

**RESOLUTION NO. 1375**

**A RESOLUTION OF THE CITY OF WILSONVILLE EXEMPTING THE CITY FROM COMPETITIVE BIDDING REQUIREMENTS AND AUTHORIZING THE CITY ENGINEER TO SIGN A PROFESSIONAL SERVICES AGREEMENT WITH LEE ENGINEERING, INC. TO PROVIDE PROFESSIONAL (ENGINEERING) SERVICES FOR A NEW MUNICIPAL WATER RESERVOIR, PIPELINES AND BOOSTER STATION PROJECT.**

WHEREAS, the City Engineer has determined that the existing Domestic Water Supply system is in need of additional storage capability to provide safe, efficient and dependable supply for the water distribution system within the City; and

WHEREAS, staff will recommend funding for completion of the project in the 1997-98 Capital Improvement Program; and

WHEREAS, funding for the project is available through the Water System Development Charges; and

WHEREAS, the City now wishes to proceed with the Phase 1 (design, surveying, easement acquisition and geotechnical analysis) design of the new Municipal Water Reservoir, Pipelines and Booster Station and seeks the services of a consulting engineering firm to provide the Professional Services for the referenced project; and

WHEREAS, the City Engineer proposes to utilize the experience and expertise of Lee Engineering, Inc. to provide design, surveying and project management services associated with the design and construction of the Municipal Water Reservoir, Pipelines and Booster Station; and

WHEREAS, if timely made, the completion of the design for the Municipal Water Reservoir, Pipelines and Booster Station will provide for the safe, efficient and dependable supply for the water distribution system within the City; and

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

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

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

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

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

WHEREAS, after reviewing the fees associated with providing the requested design, surveying and project management services, Staff has determined that the fees for the services as proposed by Lee Engineering, Inc. have been found to be fair and reasonable; and

WHEREAS, these fees are calculated to be \$82,500.

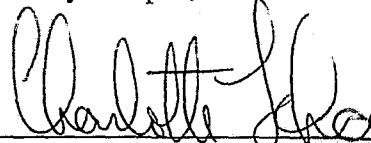
NOW, THEREFORE, THE CITY OF WILSONVILLE RESOLVES AS FOLLOWS:

1. That the City Council, serving in its role as Local Contract Review Board does hereby exempt the award of contract for Professional Services for the planned new Municipal Water Reservoir, Pipelines and Booster Station from competitive bidding and further concludes this award will not diminish competition and will result in substantial costs savings by completing the design to allow construction in the upcoming construction season.
2. The City Council, serving as a Local Contract Review Board, does hereby approve and authorize the City Engineer to sign a Professional Services Agreement between the City of Wilsonville and Lee Engineering, Inc., a copy of which is marked Exhibit "A", attached hereto and incorporated herein, to provide the Professional Services recited above for the referenced project.
3. Authorize the expenditures for this contract not to exceed budget amount from:


Account	Budget Amount
530-49130-5000-327	\$82,500

ADOPTED by the City Council of the City of Wilsonville at a regular meeting thereof of April 21, 1997, and filed with the Wilsonville City Recorder this date.

DATED and signed by the Mayor this 21 day of April, 1997.

  
\_\_\_\_\_  
CHARLOTTE LEHAN, Mayor

ATTEST:

  
\_\_\_\_\_  
Sandra C. King, CMC, City Recorder

SUMMARY of Votes:

Mayor Lehan	<u>Yes</u>
Councilor MacDonald	<u>Yes</u>
Councilor Luper	<u>Yes</u>
Councilor Helser	<u>Yes</u>
Councilor Barton	<u>Yes</u>

**CITY OF WILSONVILLE  
PROFESSIONAL SERVICES AGREEMENT**

THIS AGREEMENT is made and entered into as of the date first indicated on the signature page, by and between the City of Wilsonville, Wilsonville, Oregon, (hereinafter referred to as the "City"), and Lee 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 \$82,500 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 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 James D. Porter. City shall give Consultant prompt written notice of any redesignation of its Project Manager.

**F. Consultant's Project Manager**

Consultant's Project Manager is David A. Lee. 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 21<sup>st</sup> day of APRIL, 1997

CONSULTANT:

Lee Engineering, Inc  
Name of Firm

By David A. Lee  
Typed or  
Printed Name: David A. Lee

Title: V-P

Mailing  
Address: 1800 John Adam ST  
Oregon City, OR 97045

Employer I.D. No. 93-0715781

CITY OF WILSONVILLE:

By Michael A. Stone  
Michael A. Stone  
City Engineer

Attest:

Sandra C. King  
Sandra C. King  
City Recorder

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

Approved as to form:

Michael E. Kohlhoff  
Michael E. Kohlhoff  
City Attorney

**EXHIBIT "A"**

**ITEMS TO BE PROVIDED BY LEE ENGINEERING, INC.**

**WORK PROGRAM  
CITY OF WILSONVILLE SERVICE LEVEL "A"  
RESERVOIR, BOOSTER STATION AND TRANSMISSION MAIN  
DESIGN AND ADMINISTRATION**

**PHASE 1**

**A. PRELIMINARIES**

1. Meet with Mike Stone, City Engineer, to establish the final scope of work, the final time schedule and the design criteria to be applied to this project.
2. Develop the final work, plan schedule and the cost of engineering services, including a fee-not-to-exceed.
3. Execute the Engineering Services Agreement.
4. Formal Notice to Proceed is issued.

