity the nature of the change, any delay in time the Change Order will cause, or any increase or decrease in the Contract Sum. The Change Order must be signed and dated by both Contractor and the City before the Change Order may be implemented.

Section 24. Dispute Resolution

In the event of a dispute concerning performance of this Contract, the parties agree to meet to negotiate the problem. If such negotiation fails, the parties will mediate the dispute using a professional mediator, and the parties will split the cost. If the dispute cannot be resolved in either of the foregoing ways within thirty (30) days, either party may file suit in Clackamas County

Section 28. Miscellaneous Provisions

28.1. Integration. This Contract contains the entire and integrated agreement between the parties and supersedes all prior written or oral discussions, representations, or agreements. In case of conflict among these documents, the provisions of this Contract shall control.

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

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

28.4. Adherence to Law. Contractor shall adhere to all applicable federal and state laws, including but not limited to laws, rules, regulations, and policies concerning employer and employee relationships, workers compensation, and minimum and prevailing wage requirements. Any certificates, licenses, or permits that Contractor is required by law to obtain or maintain in order to perform the Work shall be obtained and maintained throughout the term of this Contract.

28.5. Governing Law. This Contract shall be construed in accordance with and governed by the laws of the State of Oregon. All contractual provisions required by ORS Chapters 279A and 279C to be included in public agreements are hereby incorporated by reference and shall become a part of this Contract as if fully set forth herein.

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

28.7. 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 Contract 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 Contract, 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.

28.8. Nonwaiver. Failure by either party at any time to require performance by the other party of any of the provisions of this Contract 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.

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

28.10. Modification. This Contract may not be modified except by written instrument executed by Contractor and the City.

28.11. Time of the Essence. Time is expressly made of the essence in the performance of this Contract.

28.12. 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 Contract, the first day from which the designated period of time begins to run shall not be included.

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

28.14. Number, Gender and Captions. In construing this Contract, 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 Contract.

28.15. Good Faith and Reasonableness. The Parties intend that the obligations of good faith and fair dealing apply to this Contract generally and that no negative inferences be drawn by the absence of an explicit obligation to be reasonable in any portion of this Contract. 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 Contract gives the City “sole discretion” or the City is allowed to make a decision in its “sole judgment.”

28.16. 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 Contract in order to provide and secure to the other parties the full and complete enjoyment of rights and privileges hereunder.

28.17. Interpretation. As a further condition of this Contract, the City and Contractor acknowledge that this Contract 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 contract, 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.

28.18. Defined Terms. Capitalized terms not otherwise defined herein shall have the meaning given to them in the Specifications and Contract Documents.

28.19. Entire Agreement. This Contract, all documents attached to this Contract, and all Contract Documents and laws and regulations incorporated by reference herein, represent the entire agreement between the parties.

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

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

The Contractor and the City hereby agree to all provisions of this Contract.

CONTRACTOR:

CITY:

KERR CONTRACTORS OREGON, INC.

CITY OF WILSONVILLE

By: _____
Alan W. Aplin
As Its: Vice-President

By: _____
Bryan Cosgrove
As Its: City Manager

Employer I.D. No. 90-0592910

APPROVED AS TO FORM:

Barbara A. Jacobson, City Attorney
City of Wilsonville, Oregon



CITY COUNCIL STAFF REPORT

Meeting Date: December 18, 2017	Subject: Resolution No. 2662 Old Town Square (Fred Meyer) Intersection Modifications Contract Award (CIP #4199) Staff Member: Eric Mende, Capital Projects Engineering Manager Department: Community Development	
Action Required	Advisory Board/Commission Recommendation	
<input checked="" type="checkbox"/> Motion <input type="checkbox"/> Public Hearing Date: <input type="checkbox"/> Ordinance 1 st Reading Date: <input type="checkbox"/> Ordinance 2 nd Reading Date: <input checked="" type="checkbox"/> Resolution <input type="checkbox"/> Information or Direction <input type="checkbox"/> Information Only <input type="checkbox"/> Council Direction <input type="checkbox"/> Consent Agenda	<input type="checkbox"/> Approval <input type="checkbox"/> Denial <input type="checkbox"/> None Forwarded <input checked="" type="checkbox"/> Not Applicable Comments: See Congestion Improvements Work Session Staff Report for discussion of the scope and financial issues associated with this project.	
Staff Recommendation: Staff recommends that Council adopt Resolution No. 2662.		
Recommended Language for Motion: I move to approve Resolution No. 2662.		
Project / Issue Relates To: <i>[Identify which goal(s), master plans(s) your issue relates to.]</i>		
<input checked="" type="checkbox"/> Council Goals/Priorities	<input type="checkbox"/> Adopted Master Plan(s)	<input type="checkbox"/> Not Applicable

ISSUE BEFORE COUNCIL:

To approve Resolution No. 2662 authorizing the City Manager to execute a Construction Contract with Brown Contracting Inc. for \$191,649 to complete the Old Town Square (Fred Meyer) Intersection Modifications project.

Resolution No. 2662 Staff Report

Page 1 of 3

EXECUTIVE SUMMARY:

Construction Bids were opened for the Old Town Square (Fred Meyer) Intersection Modifications project on November 30, 2017. The project removes the curb extension on the northeast corner of the intersection, allowing a second northbound travel lane through and past the intersection. The project modifies the sidewalk, crosswalks, handicap ramps, and storm drainage piping, maintains the bike lane, and relocates the traffic signal pole, requiring wiring and conduit extensions. The City received three bids with Brown Contracting Inc. determined to be the lowest responsive and responsible bid at \$191,649.

This project is administratively designated as CIP #4199FME (Fred Meyer Exit) in order to distinguish it from other sub-projects also funded by CIP #4199.

EXPECTED RESULTS:

The intersection modifications will help to reduce (but not fully mitigate) congestion on Boones Ferry Road south of the intersection by allowing vehicles to access a second lane to the north of the intersection.

TIMELINE:

Pending receipt of signed contracts, bonds, and insurance certificates, construction will begin in early January and be substantially completed by May 30, 2018.

CURRENT YEAR BUDGET IMPACTS:

This is a sub-project to CIP project #4199, which has a total budget of \$827,214. The FY 2017/18 budget for CIP #4199 is inadequate to fund both this project and the companion I-5 Exit 283 Southbound Ramp Modification project, which are now estimated to cost just over \$1 million. Transfer from existing appropriated budgets for other transportation projects can allow both projects to move forward without additional FY 2017/18 appropriations.

