

RESOLUTION NO. 1567

A RESOLUTION OF THE CITY OF WILSONVILLE AUTHORIZING THE PLANNING DIRECTOR TO SIGN A PROFESSIONAL SERVICES AGREEMENT WITH FISHMAN ENVIRONMENTAL SERVICES (FES) TO PROVIDE PROFESSIONAL CONSULTING SERVICES FOR COMPLIANCE WITH STATEWIDE PLANNING GOAL 5, TITLE III OF METRO'S URBAN GROWTH MANAGEMENT FUNCTIONAL PLAN, AND THE LISTING OF SALMONIDS IN THE UPPER WILLAMETTE RIVER UNDER THE ENDANGERED SPECIES ACT.

WHEREAS, the City of Wilsonville has an adopted budget for the current fiscal year (1999/2000), authorizing and approving appropriations for this year; and

WHEREAS, the adopted 1999/00 budget contains funds for the planing effort to result in compliance with federal, state, and regional regulations for natural areas; and

WHEREAS, the City's budget for fiscal year 1998/99 included funds for professional consulting services that were unexpended and carried over to the current fiscal year; and

WHEREAS, the City now wishes to proceed with the scope of work for compliance with Goal 5, Title III, and the Endangered Species Act (ESA) and seeks the services of professional consulting firms to provide certain professional services for the referenced project; and

WHEREAS, the City solicited proposals to accomplish the professional planning services for the referenced project; and

WHEREAS, three submittals were received after a total of fifty requests for proposals were sent out; and

WHEREAS, the three teams of consultant firms that submitted proposals were interviewed; and

WHEREAS, from the three firms that participated in the competitive, selective process based on qualifications, Fishman Environmental Services (FES) was selected as the consulting firm that was best qualified to provide the certain professional services for the referenced project; and

WHEREAS, 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 personal services; and

WHEREAS, the contract to be awarded is for personal services; and

WHEREAS, Section 2.312 of the Wilsonville Code states that the Council is designated as a local Contract Review Board and, relative to contract concerns for the city, shall have the powers granted to the State Contract Review Board; and

WHEREAS, after selecting FES as the best qualified firm to provide certain professional planning services; and

WHEREAS, FES has proposed to accomplish the professional planning services at a fee not to exceed \$80,000; and

WHEREAS, staff has determined the fees as proposed by FES to be fair and reasonable; and

WHEREAS, as authorized at this time, FES can provide the professional services for the City to complete work that will result in compliance with federal, state, and regional requirements for the protection of natural areas.

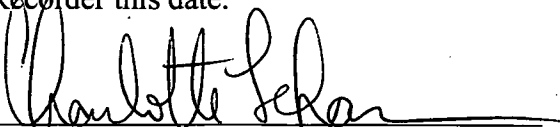
NOW, THEREFORE, THE CITY OF WILSONVILLE RESOLVES AS FOLLOWS:

1. The City Council, serving as the Local Contract Review Board, does hereby approve and authorize the City Planning Director to sign a Professional Services Agreement between the City of Wilsonville and FES, a copy of which is marked Exhibit A, attached hereto and incorporated herein, to provide the professional services referenced above for the project.

2. The City Council hereby authorizes the expenditure of funds for this contract not to exceed the budgeted amount from:

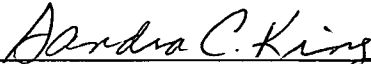
<u>Fiscal Year</u>	<u>Account No.</u>	<u>Budgeted Amount</u>
1999/2000	110-42440-2233	\$80,000.00

ADOPTED by the Wilsonville City Council at a special meeting thereof this 8th day of July, 1999, 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 Helser	Excused
Councilor Barton	Yes
Councilor Kirk	Yes
Councilor Holt	Yes

**CITY OF WILSONVILLE
PROFESSIONAL SERVICES AGREEMENT
(ORIGINAL FORM)**

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 Fishman Environmental Services (FES), (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 agree 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 Manager may 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 that are 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 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 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 \$80,000 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 revised project budget dated June 12, 1999. 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 revised project budget, 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 authorized by this agreement 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 Chris Neamtzu, Associate Planner. City shall give Consultant prompt written notice of any re-designation of its Project Manager.

