

**RESOLUTION NO. 987**

**A RESOLUTION EXEMPTING THE CITY FROM COMPETITIVE BIDDING REQUIREMENTS AND AUTHORIZING APPROVAL OF AN ENGINEERING SERVICES AGREEMENT BETWEEN OTAK, INC. AND THE CITY OF WILSONVILLE FOR DESIGN AND ENGINEERING SERVICES DURING CONSTRUCTION OF BIKEWAYS AND PEDESTRIAN WAYS IN THE CITY OF WILSONVILLE IN OREGON.**

WHEREAS, Federal Surface Transportation Funds for FY-92 and FY-93 are available to the City of Wilsonville in the amount of \$91,738; and

WHEREAS, the Oregon Department of Transportation will exchange these funds for state funds at a ratio of ninety-four cents in state funds for one dollar in federal funds, thereby allowing projects to be constructed in accordance with state requirements instead of federal requirements; and

WHEREAS, OTAK, Inc. has been providing engineering services to the Bikeway Advisory Task Force as a subconsultant to McKeever/Morris, Inc.; and

WHEREAS, City Council has previously indicated an interest in using the Federal Surface Transportation Program Funds for bikeways and pedestrian ways; and

WHEREAS, the Bikeway Advisory Task Force has developed the following priority list of projects on which it recommends that these funds be expended. Taken from an excerpt of the March 2, 1993, Bicycle Advisory Task Force Minutes, the projects are as follows:

- \* Boeckman Road - "bike safe" inlet grates \$1,000.
- \* Town Center/Parkway connection from Fun Center to Wilsonville Road, \$20,000.
- \* Improvement of Kinsman/Barber/Boberg/95th into a continuous north-south bike/pedestrian route, \$30,000 (not including sidewalks).
- \* Wilsonville Road from Boeckman Road to Wood Middle School - from the railroad tracks to Boones Ferry - restripe.
- \* Boones Ferry Road from Wilsonville School to Wilsonville Road, \$16,000.
- \* Brown Road from Montebello to Wilsonville Road - Parkwood to the park - pave path through park - do nothing to east side, \$25,000; and

WHEREAS, city staff is presently fully committed to other engineering projects and would not have time to complete the design of these bikeway and pedestrian way improvements in a timely manner; and

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

WHEREAS, Section 2.314 (1) states that all contracts shall be based upon competitive bid with certain exceptions; and

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

WHEREAS, Oregon Revised Statutes 279.015 - Competitive Bidding Exemptions, also allows exemptions as stated in the City code; and

WHEREAS, OTAK, Inc. has previously worked with the Bicycle Advisory Task Force in developing cost estimates and project priorities and is most familiar with the scope and requirements; and

WHEREAS, the use of another consulting engineering firm at this time would require a very significant duplication of engineering effort, would delay preparation of final plans and specifications and would result in a significant increase in cost for this project; and

WHEREAS, construction of this project needs to be expedited to ensure that the bikeways and pedestrian ways are available as soon as possible; and

WHEREAS, the City Council, as the Local Contract Review Board, finds that under the circumstances as recited above, approval of the award of the Engineering Services Contract to OTAK, Inc. will not result in favoritism or substantially diminished competition in awarding the contract, and will result in substantial contract cost savings; and

WHEREAS, the City Council finds such an award of an engineering services contract meets the service contract exemptions under the State Law and City Code; and

WHEREAS, the City Council finds that the construction of bikeways and pedestrian ways is economically feasible, desirable and necessary.

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

1. That the City Council, serving in its role as a Local Contract Review Board, does hereby exempt the award of the concurrence with the engineering services agreement for development of plans and specifications and to provide engineering services during construction of the bikeways and pedestrian ways in Wilsonville Oregon from competitive bidding requirements.

2. That the City Council, serving as a Local Contract Review Board, does hereby approve and authorize the City Manager to sign an Engineering Services Agreement between OTAK, Inc. and the City of Wilsonville to provide engineering services for preparation of plans and specifications and to provide engineering services during construction of the bikeways and pedestrian ways.

ADOPTED by the City Council of the City of Wilsonville at a regular meeting thereof, this 5th day of April, 1993, and filed with the Wilsonville City Recorder this same date.

