

RESOLUTION NO. 1997

A RESOLUTION OF THE CITY OF WILSONVILLE AUTHORIZING THE CITY ENGINEER TO SIGN A PROFESSIONAL SERVICES AGREEMENT WITH MACKAY & SPOSITO, INC. TO PROVIDE PROFESSIONAL (ENGINEERING) SERVICES FOR THE S.W. BARBER ROAD IMPROVEMENT PROJECT - PHASE 1 (KINSMAN RD TO BOBERG RD).

WHEREAS, in June, 2005, the Wilsonville City Council adopted a Capital Improvement Program for the City that includes a FY 2005/06 appropriation of \$2,000,000.00 and the proposed FY 2006/07 budget includes the appropriation of \$1,500,000.00 to fund the design and construction of the S.W. Barber Road Improvement Project – Phase 1 (Kinsman Rd to Boberg Rd) (Project No. 910.950.45030.00000.4112); and

WHEREAS, the City Engineer seeks the services of an engineering firm to provide professional engineering services for the referenced project; and

WHEREAS, on the 22nd day of February, 2005, the City of Wilsonville adopted Ordinance No. 578 adopting State findings, policies and methods of fostering competition and definitions consistent therewith, to provide for competitive bids or proposals, providing for contracting officers and the creation of procedures for the screening and selection of professional services; and

WHEREAS, the S.W. Barber Road Improvement Project – Phase 1 (Kinsman Rd to Boberg Rd) was duly advertised for competitive proposals to provide professional services in the Daily Journal of Commerce, a newspaper of general circulation on March 16, 2006; and

WHEREAS, two (2) proposals were received by April 6, 2006, prior to 5:00 p.m., local time, at the Community Development Department, 8445 SW Elligsen Road, Wilsonville, Oregon; and

WHEREAS, the two (2) proposals were reviewed by a City staff panel and ranked on April 6, 2006; and

WHEREAS, from the two (2) firms that participated in the competitive, qualification based selective process, MacKay & Sposito, Inc. was selected as the consultant firm that was best qualified to provide the certain professional services because they can complete the design within the City's timeline for the referenced project; and

WHEREAS, Section 2.310 of the Wilsonville Code states that "The Wilsonville City Council is designated as a Local Contract Review Board under the State of Oregon Public Contracting Code"; and

WHEREAS, after selecting MacKay & Sposito, Inc. as the best qualified firm to provide certain professional engineering services; and

WHEREAS, MacKay & Sposito, Inc. has proposed to accomplish the professional engineering services for a fee not to exceed \$695,258.00; and

WHEREAS, staff has determined that the fees, as proposed by MacKay & Sposito, Inc., are fair and reasonable; and

WHEREAS, in the public interest the City Council acting as the Local Contract Review Board may exercise its rights to reject any proposals and waive informalities as reserved in its Request for Proposals; and

WHEREAS, the City of Wilsonville desires to execute a Professional Services Contract Agreement in a timely manner.

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

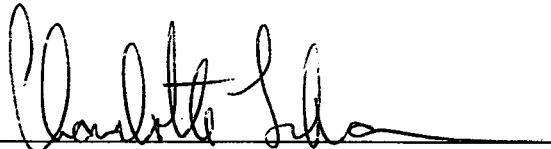
1. The City Council, acting as the Local Contract Review Board, does hereby approve and authorize the City Engineer to sign a Professional Services Agreement between the City of Wilsonville and MacKay & Sposito, Inc., a copy of which is marked Exhibit "A", attached hereto and incorporated herein, to provide the engineering professional services recited within for the referenced project.

2. The City Council hereby authorizes the expenditures for this contract not to exceed \$695,258.00 from the Fiscal Year 2005/06 and 2006/07 budget as follows:

<u>Budget Year</u>	<u>Account</u>	<u>Budget Amount</u>
2005/06	910.950.45030.00000.4112	\$2,000,000.00
2006/07	910.950.45030.00000.4112	\$1,500,000.00

3. This resolution is effective upon adoption.

ADOPTED by the Wilsonville City Council at a regular meeting thereof this 15th day of May, 2006, and filed with the Wilsonville City Recorder this date.



CHARLOTTE LEHAN, Mayor

ATTEST:



Sandra C. King, City Recorder, MMC

SUMMARY OF VOTES:

Mayor Charlotte Lehan	<u>Yea</u>
Council President Kirk	<u>Yea</u>
Councilor Holt	<u>Yea</u>
Councilor Ripple	<u>Excused</u>
Councilor Knapp	<u>Yea</u>

**CITY OF WILSONVILLE
PROFESSIONAL SERVICES AGREEMENT
SW BARBER STREET (KINSMAN ROAD - BOBERG ROAD)**

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 MacKay & Sposito, Inc., hereinafter referred to as "Consultant").