**B. PRELIMINARY DESIGN**

1. Pre-design Conference.
2. Data Gather
  - a. Obtain orthophotos and utility maps of the existing facilities.
  - b. Obtain and review pertinent elements of the Walter System Master Plan, Wilsonville Comprehensive Plan and Facilities Element. Receive update from Planning Dept. on the possible development in north Wilsonville.
  - c. Obtain geological data from the City of Wilsonville, Tualatin and the S.C.S.
  - d. Obtain a copy of the deed for the reservoir site and the legal description for the access road and pipeline easement.
  - e. Obtain "as-built" records for the existing system.
  - f. Conduct a site visit and take pictures to aid in design.
  - g. Obtain data for survey control such as record surveys, existing monuments, elevation data, recorded plats, etc.
  - h. Review all collected data with the City to verify its accuracy and interpretation.

3. Preliminary Design

- a. Develop preliminary pipeline routing and reservoir siting based upon the preliminary development plan shown in the Water Master Plan. Establish reservoir overflow elevation.
- b. Perform a hydraulic analysis of the proposed system configuration.
  - 1) Develop system average daily and peak day demands for both Service Level "B" and "C".
  - 2) Develop fire flow requirements based upon City of Wilsonville criteria.
  - 3) Develop the water storage capacity based on the above criteria. Master Plan recommended capacity was 825,000 gallons.
  - 4) Develop preliminary tank geometry and pipeline sizing based on hydraulic requirements.
  - 5) Develop a pump station design which can meet average daily demand and peak day/peak hour demand. Consider emergency power. Site the pump station.
  - 6) Evaluate the telemetry requirement for a variety of operating scenarios.
- c. Determine probable costs for the system elements in pipeline work, reservoir, booster pump station, telemetry, and possible land acquisition.
- d. Prepare a preliminary engineering report and present to the City for review and comment.
- e. Approval to proceed with Final Design. Modify the final scope of work and work schedule if preliminary design dictates a change.

**C. COORDINATION OF SUBSURFACE INVESTIGATION, SURVEYS AND ACQUISITION OF EASEMENTS.**

1. If digitized orthophotos are available such that horizontal and vertical control data are available, these will be used for final design. If not, Lee Engineering, Inc. will use Compass Corporation to develop the necessary design survey data. Survey data for the tank site will be required.
2. Subsurface exploration will be initiated for the reservoir site and for any other areas which may warrant further study, such as potential slide areas. This work will be coordinated with Squier Associates. A scope of work and a fee-not-to-exceed figure will be given to the City before commencing with this work. A formal report will be presented to the City and will serve as the basis for reservoir siting and foundation design.
3. Compass Corporation will be available to provide any needed surveys for the establishment of easements or for permanent land acquisition.



**D. FINAL DESIGN**

1. Pipeline Design

- a. The final pipeline route will be established relative to the existing easement. A combination of tangents between standard fittings and segments of curvilinear design will be used to avoid as much tree removal as possible.
- b. Unless field conditions should dictate otherwise, or if the City should direct an alternate location, the pipeline will be installed 10 to 15 feet off the adjacent property line.
- c. As directed by the City, the pipeline will be extended along Elligsen Road to provide flow to Service Level "B" portions of Parkway Avenue and Canyon Creek North.
- d. A pressure reducing vault will be installed so that the storage volume of Service Level "B" will be available to Service Level "A". This may also allow an intertie with the city of Tualatin's system.

2. Water Tank Design

a. Site Selection

It is our understanding that formal site selection has taken place. We will coordinate with the geotechnic subconsultant to perform the necessary geological review. A formal report will be submitted which will include foundation design recommendations.

b. Site Survey

A topographic survey of the tank site will be required to determine the extent of site grading and to properly design access and the yard piping.

c. Tank Geometry

Tank geometry will be determined by the capacity needs of the system established during the preliminary design, the overflow elevation as required by the established service level, and the foundation elevation of the final site selection.

d. Tank Material

Since the City has indicated a desire to proceed as rapidly as possible with this installation the tank will be made of welded steel construction.

e. Foundation

Standard practice in the industry calls for a reinforced concrete tension ring foundation filled with compacted granular material and capped with oiled sand or asphalt pavement. A seismic analysis will be completed to determine if tie-downs are required and, if installed, the impact upon the tank shell design.

f. Yard Piping

Inlet/outlet piping will be designed for efficient operation and will provide for the isolation and draining of the tank for inspection and maintenance. An investigation will be made to ensure that the overflow/drain line is either connected to the storm sewer system or that overland flow or discharge to natural drainage course will not cause damage.

