

RESOLUTION NO. 2396

A RESOLUTION OF THE CITY OF WILSONVILLE ACTING IN ITS CAPACITY AS THE LOCAL CONTRACT REVIEW BOARD AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH WALLIS ENGINEERING TO PROVIDE PROFESSIONAL SERVICES FOR THE MEMORIAL PARK PARKING LOT REPAIR PROJECT.

WHEREAS, the adopted City FY 2012-13 budget includes funding for the Memorial Park Parking Lot project (Project No. 9112); and

WHEREAS, the Community Development Director seeks the services of a consulting firm to provide professional services for the above referenced project; and

WHEREAS, the City solicited Requests for Proposals for professional consulting services and received three competitive responses; and

WHEREAS, based on a review and ranking of the proposals based on applicable state law, Attorney General Model Contracting Rules implementing the applicable state law, and City Code provisions authorized by state law for soliciting and making a quality based selection among engineering personal services consulting contractors, Wallis Engineering was selected as the firm best qualified to be awarded professional services contract for the referenced project; and

WHEREAS, Section 2.312 of the City Code states, "The Council is hereby designated as a Local Contract Review Board and, relative to contract concerns for the City, shall have all the powers granted to the State Public Contract Review Board." and has reserved the right to itself to award any contract over \$100,000; and

WEHREAS, after reviewing the fees associated with providing the requested professional services, staff has determined that the fees for services as proposed by Wallis Engineering for the project in the amount of \$149,113 are fair and reasonable and staff recommends Wallis Engineering be awarded the contract for the above referenced project; and

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

1. The City Council serving in the role of Local Contract Review Board adopts the above recitals as findings and incorporates them by reference as if fully set forth herein.

2. The City Council serving in its role as Local Contract Review Board does hereby approve and authorize the City Manager to execute a Professional Services Agreement for the Memorial Park Parking Lot project in the amount not to exceed \$149,113 between the City of Wilsonville and Wallis Engineering, a copy of which is marked Exhibit A, attached hereto and incorporated by reference herein.
3. This resolution is effective upon adoption.

ADOPTED by the Wilsonville City Council at a regular meeting thereof this 4th day of February, 2013, and filed with the Wilsonville City Recorder this date.

TIM KNAPP, Mayor

ATTEST:

Sandra C. King, City Recorder, MMC

SUMMARY OF VOTES:

Mayor Knapp	Yes
Council President Starr	Yes
Councilor Goddard	Yes
Councilor Fitzgerald	Yes
Councilor Stevens	Yes

**CITY OF WILSONVILLE
PROFESSIONAL SERVICES AGREEMENT**

This Professional Services Agreement ("Agreement") is made and entered into on this 5th day of February, 2013 ("Effective Date") by and between the **City of Wilsonville**, a municipal corporation of the State of Oregon (hereinafter referred to as the "City"), and **Wallis Engineering, LLC**, a Washington limited liability company (hereinafter referred to as "Consultant").

RECITALS

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

WHEREAS, Consultant represents that Consultant is qualified to perform the services described herein on the basis of specialized experience and technical expertise; and

WHEREAS, Consultant is prepared to provide such services as the City does hereinafter require.

NOW, THEREFORE, in consideration of these mutual promises and the terms and conditions set forth herein, the parties agree as follows:

AGREEMENT

Section 1. Term

The term of this Agreement shall be from the Effective Date until all services required to be performed hereunder ("Services") are completed and accepted, unless earlier terminated in accordance herewith. Consultant shall diligently perform the Services according to the requirements and deliverable dates identified in the Scope of Services, attached hereto as **Exhibit A** and incorporated by reference herein. Except in the event of an extension of time, agreed to in writing by the City, all Services must be completed no later than December 31, 2013.

Section 2. Consultant's Services

2.1. Consultant will perform the Scope of Services, more particularly described on **Exhibit A**, for the Memorial Park Parking Lot and Stormwater Retrofit project ("Project").

2.2. All written documents, drawings, and plans submitted by Consultant in conjunction with the Services shall bear the signature, stamp, or initials of Consultant's authorized Project Manager. Any documents submitted by Consultant which do not bear the signature, stamp, or initials of Consultant's authorized Project Manager, will not be relied upon by the City. Interpretation of plans and answers to questions regarding the Services or Scope of Services given by Consultant's Project Manager may be verbal or in writing, and may be relied upon by the City, whether given verbally or in writing. If requested by the City to be in writing, Consultant's Project Manager will provide such written documentation.

