

RESOLUTION NO. 1622

A RESOLUTION OF THE CITY OF WILSONVILLE FINDING A PROFESSIONAL ENGINEERING CONTRACT IS A PERSONAL SERVICE CONTRACT EXEMPT FROM PUBLIC CONTRACT COMPETITIVE BIDDING REQUIREMENTS, FURTHER FINDING THE CONTRACT WILL NOT RESULT IN DIMINISHED COMPETITION AMONG PROFESSIONAL ENGINEERING FIRMS AND WILL RESULT IN SUBSTANTIAL COST SAVINGS, AND AUTHORIZING THE CITY ENGINEER TO AWARD AND SIGN A PROFESSIONAL SERVICES AGREEMENT WITH WESTECH ENGINEERING, INC. TO PROVIDE ENGINEERING SERVICES FOR THE WOMEN'S PRISON AND INTAKE FACILITY (PROJECT NO. 570-49131-5220-131)

WHEREAS, pursuant to the authority set forth in WC 2.312, the City Council acting as the City's Contract Review Board make the following findings:

1.01 WC 2.314(1) states that "All public contracts shall be based upon competitive or bids or proposals..."; and

1.02 The City of Wilsonville adopted a motion at a regular meeting in June 1999, approving budget appropriations for the 1999-00 fiscal year; and

1.03 The approved Capital Projects Fund for 1999-00 contains funding for the design and construction of storm water improvements (Infrastructure) associated with the Women's Prison and Intake Center (Facility); and

1.04 The City has entered into an Intergovernmental Agreement (IGA) with the Oregon Department of Corrections (DOC) to provide the Infrastructure improvements for the Facility; and

1.05 Under the terms and conditions of the IGA, the City has agreed to complete the installation of the Infrastructure to allow construction of the Facility to commence in March 2000, partial occupancy no later than March, 2002 and final occupancy no later than October, 2002; and

1.06 Any delay in the completion of the Infrastructure could compromise the City's ability to provide fire and life safety Infrastructure for the Facility thereby leading to substantial unbudgeted costs to the DOC in providing temporary inmate housing and to the City in construction costs; and

1.07 Due to the limited time available to comply with the terms and conditions of the Agreement, the City wishes to proceed with the design of the Infrastructure immediately and seeks these services from an engineering firm with a demonstrated ability to perform; and

1.08 Westech Engineering Inc. has provided professional storm water related engineering services on preliminary engineering reports and studies for the Facility at the request of the DOC; and

1.09 All the storm water related projects have been controversial and required exceptional attention to concerns from adjacent property owners, project schedule and budget limitations as well as professional discretion and judgment; and

1.10 Given the demonstrated ability to provide exceptional engineering services under extremely demanding timelines, the City Engineer wishes to retain Westech Engineering Inc. to provide design, surveying and project management services during the construction of the Infrastructure; and

1.11 ORS 279.011 (6) and WC 2.310 (1) (a) define public contracts as being other than agreements for personal service. The contract to be awarded is for professional engineering services and meets the WC 2.310(3) definition for personal services, and therefore, is not a public contract for the purposes of competitive bidding or proposals; and

WHEREAS, pursuant to the authority set forth in WC 2.312, the City Council acting as the City's Contract Review Board, makes the following additional findings of exemption:

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

2.02 ORS 279.015, Competitive Bidding Exemptions and ORS 279.712(3)(c) (personal service contract exemption), also allow exemptions as stated in the City Code; and

2.03 The City Engineer has reviewed the number of engineering contracts awarded and has determined the City has awarded engineering contracts to several different firms and this award will not result in favoritism or substantially diminish competition and there is substantial cost savings given the fees proposed and given the history of the quality of past work performed in a timely manner.

2.04 The fees associated with providing the requested design, surveying and project management services, in the proposed sum \$101,600. Staff has determined that the fees for the services as proposed by Westech Engineering, Inc. to be fair and reasonable; and

2.05 Westech Engineering, Inc. has demonstrated to Staff the firm is capable and willing to provide the required engineering services for the completion of the Infrastructure improvements for the Facility in accordance with the terms and conditions of the IGA; and

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

1. Based on the recited findings above, which are adopted and incorporated by reference herein, the City Council, serving as the Local Contract Review Board,

does hereby exempt the award of contract to Westech Engineering, Inc., for Professional Engineering Services for the planned Women's Prison and Intake Facility from competitive bidding and proposals, a copy of which is referenced below.