  
GERALD A. KRUMMEL, Mayor

ATTEST:

  
VERA A. ROJAS, CMC/AAE, City Recorder

SUMMARY of Votes:

Mayor Krummel	<u>AYE</u>
Councilor Carter	<u>AYE</u>
Councilor Hawkins	<u>AYE</u>
Councilor Lehan	<u>AYE</u>
Councilor Van Eck	<u>AYE</u>

COPY

**PROFESSIONAL SERVICES AGREEMENT**  
**FOR**  
**DESIGN AND ENGINEERING SERVICES DURING CONSTRUCTION**  
**OF BIKEWAYS AND PEDESTRIAN WAYS IN THE CITY OF**  
**WILSONVILLE, IN OREGON.**

This AGREEMENT is made and entered into by and between OTAK, Incorporated ("CONSULTANT" herein) and the City of Wilsonville, a political subdivision of the State of Oregon ("CITY" herein).

**ARTICLE 1. PURPOSE OF AGREEMENT**

- 1.1 The purpose of this AGREEMENT shall be to set forth responsibilities and to clarify the relationship between the CITY and the CONSULTANT. CONSULTANT shall supply professional services as herein described. In consideration for said services the CITY shall pay the CONSULTANT such monies and in such and in such manner as herein described.

**ARTICLE 2. WHOLE AGREEMENT**

- 2.1 This AGREEMENT is the complete and exclusive statement of the AGREEMENT between the parties relevant to the purpose described above and supersedes all prior agreements or proposals, oral or written, and all another communication between the parties relating to the subject matter of this AGREEMENT. No modification of this AGREEMENT will be binding on either party except as a written addendum, signed by an authorized agent of each party.

**ARTICLE 3. EFFECTIVE DATE OF AGREEMENT**

- 3.1 This AGREEMENT shall be effective after signing by both parties and upon issuance of a written notice to proceed by the CITY.

**ARTICLE 4. WRITTEN NOTICE**

- 4.1 Any notice of change, termination or other communication having a material effect on this AGREEMENT shall be served in one or more of the following manners:
- a. In-person delivery to and signed acknowledgment of receipt by an authorized officer, employee, agent or other representative of the contracting parties.
  - b. Deposited in the U.S. mails posted to the address(es) given in this document.

## ARTICLE 5. GOVERNING LAW/VENUE

- 5.1 This AGREEMENT shall be governed by the laws of the State of Oregon. Any action or suite commenced in connection with this AGREEMENT shall be in the Circuit Court of Clackamas County. The prevailing party shall be entitled to reasonable attorney fees and costs as awarded by the court.
- 5.2 All rights and remedies of the parties hereto shall be cumulative and may be exercised successively or concurrently. The foregoing is without limitation to or waiver of any other rights or remedies according to law. It is agreed that fifteen (15) calendar days shall constitute reasonable notice for the exercise of any right in the event that applicable law specifically required such notice.

## ARTICLE 6. OREGON REVISED STATUTES

- 6.1 All requirements of the Oregon Revised Statutes Nos. 279.310 through 279.430, Public Contracting, as applicable, are incorporated herein by reference.

## ARTICLE 7. JUDICIAL RULINGS

- 7.1 If any provision of this AGREEMENT as applied to either party or to any circumstance shall be adjudged by a court to be void or unenforceable, the same shall in no way affect any other provision of the AGREEMENT or the validity or enforceability of this AGREEMENT.

## ARTICLE 8. NONDISCRIMINATION

- 8.1 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 or national origin. Any violation of this provision shall be considered a material violation of this AGREEMENT and shall be grounds for cancellation, termination or suspension in whole or in part by the CITY.

## ARTICLE 9. DUTIES AND RESPONSIBILITIES OF THE CONTRACTOR

- 9.1 The CONSULTANT shall perform services as described in Attachment "A" and "B" (Work Plan), attached hereto and by this reference made a part hereof.

## ARTICLE 10. STANDARD OF SERVICES AND WARRANTY

- 10.1 The CONSULTANT agrees to perform his services with that standard of care, skill and diligence normally provided by a professional individual in the performance of similar services. It is understood that the CONSULTANT must perform the services based in part on information furnished by the CITY and that the CONSULTANT shall be entitled to rely on such information. However, the CONSULTANT is given notice that the CITY will be relying on the accuracy,

competence and completeness of the CONSULTANT'S services in utilizing the results of such services.

The CONSULTANT warrants that the recommendations, guidance and performance of any person assigned under this AGREEMENT shall be in accordance with sound engineering/technical practice and/or professional standards and the requirements of this AGREEMENT.

#### **ARTICLE 11. INDEPENDENT AGENT**

- 11.1 The CONSULTANT shall be an "independent agent". All persons employed to furnish services hereunder are employees of the CONSULTANT and not of the CITY. Further, the CITY shall not be liable for any of CONSULTANT'S acts for omissions performed under this or other agreements to which CONSULTANT is a party.