2.3. Consultant will not be responsible for damages, be in default, or be deemed to be in default by reason of delays in performance due to reasons beyond Consultant's reasonable control, including but not limited to strikes, lockouts, severe acts of nature, or other unavoidable delays or acts of third parties not under Consultant's direction and control ("Force Majeure"). In

the case of the happening of any Force Majeure event, the time for completion of the Services will be extended accordingly by the City, in writing. Lack of labor, supplies, materials, or the cost of any of the foregoing shall not be deemed a Force Majeure event.

2.4. The existence of this Agreement between the City and Consultant shall not be construed as the City's promise or assurance that Consultant will be retained for future services beyond the Scope of Services described herein.

2.5. Consultant shall maintain the confidentiality of any confidential information that is exempt from disclosure under state or federal law to which Consultant may have access by reason of this Agreement. Consultant warrants that Consultant's employees assigned to work on the Services provided in this Agreement shall be clearly instructed to maintain this confidentiality. All agreements with respect to confidentiality shall survive the termination or expiration of this Agreement.

Section 3. City's Responsibilities

3.1. The scope of the City's responsibilities, including those of the City's Project Manager, are also set forth in the Scope of Services. The City will designate a Project Manager to facilitate day-to-day communication between Consultant and the City, including timely receipt and processing of invoices, requests for information, and general coordination of City staff to support the Project.

3.2. The City hereby certifies that sufficient funds are available and authorized to finance the Compensation Amount set forth in **Section 4** of this Agreement.

Section 4. Compensation

4.1. Except as otherwise set forth in this **Section 4**, the City agrees to pay Consultant a not to exceed price of ONE HUNDRED FORTY-NINE THOUSAND ONE HUNDRED THIRTEEN DOLLARS (\$149,113) for performance of the Services ("Compensation Amount"). Any compensation in excess of the Compensation Amount will require express written agreement by the City and Consultant.

4.2. During the course of Consultant's performance, if the City or its Project Manager specifically requests Consultant to provide additional services that are beyond the Scope of Services described on **Exhibit A**, Consultant shall provide such additional services and bill the City at the hourly rates outlined on Consultant's Rate Schedule, as set forth in **Exhibit B**. Compensation above the amount shown in **Subsection 4.1** above requires a written Change Order, executed in compliance with the provisions of **Section 19**.

4.3. Consultant's Rate Schedule includes all reimbursable expenses and they are included in the fixed Compensation Amount of **Subsection 4.1**. Consultant shall only be entitled to the Compensation Amount specified in **Subsection 4.1**.

4.4. Except for amounts withheld by the City pursuant to this Agreement, Consultant will be paid for Services for which an itemized invoice is received by the City within thirty (30) days of receipt, unless the City disputes such invoice. In that instance, the undisputed portion of the invoice will be paid by the City within the above timeframe. The City will set forth its reasons for the disputed claim amount and make good faith efforts to resolve the invoice dispute with Consultant as promptly as is reasonably possible.

4.5. The City will be responsible for the direct 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, that are not specifically covered by **Exhibit A**.

4.6. Consultant's Compensation Amount and Rate Schedule are all inclusive and include, but are not limited to, salaries or wages plus fringe benefits and contributions, including payroll taxes, workers' compensation insurance, liability insurance, profit, pension benefits and similar contributions and benefits, technology and/or software charges, office expenses, and all other indirect and overhead charges.

Section 5. City's Project Manager

The City's Project Manager is Kerry Rappold. The City shall give Consultant prompt written notice of any re-designation of its Project Manager.

Section 6. Consultant's Project Manager

Consultant's Project Manager is Adam Crafts. In the event that Consultant's designated Project Manager is changed, Consultant shall give the City prompt written notification of such re-designation. Consultant's Project Manager will not be changed without the written consent of the City, which consent shall not be unreasonably withheld. In the event the City receives any communication from Consultant that is not from Consultant's designated Project Manager, the City may request verification by Consultant's Project Manager, which verification must be promptly furnished.

Section 7. Project Information

Except for confidential information designated by the City as information not to be shared, Consultant agrees to share Project information with, and to fully cooperate with, those 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 newspapers, magazines, or television and radio stations, shall be made without the written authorization of the City's Project Manager.