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

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

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

A. Term

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

B. Consultant's Services

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

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

B.3 All agreements on the Consultant's part are contingent upon, and the Consultant shall not be responsible for damages or be in default or be deemed to be in default by reason of delays in performance due to third party: strikes, lockouts, accidents; acts of God; other delays

unavoidable or beyond the Consultant's reasonable control, or due to shortages or unavailability of labor at established area wage rates or delays caused by failure of the City or City's agents to furnish information or to approve or disapprove the Consultant's work promptly, or due to late or slow, or faulty performance by the City, other contractors, other consultants not under Consultant's control or governmental agencies, the performance of whose work is precedent to or concurrent with the performance of the Consultant's work. In the case of the happening of any such cause of delay, the time of completion shall be extended accordingly.

B.4 The existence of this Agreement between City and Consultant shall not be construed as City's promise or assurance that Consultant will be retained for future services unrelated to this public works project.

B.5 Consultant shall maintain confidentiality of any private confidential information and any public information which is exempt from disclosure under state or federal law to which the Consultant may have access by reason of this Agreement. Consultant warrants that its employees assigned to work on services provided in this Agreement shall maintain confidentiality. All agreements with respect to confidentiality shall survive the termination or expiration of this Agreement.

C. City's Responsibilities

C.1 The scope of City's responsibilities, including those of its Project Manager, are set forth in Exhibit B, which is attached hereto and incorporated herein.

C.2 City certifies that sufficient funds are available and authorized for expenditure to finance costs of this Agreement.

D. Compensation

D.1 Except as otherwise set forth in this subsection D, City agrees to pay Consultant not more than \$695,258.00 for performance of those services provided hereunder. However, compensation may be less than such maximum amount and shall be actually determined on an hourly basis as shown on the Rate Schedule attached as Exhibit C which is attached hereto and incorporated herein. Compensation shall be only for actual hours worked on this project and related direct expenses. Consultant shall furnish with each bill for services an itemized statement showing the amount of hours devoted to the project by Consultant as well as any agents or employees of Consultant and any direct expenses.

D.2 During the course of Consultant's performance, if City or its Project Manager specifically requests Consultant to provide additional services which are beyond the scope of the services described on Exhibit A, Consultant shall provide such additional services and bill the City at the hourly rates outlined on the attached Standard Hourly Rate Schedule, provided the parties comply with the requirements of Section R. No compensation for additional services shall be paid or owing unless both parties specifically agree to such additional compensation

and services.

- D.3 Unless expressly set forth on Exhibit C 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 C and itemized on Consultant's bills for services shall be the basis for which payment of those expenses by City shall be owing.
- D.4 Except for amounts withheld by City pursuant to this agreement, Consultant will be paid for services for which an itemized bill is received by City within 30 days.
- D.5 City shall be responsible for payment of required fees, payable to governmental agencies including, but not limited to plan checking, land use, zoning and all other similar fees resulting from this project, and not specifically covered by Exhibit C.
- 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.
- D.8 Work performed by the Consultant after the expiration date of the Standard Hourly Rate Schedule attached as Exhibit C shall be billed at the hourly rates shown on the Consultant's Standard Hourly Rate Schedule in effect the year the work is performed.

E. City's Project Manager

City's Project Manager is Jadene Stensland. City shall give Consultant prompt written notice of any redesignation of its Project Manager.

F. Consultant's Project Manager

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

G. Project Information

City shall provide full information regarding its requirements for the Project. Consultant

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

H. Duty to Inform

If at any time during the performance of this Agreement, or any future phase of this Agreement for which Consultant has been retained, Consultant becomes aware of actual or potential problems, faults or defects in the project or any portion thereof, any nonconformance with the federal, state or local law, rule, or regulation, or has any objection to any decision or order made by City with respect to such laws, rules or regulations, Consultant shall give prompt written notice thereof to City's Project Manager. Any delay or failure on the part of City to provide a written response to Consultant shall neither constitute agreement with nor acquiescence to Consultant's statement or claim, nor constitute a waiver of any of City's rights.