#### **ARTICLE 12. IDENTIFICATION AND INSURANCE**

- 12.1 CONSULTANT shall save harmless and indemnify CITY, its Commissioners, employees and agents for any and all claims, damages, losses and expenses, including but not limited to reasonable attorney's fees arising out of or resulting from negligent performance of or failure to perform the obligations of the AGREEMENT.
- 12.2 The CONSULTANT shall purchase and maintain insurance at his expense, and shall provide certification to the CITY-of insurance in the types and amounts specified in Attachment "C" (Insurance), attached hereto and by this reference made a part hereof.

#### **ARTICLE 13. SUBCONTRACTING**

- 13.1 No portion of the AGREEMENT may be subcontracted to any other individual, firm or entity, except as may be set forth in Attachment "A", without the express and prior approval of the CITY.

#### **ARTICLE 14. NON ASSIGNMENT**

- 14.1 No portion of nor any interest in this AGREEMENT may be assigned to a third party, except as may be set forth in ATTACHMENT "A", without the express and prior approval of the CITY.

#### **ARTICLE 15. FUNDING**

- 15.1 In the event the City Council of the City of Wilsonville or other governing authority reduces, changes, eliminates, or otherwise modifies the funding for any of the projects identified herein, the CONSULTANT agrees to abide by any such decision including termination of service.

## **ARTICLE 16. CITY PRIORITIES**

- 16.1 The CONSULTANT shall comply promptly with any requests by the CITY relating to the emphasis or relative emphasis to be placed on various aspects of the work or to such other matters pertaining to said work.

## **ARTICLE 17. PUBLICITY**

- 17.1 CONSULTANT shall not use in its external advertising, marketing programs, or other promotional efforts, any data, pictures or other representations of the CITY except on prior specific written authorization from CITY.

## **ARTICLE 18. USE OF CITY FACILITIES**

- 18.1 CONSULTANT and its employees or agents shall have the right to use only those facilities of the CITY that are necessary to perform services under this AGREEMENT and shall have no right of access to any other facilities of the CITY without the prior approval of the CITY.

## **ARTICLE 19. FEES AND PAYMENT**

- 19.1 The CITY agrees to pay the CONSULTANT for services performed pursuant to this AGREEMENT according to the terms and amounts specified in Attachment "D" (Fees and Payment); attached hereto and by this reference made a part hereof. Said payment shall cover all costs associated with the performance of services as described in ATTACHMENT "A". The CITY shall have no liability for taxes, insurance or other expenses associated with the performance of CONSULTANT'S duties hereunder.

## **ARTICLE 21. CHANGES**

- 21.1 The fee specified herein shall include all services specified herein. Any change in the frequency or type of services shall cause the fee to be adjusted plus or minus accordingly; Provided, however, any fee increases will require written approval by the City of Wilsonville.

## **ARTICLE 22. OWNERSHIP OF WORK PRODUCT**

- 22.1 All work products of the CONSULTANT which result from this AGREEMENT are the exclusive property of the CITY.

## **ARTICLE 23. TERMINATION OF AGREEMENT**

- 23.1 This AGREEMENT may be terminated under the following conditions:
- a. By written mutual agreement of both parties. Termination under this provision may be immediate.

- b. Upon thirty (30) calendar days written notice by either party to the other of intent to terminate.
- c. If this AGREEMENT is terminated by either party, the CITY agrees to pay to the CONSULTANT all costs and expenses associated with services provided to the effective date of termination. Moneys due and payable will be calculated based on actual costs and the schedule set forth in Attachment "D".

**ARTICLE 24. SURVIVAL**

24.1 The terms, conditions, representations, and all warranties contained in this AGREEMENT shall survive the termination or expiration of this AGREEMENT.

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

FOR THE CONSULTANT

FOR THE CITY OF WILSONVILLE

\_\_\_\_\_  
NAME

\_\_\_\_\_  
CITY MANAGER

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
RECORDING SECRETARY

\_\_\_\_\_  
FIRM

\_\_\_\_\_  
DATE

\_\_\_\_\_  
ADDRESS

MAILING ADDRESS  
30000 S.W. Town Center Loop East  
Wilsonville, OR 97070

\_\_\_\_\_  
CITY AND STATE

\_\_\_\_\_  
EMPLOYER ID NUMBER

\_\_\_\_\_  
DATE



**Attachment "A"**

**City Of Wilsonville Proposal for Bicycle/Pedestrian Ways**

**PROPOSAL #1**

**COMPLETION OF PROJECT PROSPECTUS FORMS**

for

**BICYCLE AND PEDESTRIAN IMPROVEMENTS PROJECTS**

The work outlined in this Agreement shall generally consist of the following:

1. Complete the State of Oregon Project Prospectus Forms (Parts 1 and 2) for those Bicycle/pedestrian projects which will be improved with Intermodal Surface Transportation Efficiency Act (ISTEA) funds.

