

RESOLUTION NO. 1603

RESOLUTION OF THE CITY OF WILSONVILLE CITY COUNCIL ACTING IN ITS CAPACITY AS ITS LOCAL CONTRACT REVIEW BOARD, DECLARING THAT AN EMERGENCY EXISTS, EXEMPTING THE WATER TREATMENT INTAKE AND PLANT FACILITY FROM THE COMPETITIVE REQUIREMENTS OF ORS 279.005 ET SEQ. AND THE WILSONVILLE CODE, AUTHORIZING THE CITY ENGINEER TO SIGN A MASTER AGREEMENT FOR DESIGN BUILD SUPPORT SERVICES WITH CH2M HILL TO REPRESENT THE CITY DURING THE DESIGN AND CONSTRUCTION OF THE WILLAMETTE RIVER WATER TREATMENT PLANT BY A DESIGN BUILD CONTRACTOR AND AUTHORIZING THE CITY ENGINEER TO ISSUE A TASK ORDER FOR DESIGN BUILD SUPPORT SERVICES THROUGH NEGOTIATION OF DESIGN BUILD CONTRACT.

WHEREAS, the City Council, acting as the local Contract Review Board, finds that it has authority to determine emergency conditions requiring prompt execution of contracts, as hereinafter set forth:

1.1 ORS 279.055 provides that a local jurisdiction may designate a Contract Review Board which shall have all the power granted to the State Public Contract Review Board; and

1.2 Wilsonville Code (WC) 2.312 designates the City Council as the local Contract Review Board and relative to contract concerns of the City states that the Contract Review Board shall have all the power granted to the State Public Contract Review Board; and

1.3 WC 2.314(3) states that a contract may be exempted from competitive bidding if the Board, by unanimous vote, determines that emergency conditions require prompt execution of the contract and it further states that a determination of such an emergency shall be entered into the record of the meeting at which the determination was made; and

WHEREAS, the City Council, acting as the local Contract Review Board, finds that ORS 279.011(4) defines emergency for public contracting purposes as "emergency" means circumstances that could not be reasonably foreseen that create a substantial risk of loss, damage, interruption of services or threat to the public health or safety that require prompt execution of a contract to remedy the condition.

Therefore, the City Council, acting as the Contract Review Board makes the following findings:

2.1 The City is unable to supply water capacity within legally mandated timeframes for municipal use and for the use of a Women's Prison /Intake Center at the Day Road site, thereby creating a substantial risk of loss and damage and/or a threat to the public health or safety requiring a prompt execution of a contract for a Water Treatment Intake and Plant facility (“Water Treatment Plant”) on the Willamette River to remedy the condition.

2.2 There is a lack of water capacity due to the declining aquifer water supply. There was and is a demonstrated need to prevent a shortage of water for domestic and fire flow use, which shortage would otherwise have occurred with the continuation of new development approvals; and, therefore, the City declared a moratorium on land development approvals due to lack of water supply capacity pursuant to Ordinance No. 493, effective January 5, 1998, and adopted a plan for correction within 60 days thereafter.

2.3 The conditions necessitating the moratorium continued during the initial moratorium period and the plan of correction could not be accomplished in the initial timeframe; and that due to the complexities of obtaining an appropriate and adequate water supply, cost, and timing for potential corrections, the moratorium and its corrections plan were extended on three separate occasions, each for an additional six-month period, effective July 5, 1998 (Ord. No. 497); January 5, 1999 (Ord, No. 504); and July 5, 1999 (Ord. No. 506).

2.4 ORS 197.530(3) Correction Program Procedures states that no single extension under subsection 2 of this section [ORS 197.530(2)] may be for a period longer than six months and no moratorium shall be extended more than three times; thus, the moratorium must be lifted by January 5, 2000.

2.5 Part of the latest correction plan to the last moratorium was the use of treated Willamette River water to meet the City’s water supply capacity needs.

2.6 A measure authorizing the sale of \$25 million in revenue bonds for the treatment and use of Willamette River water as a water supply source was duly passed by the electorate of the City of Wilsonville on September 21, 1999.

2.7 After a lengthy process involving supersiting of the Women's Prison/Intake Center at the Dammasch Hospital site and the subsequent legislative action re-siting the facility,

the Department of Corrections (DOC) has received approval from the Governor to construct a Women's Prison/Intake Center on Day Road.

2.8 The Women's Prison/Intake Center is scheduled to commence operations in October 2001 and, under SB 686, DOC has the legal authority to require the City provide water for operations.

2.9 A part of a plan for correction of the problem creating the water moratorium and a Plan for a water supply until 2006 for the Women's Prison/Intake Center included a near-term supply of 2 MGD from the Tualatin Valley Water District (TVWD) which TVWD had committed to provide, routed through the City of Tualatin, to the City of Wilsonville with 630,000 gallons per day of the 2 MGD reserved for the Women's Prison/Intake Center and the remainder for the City of Wilsonville, which could bridge the City's interim water needs until the Water Treatment Plant and long term source would be operational.

2.10 In an August 23, 1999 letter to the Department of Correction, TVWD explained that, without a connection through the City of Tualatin's distribution system, TVWD will not be able to deliver the previously agreed 2 MGD to the City of Wilsonville.

2.11 The maximum water that TVWD could otherwise provide would be 300,000 gallons per day to the prison, which would not provide an interim source of water for the City of Wilsonville and which would not be sufficient for the Women's Prison/Intake Center operations, and that the City of Tualatin will no longer permit the water for a prison site at Day Road routed through its system.

2.12 As a result of the commitment by TVWD, the City of Wilsonville could not have reasonably foreseen that TVWD would not be able to provide water as previously agreed.

2.13 Property owners in the City of Wilsonville have been and continue to be precluded from receiving final development approval for their land under the water moratorium, as the City could not provide a long-term water source.

2.14 Unless there is a substantial reduction of the interim time period to provide an adequate supply of water, there would be a substantial risk of damage to property values and to the highest and best use of property and to the public health and safety.