I. Consultant is Independent Contractor

- I.1 Consultant shall be and herein declares that it is an independent contractor for all purposes and shall be entitled to no compensation other than compensation provided for under paragraph D of this Agreement. Consultant binds itself, its partners, officers, successors, assigns and legal representatives to the City. Consultant shall be completely independent and solely determine the manner and means of accomplishing the end result of this Agreement, and City does not have the right to control or interfere with the manner or method of accomplishing said results. City, however, has the right to specify and control the results of the Consultant's responsibilities.
- I.2 Subcontracting: City understands and agrees that only those special consulting services identified on Exhibit A may be performed by those persons identified on Exhibit A and not by Consultant. Consultant acknowledges such services are provided to City pursuant to a subcontract(s) between Consultant and those who provide such services. Consultant may not utilize any subcontractors or in any way assign its responsibility under the Agreement without first obtaining the express written consent of the City.
- I.3 Consultant shall be responsible for and indemnify and defend City against any liability, cost or damage arising out of Consultant's use of such subcontractor(s) and subcontractor's negligent acts, omissions, or errors. Subcontractors will be required to meet the same insurance requirements of Consultant under this Agreement. Unless otherwise specifically agreed to by City, Consultant shall require that subcontractors also comply with and be subject to the provisions of this Section I.
- I.4 Consultant shall make prompt payment of any claim for labor, materials or

services furnished to the Consultant by any person in connection with this Agreement as such claim becomes due. Consultant shall not permit any lien or claim to be filed or prosecuted against the City on account of any labor or material furnished to or on behalf of the Consultant. If the Consultant fails, neglects or refuses to make prompt payment of any such claim, the City may pay such claim to the person furnishing the labor, materials or services and charge the amount of the payment against funds due or to become due the Consultant under this Agreement.

- I.5 No person shall be employed under the terms of this agreement as described herein in violation of all wage and hour laws.
- I.6 Consultant shall make prompt payment as due to any person, co-partnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to the employees of such Consultant of all sums which the Consultant agrees to pay for such services and all monies and sums which the Consultant collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service.
- I.7 Should Consultant elect to utilize employees on any aspect of this Agreement, Consultant shall be fully responsible for payment of all withholding required by law, including but not limited to taxes, including payroll, income, Social Security (FICA) and Medicaid. Consultant shall also be fully responsible for payment of salaries, benefits, taxes, Industrial Accident Fund contributions and all other charges on account of any employees. Consultant shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. All costs incident to the hiring of assistants or employees shall be Consultant's responsibility. Consultant shall indemnify, defend and hold City harmless from claims for payment of all such expenses. Unless otherwise expressly set forth on Exhibit A as a reimbursable expense item, specific costs associated with items set forth in this paragraph shall be deemed as fully and conclusively included in the rate upon which consultants compensation is based.
- I.8 No person shall be denied or subjected to discrimination in receipt of the benefits of any services or activities made possible by or resulting from this Agreement on the grounds of sex, race, color, creed, marital status, age, disability or national origin. Any violation of this provision shall be grounds for cancellation, termination or suspension of the Agreement in whole or in part by the City.

J. Indemnity and Insurance

- J.1 Consultant acknowledges responsibility for liability arising out of the performance of this Agreement and the attachments thereto only and shall hold City harmless from and indemnify City of any and all liability, settlements, loss, costs and expenses in connection with any action, suit, or claim resulting or allegedly resulting from Consultant's negligent acts, omissions, errors or willful misconduct

provided pursuant to this Agreement or from Consultant's failure to perform its responsibilities as set forth in this agreement. The review, approval or acceptance by City, its Project manager or City of Wilsonville employees of documents or other work prepared or submitted by Consultant shall not relieve Consultant of its responsibility to provide such materials in full conformity with City's requirements as set forth in this Agreement and to indemnify City from any and all costs and damages resulting from Consultant's failure to adhere to the standard of performance described in Section J.2.3. The provisions of this section shall survive termination of this Agreement. City agrees to indemnify and hold Consultant harmless from liability, settlements, losses, costs, and expenses in connection with any action, suit or claim resulting or allegedly resulting from City's negligent acts, omissions or from its willful misconduct as governed by ORS Chapter 30.

J.2 Insurance Requirements and Consultant's Standard of Care.

- J.2.1 Consultant shall provide City with evidence of the following insurance coverages prior to the commencement of the work. A copy of each insurance policy, issued by a company currently licensed in the State of Oregon, and certified as a true copy by an authorized representative of the issuing company or at the discretion of the City, in lieu thereof, a certificate in a form satisfactory to City certifying to the issuance of such insurance shall be furnished to City. Unless specifically set forth on Exhibit C, expenses relating to the cost of insurance shall not be the basis for additional reimbursement to Consultant.
- J.2.2 The City agrees that in accordance with generally accepted construction practices, the construction contractor will be required to assume sole and complete responsibility for job site conditions during the course of construction of the project, including safety of all persons and property.
- J.2.3 In the performance of its professional services, the Consultant shall use that degree of care and skill ordinarily exercised under similar circumstances by reputable members of its profession practicing in the Portland Metropolitan Area. The Consultant will reperform any services not meeting this standard without additional compensation. Consultant's reperformance of any services, even if done at City's request, shall not be considered as a limitation or waiver by City of any other remedies or claims it may have arising out of consultant's failure to perform in accordance with the applicable standard of care or this Agreement.
- J.2.4 Consultant shall furnish the City a certificate evidencing the date, amount and type of insurance that has been procured pursuant to this Agreement. All policies shall be written on an "occurrence basis," except for Consultant's Professional Liability Insurance which may be written on a "claims made" basis, provided it shall endeavor to be maintained in full force for not less than four (4) years following Consultant's performance