g. Steel Tank Design

It is standard practice in the industry for the Owner to furnish the tank geometry, foundation design and to specify buried piping, overflow piping, access hatches, ladder and stair assembly details, roof details, painting specification and other data relative to the site. The tank will be specified and designed in accordance with AWWA D-100. Shop drawings will be furnished by the manufacturer/erector and will be thoroughly reviewed by our structural engineer.

h. Painting

We propose at this time that the exterior surface be coated with a three-coat system of epoxy and polyurethane with a finished coat thickness of 8 mils. The interior will be painted with a three-coat high-build epoxy enamel having a finished thickness of 12 mils. Coal Tank and coal tar synthetics are no longer recommended for potable water use. Vinyls and chlorinated rubbers have not had histories of success in western Oregon and therefore may not be considered unless compelling reasons for their use can be developed.

i. Testing

Tank geometry, plate thickness, weld design, material selection and approaches to assembly will be reviewed during the shop drawing submittals. Compaction testing will be completed for the foundation, buried piping and fill materials inside the foundation. Both visual and spot radiographs will be used to check field welds. a review of welder qualifications will precede assembly. Field sand blasting will be inspected for conformance to SSPC-SP10. Field painting will be tested in accordance with AWWAD-102. Initial application will be tested with a wet film thickness gauge and dry film thickness will be tested with a magnetic gauge. We also have equipment for holiday testing.

j. Telemetry

We propose that a pressure transducer be installed in the tank to control the booster pumps and maintain the desired water level in the reservoir. This will require that a conduit and electrical cables be installed in the trench with the water main between the booster station and the reservoir. The telemetry MTU will have to be programmed for both normal operation and very high demand periods.

k. Corrosion Protection

Corrosion protection can be addressed by specifying and installing cathodic protection systems. It is our initial position that the water and environment in Wilsonville are not aggressive, and that corrosion protection is of minimal concern. A good well-applied paint system should provide adequate protection, but cathodic protection can extend coating system life.

l. Tank Security

Because of liability and the risk of vandalism, a security fence should be installed around the tank site. Power should also be supplied for security lighting.

3. Booster Station

a. Pumping Units

The pumping units will be designed so that the station can satisfy the normal function of filling the reservoir, but can also supply the service level as a closed system if the reservoir is off line.

b. Pump Building

Since the pump building will be near Elligsen Road, a suitable architectural design will be furnished.

c. Telemetry

The reservoir level and booster pump station will be controlled by the water system telemetry system.

4. Final Design

a. Plans and Specifications

Design data for the pipeline design and the tank site will be collected using a total station and computerized data collectors. The field information will be downloaded to a usable, reduced format using an input/reduction software program. The final design will be formatted as a DXF file using AutoCAD Release 12 and DCA Release 12.

Three sets of the final design drawings, along with copies of the draft technical specifications and contract documents, will be submitted to the City for review.

b. Final Estimated Cost

A final Engineer's estimate of probable construction cost will be submitted.

c. Permits and Agency Review

Copies of the plans and specifications will be submitted to the Oregon State Health Division for review.

The tank and booster station design will require a building permit.

d. Final Documents

Following City and Agency approval, final corrections will be made and thirty (30) copies of the documents will be delivered to the City for formal bidding.

e. Easements and Land Acquisition

Legal descriptions for all necessary easements or land acquisitions will be submitted.

**EXHIBIT "B"**

**ITEMS TO BE PROVIDED BY THE CITY OF WILSONVILLE**

1. Record drawings of existing improvements where available.
2. Boiler plate for construction documents on computer disc.
3. Coordination and correspondence with ODOT.
4. Construction permits.
5. Conduct bid opening, select contractor, and award construction contract.
6. Construction contract administration.

**EXHIBIT "C"**

**LEE ENGINEERING  
Hourly Rate Schedule**

The following hourly rate schedule applies to most design services desired by clients of Lee Engineering, Inc. The type and extent of those services are generally difficult to determine ahead of time. This rate schedule is provided in order that the client can best accomplish the objective of the project without the burden of delays and added costs associated with needs to draft separate agreements for each new activity.

Inasmuch as this exhibit is for an indefinite period, the client or the ENGINEER may, at the option of either on written notice, request a renegotiation of the following rate schedule to allow for changes in the cost of services. Such new schedule of compensation is to apply only to work performed by the ENGINEER after delivery date of such written notice.

1. F. Duane Lee, P.E., W.R.E.	\$96.00
2. David A. Lee, P.E., P.L.S.	93.00
3. James G. Smith, P.E.	91.00
4. Phil Beverly, P.E.	80.00
5. Pat McDougal, P.E., P.L.S.	60.00
6. Robert C. George, P.E.	64.00
7. Joe Eskew, P.E.	64.00
8. James Shaver, P.E.	55.00
9. Brian Lee, E.I.T.	51.00
10. Mark D. Nelson, E.I.T.	48.00
11. Ken Elbert, E.I.T.	48.00
12. Mike Warren	42.00
13. Tom Hachtel	42.00
14. Sandra Powell, Technician	32.00
15. Mike Grose, Technician	28.00
16. Secretary	35.00