FINANCIAL REVIEW / COMMENTS:

Reviewed by: SCole Date: 12/7/2017

LEGAL REVIEW / COMMENT:

Reviewed by: BAJ Date: 12/8/2017

COMMUNITY INVOLVEMENT PROCESS:

N/A

POTENTIAL IMPACTS or BENEFIT TO THE COMMUNITY (businesses, neighborhoods, protected and other groups):

Short term delays on Boones Ferry Road, and within the Old Town Square complex during off peak travel times will occur during construction. Long term, congestion issues on Boones Ferry Road will be improved.

ALTERNATIVES:

Do not award the contract or construct the project at this time.

Resolution No. 2662 Staff Report

CITY MANAGER COMMENT:

ATTACHMENTS:

1. Resolution No. 2662

RESOLUTION NO. 2662

A RESOLUTION OF THE CITY OF WILSONVILLE ACTING IN ITS CAPACITY AS ITS LOCAL CONTRACT REVIEW BOARD AUTHORIZING THE CITY MANAGER TO EXECUTE A CONSTRUCTION CONTRACT WITH BROWN CONTRACTING, INC. FOR CONSTRUCTION OF THE OLD TOWN SQUARE INTERSECTION MODIFICATION PROJECT (CIP #4199FME).

WHEREAS, the City has planned, designed, and budgeted for the completion of Capital Improvement Project (CIP) #4199, known as the Exit 283 Congestion Improvements project, of which the Old Town Square (Fred Meyer) Intersection Modification project (the Project) is a sub-project thereof, to be administered as CIP Project #4199FME; and

WHEREAS, the Project was originally titled the Fred Meyer Exit Modifications project for ease of contractor location identification for bid purposes and those submitted bids are for the Project which is one in the same as the originally titled bid project; and

WHEREAS, the City solicited bids from qualified contractors for the Project that duly followed the State of Oregon Public Contracting Rules and the City of Wilsonville Municipal Code; and

WHEREAS, Brown Contracting, Inc. submitted a bid for the Project on November 30, 2017 for ONE HUNDRED NINETY-ONE THOUSAND, SIX HUNDRED FORTY-NINE DOLLARS (\$191,649), which, upon evaluation, was determined the lowest responsive and responsible bid.

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

1. The City of Wilsonville, acting as the Local Contract Review Board, authorizes the City Manager to enter into, on behalf of the City of Wilsonville, a Construction Contract with Brown Contracting, Inc., attached hereto and incorporated herein, for a stated value of ONE HUNDRED NINETY-ONE THOUSAND, SIX HUNDRED FORTY-NINE DOLLARS (\$191,649).
2. This resolution is effective upon adoption.

ADOPTED by the Wilsonville City Council at a regular meeting thereof this 18th day of December 2017, and filed with the Wilsonville City Recorder this date.

Tim Knapp, Mayor

ATTEST:

Kimberly Veliz, City Recorder

SUMMARY OF VOTES:

Mayor Knapp
Councilor Starr
Councilor Stevens
Councilor Lehan
Councilor Akervall

Attachments:

Exhibit A – Construction Contract

**CITY OF WILSONVILLE
CONSTRUCTION CONTRACT (CIP #4199)
OLD TOWN SQUARE INTERSECTION MODIFICATIONS**

This Construction Contract for the Old Town Square Intersection Modifications Project, also known as and bid as the Fred Meyer Exist Modifications Project (“Contract”), is made and entered into on this 19th day of December, 2017 (“Effective Date”) by and between the **City of Wilsonville**, a municipal corporation of the State of Oregon (hereinafter referred to as the “City”), and **Brown Contracting, Inc.**, an Oregon corporation (hereinafter referred to as “Contractor”).

RECITALS

WHEREAS, the City issued a formal Invitation to Bid for the Project described herein; and

WHEREAS, Contractor represents that Contractor is qualified to perform the services described in the Invitation to Bid on the basis of specialized experience and technical expertise; and

WHEREAS, after reviewing all bids submitted in accordance with the Invitation to Bid, the City has determined this Contract shall be awarded to Contractor; and

WHEREAS, Contractor is prepared to perform this Contract in accordance with all the terms and conditions as set forth below, as the City does hereinafter require.

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

AGREEMENT

Section 1. Contract Documents

This Contract includes and incorporates by reference all of the foregoing recitals and all of the following additional “Contract Documents”: Specifications and Contract Documents for the Old Town Square Intersection Modifications Project, dated November 6, 2017, including General Conditions, Special Provisions, Supplemental Conditions, and Plans and Details bound separately; Contractor’s Bid submitted in response thereto; 2015 City of Wilsonville Public Works Standards; Oregon Department of Transportation 2015 Oregon Standard Specifications for Construction; Special Provisions to ODOT Standards; 2010 ADA Standards for Accessible Design; 2004 Americans with Disabilities Act Accessibility Guidelines (“ADAAG”), as amended; 2006 International Building Code (“IBC”); and the provisions of Oregon Revised Statutes (ORS) 279C, as more particularly set forth in this Contract. Contractor must be familiar with all of the foregoing and comply with them. Any conflict or inconsistency between the Contract Documents shall be called to the attention of the City by Contractor before proceeding with affected work. All Contract Documents should be read in concert and Contractor is required to bring any perceived inconsistencies to the attention of the City before

executing this Contract. In the event a provision of this Contract conflicts with standards or requirements contained in any of the foregoing Contract Documents, the provision that is more favorable to the City, as determined by the City, will apply.

Section 2. Term

The term of this Contract shall be from the Effective Date until all work required to be performed hereunder (“Work”) is completed and accepted, or no later than May 30, 2018, whichever occurs first, unless earlier terminated in accordance herewith or an extension of time is agreed to, in writing, by the City. Contractor shall diligently perform the Work according to the requirements and deliverable dates identified in the Contract Documents. All Work must be at Substantial Completion by no later than April 30, 2018 and at Final Completion by May 30, 2018. See **Section 22** for the definitions of Substantial Completion and Final Completion.

Section 3. Contractor’s Work

3.1. Contractor will perform the Work as more particularly described herein and in the other Contract Documents for the Old Town Square Intersection Modifications Project (“Project”). It is important to note that the Work includes ADA projects, and ADA measurement standards are strict, with very little margin for error. Therefore, Contractor must take great care to know the exact standards and meet them precisely. If the finished product is not within ADA allowances, as published, Contractor will be required to re-work or remove and replace, at Contractor’s sole expense, so that the ADA specifications are fully complied with.