F. Consultant's Project Manager

Consultant's Project Manager is Paul Fishman, Principal Ecologist and Owner of FES. In the event that Consultant's designated Project Manager is changed, Consultant shall give City prompt written notification of such re-designation. 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 B. 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 insurance requirements of 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.2.2. 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** 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 re-perform any services not meeting this standard without additional compensation. Consultant's re-performance 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.2.3** 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.2.4 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 of \$250,000 per occurrence, provided the form of coverage complies with the requirements of paragraphs J.2.1, J.2.2, J.2.3 and J.2.4.
 - 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. Sub-consultants 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 sub-consultants 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 sub-consultants 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, files, 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 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:

Name of Firm

By _____
Stephan A. Lashbrook
Planning Director

By _____
Typed or
Printed Name: _____

Attest:

Sandra C. King
City Recorder

Title: _____

Mailing
Address: _____

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

Employer I.D. No. _____

Approved as to form:

Michael E. Kohlhoff
City Attorney

“Exhibit B”

The services described in the Scope of Work will be provided to the City of Wilsonville by Fishman Environmental Services (FES), the prime contractor, CDA Consulting Group, and Steve Abel of Stoel Rives, as subcontractors to FES. No other subcontractors will be used on this project without the consent of the City of Wilsonville, as per Section I. 1.2 of the Professional Services Agreement.

Project Description

The City of Wilsonville is seeking an experienced consulting firm or team who is familiar with the Statewide Land Use Planning Goal 5 resource protection process established by the Department of Land Conservation and Development (DLCD) under Oregon Administrative Rule (OAR) 660-16; Metro's Title III of the Urban Growth Management Functional Plan for compliance with Water Quality, Flood Management and Fish and Wildlife Conservation; and the National Marine Fisheries Service requirements for compliance with the Endangered Species Act (ESA) under the listing of salmonids in the upper Willamette River. The objective of this project is to inventory, plan and develop an implementation program for natural resources in the City of Wilsonville consistent with applicable Goal 5, Title III, and ESA requirements.

While there is some existing local, state and federal jurisdictional protection for individual resource sites, the City does not have programs that comprehensively address required natural resource protection.

The natural resources to be studied in this process include wetlands, riparian corridors, forested uplands, floodplains, fish and wildlife habitat, and slopes between 12%- 20% and in excess of 20%. The City recently completed a Local Wetlands Inventory (LWI) and Riparian Corridor Inventory (RCI) which has been approved by the Oregon Division of State Lands. The study area will encompass all land within the current city limits, Urban Growth Boundary, and Urban Reserve areas (see area map, Attachment 1).

The inventory and plan will build upon the City's existing resource protection program, which includes the adopted Comprehensive Plan's Primary and Secondary Open Space designations. The study will utilize the City's collection of environmental studies, LWI/RCI data and analysis, maps, aerial photography, GIS layers, land use and wetland databases, and other associated resource materials (see Attachment 2).

The selected consulting team will work closely with City staff and the resource agencies in developing a complete inventory, analysis, protection plan and map products for the natural resource areas covered by Goal 5, Title III, and the ESA. Specific issues to be addressed include:

- Applying Goal 5 to "natural areas"
- Identifying and resolving conflicts between the Development Code, Comprehensive Plan and state and federal resource protection regulations.
- Developing strategies for implementing protection that will meet Goal 5, Title III, and ESA requirements while balancing and accommodating the issues involved with takings.

In addition to the routine coordination meetings with City staff, the consulting team will be expected facilitate public workshops and attend numerous public hearings.

Scope of Work

I. Management and Administration

1. Project Management:

- a. Provide management, coordination and direction to the project team to complete the project on time and within budget.
- b. Prepare monthly progress reports and timelines.
- c. Schedule project team meetings and prepare meeting agendas and minutes.