2.15 Through heightened conservation and the potential deepening of some wells, it may be possible to cover the summer peak periods in 2000 and 2001, but not beyond.

2.16 The additional water is required to provide water to the Women's Prison/Intake Center in April 2002.

2.17 The City of Wilsonville wells can provide water to the prison during the fall, winter, and spring seasons only and the City will need an additional source of water to provide water to the City of Wilsonville and to the prison in April 2002.

2.18 The failure to provide this water to the Women's Prison/Intake Center would be a threat to the public health or safety.

2.19 The Willamette River Water Supply System Preliminary Engineering Report for the City of Tigard, City of Wilsonville, City of Sherwood, Tualatin Valley Water District and the City of Tualatin estimated that 37 months would be required from the award of the engineering services agreement to final construction of the water treatment plant on the Willamette.

2.20 There are only 28 months available from an earliest anticipated award of an engineering service agreement in December 1999, until completion of the water treatment plant is required on April 1, 2002.

2.21 There is an emergency as that term is defined in ORS 279.011(4) and used in the Wilsonville Code.

2.22 Design build is a method of project delivery in which the owner executes a single contract with one entity (design builder) to provide architectural/engineering services and construction services. Design build affords singular responsibility which, in turn, promotes motivation to build in quality throughout the design and construction process; an early team approach promotes continued value engineering and constructability, reduces significantly total design and construction time which in turn translates into cost savings, reduces owners administrative burden and provides guaranteed costs.

2.23 The design build process allows a substantial shortening of the overall time required to complete design and construction of the water treatment plant to ensure the Water Treatment Plant is ready for use April 1, 2002 in that construction in the Willamette River will be limited to only the summer periods; and it will be necessary to work in the Willamette during both the summer of 2000 and the summer of 2001.

2.24 The scope of the water treatment plant project would need to be substantially refined to identify intake structure capacity, water treatment plant systems overall capacity, chemical processing capacity, laboratory capacity, architectural design features, wet well

capacity, sludge processing and treated water line routing and size before the project could be competitively bid or advertised for proposals under a competitive selection process.

2.25 This refinement of scope would take at least three months.

2.26 The three-month delay would probably prevent a substantial construction during the construction season for 2000, and jeopardize the successful completion of the project by April 1, 2002.

2.27 There is insufficient time to exempt the Project under ORS 279.015(2)(a) and (b) and WC 2.314(2) and follow that process.

2.28 Nevertheless, to the maximum extent possible given the emergency conditions, the City of Wilsonville desires to use a form of contracting with competition.

2.29 It is unlikely that a design build contract for the Water Treatment Plant will encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts.

2.30 The award of a design build contract for the Water Treatment Plant will likely result in substantial cost savings.

2.31 On November 1, 1999, Council adopted Resolution No. 1602:

- a. Authorizing the City Manager and such persons as she may direct to immediately solicit Request for Qualifications from qualified design build contractors for the water treatment plant; and
- b. Directing the City Manager to make a recommendation for the selection of the design build contractor to the City Council acting as the City's Contract Review Board for its approval no later than December 20, 1999; and
- c. Authorizing the City Manager and such persons that she may direct shall negotiate a design build contract with the firm selected by the City Council acting as the City Contract Review Board in a form approved by the City Attorney and is directed to present the final contract to the City Council acting as the Contract Review Board for approval no later than February 1, 2000; and

2.32 The City staff has an insufficient number of qualified personnel to provide the full scale of owner representation during the selection of the design build contractor, the negotiation of the design build contract and the representation of the owner during construction; and

2.33 CH2M Hill is an engineering firm which the City lists as a qualified firm to provide consulting engineering services, this City has used CH2M Hill in the past to provide engineering services, and CH2M Hill has substantial exemplary experience in designing water treatment plants and in providing design build services; and

2.34 Due to the fact time is of the essence and an emergency in this matter has been described, staff has negotiated a Master Agreement for Professional Services to provide design build support services with CH2M Hill a copy of which is marked Exhibit A, attached hereto and incorporated herein as fully set forth, and staff recommends approval and authorization of its immediate execution by the Community Development Director; and

2.35 Staff recommends City Council approve of Task Order No. 1 of the Master Agreement for Professional Services which would include the provision of design build support services through the negotiation of the price with the design build contractor has been negotiated at a time and materials cost not to exceed \$140,000, and authorize its immediate execution by the Community Development Director.


NOW, THEREFORE THE CITY OF WILSONVILLE RESOLVES AS FOLLOWS:

- A. Based upon the findings and authority recited above and incorporated as if fully set forth herein, the City Council, acting as the City's Contract Review Board, hereby finds and declares that there is a serious lack of water supply capacity in the City of Wilsonville; that an emergency exists in the City's current lack of water capacity and ability to end the moratorium on land development approvals as required by state statute and to serve the Women's Prison/Intake Center; and that prompt execution of a professional services agreement to provide design build support services is required to obtain a timely design build contract to design and construct a water treatment plant to remedy the emergency conditions.
- B. Subject to the final review of the City Attorney, the Council approves and authorizes the City Engineer to immediately execute the Master Agreement for Professional Services, Exhibit A, with CH2M Hill to provide design build support services for the design and construction of the Willamette River water treatment plant.
- C. Council approves and the City Engineer is authorized to immediately issue Task

Order No. 1 to the Master Agreement for Professional Services, Exhibit A, between the City of Wilsonville and CH2M Hill for design build support services at a time and materials cost not to exceed \$140,000 without prior approval by the City.

- D. The City Engineer is authorized to approve modifications to Task Order No. 1 provided that the total cost of any proposed modifications does not exceed \$40,000. The City Engineer is directed to submit Task Order No. 2 for design build support services during the construction to Council for approval to issue the task order.
- E. Council authorizes the expenditure funds for the project from Account #530-49130-5000-322 in the amount up to \$180,000.

ADOPTED by the Wilsonville City Council at a regular Council meeting thereof this 15th day of November, 1999, and filed with the Wilsonville City Recorder this same date.