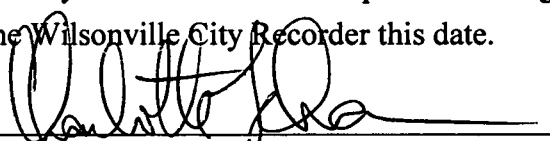
2. The City Council, serving in its role as Local Contract Review Board, does hereby approve and authorize the City Engineer, as the City's designated Contract Officer to:

- Award and execute the City of Wilsonville Professional Services Agreement Public Infrastructure for the Women's Prison/Intake Center between the City of Wilsonville and Westech Engineering, Inc., a copy of which is marked Exhibit "A", attached hereto and incorporated herein, to provide the professional engineering services as set forth therein.
- Approve change orders, provided that the total cost does not exceed funding authorized in the Fiscal Year 1999-00 Capital Projects Fund Budget.
- Certify the required improvements complete and make final payment included release of retainage.

3. Authorize the expenditures for this contract not to exceed the budgeted amount from:

<u>Account</u>	<u>Budget Amount</u>
570-49131-5220-131	\$1,092,723

ADOPTED by the City Council of the City of Wilsonville at a special meeting thereof this 24th day of February 2000 and filed with the Wilsonville City Recorder this date.



CHARLOTTE LEHAN, MAYOR

ATTEST:



Sandra C. King, CMC, City Recorder

SUMMARY of Votes:

Mayor Lehan Yes
Councilor Kirk Yes
Councilor Helser Yes
Councilor Holt Yes
Councilor Barton Yes

**CITY OF WILSONVILLE
PROFESSIONAL SERVICES AGREEMENT
WOMEN'S PRISON AND INTAKE CENTER
STORM WATER FACILITIES**

THIS AGREEMENT is made and entered into as of the date first indicated on the signature page, by and between the City of Wilsonville, Wilsonville, Oregon, (hereinafter referred to as the "City"), and Westech Engineering, Inc. hereinafter referred to as "Consultant").

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

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

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

A. Term

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

B. Consultant's Services

B.1 The scope of Consultant's services and time of performance under this Agreement are set forth in Exhibit A. All provisions and covenants contained in Exhibit A are hereby incorporated by reference and shall become a part of this Agreement as if fully set forth herein.

B.2 All written documents, drawings, and plans submitted by Consultant and intended to be relied on for the project shall bear the signature, stamp or initials of Consultant or Consultant's authorized Project Manager. Any documents submitted by Consultant which do not bear Consultant's signature, stamp or initials or those of the Consultant's authorized Project Manger shall not be relied upon by City. Interpretation of plans and answers to questions covering Plans given by Consultant or Consultant's Project Manager need not be put in writing unless requested by the City and may be relied upon by City.

B.3 All agreements on the Consultant's part are contingent upon, and the Consultant shall not be responsible for damages or be in default or be deemed to be in default by reason of delays in performance due to third party: strikes, lockouts, accidents; acts of God; other delays unavoidable or beyond the Consultant's reasonable control, or due to shortages or unavailability of labor at established area wage rates or delays caused by failure of the

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

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

C. City's Responsibilities

- C.1 The scope of City's responsibilities, including those of its Project Manager, are set forth in Exhibit B, which is attached hereto and incorporated herein.
- C.2 City certifies that sufficient funds are available and authorized for expenditure to finance costs of this Agreement.

D. Compensation

- D.1 Except as otherwise set forth in this subsection D, City agrees to pay Consultant not more than \$101,600 for performance of those services provided hereunder. However, compensation may be less than such maximum amount and shall be actually determined on an hourly basis as shown on the Rate Schedule attached as Exhibit C which is attached hereto and incorporated herein. Compensation shall be only for actual hours worked on this project and related direct expenses. Consultant shall furnish with each bill for services an itemized statement showing the amount of hours devoted to the project by Consultant as well as any agents or employees of Consultant and any direct expenses.
- D.2 During the course of Consultant's performance, if City or its Project Manager specifically requests Consultant to provide additional services which are beyond the scope of the services described on Exhibit A, Consultant shall provide such additional services and bill the City at the hourly rates outlined on the attached Standard Hourly Rate Schedule, provided the parties comply with the requirements of Section R. No compensation for additional services shall be paid or owing unless both parties specifically agree to such additional compensation and services.
- D.3 Unless expressly set forth on Exhibit A as a reimbursable expense item, Consultant shall only be entitled to the compensation amount specified in subsections D.1 and D.2. Only those reimbursable expenses which are set forth on Exhibit A and itemized on

Consultant's bills for services shall be the basis for which payment of those expenses by City shall be owing.