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

J.2.5 Insurance Requirements. The Consultant, its subcontractors, if any, and all employers working under this Agreement are subject employers under the Oregon Worker's Compensation Law and shall comply with ORS 656.017 which requires them to provide workers' compensation coverage for all their subject workers. The Consultant will maintain throughout this Agreement the following insurance:

J.2.5.1 Workers' compensation and employers liability insurance as required by the State where the work is performed.

J.2.5.2 Comprehensive automobile and vehicle liability insurance covering claims for injuries to members of the public and/or damages to property of others arising from the use of motor vehicles, including on-site and off-site operations, and owned, non-owned, or hired vehicles, with \$500,000 combined single limits.

J.2.5.3 Commercial general liability insurance covering claims for injuries to members of the public or damage to property of others arising out of any covered negligent act or omission of the Consultant or of any of its employees, agents or subcontractors, with \$1,000,000 per occurrence and in the aggregate.

J.2.5.4 Professional liability insurance of \$500,000 per occurrence and in the aggregate, including contractual liability coverage. If Consultant proposes using subcontractors, in addition to any other requirements of this Agreement, City may require subcontractors to provide Professional Liability Insurance, provided the amount and form of coverage complies with the requirements of paragraphs J.2.1, J.2.2, J.2.3, J.2.4 and J.2.5.4.

J.2.5.5 City will be named as an additional insured with respect to

Consultant's liabilities hereunder in insurance coverages identified in items J.2.5.2 and J.2.5.3.

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

K. Early Termination

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

K.1.1 By mutual written consent of the parties;

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

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

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

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

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

L. Suspension of Work

City may suspend, delay or interrupt all or any part of the work for such time as the City deems appropriate for its own convenience by giving written notice thereof to Consultant.

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

M. Subconsultants and Assignments

M.1 Unless expressly authorized in Exhibit A or Paragraph I of this Agreement, Consultant shall neither subcontract with others for any of the work prescribed herein, nor assign any of Consultant's rights acquired hereunder without obtaining prior written approval from City. Work may be performed by persons other than Consultant, provided Consultant advises City of the names of such subcontractors and the work which they intend to perform and the City specifically agrees thereto. Consultant acknowledges such services are provided to City pursuant to a subcontract(s) between Consultant and subcontractor(s). Except as otherwise provided by this Agreement, City incurs no liability to third persons for payment of any compensation provided herein to Consultant. Any attempted assignment of this contract without the written consent of City shall be void. Except as otherwise specifically agreed, all costs for services performed by others on behalf of Consultant shall not be subject to additional reimbursement by City.

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

N. Access to Records

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

O. Work is Property of City

A. Originals or Certified copies of the original work forms, including but not limited to documents, drawings, tracings, surveying records, mylars, papers, diaries, inspection reports and photographs, performed or produced by Consultant under this Agreement shall be the exclusive property of City and shall be delivered to

City prior to final payment. Any statutory or common law rights to such property held by Consultant as creator of such work shall be conveyed to City upon request without additional compensation. Upon City's approval and provided City is identified in connection therewith Consultant may include Consultant's work in its promotional materials. Drawings may bear a disclaimer releasing the Consultant from any liability for changes made on the original drawings and for reuse of the drawings subsequent to the date they are turned over to the City.

- B. Consultant shall not be held liable for any damage, loss, increased expenses or otherwise caused by or attributed to the reuse, by City or their designees, of all work performed by Consultant pursuant to this contract without the express written permission of the Consultant.
- C. City agrees it will indemnify and hold Consultant harmless for all losses or damages that may arise out of the reuse of specific engineering designs incorporated into extensions, enlargements or other projects, without the express written permission of the Consultant.

P. Law of Oregon

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

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

Q. Adherence to Law

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

R. Modification

Any modification of the provisions of this Agreement shall not be enforceable unless reduced to writing and signed by both parties. A modification is a written document, contemporaneously executed by City and Consultant, which increases or decreases the

cost to City over the agreed sum or changes or modifies the scope of service or time of performance. No modification shall be binding unless executed in writing by Consultant and City. In the event that Consultant receives any communication of whatsoever nature from City, which communication Consultant contends to give rise to any modification of this Agreement, Consultant shall, within thirty (30) days after receipt, make a written request for modification to City's Project Manager. Consultant's failure to submit such written request for modification in the manner outlined herein may be the basis for refusal by the City to treat said communication as a basis for modification. In connection with any modification to the contract affecting any change in price, Consultant shall submit a complete breakdown of labor, material, equipment and other costs. If Consultant incurs additional costs or devotes additional time on project tasks which were reasonably expected as part of the original agreement or any mutually approved modifications, then City shall be responsible for payment of only those costs for which it has agreed to pay.