3.2. All written documents, drawings, and plans submitted by Contractor in conjunction with the Work shall bear the signature, stamp, or initials of Contractor’s authorized Project Manager. Any documents submitted by Contractor which do not bear the signature, stamp, or initials of Contractor’s authorized Project Manager, will not be relied upon by the City. Interpretation of plans and answers to questions regarding the Work given by Contractor’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, Contractor’s Project Manager will provide such written documentation.

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

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

Section 4. Contract Sum, Retainage, and Payment

4.1. Except as otherwise set forth in this **Section 4**, the City agrees to pay Contractor on a time and materials basis, guaranteed not to exceed ONE HUNDRED NINETY-ONE THOUSAND SIX HUNDRED FORTY-NINE DOLLARS (\$191,649), for performance of the Work (“Contract Sum”). Any compensation in excess of the Contract Sum will require an express written Change Order between the City and Contractor.

4.2. During the course of Contractor’s performance, if the City, through its Project Manager, specifically requests Contractor to provide additional services beyond the Work described in the Contract Documents, Contractor shall provide such additional services and bill the City a reasonable agreed upon fee, pursuant to a written Change Order, executed in compliance with the provisions of **Section 23**.

4.3. Contractor will be paid for Work for which an itemized invoice is received by the City within thirty (30) days of receipt, unless the City disputes such invoice, less a five percent (5%) withholding for retainage. Retainage shall be as outlined in the Contract Documents and as specified under ORS 279C.550 to 279C.570. If the City disputes an invoice, the undisputed portion of the invoice will be paid by the City within the above timeframe, less the retainage. The City will set forth its reasons for the disputed claim amount and make good faith efforts to resolve the invoice dispute with Contractor as promptly as is reasonably possible. Final payment will be held until completion of the final walkthrough, as described in **Section 22**.

4.4. Except as provided in **Section 8.2**, the Contract Price includes the cost of all required fees payable to governmental agencies, including but not limited to plan checking, land use, zoning, and all other similar fees required to perform the Work on the Project.

4.5. 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, and all other similar fees resulting from this Project that are not specifically otherwise provided for in the Contract Documents.

4.6. Contractor’s unit prices and Contract Sum 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 all other contributions and benefits.

4.7. Contract provisions regarding payment policies, progress payments, interest, etc. are as outlined in the 2015 City of Wilsonville Public Works Standards and in ORS 279C.570.

Section 5. Prevailing Wages

This is a Contract for a Public Works Project, subject to ORS 279C.800 to 279C.870. Therefore, 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 1, 2017, and all subsequent amendments. The BOLI prevailing wage rate for public works contracts can be found at the following website address:

http://www.oregon.gov/boli/WHD/PWR/Pages/pwr_state.aspx. Because this is a public works contract subject to payment of prevailing wages, each worker in each trade or occupation employed in the performance of the Work, either by Contractor, a subcontractor, or other person doing or contracting to do, or contracting for the whole or any part of the Work, 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. Contractor must comply with all public contracting wages required by law. Contractor 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 Contractor 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. Contractor 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). Contractor shall include a contract provision in compliance with this paragraph in every subcontract and shall require each subcontractor to include it in subcontract(s).

See **Contractor's Responsibilities** below and other Contract Documents for additional requirements and responsibilities regarding compliance with wage and hour laws and regulations.

Section 6. Filing of Certified Statement

As required in ORS 279C.845(7), the City will retain twenty-five percent (25%) of any amount earned by Contractor under the Contract until Contractor has filed the certified statements required in ORS 279C.845(1). The City will pay to Contractor the amount withheld within fourteen (14) days after Contractor files the required certified statements. As required in ORS 279C.845(8), Contractor shall retain twenty-five percent (25%) of any amount earned by a first-tier subcontractor on the Project until the first-tier subcontractor has filed with the City the certified statements required in ORS 279C.845(1). Before paying any amount withheld, Contractor shall verify that the first-tier subcontractor has filed the certified statement. Within fourteen (14) days after the first-tier subcontractor files the required certified statement, Contractor shall pay the first-tier subcontractor any amount withheld. Contractor shall require all other sub-subcontractors to file certified statements regarding payment of prevailing wage rates with the City.

Section 7. Reports to Department of Revenue

When a public contract is awarded to a nonresident bidder and the contract price exceeds Ten Thousand Dollars (\$10,000), Contractor shall promptly report to the Department of Revenue, on forms to be provided by the Department, the total contract price, terms of payment, length of contract, and such other information as the Department may require, before the City will make final payment on the Contract.

Section 8. City's Rights and Responsibilities

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

8.2. If applicable, the City will pay the required Bureau of Labor and Industries fee of one/tenth of one percent (0.1%) of the Contract Sum, or as required by statute.

8.3. The City reserves the right to reject any bid or to refuse delivery of materials or services at or from any manufacturer, supplier, or contractor with which the City has reasonable grounds to believe is or may be operating in violation of any local, state, or federal law or which is the subject of pending litigation.

8.4. If Contractor fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to Contractor or a subcontractor by any person in connection with the Contract as such claim becomes due, the City may, but shall not be obligated to, pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due Contractor by reason of the Contract. The payment of a claim in the manner authorized hereby shall not relieve Contractor or its surety from the obligation with respect to any unpaid claim. If the City is unable to determine the validity of any claim for labor or services furnished, the City may withhold from any current payment due Contractor an amount equal to said claim until its validity is determined, and the claim, if valid, is paid by Contractor or the City. There shall be no final acceptance of the Work under the Contract until all such claims have been resolved.

Section 9. City's Project Manager

The City's Project Manager is Eric Mende, P.E. The City shall give Contractor prompt written notice of any re-designation of its Project Manager.

Section 10. Contractor's Project Manager

Contractor's Project Manager is Sean Emrick. In the event that Contractor's Project Manager is changed, Contractor shall give the City prompt written notification of such re-designation. Recognizing the need for consistency and knowledge in the administration of the Project, Contractor'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 Contractor that is not from Contractor's Project Manager, the City may request verification by Contractor's Project Manager, which verification must be promptly furnished.