- D.4 4 Except for amounts withheld by City pursuant to this agreement, Consultant will be paid for services for which an itemized bill is received by City within 30 days.
- D.5 City shall be responsible for payment of required fees, payable to governmental agencies including, but not limited to plan checking, land use, zoning and all other similar fees resulting from this project, and not specifically covered by Exhibit A.
- D.6 Consultant's compensation rate includes, but is not limited to, salaries or wages plus fringe benefits and contributions including payroll taxes, workers' compensation insurance, liability insurance, pension benefits and similar contributions and benefits.
- D.7 In the event Consultant's responsibilities as described on Exhibit A have been separated into two or more phases, then Consultant shall not be entitled to any compensation for work performed directly on a later category of responsibilities unless and until City specifically directs that Consultant proceed with such work.

E. City's Project Manager

City's Project Manager is Michael A. Stone. City shall give Consultant prompt written notice of any redesignation of its Project Manager.

F. Consultant's Project Manager

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

G. Project Information

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

H. Duty to Inform

If at any time during the performance of this Agreement, or any future phase of this Agreement for which Consultant has been retained, Consultant becomes aware of actual or potential problems, faults or defects in the project or any portion thereof, any nonconformance with the federal, state or local law, rule, or regulation, or has any objection to any decision or order made by City with respect to such laws, rules or regulations, Consultant shall give prompt written notice thereof to City's Project Manager. Any delay or failure on the part of City to provide a

written response to Consultant shall neither constitute agreement with nor acquiescence to Consultant's statement or claim, nor constitute a waiver of any of City's rights.

I. Consultant is Independent Contractor

- I.1 Consultant shall be and herein declares that it is an independent contractor for all purposes and shall be entitled to no compensation other than compensation provided for under paragraph D of this Agreement. Consultant binds itself, its partners, officers, successors, assigns and legal representatives to the City. Consultant shall be completely independent and solely determine the manner and means of accomplishing the end result of this Agreement, and City does not have the right to control or interfere with the manner or method of accomplishing said results. City, however, has the right to specify and control the results of the Consultant's responsibilities.
- I.2 Subcontracting: City understands and agrees that only those special consulting services identified on Exhibit A may be performed by those persons identified on Exhibit A and not by Consultant. Consultant acknowledges such services are provided to City pursuant to a subcontract(s) between Consultant and those who provide such services. Consultant may not utilize any subcontractors or in any way assign its responsibility under the Agreement without first obtaining the express written consent of the City.
- I.3 Consultant shall be responsible for and indemnify and defend City against any liability, cost or damage arising out of Consultant's use of such subcontractor(s) and subcontractor's negligent acts, omissions, or errors. Subcontractors will be required to meet the same insurance requirements of Consultant under this Agreement. Unless otherwise specifically agreed to by City, Consultant shall require that subcontractors also comply with and be subject to the provisions of this Section I.
- I.4 Consultant shall make prompt payment of any claim for labor, materials or services furnished to the Consultant by any person in connection with this Agreement as such claim becomes due. Consultant shall not permit any lien or claim to be filed or prosecuted against the City on account of any labor or material furnished to or on behalf of the Consultant. If the Consultant fails, neglects or refuses to make prompt payment of any such claim, the City may pay such claim to the person furnishing the labor, materials or services and charge the amount of the payment against funds due or to become due the Consultant under this Agreement.
- I.5 No person shall be employed under the terms of this agreement as described herein in violation of all wage and hour laws.
- I.6 Consultant shall make prompt payment as due to any person, co-partnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to the employees of such Consultant of all sums which the Consultant agrees to pay for such services and all monies and sums which the Consultant collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service.
- I.7 Should Consultant elect to utilize employees on any aspect of this Agreement,

Consultant shall be fully responsible for payment of all withholding required by law, including but not limited to taxes, including payroll, income, Social Security (FICA) and Medicaid. Consultant shall also be fully responsible for payment of salaries, benefits, taxes, Industrial Accident Fund contributions and all other charges on account of any employees. Consultant shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. All costs incident to the hiring of assistants or employees shall be Consultant's responsibility. Consultant shall indemnify, defend and hold City harmless from claims for payment of all such expenses. Unless otherwise expressly set forth on Exhibit A as a reimbursable expense item, specific costs associated with items set forth in this paragraph shall be deemed as fully and conclusively included in the rate upon which consultants compensation is based.

- I.8 No person shall be denied or subjected to discrimination in receipt of the benefits of any services or activities made possible by or resulting from this Agreement on the grounds of sex, race, color, creed, marital status, age, disability or national origin. Any violation of this provision shall be grounds for cancellation, termination or suspension of the Agreement in whole or in part by the City.