Section 8. 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 Scope of Services, or any portion thereof; or of any nonconformance with federal, state, or local laws, rules, or regulations; or if Consultant has any objection to any decision or order made by the City with respect to such laws, rules, or regulations, Consultant shall give prompt written notice thereof to the City's Project Manager. Any delay or failure on the part of the 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 the City's rights.

Section 9. Consultant Is Independent Contractor

9.1. Consultant is an independent contractor for all purposes and shall be entitled to no compensation other than the Compensation Amount provided for under **Section 4** of this Agreement. Consultant will be solely responsible for determining the manner and means of accomplishing the end result of Consultant's Services. The City does not have the right to control

or interfere with the manner or method of accomplishing said Services. The City, however, will have the right to specify and control the results of Consultant's Services so such Services meet the requirements of the Project.

9.2. Consultant may request that some consulting Services be performed on the Project by persons or firms other than Consultant, through a subcontract with Consultant. Consultant acknowledges that if such Services are provided to the City pursuant to a subcontract(s) between Consultant and those who provide such services, Consultant may not utilize any subcontractor(s), or in any way assign its responsibility under this Agreement, without first obtaining the express written consent of the City, which consent may be given or denied in the City's sole discretion. For all Services performed under subcontract to Consultant, as approved by the City, Consultant shall only charge the compensation rates shown on an approved Rate Schedule. Rate Schedules for named or unnamed subcontractors, and Consultant markups of subcontractor billings, will only be recognized by the City as set forth in Consultant's Rate Schedule, unless documented and approved, in writing, by the City pursuant to a modification to Consultant's Rate Schedule, per **Section 19** of this Agreement. In all cases, processing and payment of billings from subcontractors is solely the responsibility of Consultant.

9.3. Consultant shall be responsible for, and defend, indemnify and hold the City harmless against, any liability, cost, or damage arising out of Consultant's use of such subcontractor(s) and subcontractor's negligent acts, errors, or omissions. Unless otherwise agreed to, in writing, by the City, Consultant shall require that all of Consultant's subcontractors also comply with and be subject to the provisions of this **Section 9** and meet the same insurance requirements of Consultant under this Agreement.

9.4. Consultant shall make prompt payment for any claims for labor, materials, or services furnished to Consultant by any person in connection with this Agreement, as such claims become due. Consultant shall not permit any liens or claims to be filed or prosecuted against the City on account of any labor or material furnished to or on behalf of Consultant. If Consultant fails, neglects, or refuses to make prompt payment of any such claim, the City may pay such claim to the subcontractor furnishing the labor, materials, or services and offset the amount of the payment against funds due or to become due to Consultant under this Agreement. The City may also recover any such amounts directly from Consultant.

9.5. Should Consultant elect to utilize employees on any aspect of this Agreement, Consultant must comply with all wage and hour laws. Consultant shall make all required workers' compensation and medical care payments on time. Consultant shall be fully responsible for payment of all employee withholdings 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 defend, indemnify, and hold the City harmless from claims for payment of all such expenses. Unless otherwise expressly set forth on **Exhibit B** as a reimbursable expense item, specific costs associated with items set forth in this subsection shall be deemed as fully and conclusively included in the rate upon which Consultant's Compensation Amount is based.

9.6. No person shall be discriminated against by Consultant or any subcontractor in the performance of this Agreement on the grounds of sex, gender, 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.

Section 10. Indemnity and Insurance

10.1. Consultant acknowledges responsibility for liability arising out of the performance of this Agreement, and shall defend, indemnify, and hold the City harmless from 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 or reckless 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 the City, its Project Manager, or any City employee of documents or other work performed, prepared, or submitted by Consultant shall not be considered a negligent act, error, omission, or willful misconduct on the part of the City, and none of the foregoing shall relieve Consultant of its responsibility to perform in full conformity with the City's requirements, as set forth in this Agreement, and to indemnify the City as provided above and to reimburse the City for any and all costs and damages suffered by the City as a result of Consultant's negligent performance of this Agreement, failure of performance hereunder, violation of state or federal laws, or failure to adhere to the standards of performance and care described in **Subsection 10.2**. Consultant shall defend the City (using legal counsel reasonably acceptable to the City) against any claim that alleges negligent acts, omissions, errors, or willful or reckless misconduct by Consultant.