Section 11. Project Information

Except for confidential information designated by the City as information not to be shared, Contractor agrees to share Project information with, and to fully cooperate with, those corporations, firms, contractors, public utilities, governmental entities, and persons involved in 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 12. Duty to Inform

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

Section 13. Subcontractors and Assignments

13.1. Unless expressly authorized in writing by the City, pursuant to **Subsection 14.2**, Contractor shall neither subcontract with others for any of the Work prescribed herein nor assign any of Contractor's rights acquired hereunder without obtaining prior written approval from the City. Some Work may be performed by persons other than Contractor, provided Contractor advises the City of the names of such subcontractors and the services which they intend to provide, and the City specifically agrees, in writing, to such subcontracting. Contractor acknowledges such services will be provided to the City pursuant to a subcontract(s) between Contractor and subcontractor(s) and no privity of contract exists between the City and the subcontractor(s). Unless otherwise specifically provided by this Contract, the City incurs no liability to third persons for payment of any compensation provided herein to Contractor. Any attempted assignment of this Contract without the written consent of the City shall be void. Except as otherwise specifically agreed, all costs for services performed by others on behalf of Contractor shall not be subject to additional reimbursement by the City.

13.2. The City shall have the right to enter into other agreements for the Project, to be coordinated with this Contract. Contractor 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. Contractor shall furnish other engineers, subcontractors, and affected public utilities, whose designs are fitted into Contractor's design, detail drawings giving full information so that conflicts can be avoided.

Section 14. Contractor's Responsibilities

Except as otherwise provided under ORS 30.265, the performance under this Contract is at Contractor's sole risk. The service or services to be rendered under the Contract are those of an independent contractor who is not an officer, employee, or agent of the City, as those terms are used in ORS 30.265. Notwithstanding the Oregon Tort Claims Act or provisions of any other contract, Contractor is acting as and assumes liability of an independent contractor as to claims between the City and Contractor. Contractor is solely liable for any workers compensation coverage, social security, unemployment insurance or retirement payments, and federal or state taxes due as a result of payments under the Contract. Any subcontractor hired by Contractor

shall be similarly responsible. Contractor shall be liable to the City for any failure of any subcontractor(s) to comply with the terms of the Contract. This Contract is a public works contract governed by the laws found at ORS Chapter 279C, which Contractor must be familiar with and adhere to. Additional Contractor's Responsibilities are set forth in the Special Provisions included in the Contract Documents.

14.1. Except as otherwise mandated by state law, the performance of Work under this Contract is at Contractor's sole risk. All damages or loss to Work, equipment, or materials incurred during the performance of the Work shall be at Contractor's sole risk. Any injury to persons or property incurred during the performance of the Work shall be at Contractor's sole risk. Contractor is an independent contractor for all purposes and shall be entitled to no compensation other than the Contract Sum provided for under **Section 4** of this Contract. Contractor will be solely responsible for determining the manner and means of accomplishing the end result of Contractor's Work. The City does not have the right to control or interfere with the manner or method of accomplishing said Work. The City, however, will have the right to specify and control the results of Contractor's Work so such Work meets the requirements of the Project.

14.2. The City understands and agrees that Contractor may request that some Work be performed on the Project by persons or firms other than Contractor, through a subcontract with Contractor. Contractor acknowledges that if such Work is provided to the City pursuant to a subcontract(s) between Contractor and those who provide such services, Contractor may not utilize any subcontractor(s), or in any way assign its responsibility under this Contract, without first obtaining the express written consent of the City. In all cases, processing and payment of billings from subcontractors is solely the responsibility of Contractor. References to "subcontractor" in this Contract mean a subcontractor at any tier. References to "subcontractor" mean a subcontractor at any tier.

14.3. Contractor shall be responsible for, and defend, indemnify, and hold the City harmless against, any liability, cost, or damage arising out of Contractor's use of such subcontractor(s) and subcontractor's negligent acts, errors, or omissions. Unless otherwise agreed to, in writing, by the City, Contractor shall require that all of Contractor's subcontractors also comply with and be subject to the provisions of this **Section 14** and meet the same insurance requirements of Contractor under this Contract.

14.4. Contractor shall make prompt payment for any claims for labor, materials, or services furnished to Contractor by any person in connection with this Contract, as such claims become due. Contractor 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 Contractor. If Contractor fails, neglects, or refuses to make prompt payment of any such claim, the City may pay such claim to the subcontractor furnishing the labor, materials, or services, and offset the amount of the payment against funds due, or to become due, to Contractor under this Contract. The City may also recover any such amounts directly from Contractor.

14.5. Contractor must comply with all Oregon and federal wage and hour laws, including BOLI wage requirements, if applicable. Contractor shall make all required workers compensation and medical care payments on time. Contractor 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. Contractor shall also be fully responsible for payment of salaries, benefits, taxes, and all other charges due on account of any employees. Contractor shall pay all contributions or amounts due the Industrial Accident Fund from Contractor or subcontractor incurred in the performance of this Contract. Contractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. All costs incident to the hiring of subcontractors or employees shall be Contractor's responsibility. Contractor shall defend, indemnify, and hold the City harmless from claims for payment of all such expenses. Unless otherwise expressly set forth in the Contract Documents as a reimbursable expense item not included in the Contract Sum, specific costs associated with items set forth in this subsection shall be deemed as fully and conclusively included in the rate upon which Contractor's Contract Sum is based.

14.6. No person shall be discriminated against by Contractor or any subcontractor in the performance of this Contract 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 Contract, in whole or in part, by the City. Contractor shall comply with all federal, state, and local laws, regulations, executive orders, and ordinances applicable to the Contract or to the implementation of the Project. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with the following laws, regulations, and executive orders to the extent they are applicable to the Contract or the implementation of the Project: (a) all applicable requirements of state civil rights and rehabilitation statutes, rules, and regulations; (b) Titles VI and VII of the Civil Rights Act of 1964, as amended; (c) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (d) the Americans with Disabilities Act of 1990, as amended, and ORS 659A.142; (e) Executive Order 11246, as amended; (f) the Health Insurance Portability and Accountability Act of 1996; (g) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (h) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (i) all regulations and administrative rules established pursuant to the foregoing laws; and (j) all other applicable requirements of federal civil rights and rehabilitation statutes, rules, and regulations.

14.7. Contractor certifies that Contractor has not discriminated against minority, women, or small business enterprises in obtaining any subcontract.

14.8. Pursuant with ORS 279C.505(2), by execution of this Contract, Contractor agrees to have an employee drug testing program in place at the time of executing the Contract, acknowledges that such a program will be maintained throughout the Contract period, including any extensions, and shall demonstrate to the City that such drug testing program is in place. The failure of Contractor to have, or to maintain, such a drug-testing program is grounds for immediate termination of the Contract. Contractor shall require each subcontractor providing labor for the Project to also comply with this drug testing program requirement.