S. Other Conditions

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

S.1.1 Subsurface Investigations. In soils, foundation, ground water, and other subsurface investigations, the actual characteristics may vary significantly between successive test points and sample intervals and at locations other than where observations, exploration, and investigations have been made. Because of the inherent uncertainties in subsurface evaluations, changed or unanticipated underground conditions may occur that could affect total Project cost and/or execution. These conditions and cost/execution effects are not the responsibility of the Consultant.

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

S.1.3 Record Drawings. Record drawings, if required, will be prepared, in part, on the basis of information compiled and furnished by others, and may not always represent the exact location, type of various components, or exact

manner in which the Project was finally constructed. Consultant is responsible for any errors or omissions about which the Consultant knew or should have known in the information from those employees or firms employed by the Consultant under the terms of the contract as stated therein that is incorporated into the record drawings.

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

T. Integration

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

U. Miscellaneous / General

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

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

IN WITNESS WHEREOF, the parties by their signatures below enter into this Agreement this _____ day of _____, 20__

CONSULTANT:

MacKay & Sposito, Inc.
Name of Firm

By _____
Typed or
Printed Name: Donald J. Moe

Title: Vice President, Engineering

Mailing
Address: MacKay & Sposito, Inc.
1325 SE Tech Center Dr., Suite 140
Vancouver, WA 98683

Employer I.D. No. 91-0915984

CITY OF WILSONVILLE:

By _____
Michael A. Stone
City Engineer

Attest:

Sandra C. King
City Recorder

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

Approved as to form:

Michael E. Kohlhoff
City Attorney

(PSA EXHIBIT "A")
PROPOSED SCOPE OF WORK
SW BARBER STREET (KINSMAN ROAD – BOBERG ROAD)

MacKay & Sposito, Inc. will provide Engineering, Surveying, Construction Management and Inspection services for the public infrastructure improvements necessary for SW Barber Street (Kinsman Road – Boberg Road). The services will be provided for the following proposed improvements:

1. Construction of improvements for Barber Street from Kinsman Road east to Boberg Road.
2. Design and construction of a traffic signal at the intersection of Kinsman Road.
3. Landscaping and irrigation for streetscape.

SERVICES

MacKay & Sposito, Inc. will provide the following services for the items listed above.

1.0 Project Management:

- 1.1 Coordinate various members of the consultant team.
- 1.2 Communicate clearly and regularly with the City's project manager.
- 1.3 Provide monthly status reports to the City's project manager.
- 1.4 Separate costs between those paid with City and state/federal funds.
- 1.5 Submit monthly payment requests.

2.0 Surveying:

- 2.1 Boundary and legal descriptions.
 - 2.1.a Research existing boundary information in the location of proposed improvements
 - 2.1.b Prepare legal descriptions for areas needed for right-of-way or easement acquisition
 - 2.1.c Resolution of boundary issues
- 2.2 Topographic survey for design purposes.
 - 2.2.a Update existing topography surveys
 - 2.2.b Determine existing ground elevation
 - 2.2.c Determine horizontal and vertical location of existing utilities, surface improvements, structures, etc.
 - 2.2.d Generate a topographic base drawing with contours for use in the design
- 2.3 Construction surveying services.
 - 2.3.a Construction staking (all improvements staked at once.)
 - 2.3.b Preparation and processing of final "As-Built" plans for the constructed improvements.
 - 2.3.c Provide pre- and post- construction surveys and monumentation.