10.2. Consultant's Standard of Care and Insurance Requirements.

10.2.1. Standard of Care: In the performance of professional services, Consultant agrees to use at least that degree of care and skill exercised under similar circumstances by reputable members of Consultant's profession practicing in the Portland metropolitan area. Consultant will re-perform any services not meeting this standard without additional compensation. Consultant's re-performance of any services, even if done at the City's request, shall not be considered as a limitation or waiver by the 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 of this Agreement and within the prescribed timeframe.

10.2.2. Insurance Requirements: Consultant shall maintain insurance acceptable to the City in full force and effect throughout the term of this Agreement. Such insurance shall cover all risks arising directly or indirectly out of Consultant's activities or work hereunder. The amount of insurance carried is in no way a limitation on Contractor's liability hereunder. The policy or policies of insurance maintained by Consultant shall provide at least the following minimum limits and coverages at all times during performance under this Agreement:

10.2.2.1. *Commercial General Liability Insurance*. Consultant shall obtain, at Consultant's expense, and keep in effect during the term of this Agreement, Comprehensive General Liability Insurance covering Bodily Injury and Property Damage on an "occurrence" form (1996 ISO or equivalent). This coverage shall include broad form Contractual Liability insurance for the indemnities provided under this Agreement. The following minimum insurance amounts must be carried and maintained at all times:

<i>Coverage</i>	<i>Limit</i>
General Aggregate	\$2,000,000
Products-Completed Operations Aggregate	2,000,000
Each Occurrence	2,000,000
Fire Damage (any one fire)	50,000
Medical Expense (any one person)	10,000

10.2.2.2. *Professional Errors and Omissions Coverage.* Consultant agrees to carry Professional Errors and Omissions Liability insurance on a policy form appropriate to the professionals providing the Services hereunder with a limit of no less than \$2,000,000 per claim. Consultant shall maintain this insurance for damages alleged to be as a result of errors, omissions, or negligent acts of Consultant. Such policy shall have a retroactive date effective before the commencement of any work by Consultant on the Services covered by this Agreement.

10.2.2.3. *Business Automobile Liability Insurance.* If Consultant will be using a motor vehicle in the performance of the Services herein, Consultant shall provide the City a certificate indicating that Consultant has business automobile liability coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than \$2,000,000.

10.2.2.4. *Workers' Compensation Insurance.* Consultant and all employers providing work, labor, or materials under this Agreement that are subject employers under the Oregon Workers' Compensation Law shall comply with ORS 656.017, which requires them to provide workers' compensation coverage that satisfies Oregon law for all their subject workers or employees that are exempt under ORS 656.126. Out-of-state employers must provide Oregon workers' compensation coverage for their workers who work at a single location within Oregon for more than thirty (30) days in a calendar year. Consultants who perform work without the assistance or labor of any employee need not obtain such coverage. This shall include Employer's Liability Insurance with coverage limits of not less than \$500,000 each accident.

10.2.2.5. *Insurance Carrier Rating.* Coverages provided by Consultant must be underwritten by an insurance company deemed acceptable by the City. The City reserves the right to reject all or any insurance carrier(s) with a financial rating that is unacceptable to the City.

10.2.2.6. *Certificates of Insurance.* As evidence of the insurance coverage required by this Agreement, Consultant shall furnish a Certificate of Insurance to the City. This Agreement shall not be effective until the required certificates and the Additional Insured Endorsements have been received and approved by the City. Consultant agrees that it will not terminate or change its coverage during the term of this Agreement without giving the City at least thirty (30) days' prior advance notice.

10.2.2.7. *Additional Insured Endorsements.* The City will be named as an additional insured with respect to Consultant's liabilities hereunder in insurance coverages. The following is included as additional insured: The City of Wilsonville, its elected and appointed officials, officers, agents, employees, and

volunteers. Except professional liability and workers' compensation coverage, all policies shall provide an Additional Insured Endorsement.

10.2.3. The coverage provided by these policies shall be primary, and any other insurance carried by the City is excess. Consultant shall be responsible for any deductible amounts payable under all policies of insurance. In the event a dispute arises between the City and Consultant for which Consultant has obtained insurance, the maximum amount that may be withheld by the City for all such claims shall be no more than the amount of the applicable insurance deductible. If insurance policies are "Claims Made" policies, Consultant will be required to maintain such policies in full force and effect through any warranty period.