J. Indemnity and Insurance

- J.1 Consultant acknowledges responsibility for liability arising out of the performance of this Agreement, and the attachments thereto only, and shall hold City harmless from and indemnify City of any and all liability, settlements, loss, costs and expenses in connection with any action, suit, or claim resulting or allegedly resulting from Consultant's negligent acts, omissions, errors or willful misconduct provided pursuant to this Agreement or from Consultant's failure to perform its responsibilities as set forth in this agreement. The review, approval or acceptance by City, its Project manager or City of Wilsonville employees of documents or other work prepared or submitted by Consultant shall not relieve Consultant of its responsibility to provide such materials in full conformity with City's requirements as set forth in this Agreement and to indemnify City from any and all costs and damages resulting from Consultant's failure to adhere to the standard of performance described in Section J.2.3. The provisions of this section shall survive termination of this Agreement. City agrees to indemnify and hold Consultant harmless from liability, settlements, losses, costs, and expenses in connection with any action, suit or claim resulting or allegedly resulting from City's negligent acts, omissions or from its willful misconduct as governed by ORS Chapter 30.
- J.2 Insurance Requirements and Consultant's Standard of Care.
- J.2.1 Consultant shall provide City with evidence of the following insurance coverages prior to the commencement of the work. A copy of each insurance policy, issued by a company currently licensed in the State of Oregon, and certified as a true copy by an authorized representative of the issuing company or at the discretion of the City, in lieu thereof, a certificate in a form satisfactory to City certifying to the issuance of such insurance shall be furnished to City. Unless specifically set forth on Exhibit A, expenses relating to the cost of insurance shall not be the basis for additional reimbursement to Consultant.
- J.2.2 The City agrees that in accordance with generally accepted construction practices, the construction contractor will be required to assume sole and complete responsibility for job site conditions during the course of construction of the project, including safety of all persons and property.
- J.2.3 In the performance of its professional services, the Consultant shall use that degree of care and skill ordinarily exercised under similar circumstances by reputable members of its profession practicing in the Portland Metropolitan Area. The Consultant will reperform any services not meeting this standard without additional compensation. Consultant's reperformance of any services, even if done at City's request, shall not be considered as a limitation or waiver by City of any other remedies or claims it may have arising out of consultant's failure to perform in accordance with the applicable standard of care or this Agreement.
- J.2.4 Consultant shall furnish the City a certificate evidencing the date, amount and type of insurance that has been procured pursuant to this Agreement. All policies shall be written on an "occurrence basis," except for Consultant's Professional

Liability Insurance which may be written on a "claims made" basis, provided it shall endeavor to be maintained in full force for not less than four (4) years following Consultant's performance under this Agreement. All policies shall provide for not less than 30 days' written notice to the City before they may be revised, non-renewed, or canceled. The Consultant shall endeavor to provide for not less than 30 days' written notice to the City before the policy coverage may be reduced. Excepting professional liability and worker's compensation coverage, all policies shall provide an endorsement naming the City, its officers, employees and agents as additional insureds. In the event the policy lapses during performance, the City may: treat said lapse as a breach; terminate this Agreement and seek damages; withhold progress payments without impairing obligations of Consultant to proceed with work; pay an insurance carrier (either Consultants' or a substitute) the premium amount and withhold that amount from payments; and, use any other remedy provided by this Agreement or by law.

- J.2.5 Insurance Requirements. The Consultant, its subcontractors, if any, and all employers working under this Agreement are subject employers under the Oregon Worker's Compensation Law and shall comply with ORS 656.017 which requires them to provide workers' compensation coverage for all their subject workers. The Consultant will maintain throughout this Agreement the following insurance:
- J.2.5.1 Workers' compensation and employers liability insurance as required by the State where the work is performed.
 - J.2.5.2 Comprehensive automobile and vehicle liability insurance covering claims for injuries to members of the public and/or damages to property of others arising from the use of motor vehicles, including on-site and off-site operations, and owned, non-owned, or hired vehicles, with \$500,000 combined single limits.
 - J.2.5.3 Commercial general liability insurance covering claims for injuries to members of the public or damage to property of others arising out of any covered negligent act or omission of the Consultant or of any of its employees, agents or subcontractors, with \$1,000,000 per occurrence and in the aggregate.
 - J.2.5.4 Professional liability insurance of \$500,000 per occurrence and in the aggregate, including contractual liability coverage. If Consultant proposes using subcontractors, in addition to any other requirements of this Agreement, City may require subcontractors to provide Professional Liability Insurance, provided the amount and form of coverage complies with the requirements of paragraphs J.2.1, J.2.2, J.2.3, J.2.4 and J.2.5.4.
 - J.2.5.5 City will be named as an additional insured with respect to Consultant's liabilities hereunder in insurance coverages identified in items J.2.5.2 and J.2.5.3.