3.0 Civil Engineering:

- 3.1 Preliminary engineering.
 - 3.1.a Get City approval for major design assumptions.
 - 3.1.b Prepare preliminary grading and erosion control plans.
 - 3.1.c Identify required easements and right-of-way for recommended alignment.
 - 3.1.d Establish and obtain City Council approval of access control for Barber Street.
 - 3.1.e Prepare cost estimates.
 - 3.2 Final engineering.
 - 3.2.a Prepare final plans or A.C., specifications, and estimates for:
 - 3.2.a.1 Concrete pavement street construction
 - 3.2.a.2 18" water main construction (includes boring under RR tracks)
 - 3.2.a.3 Extension of the existing 48" welded steel water main to the north right-of-way line (including early procurement of materials and possibly separate bidding.)
 - 3.2.a.4 Design of storm sewer mains, laterals, inlets, storm water quantity/quality facilities.
 - 3.2.a.5 Integrate Green Streets concepts into the design where possible.
 - 3.2.a.6 Coordinate repair or replacement of any existing storm water or sanitary sewer mains.
 - 3.2.a.7 Prepare final grading, tree removal, and erosion control plans.
 - 3.2.b Prepare signing, striping, and street lighting system plans.
 - 3.2.c Design electrical, telecommunication; cable TV vault and conduit systems.
 - 3.2.d Prepare quantity takeoffs and cost estimates.
 - 3.2.e Prepare construction specifications and bid documents.
- 4.0 Construction administration
- 4.1 Bidding services.
 - 4.1.a Process plan and specifications.
 - 4.1.b Coordinate the plan holder's list.
 - 4.1.c Prepare and distribute Addenda as necessary.
 - 4.1.d Manage the project bid process and prepare bid tabulation.
 - 4.2 Construction management services.
 - 4.2.a Lead the pre-construction conference.
 - 4.2.b Review monthly invoices from the Contractor and prepare monthly pay estimates for City throughout construction.
 - 4.2.c Lead weekly progress meetings during construction
 - 4.2.d Process Requests For Information (RFI's), Clarifications, Change Order Requests (COR's), Work Change Directives (WCD's), and Change Orders (CCO's).
 - 4.2.e Review and process daily on-site construction inspection reports.
 - 4.2.f Process material submittals.
 - 4.2.g Review certified payrolls.
 - 4.2.h Monitor Contractor's progress and adherence to the project schedule.
 - 4.2.i Conduct site visits as necessary.
 - 4.2.j Perform constructability reviews as needed.

- 4.2.k Provide centralized documentation and handling of project communication.
- 4.2.l Coordinate with City on project close-out and transfer of documents.
- 4.3 Construction inspection.
 - 4.3.a Perform daily field inspections of work performed.
 - 4.3.b Provide work reports of work performed.
 - 4.3.c Review work for compliance with plans and specifications
- 5.0 Permitting and additional services.
 - 5.1 Railroad – Utility Bore and Surface Crossing permits.
- 6.0 Subconsultants
 - 6.1 Traffic engineering, including signal design, signing and striping plans, and lighting design (ATEP).
 - 6.1.a Project familiarization
 - 6.1.b Preliminary engineering.
 - 6.1.c Final design.
 - 6.1.d Construction Engineering.
 - 6.2 Landscape (MR).
 - 6.2.a Administration and Project Start-up.
 - 6.2.b Concept design.
 - 6.2.c Preliminary design.
 - 6.2.d Advance plans (95%).
 - 6.2.e Final design (100%)
 - 6.2.f Bidding and construction services
 - 6.2.g As-built drawings.
 - 6.3 Geotechnical engineering and soils analysis (ACA).
 - 6.3.a Office study.
 - 6.3.b Field reconnaissance.
 - 6.3.c Subsurface explorations.
 - 6.3.d Analysis and report.
 - 6.4 Geotechnical Inspection (GCNW).
- 7.0 Excluded Services
 - 7.1 Arborist services.
 - 7.2 Design of fencing, retaining walls, or sound walls.
 - 7.3 Any environmental permitting.
 - 7.4 Design of any gas systems.

SUBCONSULTANTS

MacKay & Sposito, Inc. proposes to use the following subconsultants for the work listed above:

1. Associated Transportation Engineering and Planning for traffic engineering, including signalization, street lighting and signing and striping plans.

2. Mayer Reed for landscaping architecture.
3. Ash Creek Associates for Geotechnical services, including investigation and pavement design.
4. GeoCon for Geotechnical inspection services and testing.

SCHEDULE

MacKay & Sposito, Inc. will make every attempt to meet the proposed schedule to complete construction of the SW Barber Street (Kinsman Road – Boberg Road) project during the 2007 construction season. Right of way acquisition and railroad permits may substantially affect the schedule.

Exhibit "B"

Professional Services Agreement with MacKay & Sposito, Inc. S.W. Barber St Improvement Project – Phase 1 (Kinsman Rd. to Boberg Rd.)