2. Project Coordination:

Hold project meetings as frequent as necessary with key team members, city staff, and state and federal resource agencies, as applicable. These meetings will have specific agendas addressing and resolving project issues as they are encountered.

3. Project Manager

The Project Manager shall be identified in the consultant interview process. The identified project manager will be expected to be at all meetings and make presentations as needed.

II. Develop Plan Process, Inventory Resources and Determine Significance

1. In coordination with staff and appropriate resource and planning agencies, develop a "natural area" planning process that:

- a. Meets Statewide Land Use Planning Goal 5 and OAR-660-16 requirements;
- b. Meets Metro's Title III of the Urban Growth Management Functional Plan for compliance with Water Quality, Flood Management and Fish and Wildlife Conservation;
- c. Meets the National Marine Fisheries Service requirements for compliance with the Endangered Species Act under the listing of salmonids in the upper Willamette River;
- d. Stipulates the resources that will constitute "natural areas," including but not limited to wetlands, open space, riparian corridors, fish and wildlife habitat, forested uplands, floodplains, and slopes of 12% to 20%, and 20% and greater.
- e. Considers existing federal, state and local programs and regulations that protect wetlands and natural areas.
- f. Identifies proposed inventory methodology.
- g. Documents recommended planning process in a technical memorandum for review and approval by the City.

In coordination with staff and appropriate resource and planning agencies, and consistent with methodology proposed by the consultant and approved by the City, inventory resources and determine significance consistent with all applicable requirements. The process shall include:

- a. Inventorying the "natural areas" within Wilsonville's City Limits, Urban Growth Boundary and Urban Reserve areas (see attachment 1), except wetlands and riparian corridors previously inventoried by the City. The product will be a "natural area" resource inventory which will provide the location, quality and quantity information required for the Goal 5 [OAR 660-16-00 (1-4)] and Title III processes, including GIS map coverage's (Arc View 3.1) for agency adoption. Inventory data sheets shall be substantially consistent with the adopted Local Wetland Inventory format;
- b. Ensuring the completeness, adequacy and accuracy of inventory data according to Goal 5 Administrative Rules (OAR 16-000 through 16-020); This will require that the consultant:
 - i. Perform field checks to identify "impact areas" for all natural areas as required by OAR 660-16-000(2) and specify resource inventory methods (on-site and off-site description narratives, technical documentation, etc.) that are acceptable to the City and the jurisdictional resource agencies.
 - ii. Provide GIS maps with associated attributes showing inventoried resource sites, impact areas, buffers, and site characteristics.
- c. Specifying criteria for determining the significance of the individual resource sites;
- d. Analyzing inventory information on wetlands and natural areas [OAR 660-16-000 (5)]. If the information is sufficient, recommend, based on significance criteria, the individual resource sites as either:
"1A"-significant, based on location, quality and quantity; or
"1B"-not significant; or
If the inventory information is insufficient for determining significance, the consultant may recommend listing the resource area/site as:
"1C" not enough information;
- e. Providing property owner notification and citizen involvement opportunities that are coordinated with the resource agencies;
- f. Stipulating what constitutes a resource site in terms of the Goal 5 process that also considers the *Columbia Steel Casting vs. City of Portland* Supreme Court decision, and recommend standards for determining a resource "impact area";
- g. Recommending a "Natural Areas Resource Protection Plan" consistent with Goal 5, Title III and ESA processes.