J.2.6 The coverage provided by these policies shall be primary and any other insurance carried by City is excess. Consultant shall be responsible for any deductible amounts payable under all policies of insurance. In the event a dispute arises between City and Consultant for which Consultant has obtained insurance, the maximum amount which may be withheld by City for all such claims shall be no more than the amount of the applicable insurance deductible.

K. Early Termination

K.1 This Agreement may be terminated prior to the expiration of the agreed upon terms:

K.1.1 By mutual written consent of the parties;

K.1.2 By City for any reason within its sole discretion, effective upon delivery of written notice to Consultant by mail or in person; and

K.1.3 By Consultant, effective upon seven days prior written notice in the event of substantial failure by the City to perform in accordance with the terms through no fault of the Consultant.

K.2 If City terminates the Agreement in whole or in part due to default or failure of Consultant to perform services in accordance with this Agreement, City may procure, upon reasonable terms and in a reasonable manner, services similar to those so terminated. In addition to any other remedies the City may have, Consultant shall be liable for all costs and damages incurred by City in procuring such similar service, and the Contract shall be in full force to the extent not terminated.

K.3 If City terminates the Agreement for its own convenience, payment of Consultant shall be prorated to and include the day of termination and shall be in full satisfaction of all claims by Consultant against City under this Agreement.

K.4 Termination under any provision of this paragraph shall not affect any right, obligation or liability of Consultant or City which accrued prior to such termination. Consultant shall surrender to City items of work or portions thereof, referred to in Paragraph O for which Consultant has received payment, or City has made payment. City retains the right to elect whether or not to proceed with actual construction of the project.

L. Suspension of Work

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

M. Subconsultants and Assignments

M.1 Unless expressly authorized in Exhibit A or Paragraph I of this Agreement, Consultant shall neither subcontract with others for any of the work prescribed herein, nor assign any of Consultant's rights acquired hereunder without obtaining prior written approval

from City. Work may be performed by persons other than Consultant, provided Consultant advises City of the names of such subcontractors and the work which they intend to perform and the City specifically agrees thereto. Consultant acknowledges such services are provided to City pursuant to a subcontract(s) between Consultant and subcontractor(s). Except as otherwise provided by this Agreement, City incurs no liability to third persons for payment of any compensation provided herein to Consultant. Any attempted assignment of this contract without the written consent of City shall be void. Except as otherwise specifically agreed, all costs for services performed by others on behalf of Consultant shall not be subject to additional reimbursement by City.

- M.2 City shall have the right to let other agreements be coordinated with this Agreement. Consultant shall cooperate with other firms, engineers or subconsultants on the project and the City so that all portions of the project may be completed in the least possible time within normal working hours. Consultant shall furnish other engineers and subconsultants and affected public utilities, whose designs are fitted into Consultant's design, detail drawings giving full information so that conflicts can be avoided.

N. Access to Records

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

O. Work is Property of City

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

P. Law of Oregon

The Agreement shall be governed by the laws of the State of Oregon. The Agreement provisions required by ORS Chapter 279 to be included in public agreements are hereby incorporated by reference and shall become a part of this Agreement as if fully set forth herein.

Consultant shall adhere to all applicable federal and state laws, including but not limited to laws, rules, regulations, and policies concerning employer and employee relationships, workers' compensation, and minimum and prevailing wage requirements. Any certificates, licenses or permits which Consultant is required by law to obtain or maintain in order to perform work described on Exhibit A, shall be obtained and maintained throughout the term of this Agreement.

Q. Adherence to Law

Consultant shall adhere to all applicable federal and state laws, including but not limited to laws, rules, regulations, and policies concerning employer and employee relationships, workers' compensation, and minimum and prevailing wage requirements. Any certificates, licenses or permits which Consultant is required by law to obtain or maintain in order to perform work described on Exhibit A, shall be obtained and maintained throughout the term of this Agreement.

R. Modification

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

S. Other Conditions

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

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

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

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

S.1.3 Record Drawings. Record drawings, if required, will be prepared, in part, on the basis of information compiled and furnished by others, and may not always represent the exact location, type of various components, or exact manner in which the Project was finally constructed. Consultant is responsible for any errors or omissions about which the Consultant knew or should have known in the information from those employees or firms employed by the Consultant under the terms of the contract as stated therein that is incorporated into the record drawings.