Section 11. Payment, Performance, and Completion Bonding Requirements

No bonds are required for this Project.

Section 12. Early Termination; Default

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

12.1.1. By mutual written consent of the parties;

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

12.1.3. By Consultant, effective upon seven (7) days' prior written notice in the event of substantial failure by the City to perform in accordance with the terms through no fault of Consultant, where such default is not cured within the seven (7) day period by the City. Withholding of disputed payment is not a default by the City.

12.2. If the City terminates this Agreement, in whole or in part, due to default or failure of Consultant to perform Services in accordance with the Agreement, the 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, both at law and in equity, for breach of contract, Consultant shall be liable for all costs and damages incurred by the City as a result of the default by Consultant, including, but not limited to all costs incurred by the City in procuring services from others as needed to complete this Agreement. This Agreement shall be in full force to the extent not terminated by written notice from the City to Consultant. In the event of a default, the City will provide Consultant with written notice of the default and a period of ten (10) days to cure the default. If Consultant notifies the City that it wishes to cure the default but cannot, in good faith, do so within the ten (10) day cure period provided, then the City may elect, in its sole discretion, to extend the cure period to an agreed upon time period, or the City may elect to terminate this Agreement and seek remedies for the default, as provided above.

12.3. If the City terminates this Agreement for its own convenience not due to any default by Consultant, 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 the City under this Agreement.

12.4. Termination under any provision of this section shall not affect any right, obligation, or liability of Consultant or the City that accrued prior to such termination. Consultant shall surrender to the City items of work or portions thereof, referred to in **Section 16**, for which

Consultant has received payment or the City has made payment. The City retains the right to elect whether or not to proceed with actual construction of the Project.

Section 13. Suspension of Work

The 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 Consultant's control. The City shall not be responsible for work performed by any subcontractors after notice of suspension is given by the City to Consultant. Should the City suspend, delay, or interrupt the work and the suspension is not within Consultant's control, then the City shall extend the time of completion by the length of the delay.

Section 14. Subcontractors and Assignments

14.1. Unless expressly authorized in **Exhibit A** or **Section 9** 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 the City, which approval may be granted or denied in the City's sole discretion. Work may be performed by persons other than Consultant, provided Consultant advises the City of the names of such subcontractors and the work which they intend to perform, and the City specifically agrees in writing to such subcontracting. Consultant acknowledges such services will be provided to the City pursuant to a subcontract(s) between Consultant and subcontractor(s) and no privity of contract exists between the City and the subcontractor(s). Unless otherwise specifically provided by this Agreement, the City incurs no liability to third persons for payment of any compensation provided herein to Consultant. Any attempted assignment of this Agreement without the written consent of the 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 the City.

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

Section 15. Access to Records

The 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 the City specifically requests an extension. This clause shall survive the expiration, completion, or termination of this Agreement.

Section 16. Property of the City

16.1. 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 the City and shall be delivered to the 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 the City upon request without additional compensation. Upon the City's approval, and provided the City is identified in connection therewith, Consultant may include Consultant's work in its promotional materials. Drawings may bear a disclaimer releasing 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.

16.2. Consultant shall not be held liable for any damage, loss, increased expenses, or otherwise, caused by or attributed to the reuse by the City or its designees of all work performed by Consultant pursuant to this Agreement without the express written permission of Consultant.

Section 17. Laws of Oregon

This Agreement shall be governed by the laws of the State of Oregon. All contractual provisions required by ORS Chapter 279A and 279C 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.

Section 18. 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 that 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.

Section 19. Modification/Change Orders

Any modification of the provisions of this Agreement shall not be enforceable unless reduced to writing and signed by both the City and Consultant. A modification is a written document, contemporaneously executed by the City and Consultant, which increases or decreases the cost to the City over the agreed Compensation Amount in **Section 4** of this Agreement, or changes or modifies the Scope of Services or the time for performance. No modification shall be binding or effective until executed, in writing, by both Consultant and the City. In the event Consultant receives any communication of whatsoever nature from the City, which communication Consultant contends gives rise to any modification of this Agreement, Consultant shall, within five (5) days after receipt, make a written request for modification to the City's Project Manager in the form of a Change Order. Consultant's failure to submit such written request for modification in the form of a Change Order shall be the basis for refusal by the City to treat said communication as a basis for modification or to allow such modification. In connection with any modification to this Agreement 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, the City shall be responsible for payment of only those additional costs for which it has agreed to pay under a signed Change Order. To be enforceable, the Change Order must describe with particularity the nature of the change, any delay in time the Change Order will cause, or any increase or decrease in the Contract Price. The Change Order must be signed and dated by both Consultant and the City before the Change Order may be implemented.