- III. Prepare a fully developed "Natural Areas Resource Protection Plan and Program" synthesizing all previous tasks and:**
1. Summarize the planning process including public input and results.
 2. Create data sheets which include the information on location, quality and quantity for "1A and 1B" resource sites. Identify the impact area and conflicting uses for each resource site [OAR 660-16-005]. Conflicting uses will include allowed land uses applicable to each site.
 3. Identify significant resource sites that have existing protection in local, state and federal programs. Determine the adequacy of existing protection for each "1A" site.
 4. Determine the ESEE (Economic, Social, Environmental, and Energy) consequences of impacts from the conflicting uses identified above for "1A" resource sites [OAR 660-16-005]. Also analyze, where appropriate, the applicability and requirements of other statewide planning goals. Public and coordinating agency input is required.
 5. For each "1A" resource site, recommend a protection, conservation or development decision based on the ESEE analysis balanced against the State Land Use Planning Goals [OAR 660-16-010]. Public and agency input is required. Provide supporting rationale for the recommendation. The decision shall be based on the following:
 - "3A" Protect the resource fully and prohibit conflicting uses on the site and in the impact areas.
 - "3B" Allow the conflicting use fully.
 - "3C" Allow conflicting uses with limits that give some protection to the resource.
 6. For all water quality resource areas identified on Metro's Water Quality and Floodplain Management Plan maps within the City limits and including the Urban Reserves, recommend protection, conservation and/or development based on the performance standards identified in Title III of the Metro Urban Growth Management Functional Plan.
 7. Develop language for the Wilsonville Comprehensive Plan and create Development Code standards to fully protect "3A" resource sites and allow conflicting uses on "3B" sites. For "3C" sites, recommend development standards that are "clear and objective" allowing some conflicting uses while protecting identified "3C" sites to some desired extent.
 8. Recommend a policy for "1C" resource sites.

9. Develop language for the Wilsonville Comprehensive Plan and create Development Code standards for compliance with Title III of the Metro Urban Growth Management Functional Plan, and associated performance standards.
10. Develop language for the Wilsonville Comprehensive Plan and create Development Code standards consistent with the National Marine Fisheries Service requirements for compliance with the Endangered Species Act (1973) under the listing of salmonids in the upper Willamette River.
11. Identify conflicts between the City's Development Code, Comprehensive Plan and the "Natural Areas Resource Protection Plan" and recommend amendments to resolve those conflicts.
12. Identify program strategies for "Natural Areas Resource Protection Plan" implementation, while balancing and accommodating the issues involved in inverse condemnation.

IV. Products, Services, Public Meetings and Workshops

1. Provide draft and final written reports, data sheets and analysis that synthesize all of the required elements for compliance. The draft and final reports shall be provided as hard copy reproducible masters in Microsoft Word 97' (or later) on 3 1/2" diskettes. The natural area inventory mapping shall be done in Arc View (compatible with v.3.1). Mapping products shall identify each resource site and its impact area, buffer areas as well as tables and attributes containing pertinent characteristics for each resource site. All final maps shall be at a scale of 1"=400'. Individual site/area maps shall be provided at a 1"=100' scale or larger.
2. Five hard copies of the draft report, twenty copies of the final report, and 40 additional copies of the executive summary shall be provided to the City of Wilsonville.
3. Conduct up to a total of four public information meetings. Provide checklist for meeting space requirements and supplies. Provide staff with camera-ready announcement for public information meetings. Provide necessary written and graphic materials for participants. Document process and result.

The general public needs to have input on the nature and extent of the inventories. They also should have input on the levels of protection proposed and protection programs. Land owners need to be notified that the ESEE is being conducted, and that Goal 5/Title III/ESA (Endangered Species Act) performance standards may apply to their site. They need to assist in identifying conflicting uses; reviewing draft ESEE commentary; identifying impact areas; verifying the precise boundaries of a resource; and verifying the width of vegetated corridors and appropriate performance standards for Title III resources.

4. In coordination with City staff, work closely with the Wilsonville Parks and Recreation Advisory Board, Planning Commission and City Council. Attend and participate in an estimated ten public meetings (including the above-referenced public workshops). The consultant shall be required to make presentations at meetings, and provide appropriate presentation graphics and handouts.
5. Develop required mailing lists, prepare the required notices for individual landowners, and write the required staff reports including findings for adoption by the Planning Commission and City Council in a public hearing format. City staff will accomplish the mailings, with materials prepared by the consultant.
6. All final products shall become the sole property of the City of Wilsonville.

V. Available Data

1. The information listed in Attachment 1 and 2 to this RFP will be available to the successful candidate.
2. The City shall, at its expense, provide Metro's Regional Land Information System (RLIS) GIS files and digital orthophotos that cover the Study Area.