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

T. Integration

This Agreement, including but not limited to Exhibits and Consultant's proposal submitted to City contains the entire and integrated agreement between the parties and supersedes all prior written or oral discussions, representations or agreements. In case of conflict among these documents the provisions of this Agreement shall control.

U. Miscellaneous / General

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

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

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

CONSULTANT:

CITY OF WILSONVILLE:

Westech Engineering, Inc.

Name of Firm

By 

Typed or

Printed Name: Steven A. Ward, P.E.

Title: President

By _____

Michael A. Stone
City Engineer

Attest:

Sandra C. King
City Recorder

Mailing

Address: 3841 Fairview Industrial Drive SE
Suite 100
Salem, OR 97302-1192

Mailing

Address: 3000 SW Town Center Loop East
Wilsonville, OR 97070

Employer I.D. No. 93-0576448

Approved as to form:

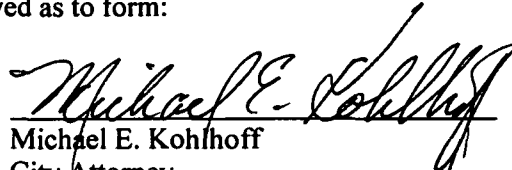

Michael E. Kohlhoff
City Attorney

EXHIBIT 'A'

Scope of Services

Phase 1 – Project Management & Orientation:

The major objective of this task will be to provide project management and contract administration in order to keep the City of Wilsonville informed of the work progress and aware of changes affecting the scope of work and related project costs.

In addition, this task will include attending any required meetings with the City as the project progresses. It is anticipated that this will include an orientation meeting at the beginning of the project and two additional project review meetings; one after review of the preliminary design and one after final design review. The following scope of services is also included in this task.

1. Meet with the City to review critical aspects of the project, design parameters, scope of work, project files, policies, procedures, and project specifics.
2. Review proposed design and construction schedule with the City and obtain consensus by all parties.
3. Conduct day-to-day project management, including supervision of the work, communication with involved parties, and preparation of project design invoices.
4. Work with the City and our sub-consultant(s) for scheduling the work phases to meet project milestones and deadlines.
5. Oversee, coordinate and monitor sub-consultant(s) progress, budget and services.
6. Provide project status reports to the City as requested.

Phase 2 – Surveying:

1. Research existing records including benchmark data, recorded surveys, property records, utility information, railroad maps, BPA maps, etc.
2. Contact public and private utilities for field location of existing utilities.
3. Perform topographic survey for the proposed storm drain alignment, locating surface and subsurface features. Topographic survey shall include, as a minimum, ground elevations, existing right-of-way limits, easements, utilities, driveways, culverts, trees, landscaping, manmade structures, water surface elevations, etc.
4. Prepare survey base sheets at a scale of 1" = 20' of the project work limits and plot topographic survey data and right-of-way/easement limits as required.
5. Complete all surveying using electronic total station with data collector (TOPCON PROPAC). All plotting of topography and existing right-of-way will be accomplished with a computerized plotter. DCA software will be used for all computation and plotting of base maps.
6. Prepare easement legal descriptions and exhibit maps for each property crossed by the final storm drain alignment.
7. Submit one (1) set of field survey notes and one (1) original copy of the topographic survey to the City of Wilsonville.

Phase 3 – Preliminary Engineering:

1. Make a field reconnaissance of the proposed storm drain alignment to verify existing conditions and identify potential field difficulties.
2. Meet with the City to gain consensus on the storm drain alignment.
3. Obtain tax maps, available aeriels and photos for the project.
4. Collect public and private utility maps, as-builts, and any other information available from the City and County to assist with the survey and design of the project.
5. Review all collected technical data pertaining to this project. We already have most of this information from our work with the City and ODOC during preliminary site studies.
6. Prepare overall strip maps at a scale of 1" = 40' of the project work limits to layout proposed storm drain alignments and identify advantages and disadvantages of various alignments.
7. Identify existing utilities which should be potholed by the City to field verify exact location, alignment, depth, size and material type.
8. Prepare design base maps at a scale of 1" = 20' of the project work limits for use in the final design phase.
9. Complete storm drain runoff and sizing calculations for the project.
10. Prepare preliminary storm drain design plans showing the proposed alignment, grade, location of structures, and relocation of any conflicting facilities.
11. Coordinate with Utility Company Representative's to review the preliminary design and identify any potential conflicts.
12. Conduct meeting(s) with the City and ODOC as required to discuss design features, details, cost estimates, permits, approvals, etc.
13. Obtain concurrence on preliminary design from the City and ODOC prior to proceeding with the final design.
14. Prepare railroad bore permit application and submit package to the City for signature(s), payment of fees, and mailing.
15. Coordinate with BPA for storm drain crossing. Complete any permit applications which may be required. Our scope does not include processing or application fees.