The City of Wilsonville will provide the following:

- Project engineer/manager who is responsible for overall City project management and will provide coordination between the consultant and the City
- City staff member(s) to provide timely response to any questions and to be available for any meetings requested by the Consultant. All meetings will take place at the Wilsonville City Hall or Annex Buildings
- Make available guidelines, policies and regulations to be used in developing design
- Coordinate collection of data from City records such as as-built data
- Aerial photogrametric mapping for the project area .
- Contour mapping for the project area at a scale of 1" = 20ft. with contours at 2ft. intervals on steeper areas and 1ft. intervals on flatter areas
- Right of entry for M&S to access the site to perform geotechnical reconnaissance walk through's and subsurface drilling
- Verification of the types of land uses, and land use intensity for the Transportation Analysis Zones (TAZs) that represent the Villebois Development to ensure the appropriate levels of traffic are being included in the traffic forecasts. The travel model will be revised by the City, as appropriate. M&S will use the information provided by the City without further verification.
- Existing Traffic Data:
 - All available traffic count information, including peak hour traffic volumes, average daily traffic (ADT) volumes, and vehicle classification counts.
 - Existing and proposed signal timing plans, including minimum and maximum cycle lengths, clearance intervals, and pedestrian clearance times for all study intersections.
 - List of pipeline developments, and corresponding pipeline traffic to include in background traffic
 - Most recent 3 years of accident data
 - Land use summary for the Villebois development
 - Any other studies, documents, mapping, etc. that may be applicable to this project
 - Future Forecasting model developed by DKS
- Existing traffic counts, traffic control, signal timing, signal phasing, pedestrian crossings, channelization, estimated grade, speed limits, lane lengths, etc. at 10 study intersections.
- Storm water, sanitary sewer and water system master plans
- Local wetland inventory (LWI) maps, if needed, for purposes of identifying potential off-site

mitigation opportunities

- Significant Resource Overlay Zone (SROZ) Mapping data
- Post project information, meeting materials and announcements to the project web page.
- Distribute press releases.
- Supply GIS data to the extent the City may have information available.
- Provide legal review of all contracts, bid forms, and real property conveyances
- Provide the base or template provisions for the construction contract to which the Consultant shall add terms and conditions unique to the project
- Pay all permit fees to agencies, by internal transfer at the City of Wilsonville, or by check to outside agencies, upon the request of Consultant,
- Conduct public hearings, prepare Council agenda items, and conduct Council workshops
- Perform other tasks as negotiated

EXHIBIT "C"
PROPOSED FEE BUDGET
SW Barber Street (Kinsman Road – Boberg Road), Wilsonville, OR

1.	<u>Task 1.0 Project Management</u>	\$ <u>51,840.00</u>
2.	<u>Task 2.0 Surveying</u>	\$ <u>126,284.00</u>
3.	<u>Task 3.0 Civil Engineering</u>	\$ <u>122,840.00</u>
4.	<u>Task 4.0 Construction Administration</u>	\$ <u>227,394.00</u>
5.	<u>Task 5.0 Permitting and Additional Services</u>	\$ <u>11,460.00</u>
6.	<u>Task 6.0 Subconsultants</u>	\$ <u>123,945.00</u>
	<u>Expenses</u>	\$ <u>31,495.00</u>

TOTAL ESTIMATED BUDGET FOR SERVICES:.....\$ 695,258.00

Reimbursable expenses and application fees are included in this amount. We will bill our services on a time and materials basis and we will not exceed this scope or the fee budget without prior written authorization from you.

MacKay & Sposito, Inc.

ENGINEERS SURVEYORS PLANNERS
VANCOUVER KENNEWICK



1325 S.E. Tech Center Drive, Ste. 140, Vancouver, WA 98683 (360) 695-3411 (503) 289-6726 PTLD (360) 695-0833 FAX

JANUARY 2006
HOURLY RATE SCHEDULE
MACKAY & SPOSITO, INC.
EFFECTIVE THROUGH DECEMBER 31, 2006
EXHIBIT D
Oregon

Senior Principal	\$	195.00
Principal		160.00
Planning Manager		110.00
Project Development Coordinator		74.00
Engineering Manager		128.00
Project Manager		123.00
Project Engineer		100.00
Engineer III		95.00
Engineer II		90.00
Engineer I		84.00
Survey Manager		110.00
Field Survey Crew Manager		101.00
Land Surveyor III		101.00
Land Surveyor II		88.00
Land Surveyor I		77.00
Senior Planner		91.00
Planner		80.00
Planning Technician		69.00
Platting Specialist		89.00
Technician III		87.00
Technician II		77.00
Technician I		68.00
Graphics Specialist		71.00
3 Person Survey Crew		198.00
2 Person Survey Crew		150.00
1 Person Survey Crew		117.00
Public Involvement Specialist		97.00
Administrative Assistant		69.00
Clerical		53.00
Mileage		.485/mile
Per Diem		98.00

The above rates cover salaries, benefits and salary overhead, insurance, administration, general overhead, and profit.

All other materials and expenses on an actual cost plus 10% basis. Sub-consultants costs on actual cost plus 3% to compensate

MacKay & Sposito, Inc. for Business and Occupation Tax and administrative costs.

Engineering categories are in accordance with ASCE Classifications.