14.9. Contractor agrees that the City shall not be liable, either directly or indirectly, in any dispute arising out of the substance or procedure of Contractor's drug testing program. Nothing in this drug testing provision shall be construed as requiring Contractor to violate any legal, including constitutional, rights of any employee, including but not limited to selection of which employees to test and the manner of such testing. The City shall not be liable for Contractor's negligence in establishing or implementing, or failure to establish or implement, a

drug testing policy or for any damage or injury caused by Contractor's employees acting under the influence of drugs while performing Work covered by the Contract. These are Contractor's sole responsibilities, and nothing in this provision is intended to create any third party beneficiary rights against the City.

14.10. Contractor is solely responsible for ensuring that any subcontractor selection and substitution is in accordance with all legal requirements. The City shall not be liable, either directly or indirectly, in any dispute arising out of Contractor's actions with regard to subcontractor selection and/or substitution.

14.11. Contractor shall make payment promptly, as due, to all parties supplying to such Contractor labor or material for the prosecution of the Work provided for in the Contract Documents, and shall be responsible for payment to such persons supplying labor or material to any subcontractor.

14.12. By execution of this Contract, as required by ORS 305.385(6), Contractor certifies under penalty of perjury that to the best of Contractor's knowledge, Contractor is not in violation of any tax laws described in ORS 305.380(4).

14.13. Contractor agrees that if Contractor or a first-tier subcontractor fails, neglects, or refuses to make payment to a person furnishing labor or materials in connection with this Contract within thirty (30) days after receiving payment from the City or a contractor, Contractor or the first-tier subcontractor shall owe the person the amount due plus interest charges commencing at the end of the ten (10) day period within which payment is due under ORS 279C.580(3)(a) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest on the amount due shall be calculated in accordance with ORS 279C.515(2). The amount of interest may not be waived.

14.14. Contractor agrees that if Contractor or a subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with this Contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580.

14.15. Contractor shall make payment promptly, as due, to any party furnishing medical, surgical, hospital, or other needed care and attention, incident to sickness or injury, to the employees of Contractor, of all sums which Contractor agreed to pay for the services or collected or deducted from the wages of employees pursuant to any law, contract, or agreement for the purpose of providing or paying for such service.

14.16. Contractor and all subcontractors shall comply with the provisions of ORS 279C.540 pertaining to maximum hours, holidays, and overtime. With certain exceptions listed below, Contractor shall not require or permit any person to work more than ten (10) hours in any one (1) day, or forty (40) hours in any one (1) week, except in case of necessity, emergency, or where public policy requires it, and in such cases the person shall be paid at least time and a half for:

14.16.1. All overtime in excess of eight (8) hours in any one (1) day or forty (40) hours in any one (1) week when the work week is five (5) consecutive days, Monday through Friday; or

14.16.2. All overtime in excess of ten (10) hours in any one (1) day or forty (40) hours in any one (1) week when the work week is four (4) consecutive days, Monday through Friday; and

14.16.3. All work performed on the days specified in ORS 279C.540(1)(b) for public improvement contracts.

14.17. Contractor and all subcontractors shall comply with the provisions of ORS 279C.545 pertaining to time limitation on claims for overtime and requirements for posting circulars containing said provisions.

14.18. For personal/professional service contracts, as designated under ORS 279A.055, instead of 14.16.1, 14.16.2, and 14.16.3 above, a laborer shall be paid at least time and a half for all overtime worked in excess of forty (40) hours in any one (1) week, except for individuals under these contracts who are excluded under ORS 653.010 to 653.261 or under 29 USC §§ 201 to 209 from receiving overtime.

14.19. Contractor shall follow all other exceptions, pursuant to ORS 279B.235 (for non-public improvement contracts) and ORS 279C.540 (for public improvement contracts), including contracts involving a collective bargaining agreement, contracts for services, and contracts for fire prevention or suppression.

14.20. Contractor must give notice to employees who work on a public contract, in writing, either at the time of hire or before commencement of Work on the Contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.

14.21. The hourly rate of wage to be paid by any Contractor or subcontractor to employed workers or other persons doing or contracting to do all or part of the work contemplated by a public contract shall be not less than the applicable wage required by law.

14.22. Contractor, its subcontractors, and all employers working under the Contract are subject employers under the Oregon Workers Compensation Law and shall comply with ORS 656.017 and provide the required workers compensation coverage, unless otherwise exempt under ORS 656.126. Contractor shall ensure that each of its subcontractors complies with these requirements.

14.23. In the performance of this Contract, Contractor shall comply with all applicable federal, state, and local laws, municipal codes, regulations, rules, and ordinances, including but not limited to those dealing with public contracts (ORS Chapter 279C) and with the prevention of environmental pollution and the preservation of natural resources (and avoidance of natural resource damages) in the performance of the Contract, including but not limited to ORS 279C.525. To the extent that known environmental and natural resource risks are specifically noted, shown, or specified in the Contract Documents or on the construction

drawings, such risks are allocated to Contractor pursuant with ORS 279C.525(8)(a). If new or amended statutes, ordinances, rules, or regulations are adopted, or Contractor encounters a condition not referred to in this Contract, not caused by Contractor, and that was not discoverable by reasonable site inspection which requires compliance with federal, state, or local laws, codes, or regulations dealing with the preservation of the environment, both the City and Contractor shall have all the rights and obligations set forth in ORS 279C.525.

14.24. Contractor shall be liable for any fine imposed against Contractor, the City or the 'Project' as a result of a violation of any laws or permitting requirements by Contractor or any of its subcontractors or their sub-subcontractors or any suppliers.

Section 15. Subcontractor Requirements

15.1. If subcontractors are permitted, Contractor's relations with subcontractors shall comply with ORS 279C.580. Pursuant with ORS 279C.580(3), each subcontract for property or services that Contractor enters into with a first-tier subcontractor, including a material supplier, for the purpose of performing a construction contract, shall include:

15.1.1. A payment clause that obligates Contractor to pay the first-tier subcontractor for satisfactory performance under the subcontract within ten (10) days out of such amounts as are paid to Contractor by the City under the public improvement contract; and

15.1.2. An interest penalty clause that obligates Contractor, if payment is not made within 30 days after receipt of payment from the City, to pay to the first-tier subcontractor an interest penalty on amounts due in the case of each payment not made in accordance with the payment clause outlined in (a) above. A contractor or first-tier subcontractor may not be obligated to pay an interest penalty if the only reason that the contractor or first-tier subcontractor did not make payment when payment was due is that the contractor or first-tier subcontractor did not receive payment from the City or Contractor when payment was due. The interest penalty period shall begin on the day after the required payment date and end on the date on which payment of the amount due is made and shall be computed at the rate specified in ORS 279C.515(2).