Section 20. Notices

Any notice required or permitted under this Agreement shall be in writing and shall be given when actually delivered in person or forty-eight (48) hours after having been deposited in the United States mail

as certified or registered mail, addressed to the addresses set forth below, or to such other address as one party may indicate by written notice to the other party.

To City: City of Wilsonville
Attn: Kerry Rappold
29799 SW Town Center Loop E
Wilsonville OR 97070

To Consultant: Wallis Engineering
Attn: Adam Crafts
215 SW 4th Street, Suite 200
Vancouver WA 98660

Section 21. Miscellaneous Provisions

21.1. Integration. This Agreement, including all exhibits attached hereto, 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.

21.2. 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 that Consultant is required by law to obtain or maintain in order to perform work described in the Fee Schedule shall be obtained and maintained throughout the term of this Agreement.

21.3. Legal Effect and Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors, and assigns. This Agreement may be enforced by an action at law or in equity.

21.4. No Assignment. Consultant may not delegate the performance of any obligation to a third party unless mutually agreed, in writing. This Agreement cannot be assigned without the written consent of the other party, but all claims for overcharges of goods or other anti-trust violations in connection with this Agreement are assigned to the City of Wilsonville. Consultant warrants that its suppliers will also assign any such claims.

21.5. Governing Law/Jurisdiction. This Agreement shall be construed in accordance with and governed by the laws of the State of Oregon. Venue for any dispute will be in Clackamas County Circuit Court.

21.6. Legal Action/Attorney Fees. If a suit, action, or other proceeding of any nature whatsoever (including any proceeding under the U.S. Bankruptcy Code) is instituted in connection with any controversy arising out of this Agreement or to interpret or enforce any rights or obligations hereunder, the prevailing party shall be entitled to recover attorney, paralegal, accountant, and other expert fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, as determined by the court or body at trial or on any appeal or review, in addition to all other amounts provided by law. If the City is required to seek legal assistance to enforce any term of this Agreement, such fees shall include all of the above

fees, whether or not a proceeding is initiated. Payment of all such fees shall also apply to any administrative proceeding, trial, and/or any appeal or petition for review.

21.7. Nonwaiver. Failure by either party at any time to require performance by the other party of any of the provisions of this Agreement shall in no way affect the party's rights hereunder to enforce the same, nor shall any waiver by the party of the breach hereof be held to be a waiver of any succeeding breach or a waiver of this nonwaiver clause.

21.8. Severability. If any provision of this Agreement is found to be void or unenforceable to any extent, it is the intent of the parties that the rest of the Agreement shall remain in full force and effect, to the greatest extent allowed by law.

21.9. Modification. This Agreement may not be modified except by written instrument executed by Consultant and the City.

21.10. Time of the Essence. Time is expressly made of the essence in the performance of this Agreement.

21.11. Calculation of Time. All periods of time referred to herein shall include Saturdays, Sundays, and legal holidays in the State of Oregon, except that if the last day of any period falls on any Saturday, Sunday, or legal holiday in the State of Oregon, the period shall be extended to include the next day which is not a Saturday, Sunday, or legal holiday.

21.12. Counting of Days. Whenever a time period is set forth in days in this Agreement, the first day from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday or legal holiday, including Sunday, in which event the period runs until the end of the next day that is not a Saturday or legal holiday.

21.13. Headings. Any titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

21.14. Number, Gender and Captions. In construing this Agreement, it is understood that, if the context so requires, the singular pronoun shall be taken to mean and include the plural, the masculine, the feminine and the neuter, and that, generally, all grammatical changes shall be made, assumed, and implied to individuals and/or corporations and partnerships. All captions and paragraph headings used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Agreement.