CHARLOTTE LEHAN, MAYOR

ATTEST:



SANDRA C. KING, CMC, City Recorder

SUMMARY OF VOTES:

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

CH2M HILL MASTER AGREEMENT FOR PROFESSIONAL SERVICES

(11/15/99)

This Master AGREEMENT is between CH2M HILL, CORP. (the CONSULTANT), and City of Wilsonville, Oregon (the CITY), for engineering services associated with the Willamette River Water Treatment Plant Project. The engineering services will be determined and specified on a Task Order basis.

Article 1. Scope of Services

CONSULTANT shall be an independent contractor performing the services hereunder. The CONSULTANT agrees to provide required engineering, planning, permitting, public involvement, economics, design review, construction management, inspection, and related services for the CITY in the role of an Owner's Representative providing Design-Build Support Services in a Design-Build Willamette River Water Treatment Plant Project. It is anticipated that the services furnished by the CONSULTANT to the CITY will be performed under a series of Task Orders defining the specific services to be performed and the estimated cost for each phase of services. The full scope of services as they are understood currently is in Attachment A to this master agreement.

The specific services to be provided by the CONSULTANT and the compensation for such services will be as mutually agreed to in separate Task Orders, which shall become a supplement to and part of this AGREEMENT. Unless otherwise indicated in a Task Order, execution of a Task Order by the CITY shall constitute authorization for the CONSULTANT to proceed with the services enumerated in the Task Order. The Task Orders may be mutually amended as changes in scope or required levels of work effort are identified. An initial Task Order is attached hereto for Task 1 services.

Article 2. Compensation

Compensation by the CITY to the CONSULTANT for the services enumerated in ARTICLE 1, will be on the basis to be established in each Task Order. Said compensation for each service will be negotiated by the parties at the time each Task Order is authorized.

The types of compensation that may be used for each Task Order are limited to the following:

1. Cost Reimbursables—Multiplier

CONSULTANT'S compensation will be based on the Salary Cost multiplied by a factor of 2.2 plus Direct Expenses, plus a service charge of 10 percent of Direct Expenses, plus any applicable sales, use, value added, business transfer, gross receipts, or other similar taxes. The Salary Costs are subject to annual calendar year adjustments; (not to exceed six percent annually) include all allowances for salary, overheads and fee; but do not include allowances for Direct Expenses.

Direct Expenses are defined as the costs incurred on or directly for the project, other than the labor costs (as defined previously). Such direct expenses shall be obtained from commercial sources and other items provided by the CONSULTANT. Direct Expenses shall include, but not be limited to, necessary transportation costs, including mileage at the CONSULTANT's standard cost per mile when the CONSULTANT's own automobiles are used, meals, computer services, word processing services, mail costs, telephone, printing, binding, reprographic, the cost of technical or professional services furnished by subconsultants, outside sources, and materials and supplies from outside sources.

The cost reimbursable compensation(s) included in Task Orders are estimates of the cost of required services based on the CONSULTANT's experience and judgment. The CONSULTANT will complete the specified work within the budget(s) established and will keep the CITY informed of progress toward that end so that budgets and/or the work effort may be adjusted, if appropriate. The CONSULTANT is not obligated to incur costs beyond established budgets, nor is the CITY obligated to pay CONSULTANT beyond these budgets.

2. Lump Sum

When Engineer's compensation basis is a lump sum, it shall include full compensation for all the CONSULTANT'S Salary Cost, Direct Expenses (actual + 10%) and Profit, The lump sum amount will be developed using the labor and expense definitions described in Section "Cost Reimbursables – Multiplier."

3. Renegotiation of Task Order Scope and Compensation

The CITY reserves the right to modify the scope of services as needed to satisfy the needs of the projects as identified by task orders.

For all Task Orders that specify a maximum budget, not-to-exceed fee, or a lump sum amount as the basis of compensation, the CONSULTANT reserves the right to renegotiate this compensation if the scope of services as specified on the Task Order is modified or changed by the CITY, whereupon additional expenses will be incurred by the CONSULTANT. When any budget has been increased, the CONSULTANT's excess costs expended prior to such increase that were directly caused by the Task Order modification or change will be allowable to the same extent as if such costs had been incurred after the approved increase.

If the scope of services as specified in a Task Order is modified or changed by the City, wherein reduced costs will be incurred by the CONSULTANT, the Task Order budget will be decreased to reflect the reduced costs to be incurred by the CONSULTANT.

Article 3. Terms of Payment

Payment to the CONSULTANT will be made as follows:

A. Invoices and Time of Payment

Invoices will be issued by CONSULTANT by the 5th of each month following the month the professional services were provided for all work performed under this AGREEMENT. Invoices are due and payable net 30 days from receipt. Upon mutually agreed upon completion of services enumerated in each Task Order, the final payment of any balance will be due upon receipt of the final invoice.

For Task Orders with lump sum compensation, monthly invoices will be based on work programs as a percent complete of the Task Order services. For Task Orders with cost reimbursables compensation, invoices will be based on actual labor and expenses incurred during the period and will include a summary of all charges, current and past, along with a summary of previous payments made by the owner.

B. Interest

Interest at the rate of 1 percent per month will be charged on all amounts beginning 15 days after the first of the month following the month the professional services were provided.

Article 4. Obligations of the CONSULTANT

A. Standard of Care

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.

B. Subsurface Investigation

In soils, foundations, groundwater, and other subsurface investigations, the actual characteristics may vary significantly between successive test points and sample intervals and at locations other than where observations, explorations, 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 schedule. These conditions and cost/execution effects are not the responsibility of the CONSULTANT.

C. Subcontracting

The CONSULTANT shall not subcontract its work under this Agreement, in whole or in part, without approval of the SUBCONTRACTOR by the CITY. The CONSULTANT shall require any approved subcontractor to agree, as to the portion subcontracted, to fulfill all obligations of the CONSULTANT as specified in this Agreement.

Notwithstanding CITY approval of a subcontractor, the CONSULTANT shall remain obligated for full performance hereunder, and the CITY shall incur no obligation other than its obligations to the CONSULTANT hereunder.