Phase 4 – Final Engineering:

1. Finalize storm drain improvement plans incorporating those comments identified during review of the preliminary plans.
2. Prepare plan and profile drawings for the piping, ditch work and maintenance road.
3. Prepare construction notes for inclusion on the project plans.
4. Prepare final construction details per City of Wilsonville and Westech Engineering standard details as appropriate.
5. Coordinate with the railroad and BPA to incorporate any special requirements or permit conditions into the final design.
6. Coordinate with Utility Companies to avoid potential conflicts.
7. Prepare special provisions and specifications for the project.
8. Coordinate with the City to prepare contract portion of the specifications.
9. Complete quantity take-off and cost estimate for the project.
10. Submit final plans, easement legal descriptions, specifications and cost estimate to the City of Wilsonville for review and approval.
11. Make minor corrections to the plans and contract documents for final approval as appropriate.
12. Provide the City of Wilsonville with one (1) original copy of the approved plans, specifications, cost estimate and easement legal descriptions.

Phase 5 – Bidding Services:

1. Print and distribute contract documents to prospective bidders.
2. Attend pre-bid meeting at the City.
3. Assist the City in answering bidder questions to clarify intent of contract documents.
4. Prepare any addenda which may be required during bidding.
5. Provide all available information pertinent to the design and construction of the project as requested by prospective bidders.
6. Review bids with the City and assist with recommendation of award.
7. Coordinate preparation of final contracts and issuance of Notice to Proceed.

Phase 6 – Construction Staking:

1. Surveyor will attend Pre-Construction meeting.
2. Set clearing limits.
3. Set slope stakes at 50-ft. intervals or as requested by the Contractor.
4. Stake utilities and structures for line and grade.
5. Complete final as-built survey of the project.

Phase 7 – Construction Services:

1. Attend Pre-Construction meeting to answer Contractor questions.
2. Provide requested interpretation of drawings and specifications to ensure successful completion of the project.
3. Review construction change orders and make recommendation to the City.
4. Coordinate and review shop-drawing submittals for conformance to the drawings and specifications.
5. Review Contractor payment requests and make recommendation for payment.
6. Coordinate a final walk through inspection of the project with the City, ODOC and Contractor and prepare a final punch list of deficit items. Verify that punch list items are completed.
7. Prepare final as-built drawings for the project using field inspection notes, Contractor as-builts, and the as-built survey. Provide a copy of the as-built drawings to the City of Wilsonville and ODOC for final project acceptance.

Phase 8 – Permitting & Unknown/Unforeseen Conditions:

We recommend and have provided a budget for plan check/permit fees and for unknown and unforeseen conditions. We recommend this additional scope due to unknown information regarding the off-site storm water improvements required for this project. We have included a budget allowance which will only be used (on a time and materials basis) as authorized by the City of Wilsonville.

This budget allowance also includes all work related to revisions or extra work during construction and includes price agreements, extra work orders, time extensions, wetland investigations, etc. Generally, any time spent dealing with quality or quantity assurance documentation related to a change order or extra work is included under this task. No changes to the Contractor work will be approved without prior authorization from the City of Wilsonville.

Fee Schedule

Our proposed approach to completing the above outlined services is straightforward and structured to minimize the overall time from authorization to proceed to approval of the final design. Westech Engineering has provided a comprehensive scope of services to successfully complete the project in a timely and efficient manner. We anticipate the sheets of drawings required to complete this project are as follows:

- Cover Sheet, Vicinity Map, Legend & Sheet Index
- Construction Notes
- Overall Plan
- Existing Conditions/Erosion Control Plan
- Storm Drain Plan & Profile (3 sheets)
- Ditch and Maintenance Road (6 sheets)
- Details (2 sheets)

We are prepared to complete the above tasks for the following fees.