## Attachment "B"

### City of Wilsonville Proposal for Bicycle/Pedestrian Ways

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**PROPOSAL #2  
ENGINEERING SERVICES  
for  
BICYCLE/PEDESTRIAN PROJECTS**

The work outlined below consists of three distinct phases; design, advertising, and construction. The work to be accomplished in this Agreement shall be generally consist of the following:

#### **PHASE I - DESIGN**

The objective of the design phase is to develop contract documents which will met the needs of the City and can be easily understood by the inspectors, surveyors and contractors. The following outlines the specific work tasks to be accomplished by the OTAK project team.

- 1a. Collect, Analyze Existing Data. Hold a kick off meeting with OTAK and City staff to establish communication links and project protocols, expectations and collect and analyze existing data to define project opportunities and constraints, including:
  - Existing survey data and topography maps (since the City has aerial topography in ACAD format of the project sites, we do not anticipate any additional surveying)
  - Drainage ways and storm sewer systems.
  - All underground utilities.
  - City of Wilsonville standards.
  - Prepare base maps for design
  
- 1b. Preliminary Design (75% plans), six plan and detail sheets assumed
  - Inspect site of the proposed improvements.
  - Field verify segment lengths and widths.
  - Determine what improvements are necessary (taking into consideration safety, signage, striping, access requirements, inlet adjustments, base repairs, curb ramps, parking, maintenance, and intersection designs).
  - Prepare preliminary plans, including preliminary cost estimate.
  - Review preliminary design and recommendations with the City.
  
- 1c. Final Civil Design (100% plans and specifications)
  - Refine design and incorporate comments from preliminary design.
  - Develop a Construction Traffic Control Plan, where required.
  - Write special specifications for City of Wilsonville standard specifications.
  - Prepare final plans.
  - Finalize cost estimate.
  - Prepare final bid document.
  - Review with City staff.

Attachment "C"

INSURANCE

The CONSULTANT shall purchase and maintain, at his expense, the following types of insurance covering the CONSULTANT, his employees and agents.

1. Workers' Compensation with limits as required by statute. Employer's liability shall be a minimum of \$100,000.
2. Comprehensive general liability insurance covering personal injury & property damage, in an amount not less than \$50,000 for property damage, and \$500,000 per occurrence.
3. Automobile liability insurance in an amount not less than \$50,000 for property damage, and \$500,000 per occurrence.
4. Professional liability insurance covering any personal injury or property damage caused by error, omission, or any negligent act, in an amount not less than \$500,000 per occurrence.

The City of Wilsonville, its Council members, employees and agents shall be Named Insured for Items No. 2 and 3 above.

A copy of the policy or Certificate of Insurance acceptable to the CITY shall be filed with the CITY prior to the effective date of this AGREEMENT. The policy or Certificate of Insurance shall provide for thirty (30) days' notice of cancellation or material change.

( 11474 . INS )

## Bicycle/Pedestrian Ways for City of Wilsonville, Oregon by OTAK Inc.

Task Name	Duration (Days)	Start	Resource Effort	Total Cost	1993							
					Mar	Apr	May	Jun	Jul	Aug	Sep	
<i>PROPOSAL #1</i>	5.00	Mar/22/93		\$1,200.00								
Complete Project Prospectus Forms	5.00	Mar/22/93	pe75* 8.00 h, Tech50 12.00 h	\$1,200.00	■							
<i>PROPOSAL #2</i>	108.00	May/03/93		\$17,430.00								
PHASE I - Design	43.00	May/03/93		\$13,890.00								
1a. Collect/analyze existing data	5.00	May/03/93	pe75* 0.95 d, Tech50 4.70 d	\$2,450.00			■					
1b. Preliminary Design (75%)	15.00	May/10/93	pe75* 4.05 d, Tech50^ 4.95 d	\$4,410.00			■					
City Review	5.00	Jun/01/93		\$0.00			■					
1c. Final Design (100%)	15.00	Jun/08/93	pe75* 4.05 d, Tech50 4.00 d	\$4,030.00			■					
City Review	3.00	Jun/29/93		\$0.00			■					
Miscellaneous Engineering	10.00	May/10/93	Tech50^ 7.50 d	\$3,000.00			■					
PHASE II - Advertising & Bidding	20.00	Jul/02/93	pe75* 1.40 d	\$840.00								
PHASE III - Construction	45.00	Jul/30/93	pe75* 0.21 m	\$2,700.00								

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 transporWilsonville.tlp

Milestone ◇ Summary ■■■■