If a specified or requested subcontractor and/or minority- and women-owned business is unable to comply with the insurance requirements of this Agreement, the CITY and CONSULTANT may mutually accept the subcontractor or business and limit the CONSULTANT's liability arising from the work of said subcontractor or business to the proceeds available from their insurances.

D. CONSULTANT's Personnel at Construction Site

The CONSULTANT may, at the CITY's request, provide personnel on the construction sites of projects. The specific duties of the CONSULTANT's on-site personnel will be defined in a subsequent Task Order. The presence of CONSULTANT's personnel at a construction site is for the purpose of monitoring, reporting progress assuring compliance with the CITY approved plans and specifications and reviewing payment requests of the work and providing the CITY with a greater degree of confidence that the completed work conforms to the Contract Documents and that the integrity of the design concept as reflected in the Contract Documents has been implemented and preserved by the construction contractor(s). CONSULTANT neither guarantees the performance of the construction contractor(s) nor assumes responsibility for construction contractor's failure to perform their work in accordance with the Contract Documents. Construction sites include places of manufacture for materials incorporated into the construction work. Construction contractors include manufacturers of materials incorporated into the construction work.

The presence of the CONSULTANT's personnel at a construction site, whether as onsite representatives or otherwise, does not make the CONSULTANT or its personnel in any way responsible for those duties that belong to construction contractors and/or other entities and does not relieve the construction contractors or any other entity of its obligations, duties, and responsibilities, for, but not limited to, all construction methods, means, techniques, sequences, and procedures necessary for coordinating and completing all portions of the construction work in accordance with the Contract Documents and any health or safety precautions required by Oregon Bureau of Labor and Industries or OSHA. The CONSULTANT and its personnel have no authority to supervise or control construction contractor(s) or other entity or their employees in connection with their health or safety precautions.

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 if any of CITY's rights.

E. Opinions of Cost, Financial Considerations, and Schedules

In providing opinions of construction cost, financial analyses, economic feasibility projections, and schedules for the project, the 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 its 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, the CONSULTANT makes no warranty that the CITY's actual project costs, financial aspects, economic feasibility, or schedules will not vary from the CONSULTANT's opinions, analyses, projections, or estimates. If the CITY requires the CONSULTANT to prepare quantity and material takeoffs and/or opinions of construction cost from plans and specifications that are less than 100 percent complete, the CITY will hold the CONSULTANT harmless for any and all loss, liability, and claims resulting from the incompleteness.

F. Construction Progress Payments

The CONSULTANT's construction-related duties will, include recommendations to the CITY of payments to construction contractors. This may include recommendations for work completed but not accepted. Recommendations by the CONSULTANT to the CITY for periodic construction progress payments to the construction contractor will be based on the CONSULTANT's review and evaluation of contractor's application for payment and the CONSULTANT's own knowledge, information, and belief from selective sampling that the work has progressed to the point indicated. Such recommendations regarding contractor payment do not represent that continuous or detailed examinations have been made by the CONSULTANT to ascertain that the construction contractor has completed the work in exact accordance with the Contract Documents; that the final work will be acceptable in all respects; that the CONSULTANT has made an examination to ascertain how or for what purpose the construction contractor has used the monies paid; that title to any of the work, materials, or equipment has passed to CITY free and clear of liens, claims, security interests, or encumbrances; or that there are not other matters at issue between the CITY and the construction contractor that affect the amount that should be paid.

G. Record Drawings

Record drawings (as-builts) will be compiled and provided by the Design-Build Contractor from information obtained during the construction by the Design-Build contractor and the construction inspector. The record drawings will represent, with the best available information, the basis of construction. The record drawings may not always represent the exact location or exact manner in which the project was finally constructed.

H. Access to CONSULTANT's Accounting Records

The CONSULTANT will maintain accounting records, in accordance with generally accepted accounting principles and practices, to substantiate all invoiced amounts. Said records will be available to CITY during CONSULTANT's normal business hours for a period of 3 years after CONSULTANT's final invoice for examination to the extent required to verify the direct costs (excluding established or standard allowances and rates) incurred hereunder. The CITY may audit all accounting records relating to costs billed to the CITY by the CONSULTANT under the terms of this agreement.

I. CONSULTANT's Insurance

The CONSULTANT will maintain throughout this AGREEMENT the following insurance:

- (a) Workers' compensation and employer's liability/stopgap insurance as required by the State of Oregon.
- (b) Comprehensive automobile and vehicle liability insurance covering claims for injuries to persons or damages to property of others arising from use of motor vehicles, including onsite and offsite operations, and owned, nonowned, or hired vehicles, with \$1,000,000 combined single limits.
- (c) Commercial general liability insurance covering claims for injuries to persons or damage to property of others arising out of any covered negligent act or omission of the CONSULTANT or any of its employees, agents, or subcontractors, with \$1,000,000 combined single limits.
- (d) Professional liability insurance of \$2,000,000 single occurrence and in the aggregate.
- (e) CITY will be named as an additional insured with respect to CONSULTANT's liabilities hereunder in insurance coverages identified in Items b and c, and CONSULTANT waives subrogation against CITY as to said policies.
- (f) CONSULTANT shall provide CITY with certificates of insurance showing compliance with these insurance requirements prior to commencing work. This requirement shall continue as policies are renewed or replaced. There shall be thirty (30) days' prior written notice of any policy cancellations and thirty (30) days' notice given of the renewal and/or replacement of existing policies.

J. Project Personnel

CONSULTANT project personnel shall not be changed or substituted without prior authorization from the CITY. Project personnel will be assigned on a Task Order basis.

Article 5. Obligations of the CITY

A. CITY-Furnished Data

The CITY will provide the CONSULTANT copies of available technical and related data in the CITY's possession, including but not limited to, previous reports, maps, surveys,

borings, and all other information relating to the CONSULTANT's services on the projects. CONSULTANT will reasonably rely on the accuracy, timeliness, and completeness of the information provided by and as represented by the CITY.