Phase 1 – Project Management/Orientation	\$ 3,600
Phase 2 – Surveying	\$21,500
Phase 3 – Preliminary Engineering	\$11,500
Phase 4 – Final Engineering	\$ 8,500
Phase 5 – Bidding Services	\$ 5,200 Hourly NTE
Phase 6 – Construction Staking	\$19,000 Hourly NTE
Phase 7 – Construction Services	\$ 7,300 Hourly NTE
Phase 8 – Permitting & Unknown/Unforeseen Conditions	\$25,000 Hourly NTE
Total Lump Sum Fees	\$45,100
Total Hourly Not-to-Exceed (NTE) Fees	\$56,500
Grand Total	\$101,600

EXHIBIT 'B'

Our fee proposal is based on the following:

- The City of Wilsonville and ODOC preparing and obtaining the necessary permits of the entry.
- The City of Wilsonville and ODOC completing the easement acquisitions required for the project.
- The City of Wilsonville is the plan review and approval authority.
- Using APWA technical specifications for the construction documents.

EXHIBIT 'C'

**WESTECH ENGINEERING, INC.
HOURLY BILLING RATES
EFFECTIVE OCTOBER 1999**

Engineer IX	\$90.00/hr.
Engineer VIII	\$84.00/hr.
Engineer VII	\$78.00/hr.
Engineer VI	\$74.00/hr.
Engineer V	\$70.00/hr.
Engineer IV	\$68.00/hr.
Engineer III	\$62.00/hr.
Engineer II	\$58.00/hr.
Engineer I	\$54.00/hr.
Designer III	\$62.00/hr.
Designer II	\$58.00/hr.
Designer I	\$52.00/hr.
Technician III	\$48.00/hr.
Technician II	\$44.00/hr.
Technician I	\$40.00/hr.
Inspector	\$52.00/hr.
Secretary	\$38.00/hr.

Outside Services Cost Plus 10%
Mileage \$0.35 per Mile
Blueprints \$2.00/sheet
Photocopies \$0.10/page

ACORD CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YY)
2/07/00

PRODUCER
Acordia/Potts, Davis & Co.

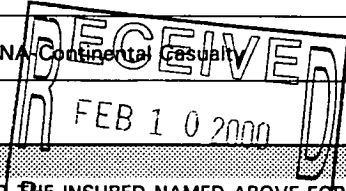
P.O. Box 390, Salem, OR 97308
503-585-7555

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

COMPANIES AFFORDING COVERAGE

COMPANY A American States
COMPANY B American Manufacturers Mutual
COMPANY C CNA-Continental Casualty
COMPANY D

INSURED
Westech Engineering, Inc.
3841 Fairview Indr SE, Ste 100
Salem OR 97302



COVERAGES

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN. THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> OWNER'S & CONTRACTOR'S PROT	02B0831566	10/25/99	10/25/00	GENERAL AGGREGATE \$ 400000 PRODUCTS - COMP/OP AGG \$ 200000 PERSONAL & ADV INJURY \$ 200000 EACH OCCURRENCE \$ 200000 FIRE DAMAGE (Any one fire) \$ 200000 MED EXP (Any one person) \$ 10000
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	02CC981575	10/25/99	10/25/00	COMBINED SINGLE LIMIT \$ 100000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE \$
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EACH ACCIDENT \$ AGGREGATE \$
	EXCESS LIABILITY <input type="checkbox"/> UMBRELLA FORM <input type="checkbox"/> OTHER THAN UMBRELLA FORM				EACH OCCURRENCE \$ AGGREGATE \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY THE PROPRIETOR/PARTNERS/EXECUTIVE OFFICERS ARE: <input type="checkbox"/> INCL <input type="checkbox"/> EXCL	7CQ30928302	5/01/99	5/01/00	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER EL EACH ACCIDENT \$ 500000 EL DISEASE - POLICY LIMIT \$ 500000 EL DISEASE - EA EMPLOYEE \$ 500000
C	OTHER Professional Liab	AEE113819758	6/30/99	6/30/00	\$1,000,000 Each Occurrence \$1,000,000 Annual Aggregate \$ 35,000 Deductible

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS
 City of Wilsonville, its officers, employees and agents are named as additional insured as respects work performed on its behalf by the named insured per BP7057 attached. Re: ODOC Offsite Storm Water

CERTIFICATE HOLDER

City of Wilsonville
 30000 SW Town Center Loop E
 Wilsonville, OR 97070

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**American States
Insurance**
A SAFECO Company

**ADDITIONAL INSURED - DESIGNATED
PERSON OR ORGANIZATION**

BP 70 57 10 97
BUSINESSOWNERS

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS LIABILITY COVERAGE FORM

SCHEDULE*

Name of Person or Organization:

WHO IS AN INSURED (Section C) is amended to include as an insured the person or organization shown in the Schedule as an insured but only with respect to liability arising out of your operations or premises owned by or rented to you.

*Information required to complete the Schedule, if not shown on this endorsement, will be shown in the Declarations.