COMMUNITY DEVELOPMENT
STAFF REPORT

Date: May 10, 2006

To: Honorable Mayor and City Councilors

From: Jadene Stensland, Deputy City Engineer – Capital Projects
Eldon R. Johansen, Interim Community Development Director

Subject: S.W. Barber Street Improvement Project - Phase 1 (Kinsman Rd. to Boberg Rd.)

RECOMMENDATION:

Staff respectfully recommends that the City Council, acting as the Contract Review Board, adopt Resolution No. 1997, authorizing the City Engineer to sign the Professional Services Agreement with MacKay & Sposito, Inc. to provide Professional Engineering Services for the SW Barber Street (Kinsman Rd. to Boberg Rd.) Improvement Project (#4112) in an amount not to exceed \$695,258.00.

SUMMARY:

The completion of what was then described as Barber Phase 1 which was the reconstruction and widening of Barber from Kinsman to the railroad tracks needed to be accomplished prior to the beginning of commuter rail service. In late 2004 it was identified that the City would need to have Barber reconstructed by June 2006. Engineering requested that MacKay and Sposito initiate the engineering services for Barber Phase 1 and also Barber Phase 2 (Project No. 4113) immediately pending future Council approval. Barber Phase 1 then extended from Kinsman to the railroad tracks and Phase 2 extended from the railroad tracks to Boones Ferry Road.

MacKay and Sposito began to work on the project and staff obtained a proposed Scope of Work and Professional Services Agreement for each of the phases. Council approval was requested in Resolutions No. 1920 and 1921.

At the Council meeting on February 7, 2005 Council requested additional information and the two resolutions were carried over. Engineering stopped all work on Barber Street Phases 1 and 2 pending action on the approval of the two resolutions. In the meantime there were three separate actions which negated the expedited design of Barber Street Phases 1 and 2. First, the funding for Commuter Rail was delayed so that the completion of the project did not need to be accomplished as early as anticipated. In a related action Tri-Met agreed that as long as we were able to provide access during construction, that Barber Phase 1 would not need to be completed prior to beginning of construction of Commuter Rail Station. Second, the City Contracting Rules and State Statutes as well as the Attorney General Guide Specifications on public contracting changed effective March 1, 2005. It became questionable as to whether we could use sole source purchasing to obtain the engineer to do the project. Third, the cost for the Boeckman Extension increased substantially and it became very questionable as to whether funds would be available to do Barber Street Phases 1 and 2 or whether we would need to develop a different funding approach.

The situation is more stable now and we need to go ahead with the completion of the reconstruction of Barber adjacent to the Commuter Rail Station. The project has been shortened so we will only do Barber from Kinsman to Boberg Road and will not look at extending beyond Boberg Road and funding looks more promising.

With the new purchasing rules Staff decided that rather than pursue an exemption from the competitive selection based on prior knowledge of the project by MacKay and Sposito that we would use the formal selection process. Staff advertised in the Journal of Commerce and listed the prior work that had been accomplished by MacKay and Sposito as an available resource. We received two Statements of Interest and Qualifications and in subsequent paragraphs Jadene has described the basis for the selection.

For comparison purposes the estimated cost of the Professional Services by MacKay and Sposito for Barber Street Phases 1 and 2 was \$1,155,000. The current project for Barber Street from Kinsman to Boberg Road including a contingency of 10% is at time and materials not to exceed \$695,000. In comparison, the \$695,000 is based on using the approximately \$235,000 in work that was accomplished before work on Barber Street Phases 1 and 2 (City Projects No. 4112 and 4113) was terminated.

The S.W. Barber Street Improvement Project - Phase 1 (Kinsman Rd. to Boberg Road) includes street widening improvements from the intersection of Kinsman Road to Boberg Road. In addition, the improvements will include design and construction of a traffic signal at the Kinsman Road intersection and the Kinsman Rd extension of the 48-inch waterline. The agreement with MacKay & Sposito, Inc. will provide the required surveying, engineering, permitting and construction management services for the Project.

The design through the railroad tracks needs to be completed as soon as possible as there are long permit review processes with ODOT and the rail owner. The railroad crossing will be upgraded through a separate process with the rail owner.

Staff advertised the Request for Qualifications in the Daily Journal of Commerce and received response from MacKay & Sposito, Inc. and DeHaas & Associates. Both firms were qualified to accomplish the work. Staff selected MacKay & Sposito, Inc., because they have the resources to complete the project by November 2007. Attached is a Scope of Work, fee estimate, the proposed project schedule and a Professional Services Agreement.

The approved FY 2005/06 budget includes \$2,000,000 and the proposed FY 2006/07 budget included \$1,500,000 for the design and construction of the SW Barber Street (Kinsman Rd. to Boberg Rd.) project. Construction of the project will continue into FY 2007/08.

cc: IOC-CD File
Staff Report File