B. Advertisements, Permits, and Access

Unless otherwise agreed to in the Scope of Services, the CITY will obtain, arrange, and pay for, or reimburse the CONSULTANT, for all advertisements for bids, permits, and licenses required by local, state, province, or federal authorities, except that the CONSULTANT will obtain and pay for City or County required business licenses necessary for the CONSULTANT's services.

C. Timely Review

The CITY will examine the CONSULTANT's studies, reports, sketches, drawings, specifications, proposals, and other documents; obtain advice of an attorney, insurance counselor, accountant, auditor, or other consultants as CITY deems appropriate; and render in writing decisions required of CITY in a timely manner.

E. Prompt Notice

The CITY will give prompt written notice to CONSULTANT whenever CITY observes or becomes aware of any development that affects the scope or timing of CONSULTANT's services or any defect in the work of the CONSULTANT. The CONSULTANT will give prompt written notice to the CITY whenever CONSULTANT observes or becomes aware of any development that affects the scope or timing of the project or any defect in the work of the CITY or construction contractors.

F. Contractor Indemnification

CONSULTANT shall have the right to review and approve all construction contracts associated with projects for purpose of determining:

- (1) That such contracts contain provisions substantially identical to those in ARTICLE 4i of the AGREEMENT.
- (2) That such contracts include provisions reading substantially as follows:
 - (a) The contractor agrees to indemnify and save harmless the CITY and CONSULTANT and their officials, agents, and employees from and against any and all suits, claims, actions, losses, costs, penalties, and damages of whatsoever kind or nature, including attorneys' fees, arising out of, in conjunction with, or incidental to the work of this contract, except those caused by the sole negligence of the CITY or CONSULTANT or their officials, agents, or employees. In the event the obligation to indemnify is caused by or results from the concurrent negligence of the CITY or CONSULTANT or their officials, agents, or employees and the contractor or its employees of agencies, the contractor shall be required to indemnify the CITY or CONSULTANT only to the extent of the negligence of the contractor or its employees or

agents. In the event of litigation among the parties to enforce the rights under this paragraph, reasonable attorneys' fees shall be allowed to the prevailing party.

- (b) This indemnity agreement shall include any claim made against the CITY or CONSULTANT or their officials, agents, or employees by an employee of the contractor or of a subcontractor even if such employer is thus or otherwise immune from liability pursuant to workers' compensation statutes.
 - (c) The provisions contained in this paragraph have been mutually negotiated by the parties and it is the intent of the parties that the contractor provide the broadest scope of indemnity permitted by Oregon law.
- (3) The construction contractor shall carry comprehensive general liability insurance naming the CITY and the CONSULTANT as additional insured and including a contractual liability clause or endorsement covering the construction contractor's indemnity of the CITY and CONSULTANT and shall provide the CITY and CONSULTANT with a certificate of insurance showing compliance with this paragraph prior to commencing work.
 - (4) CITY will use reasonable efforts to include CONSULTANT as additional named insured and to seek indemnity for CONSULTANT consistent with the requirements of paragraphs 2 and 3 above. To the extent that CITY is unable to actually obtain such protection for the CONSULTANT, it will be deemed to have complied with paragraphs 2 and 3 above.

G. Litigation Assistance

If the CITY requests, the CONSULTANT will provide assistance to support, prepare, document, bring, defend, or assist in litigation undertaken or defended by the CITY on issues related to the project. All other such services required or requested of the CONSULTANT, except for suits or claims among the parties to this AGREEMENT, will be reimbursed as mutually agreed, and payment for such services shall be in accordance with ARTICLE 3. CONSULTANT shall bear all such costs incurred as a result of the CONSULTANT's fault or negligence in whole or in part.

H. Changes

The CITY may make or approve changes within the general scope of services of this AGREEMENT. If such changes affect the CONSULTANT's cost or time required for performance of the services, an equitable adjustment will be made through an amendment to this AGREEMENT.

Such changes shall be served in the following manner:

1. In-person delivery to and signed acknowledgement of receipt by an authorized officer, employee, agent, or other representative of the contracting parties.

2. Deposited in the U.S. mails posted to the address(es) given in this document.

I. CONSULTANT's Standards

It is the general intent that services specified in this AGREEMENT shall be performed by the CONSULTANT, and will be delivered using the CONSULTANT's standard form and content of drawings, technical specifications, and Contract Documents. The CONSULTANT's standards will be in conformance with applicable local, state, and federal standards and requirements. The use of other standards, if requested or required, will be stipulated in Task Order "Scope and Services."

Article 6. General Legal Provisions

A. Authorization to Proceed

This agreement shall be effective after signing by both parties and upon issuance of written notice to proceed by the CITY. Authorization to proceed on work elements not defined in this AGREEMENT as to scope, cost, and/or time for completion shall be in the form of a Task Order as previously described.

B. Reuse of Project Documents

All designs, drawings, specifications, documents, and other work products of the CONSULTANT, whether in hard copy or in electronic form, are instruments of service for these projects, whether the projects are completed or not. Reuse, change, or alteration by the CITY or by others acting through or on behalf of the CITY of any such instruments of service without written permission of the CONSULTANT will be at the CITY's sole risk. The CITY agrees to indemnify the CONSULTANT and its officers, employees, subcontractors, and affiliated corporations from all claims, damages, losses, and costs, including, but not limited to, litigation expenses and attorney's fees, arising out of or related to such authorized reuse, change, or alteration.

C. Force Majeure

The CONSULTANT is not responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of the CONSULTANT.

D. Termination

This AGREEMENT may be terminated for cause with 30 days' written notice to the addresses specified in this document if either party fails substantially to perform through no fault of the other and does not commence correction of such nonperformance within 5 days of written notice to the addresses specified in this document and diligently complete the correction thereafter.

On termination, the CONSULTANT will be paid for all authorized work performed up to the termination date plus termination expenses such as, but not limited to, subcontract termination costs and related closeout costs.