15.2. Contractor shall include in each subcontract, as a condition of performance of such contract, a provision requiring the first-tier subcontractor to include a payment clause and interest penalty clause, conforming to the standards set forth in **Subsection 15.1(a) and (b)** above, in each of its subcontracts and requiring that the same clauses be included in any of the first-tier subcontractors' subcontracts with a lower-tier subcontractor or supplier.

15.3. Contractor shall certify that all subcontractors, as described in ORS 701.005(2), will be registered with the Construction Contractors Board or licensed by the State Landscape Contractors Board in accordance with ORS 701.035 or 701.026, respectively, before the subcontractors commence Work under the Contract.

15.4. In no event shall any subcontract be awarded to any person or entity debarred, suspended, or disqualified from federal, state, or municipal contracting.

Section 16. Environmental Laws

16.1. In compliance with the provisions of ORS 279C.525, the following is a list of federal, state, and local agencies, of which the City has knowledge, that have enacted ordinances or regulations dealing with the prevention of environmental pollution and the preservation of natural resources that may affect the performance of the Contract:

FEDERAL AGENCIES:

Forest Service
 Defense, Department of
 Environmental Protection Agency
 Bureau of Sport Fisheries and Wildlife
 Bureau of Land Management
 Bureau of Reclamation
 Occupational Safety and Health Administration
 Coast Guard

Agriculture, Department of
 Soil Conservation Service
 Army Corps of Engineers
 Interior, Department of
 Bureau of Outdoor Recreation
 Bureau of Indian Affairs
 Labor, Department of
 Transportation, Department of
 Federal Highway Administration

STATE AGENCIES:

Environmental Quality, Department of
 Forestry, Department of
 Human Resources, Department of
 Soil and Water Conservation Commission
 State Land Board

Agriculture, Department of
 Fish and Wildlife, Department of
 Geology and Mineral Industries, Department of
 Land Conservation and Development Commission
 National Marine Fisheries Service (NMFS)
 State Engineer
 Water Resources Board

LOCAL AGENCIES:

County Courts
 Port Districts
 County Service Districts
 Water Districts

City Council
 County Commissioners, Board of
 Metropolitan Service Districts
 Sanitary Districts
 Fire Protection Districts

This list may not be all inclusive, and it is the responsibility of Contractor to know all applicable laws and to comply with them in the performance of this Contract.

16.2. Pursuant with ORS 279C.510(1), if this Contract calls for demolition work, Contractor shall salvage or recycle construction and demolition debris, if feasible and cost-effective.

16.3. Pursuant with ORS 279C.510(2), if this Contract calls for lawn or landscape maintenance, Contractor shall compost or mulch yard waste material at an approved site, if feasible and cost-effective.

16.4. Contractor shall be responsible for the immediate clean-up, remediation, reporting, and payment of fines, if any, related to the release of any hazardous substance or material by Contractor or any subcontractor.

Section 17. Indemnity and Insurance

17.1. Indemnification. Contractor acknowledges responsibility for liability arising out of the performance of this Contract, 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 Contractor's negligent acts, omissions,

errors, or willful or reckless misconduct pursuant to this Contract, or from Contractor's failure to perform its responsibilities as set forth in this Contract. 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 Contractor 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 Contractor of its responsibility to perform in full conformity with the City's requirements, as set forth in this Contract, 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 Contractor's negligent performance of this Contract, failure of performance hereunder, violation of state or federal laws, or failure to adhere to the standards of performance and care described in **Subsection 17.2**. Contractor 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 Contractor.

17.2. Standard of Care. In the performance of the Work, Contractor agrees to use that degree of care and skill exercised under similar circumstances by reputable members of Contractor's profession, practicing in the Portland metropolitan area. Contractor will re-perform any services not meeting this standard without additional compensation. Contractor'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 Contractor's failure to perform in accordance with the applicable standard of care of this Contract and within the prescribed timeframe.

17.3. Insurance Requirements. Contractor must maintain insurance coverage acceptable to the City in full force and effect throughout the term of this Contract. Such insurance shall cover all risks arising directly or indirectly out of Contractor's activities or work hereunder. The amount of insurance carried is in no way a limitation on Contractor's liability hereunder. The policy or policies of insurance maintained by Contractor shall provide at least the following minimum limits and coverages at all times during performance of this Contract:

17.3.1. Commercial General Liability Insurance. Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this Contract, 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 Contract 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 Contract.

17.3.2. Business Automobile Liability Insurance. If Contractor will be using a motor vehicle in the performance of the Work herein, Contractor shall provide the City a certificate indicating that Contractor has 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**.

17.3.3. Pollution Liability Coverage. Contractor shall carry sudden and accidental and gradual release pollution liability coverage that will cover, among other things, any spillage of paints, fuels, oils, lubricants, de-icing, anti-freeze or other hazardous materials, or disturbance of any hazardous materials, as that term is defined under Oregon law, during the performance of this Contract. Contractor will be fully responsible for the cost of any clean-up of any released materials or disturbance, in accordance with Oregon Department of Environmental Quality (“DEQ”) and Federal Environmental Protection Agency (“EPA”) clean-up requirements. The coverage shall be in the amount of **\$2,000,000** for each occurrence and **\$2,000,000** general aggregate.

17.3.4. Workers Compensation Insurance. Contractor and all employers providing work, labor, or materials under this Contract 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. Contractors 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.

17.3.5. Insurance Carrier Rating. Coverages provided by Contractor 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.

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

17.3.7. Certificates of Insurance. As evidence of the insurance coverage required by this Contract, Contractor shall furnish a Certificate of Insurance to the City. This Contract shall not be effective until the required certificates and the Additional Insured Endorsements have been received and approved by the City. Contractor agrees that it will not terminate or change its coverage during the term of this Contract without giving the City at least thirty (30) days’ prior advance notice and Contractor 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.

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

Section 18. Bonding Requirements

18.1. Payment and Performance Bonds. Contractor shall obtain a Payment Bond and a Performance Bond, each in a form acceptable to the City and from a surety acceptable to the City, and each in the full amount of the Contract Sum.

18.2. Maintenance/Warranty Bond. Contractor shall maintain a two (2) year Maintenance/Warranty Bond, in a form acceptable to the City and from a surety acceptable to the City, in the amount of ten percent (10%) of the Contract Sum.