21.15. Good Faith and Reasonableness. The Parties intend that the obligations of good faith and fair dealing apply to this Agreement generally and that no negative inferences be drawn by the absence of an explicit obligation to be reasonable in any portion of this Agreement. The obligation to be reasonable shall only be negated if arbitrariness is clearly and explicitly permitted as to the specific item in question, such as in the case of where this Agreement gives the City "sole discretion" or the City is allowed to make a decision in its "sole judgment."

21.16. Other Necessary Acts. Each party shall execute and deliver to the other all such further instruments and documents as may be reasonably necessary to carry out this Agreement in order to provide and secure to the other parties the full and complete enjoyment of rights and privileges hereunder.

21.17. Interpretation. As a further condition of this Agreement, the City and Consultant acknowledge that this Agreement shall be deemed and construed to have been prepared mutually by each party and it shall be expressly agreed that any uncertainty or ambiguity existing therein shall not be construed against any party. In the event that any party shall take an action, whether judicial or otherwise, to enforce or interpret any of the terms of the contract, the prevailing party shall be entitled to recover from the other party all expenses which it may reasonably incur in taking such action, including attorneys' fees and costs, whether incurred in a court of law or otherwise.

21.18. Entire Agreement. This Agreement, all documents attached to this Agreement, and all Contract Documents and laws and regulations incorporated by reference herein, represents the entire agreement between the parties.

21.19. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original Agreement but all of which together shall constitute one and the same instrument.

21.20. Authority. Each party signing on behalf of Consultant and the City hereby warrants actual authority to bind their respective party.

The Consultant and the City hereby agree to all provisions of this Agreement.

CONSULTANT:

CITY:

WALLIS ENGINEERING, LLC

CITY OF WILSONVILLE

By: _____

By: _____

(Print Name) _____

(Print Name) _____

As Its: _____

As Its: _____

APPROVED AS TO FORM

ATTESTED TO:

Barbara A. Jacobson, Assistant City Attorney
City of Wilsonville, Oregon

Sandra C. King, MMC, City Recorder
City of Wilsonville, Oregon

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EXHIBIT A – SCOPE OF WORK

City of Wilsonville
Memorial Park Parking Lot Repair and Stormwater Retrofit Project
January 24, 2013
WE #1337A

GENERAL SCOPE OF PROJECT

This project consists of providing design phase services for the Memorial Park Parking Lot Repair and Stormwater Retrofit Project. The heavily used parking lot is located at the main entrance to the active recreational area in the park, and is currently experiencing asphalt failure and poor drainage. Proposed improvements include parking lot pavement reconstruction, LID stormwater management facilities, a trail connection across the parking lot, an informational kiosk, and a SMART bus turnout. Consultant services will include boundary and site surveying, geotechnical investigations, tree evaluation and protection by a certified arborist, hydrologic analysis, public involvement, preparation of contract plans, technical specifications, estimates, and assistance with bidding. Construction phase professional services may be provided under a separate agreement.

SPECIFIC SCOPE OF WORK

- Task 1 Project Management**
- Task 2 Site Evaluation and Data Collection**
- Task 3 Preliminary Engineering**
- Task 4 Hydrologic Analysis and Stormwater Management**
- Task 5 Permitting Assistance**
- Task 6 Final Engineering**

Task 1 Project Management

Provide project management, coordination, and direction to the design team to complete the project. Establish quality control management and designate responsibility of technical work and deliverable products.

- 1.1 Project Coordination.** Provide coordination and communication with City's project manager, design team, and affected agencies and stakeholders.
- 1.2 Scope and Schedule.** Prior to consultant contract award, we propose an initial workshop with key members of the consultant team and City staff to develop the scope of work for the project. The consultant team will prepare a gantt chart for delivery to the City defining the anticipated process for project delivery with anticipated construction to start after Labor Day 2013.
- 1.3 Public Meetings.** The Project Manager from Wallis Engineering and GreenWorks will attend two City Council meetings, one Development Review Board meeting, and one Parks and Recreation Advisory Board meeting. No other meetings are

anticipated.

1.4 Public Involvement Support. The consultant will assist City staff with informing elected officials, stakeholders, and the general public of the project and soliciting their input. This task will include the preparation of two fact sheets, a project information sign, coordination with the City's Public Affairs Coordinator, preparation of content and exhibits to include on the City's website, and participation in four public meetings. Mason Bruce and Girard (MB&G) will assist in this task as a sub-consultant to Wallis Engineering.