E. Suspension, Delay, or Interruption of Work

The CITY may suspend, delay, or interrupt the services of the CONSULTANT for the convenience of the CITY. In the event of force majeure or such suspension, delay, or interruption, an equitable adjustment in the project's schedule, commitment and/or cost of CONSULTANT's personnel and subcontractors and CONSULTANT's compensation will be made. Such compensation shall not exceed the value of the work to be performed.

F. No Third-Party Beneficiaries

This AGREEMENT gives no rights or benefits to anyone other than the CITY and CONSULTANT and has no third-party beneficiaries.

G. Indemnification

- (a) CONSULTANT agrees to indemnify and defend CITY from any loss, cost, or expense claimed by third parties for property damage and bodily injury, including death, caused solely by the negligence or willful misconduct of CONSULTANT, its employees, or agents in connection with the project.
- (b) CITY agrees to indemnify and defend CONSULTANT from any loss, cost, or expense claimed by third parties for property damage and bodily injury, including death, caused solely by the negligence or willful misconduct of CITY, its employees, or agents in connection with the project.
- (c) If the negligence or willful misconduct of both the CONSULTANT and CITY (or a person identified above for whom each is liable) is a cause of such damage or injury, the loss, cost, or expense shall be shared between CONSULTANT and CITY in proportion to their relative degrees of negligence or willful misconduct and the right of indemnity shall apply for such proportion.
- (d) This indemnity agreement shall include any claim made against the CITY or CONSULTANT or their officials, agents, or employees by an employee of the other party even if such employer is thus or otherwise immune from liability pursuant to workers' compensation statutes.
- (e) The provisions contained in this paragraph have been mutually negotiated by the parties and it is the intent of the parties that the paragraph provide the broadest scope of indemnity permitted by Oregon law.

H. Assignment

Neither party will assign all or any part of this AGREEMENT without the prior written consent of the other party.

I. Legal Action/Dispute Resolution

All legal actions by either party against the other arising from this AGREEMENT or for the failure to perform in accordance with the applicable standard of care or any other cause of action will be barred 2 years from the date the claimant knew or should have

known of its claim, but, in any event, no later than 10 years from the date of mutually agreed substantial completion of CONSULTANT's services.

J. Interpretation

Releases from, indemnities against, limitations on, and assumptions of liability and limitations on remedies expressed in this AGREEMENT shall apply even in the event of breach of contract or warranty, fault, tort, including negligence, strict liability, statutory, or any other cause of action (except for willful or reckless disregard of obligations) of the party released or indemnified, or whose liability is limited or assumed, or against whom remedies are limited. Party, as used herein, includes the named parties, their officers, employees, agents, subcontractors, and affiliates.

K. Consequential Damages

In no event shall CONSULTANT or CITY, their officers, employees, agents, or subcontractors be liable for consequential damages not directly related to a negligent act, error, or omission of the CONSULTANT or the CITY, respectively.

L. Jurisdiction

The law of the State of Oregon shall govern the validity of this agreement, its interpretation and performance, and any other claims related to it. Venue will be in Clackamas County.

M. Severability and Survival

If any of the provisions contained in this AGREEMENT are held for any reason to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provision, and this AGREEMENT shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

ARTICLES 4, 5, and 6 shall survive termination of this AGREEMENT for any cause.

N. Nondiscrimination

No person shall be denied or subjected to discrimination in receipt of the benefits of any services or activities made possible by or resulting from this AGREEMENT on the grounds of sex, race, color, creed, marital status, age, or national origin. Any violation of this provision shall be considered a material violation of this AGREEMENT and shall be grounds for cancellation, termination, or suspension in whole or in part by the CITY.

O. Independent Agent

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

P. Funding

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

Article 7. Attachments, Schedules, and Signatures

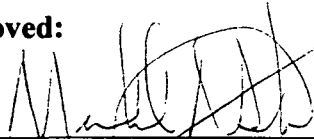
This AGREEMENT, including its attachments and schedules, constitutes the entire AGREEMENT, supersedes all prior written or oral understandings, and may be changed only by a written amendment executed by both parties.

IN WITNESS WHEREOF, the parties execute below:

For the CITY:

City of Wilsonville
30000 S.W. Town Center Loop East
Wilsonville, OR 97070

Approved:

By:  Date: 11/17/99
Title: CITY ENGINEER

For the CONSULTANT:

CH2M HILL, CORP.
825 N.E. Multnomah, Suite 1300
Portland, OR 97232

Approved:

By: _____ Date: _____
Title: _____

Approved as to form:

By: _____ Date: _____

TASK ORDER NO. 1

TO THE

MASTER AGREEMENT

BETWEEN

THE CITY OF WILSONVILLE AND CH2M HILL

DESIGN-BUILD SUPPORT SERVICES

This Task Order is to be conducted under the terms and conditions of the Master Agreement between the City of Wilsonville and CH2M HILL, CORP. dated _____, for the Owner's Representative for a Design-Build Water Treatment Plant Project.

Scope of Work

TASK 1 - Complete Request for Qualifications (RFQ), Select Design-Builder, and Final Contract

Task Objective

Complete the RFQ document, participate in a pre-submittal meeting (if held), participate in Design-Builder selection using the criteria contained within Design-Builder submittals as described in the RFQ to help the City determine the most qualified Respondent, and select a Design-Builder.

Task Description

1.1 Request for Qualifications

The draft RFQ will be developed and reviewed with the City staff. Changes will be incorporated and a final RFQ will be prepared for review by the City Council on November 1, 1999. Once approved by the City Council, the RFQ will be distributed by the City to selected Design-Builders. The Consultant will prepare materials for Addenda to the RFQ as needed and requested by the City.

1.2 Pre-Submittal Meeting

A pre-submittal meeting is not currently scheduled or planned. If a pre-submittal meeting is scheduled later during the process to provide Design-Builders with information about the City submittal process and requirements and to provide background information for the Project, the Consultant will attend and participate in the meeting. No new materials would be prepared for this conference unless requested by the CITY. Information presented and/or obtained at the conference, including questions and respective answers would be recorded by the Consultant and distributed to those Design-Builder firms requesting RFQ documents.