18.3. Public Works Bond. Pursuant to ORS 279C.830(2), in addition to the Payment and Performance bonds, before starting work on this Contract or any subcontract hereunder, Contractor and all subcontractors, unless exempt under ORS 279C.836(4), (7), (8), or (9), must have on file with the Construction Contractors Board a public works bond with a corporate surety authorized to do business in the State of Oregon in the minimum amount of **\$30,000**. The bond must provide that the Contractor or subcontractor will pay claims ordered by the Bureau of Labor and Industries to workers performing labor upon public works projects. The bond must be a continuing obligation, and the surety’s liability for the aggregate of claims that may be payable from the bond may not exceed the penal sum of the bond. The bond must remain in effect continuously until depleted by claims paid under ORS 279C.836, unless the surety sooner cancels the bond. Contractor further certifies that Contractor will include in every subcontract a provision requiring a subcontractor to have a public works bond filed with the Construction Contractors Board before starting work on the Project, unless exempt under ORS 279C.836(4), (7), (8), or (9).

18.4. Bond Claims. Any notice of claim on a payment or performance bond or public works bond shall comply with the requirements of ORS 279C.605.

Section 19. Warranty

19.1. Contractor shall fully warranty all Work for a period of two (2) years from the date of Final Acceptance of all Work. As set forth above, Contractor understands that ADA specifications are exact and, if exact compliance is not met, Contractor will be required to repair or redo the Work to bring all Work into compliance with ADA requirements.

19.2. In addition to, and not in lieu of, any other warranties provided by various manufacturers and suppliers, Contractor fully warrants all Work for a period of two (2) years from the date of Final Acceptance of the Work and shall make all necessary repairs and replacements to remedy, in a manner satisfactory to the City’s Project Manager and at no cost to the City, any and all defects, breaks, or failures of the Work occurring within two (2) years following the date of completion due to faulty or inadequate materials or workmanship. Repair of damage or disturbances to other improvements under, within, or adjacent to the Work,

whether or not caused by settling, washing, or slipping, when such damage or disturbance is caused, in whole or in part, from activities of Contractor in performing his/her duties and obligations under this Contract, is also covered by the warranty when such defects or damage occur within the warranty period. The two (2) year warranty period shall, with relation to such required repair, be extended two (2) years from the date of completion of such repair.

19.3. If Contractor, after written notice, fails within **ten (10) days** to proceed to comply with the terms of this section, the City may have the defects corrected, and Contractor and Contractor's surety shall be liable for all expense incurred. In case of an emergency where, in the opinion of the City's Project Manager, delay would cause serious loss or damage, repairs may be made without notice being given to Contractor, and Contractor or Contractor's surety shall pay the cost of repairs. Failure of the City's Project Manager to act in case of an emergency shall not relieve Contractor or Contractor's surety from liability and payment of all such costs.

19.4. Current State Law (ORS 12.135) provides for a ten (10) year period, from the time of Substantial Completion, for the City to file a claim for repairs of defective Work due to Contractor's improper use of materials and/or workmanship, and Contractor agrees it is bound thereby.

Section 20. Early Termination; Default

20.1. This Contract may be terminated prior to the expiration of the agreed upon terms:

20.1.1. By mutual written consent of the parties;

20.1.2. By the City, for any reason, and within its sole discretion, effective upon delivery of written notice to Contractor by mail or in person. The City retains the right to elect whether or not to proceed with actual construction of the Project; or

20.1.3. By the City if Contractor breaches this Contract and fails to cure the breach within ten (10) days of receipt of written notice of the breach from the City.

20.2. If the City terminates this Contract in whole or in part, due to default or failure of Contractor to perform Work in accordance with the Contract, 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, Contractor shall be liable for all costs and damages incurred by the City as a result of the default by Contractor, including, but not limited to all costs incurred by the City in procuring services from others as needed to complete this Contract. This Contract shall be in full force to the extent not terminated by written notice from the City to Contractor. In the event of a default, the City will provide Contractor with written notice of the default and a period of ten (10) days to cure the default. If Contractor notifies the City that it wishes to cure the default but cannot, in good faith, do so within the ten (10) day cure period provided, then the City may elect, in its sole discretion, to extend the cure period to an agreed upon time period, or the City may elect to terminate this Contract and seek remedies for the default, as provided above.

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

20.4. Termination under any provision of this section shall not affect any right, obligation, or liability of Contractor or the City that accrued prior to such termination. Contractor shall surrender to the City items of work or portions thereof, referred to in **Section 26**, for which Contractor has received payment or the City has made payment.

Section 21. Suspension of Work

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

Section 22. Substantial Completion, Final Completion, and Liquidated Damages

22.1. Contractor's Project Manager and City's Project Manager shall conduct a final inspection of the Project when Contractor believes the Work is substantially complete, and create a project corrections list ("punch list") of items to be completed before final payment will be made. Substantial Completion means that the Work is completed and facilities/roads are fully functional and may be utilized with only minor punch list items remaining that do not significantly impact public use. Unless otherwise agreed to, in writing, by both parties, the punch list items will be completed within thirty (30) days thereof, and then a final walk-through will occur to confirm all punch list items have been completed. Final payment will occur upon completion of all punch list items ("Final Completion") as determined by final acceptance by the City ("Final Acceptance"). Substantial Completion must occur on or before April 30, 2018 or liquidated damages will apply. The parties agree that delay damages can be significant but are often difficult to quantify and costly to litigate; therefore the Contractor and the City agree that the sums set forth below in **Section 22.3** and **Section 22.4** shall apply as liquidated damages for every day the Project is not completed beyond the Substantial Completion and Final Completion dates.

22.2. The City and Contractor recognize that time is of the essence of this Contract and that the City will suffer financial loss and public detriment if the Work is not substantially completed within the time specified in the paragraph above, plus any extensions thereof granted, in writing, by the City. Both parties also recognize the delays, expenses, and difficulties involved in proving in a legal proceeding the actual loss suffered by the City if the Work is not substantially completed on time. Accordingly, instead of requiring any such proof, the City and Contractor agree that, as liquidated damages for delay (but not as a penalty), Contractor shall pay the City the amounts listed below for each and every day that expires after the time specified for Substantial and Final Completion.

22.3. Liquidated damages shall apply against Contractor and accrue to the City at the rate of One Hundred Dollars (\$100) for each day that expires after the time specified for Substantial Completion of all Work until the Work reaches Substantial Completion.

22.4. If Contractor shall neglect, fail, or refuse to complete the remaining Work on the punch list by the Final Completion date of May 30, 2018, or any proper extension thereof granted by the City, Contractor shall pay the City Five Hundred Dollars (\$500) for each day that expires after the time specified above for the Work to reach Final Completion and be ready for final payment. Retainage will not be released before Final Completion is established.