1.3 Existing Reports Review

Prior to the initial Technical Review Committee meeting thoroughly review the existing reports, including the Willamette River raw water sampling reports, the pilot plant report, and the preliminary engineering report. Prepare a memorandum on the appropriateness of the selected treatment process given the water quality issues and the pilot work completed. Review the recorded threats of lawsuits (one specific threat has been recorded) and prepare technical advise for the committee regarding water quality issues.

1.4 Survey of Design-Build Experience

Prepare a brief survey to include questions regarding schedule, budget, quality, change order experience, and who comprised the Design-Build team. Contact representatives of several municipalities where similar Design-Build projects have been completed. Conduct the survey prepared and determine their perspective of how successful the project delivery method was – "Would they do it again?". Present the results in a brief report. Include a discussion of the findings and conclusions.

1.5 Statement of Qualifications Evaluation

The Statement of Qualifications submittals will be reviewed by the City's selected Technical Review Committee. The Consultant will provided staff experienced in water treatment plant processes and design-build construction to participate in the Technical Review Committee, either on the committee itself or in an advisory role to the committee, as directed by the City.

The submittals will be evaluated as described in the RFQ. The Design-Builder submittals will be distributed to the City's evaluation team for review. An evaluation form will be prepared for use by the City's evaluation team members during the review process. The team will meet to discuss and summarize the submittal findings. Requests for additional information and presentations by the potential Design-Builders may occur to complete the evaluation process. The outcome of the evaluation will be summarized and presented to the Wilsonville City Council and other participants as determined by the City. Actual contract award will follow negotiations of a contract and approval by the City Council.

1.6 Selection Results Debriefing

Once approved, the Design-Builder will be notified of the results of the evaluation. Prepare a format by which to review the results of the selection process with the design-build team participants after the contract has been awarded to the selected team. Participate with the City staff in meetings with the design-build teams as requested.

1.7 Design-Build Contract

Prepare a design development contract under which the design-build contractor can initiate the preliminary design, the architectural features, the neighborhood and stakeholder meetings, and the local, state and federal construction approval processes. This will be the first task of the design build contract that will be negotiated subsequently with the contractor. The intent is to provide a means by which the contractor can start work immediately upon the notice to proceed being authorized while negotiations proceed on the broader design build contract.

Assist the City in development of criteria and materials for the Design-Build Contract. Items to be developed may include:

- Project Delivery Plan
- Terms and Conditions
- Risk Allocation
- Documentation Requirements (Record Drawings, O&M Manuals)
- Performance Criteria/Equipment Selection
- Startup Testing Requirements
- Land/Site Programming

Actual contractual requirements and areas for Consultant participation will be determined by the City during the design phase. Scope and budget for Support Services will be modified to reflect the actual Work required.

1.8 Financial and Cash Flow Model

Develop a financial and cash flow model in coordination with the City to develop criteria for project funding and Design Builder drawdown rate.

1.9 Intergovernmental Agreement (IGA)

Assist the City in preparing the IGA's for the project participants to include the following subjects:

- Property Ownership
- 1st Phase Design Build Facility
- Ongoing Operations and Maintenance
- Future Facility Expansion

Include a methodology of facility component capacity ownership, cost, and future buy-in. After the initial drafts are completed and distributed for review, facilitate up to five meetings between the participants to progressively work toward consensus. Prepare new drafts as necessary after each meeting.

1.10 Permitting Assistance

Assist the City as requested in reviewing Design-Builder permit applications and responding to agency questions. Permitting of the Project will be the responsibility of the Design Builder.

1.11 Public Involvement

Assist with the public involvement program.

1.12 Other Services as Requested

Perform other services not specifically defined herein as requested and authorized by the City. An allowance of \$10,000 is provided for these services.

Deliverables

- Draft RFQ and final RFQ.
- Handouts and presentation materials for the pre-submittal conference, if held.
- Documentation and preparation of written responses to questions asked during the pre-submittal conference, if held.
- Up to three addenda to the final RFP.
- Evaluation form for use in evaluating submittals.
- Technical Memorandum on submittals summarizing evaluation results.
- Presentation materials to be used in one City Council meeting for recommendation of the selected Design-Builder.
- Draft letter to each Design-Builder describing the results of the evaluation process.
- Draft materials for the Design Build Contract, as requested by the City.
- Technical Memorandum summarizing Financial and Cash Flow Model.

Schedule

The preliminary selection process schedule is shown below. This schedule is subject to change at the direction of the City.

Activity	Date
Wilsonville City Council Approval of the RFQ	November 1, 1999
RFQ Distribution	November 2, 1999
SOQ Submission	November 29, 1999
Technical Advisory Committee Interviews and Recommendation to Council	TBD
Council Decision	December 20, 1999
Complete Design Development Contract	December 20, 1999
Completed Design Build Contract	February 1, 2000
Design Construction Price – Intake Structure	April 1, 2000
Design Construction Price – Remaining Work	June 1, 2000

Compensation

The compensation for the services as set forth in this Task Order No. 1 shall be based on Cost Reimbursables Multiplier, as described in Article 2 of the Master Agreement. A budget of \$142,000 is hereby established for this task order, which will not be exceeded without prior approval by the CITY.

City of Wilsonville, Oregon

By: [Signature]

Title: CITY ENGINEER

Date: 11/12/99

CH2M HILL, CORP.

By: _____

Title: _____

Date: _____

ATTACHMENT A

SCOPE OF SERVICES

WILSONVILLE WILLAMETTE RIVER WATER TREATMENT PLANT DESIGN-BUILD SUPPORT SERVICES

TASK 1 - Complete Request for Qualifications (RFQ), Select Design-Builder, and Final Contract

Task Objective

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1.12 Other Services as Requested

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Complete Design Development Contract	December 20, 1999
Completed Design Build Contract	February 1, 2000
Design Construction Price – Intake Structure	April 1, 2000
Design Construction Price – Remaining Work	June 1, 2000

TASK 2 – Services During Design/Permitting

Task Objective

Provide services to City during Design-Build design phase. Assist in development of Performance Specifications, evaluation of equipment and process, and review of Design-Builder prepared contract documents for adherence to Performance Specifications and Design Report.

Task Description

2.1 Design Kickoff Meeting

Once a Design-Builder is selected, a kick-off meeting will be held to discuss roles/responsibilities and anticipated activities during the initial phases of the project.

2.2 Design Development Workshops and Performance Criteria Development

Consultant will participate in up to three Design Development Workshops with the City and Design-Builder. Consultant will provide staff with technical expertise in water treatment processes. Consultant will work with the City during the design phase to establish the Performance Criteria for the Design Build Contract.

2.3 Operability Reviews

The Consultant will provide review of the proposed treatment plant facilities for operability in coordination with the City's selected Operations Contractor, selected under a separate selection process from the Design Builder and Support Services contracts. Consultant will provide coordination with other concurrent technical reviews. Two operability reviews are anticipated during the design phase and will be coordinated with the Design Development Workshops, as appropriate.

2.4 Constructability Review and Value Engineering

Consultant will perform a Constructability and Value Engineering Workshop in conjunction with the Design-Build Contractor to review the design prior to the Design Builders submission of the Design Construction Price for both the Intake and Water Treatment Plant. Two workshops are planned to address the two submittals independently. Also participate in design review workshops conducted by the design-build contractor.

2.5 Review of Design Builder's Design Construction Price

Review the Design Builders Design Construction Price for both the Intake and Water Treatment Plant against current, standard practices and costing methods. Review and evaluation will be performed based on the materials submitted by the Design Builder. The review will be provided for the purpose of evaluating the competitiveness of the Design Builder's price proposal. One review will be provided for each of the two Design Construction Prices.

Deliverables

- Design Kick-off meeting minutes.
- Technical Memorandum summarizing Equipment selection and Performance Specifications for the Design Build Contract.
- Technical Memoranda summarizing Design Development Workshops, Operability Reviews, and Constructability/Value Engineering Workshops.
- Transmittal memorandum and marked up copy for each submittal reviewed.
- Monthly progress meeting minutes.

Schedule

Refer to schedule presented for Task 1.

TASK 3 – Services During Construction

Task Objective

Provide services during construction to City staff and assist City staff with coordination of Design-Builder activities during construction. Provide Resident Observation of construction activities and progress.

Task Description

3.1 Construction Kickoff Meeting

A construction kickoff meeting will be held with City staff and its representatives, and the Design-Builder.

3.2 Construction Management

During construction, coordination of Design-Builder provided services will be provided to assure that the Performance Specifications, Design Report and Design Build Contract requirements are met. Weekly progress meeting will be held. Submittal reviews will be provided. Assistance will be provided to the City for change order processing, technical assistance, and review of pay estimates.

3.3 Construction Inspector

The Consultant will provide a full-time Construction Inspector (CI) CI to provide field services. The CI will observe Design-Builder activities to determine general compliance with the contract documents, document construction progress, coordinate communication with the contractor, and coordinate with the Operations Contractor to facilitate plant operation. The CI will also coordinate and communicate with the City Engineer, staff and others as needed.

3.4 Oversight of Functional and Performance Testing and Startup Plan Implementation

During construction, the Operations and Maintenance Manual outline, Facilities Functional and Performance Testing Plan, and Certification of Operability will be reviewed by the Consultant. Assistance will be provided during functional testing to determine compliance with the Performance Specifications, Design Report, and Design Build Contract.

Assistance with final inspection will be provided to determine substantial completion.

Deliverables

- Meeting minutes from pre-construction conference.
- Meeting minutes from weekly progress meetings.
- Written comments on review of submittals, substitute material requests, O&M manuals, test plans, startup plan, and compliance certifications. Fifty (50) submittals are assumed for this scope.
- Weekly Construction Inspector reports.
- Monthly review and recommendation of Design Builder Progress Payment Requests.
- Transmittals and supporting materials for change orders.

Schedule

These activities will parallel construction by the Design-Builder. Construction of facilities to provide a minimum of 3 MGD of water to the Wilsonville distribution system must be complete by April 1, 2002. Functional testing of plant capacity must be complete by October 2002.

TASK 4 Services During Warranty and Commissioning

Task Objective

Provide assistance to City staff during Plant commissioning and construction warranty period.

Task Description

4.1 Performance Validation

Once the treatment facilities have undergone Functional and Performance Testing, the facilities will be ready for operation by the Operations Contractor. The Consultant will provide transition services based on knowledge of the treatment processes and testing. This knowledge will be used to help address difficulties in initial operation and to verify that the plant is operating consistent with the Performance Specifications. If the plant is not meeting specifications, Warranty Work Requests will be generated as described below. The initial scope is based on 3 months of Performance Validation services. Consultant staff will meet with City and Operations Contractor staff as needed in the field, but will not provide full-time field services during this portion of the work.

4.2 Warranty Request Processing

Warranty services will be provided by the Design Builder for a length of time determined in the Design Build Contract. The Consultant will assist the City in preparing Warranty Work Requests, logging and tracking requests, and verifying satisfactory completion of the warranty work. For the purposes of this scope, this phase is assumed to cover a period of 1 year.

4.3 Final Warranty Period Inspection

Consultant will assist the City in the final warranty inspection of the facilities approximately 1 month before the warranty period expires. A final warranty period inspection list will be generated for the Design Builder to complete prior to termination of the warranty services.

4.4 Contract Close-Out

The Consultant will assist the City with final contract close-out activities including processing final payment requests and preparing documentation to serve as the basis for termination of the construction contract.

Deliverables

- Written comments on review of O&M manual prepared by Design Builder.
- Review of training materials for operations and maintenance staff.
- Comments on record drawings.
- Review of transition plan prepared by Design Builder for transition of plant operation to City and Operations Contractor.
- Memoranda summarizing monthly operations status during the Performance Validation Task. Three status reports are included.

- Warranty work request notifications and log.
- Final warranty inspection summary and log.

Schedule

This task will be completed in coordination with the Design Build Contract.