22.5. The parties further agree that this amount of liquidated damages is a reasonable forecast of just compensation for the harm caused by any breach and that this harm is one which is impossible or very difficult to estimate. In addition to the liquidated damages above, Contractor shall reimburse the City for all costs incurred by the City for engineering, inspection, and project management services required beyond the time specified for Substantial Completion. Contractor shall also reimburse the City for all costs incurred for inspection and project management services required due to punch list items not completed within the time allotted for Final Acceptance. If Contractor fails to reimburse the City directly, the City will deduct the cost from Contractor's final pay request.

22.6. Contractor will not be responsible for delay damages or be deemed to be in default by reason of delays in performance due to reasons beyond Contractor's reasonable control, including but not limited to strikes, lockouts, severe acts of nature, or actions of unrelated third parties not under Contractor's direction and control that preclude Contractor from performing the Work ("Force Majeure"). In the case of the happening of any Force Majeure event, the time for completion of the Work will be extended accordingly and proportionately by the City, in writing. Poor weather conditions, unless extreme, lack of labor, supplies, materials, or the cost of any of the foregoing shall not be deemed a Force Majeure event.

Section 23. Contract Modification/Change Orders

Any modification of the provisions of this Contract shall not be enforceable or binding unless reduced to writing and signed by both the City and Contractor. A modification is a written document, contemporaneously executed by the City and Contractor, which increases or decreases the cost to the City over the agreed Contract Sum in **Section 4** of this Contract, or changes or modifies the Work or the time for performance. In the event Contractor receives any communication of whatsoever nature from the City, which communication Contractor contends gives rise to any modification of this Contract, Contractor shall, within five (5) days after receipt, make a written request for modification to the City's Project Manager in the form of a Change Order. Contractor's failure to submit such written request for modification in the form of a Change Order 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 Contract affecting any change in price, Contractor shall submit a complete breakdown of labor, material, equipment, and other costs. If Contractor 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 Change Order. To be enforceable, the Change Order must describe with particularity the nature of the change, any

delay in time the Change Order will cause, or any increase or decrease in the Contract Sum. The Change Order must be signed and dated by both Contractor and the City before the Change Order may be implemented.

Section 24. Dispute Resolution

In the event of a dispute concerning performance of this Contract, the parties agree to meet to negotiate the problem. If such negotiation fails, the parties will mediate the dispute using a professional mediator, and the parties will split the cost. If the dispute cannot be resolved in either of the foregoing ways within thirty (30) days, either party may file suit in Clackamas County Circuit Court. In the alternative, at the City's election, the parties may follow the dispute resolution procedures found in the Special Provisions.

Section 25. Access to Records

The City shall have access, upon request, to such books, documents, receipts, papers, and records of Contractor as are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts for a period of four (4) years, unless within that time the City specifically requests an extension. This clause shall survive the expiration, completion, or termination of this Contract.

Section 26. Property of the City

26.1. Originals or certified copies of the original work forms, including but not limited to documents, drawings, tracings, surveying records, mylars, papers, diaries, inspection reports, and photographs, performed or produced by Contractor under this Contract 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 Contractor as creator of such work shall be conveyed to the City upon request without additional compensation. Upon the City's approval, and provided the City is identified in connection therewith, Contractor may include Contractor's work in its promotional materials. Drawings may bear a disclaimer releasing Contractor from any liability for changes made on the original drawings and for reuse of the drawings subsequent to the date they are turned over to the City.

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

Section 27. Notices

Any notice required or permitted under this Contract 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: Eric Mende, P.E.
29799 SW Town Center Loop East
Wilsonville, OR 97070

To Contractor: Brown Contracting, Inc.
Attn: Sean Emrick
PO Box 26439
29534 Airport Road
Eugene, OR 97402

Section 28. Miscellaneous Provisions

28.1. Integration. This Contract contains the entire and integrated agreement between the parties and supersedes all prior written or oral discussions, representations, or agreements. In case of conflict among these documents, the provisions of this Contract shall control.

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

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

28.4. Adherence to Law. Contractor shall adhere to all applicable federal and state laws, including but not limited to laws, rules, regulations, and policies concerning employer and employee relationships, workers compensation, and minimum and prevailing wage requirements. Any certificates, licenses, or permits that Contractor is required by law to obtain or maintain in order to perform the Work shall be obtained and maintained throughout the term of this Contract.

28.5. Governing Law. This Contract shall be construed in accordance with and governed by the laws of the State of Oregon. All contractual provisions required by ORS Chapters 279A and 279C to be included in public agreements are hereby incorporated by reference and shall become a part of this Contract as if fully set forth herein.

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

28.7. 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 Contract 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 Contract, 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.

28.8. Nonwaiver. Failure by either party at any time to require performance by the other party of any of the provisions of this Contract 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.

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

28.10. Modification. This Contract may not be modified except by written instrument executed by Contractor and the City.

28.11. Time of the Essence. Time is expressly made of the essence in the performance of this Contract.

28.12. 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 Contract, the first day from which the designated period of time begins to run shall not be included.

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

28.14. Number, Gender and Captions. In construing this Contract, 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 Contract.

28.15. Good Faith and Reasonableness. The Parties intend that the obligations of good faith and fair dealing apply to this Contract generally and that no negative inferences be drawn by the absence of an explicit obligation to be reasonable in any portion of this Contract. 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 Contract gives the City "sole discretion" or the City is allowed to make a decision in its "sole judgment."

28.16. 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 Contract in

order to provide and secure to the other parties the full and complete enjoyment of rights and privileges hereunder.

28.17. Interpretation. As a further condition of this Contract, the City and Contractor acknowledge that this Contract 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 contract, 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.

28.18. Defined Terms. Capitalized terms not otherwise defined herein shall have the meaning given to them in the Specifications and Contract Documents.

28.19. Entire Agreement. This Contract, all documents attached to this Contract, and all Contract Documents and laws and regulations incorporated by reference herein, represent the entire agreement between the parties.

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

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

The Contractor and the City hereby agree to all provisions of this Contract.

CONTRACTOR:

CITY:

BROWN CONTRACTING, INC.

CITY OF WILSONVILLE

By: _____

By: _____

Sean Emrick
As Its: Vice-President

Bryan Cosgrove
As Its: City Manager

Employer I.D. No. 93-1206558

APPROVED AS TO FORM:

Barbara A. Jacobson, City Attorney
City of Wilsonville, Oregon