The first fact sheet will be prepared for distribution at a February recreation meeting and will include general information about the project and notice of upcoming construction. The second fact sheet will be prepared after the parking lot conceptual layout has been selected by City Staff and will include site specific information, an anticipated construction schedule, information on design elements, other applicable information, and direction to the City's website for more information. The intent of this fact sheet is for distribution to park stakeholders, adjacent property owners, public officials, and posting on the City's website.

A project information sign will be designed, fabricated, and delivered to the City for installation at the park. This sign will include similar information as the second fact sheet as limited by sign spacing and will be in color with a wood substrate.

The City will design and host a virtual open house for the project with content and exhibits provided by the consultant team. MB&G shall coordinate with the City of Wilsonville Public Affairs Coordinator to provide project information on the City's website. MB&G shall prepare information for an online open house to be managed by the City during the conceptual design phase. The purpose of the online open house will be to inform Wilsonville residents and park users about the project and to invite them to comment on the elements that they think should be priorities for the design team (e.g., providing more parking, providing larger parking spaces, improving circulation, enhancing landscaping, improving signage/way finding, preserving healthy trees). MB&G shall prepare a summary of any input received through the online open house for the project team. Web design and operation will be provided by the City.

Task 1 Assumptions:

- Printing, distribution, and web maintenance of content by City
- Outreach meeting to sports clubs and neighborhood groups by City
- City project manager will schedule and attend all public meetings

Task 1 Deliverables:

- Final scope and schedule
- Meeting agendas and minutes
- Two project fact sheets
- Exhibits, maps and graphic materials for public open houses and other meetings as

requested

- Monthly status reports and pay requests
- 4'x6' project information sign

Task 2 Site Evaluation and Data Collection

Compass Engineering and Surveying (Compass) will complete all surveying-related tasks required for the project. Geotechnical investigations and evaluation will be completed by Geodesign Inc. Morgan Holen and Associates will provide consulting arborist services for the evaluation and protection of valuable trees within the project area. Their individual Scopes of Work are attached.

2.1 Boundary Survey and Legal Descriptions. This task will determine the presence of existing survey monuments of record within the proposed area of construction which may be subject to disturbance or removal related to the proposed improvements.

2.2 Topographic Survey and Base Mapping. Compass will prepare a topographic survey in AutoCAD format for use in preliminary design and for permitting. It will include:

- Existing ground elevation, with contours.
- Tree locations drip lines and sizes.
- Horizontal and vertical location of existing utilities, surface improvements, structures, and other items as necessary.
- Location of Flood Plain boundaries and Significant Resource Overlay Zones.
- Benchmark information as required.

This survey will be converted into Wallis Engineering CAD standards and converted into a base map.

2.3 Tree Survey and Protection Plan

Morgen Holen and Associates will complete a tree survey and arborist's report of all trees measuring six inches in diameter or larger within the project area. They will also participate in two project team meetings to coordinate with project designers.

2.4 Geotechnical Investigation

Geodesign will perform geotechnical services related to observing ground water conditions at the site and providing recommendations for the new parking lot pavement section. Their specific tasks include:

- Complete a review of readily available geologic maps for the site vicinity.
- Review the preliminary site plans provided to us by the City of Wilsonville and Wallis Engineering for the proposed improvements.
- Complete up to six solid stem auger explorations to depths of up to 10 feet

BGS.

- Complete infiltration testing at shallow depths in up to two of the explorations.
- Install piezometers (groundwater level monitoring wells) in up to two of the solid stem boring locations.
- Perform limited laboratory analyses on soil samples obtained from the test pits and hand augers, including up to eight moisture content determinations, two fines determinations, two atterberg limits tests, and one organic content determination.
- Monitor ground water levels approximately three times over a three month period.
- Evaluate pavement design options for asphalt concrete, portland cement concrete, and pervious concrete pavement alternative.
- Provide geotechnical engineering construction recommendations for site preparation, structural fill compaction criteria, and wet/dry weather earthwork procedures.
- Provide recommendations for proposed geotechnical construction materials and practices.
- Provide recommendations regarding the potential causes of the standing water.
- De-commission piezometers when requested by the design team and within 3 months of installation.
- Provide a written report that summarizes our findings and recommendations.

Task 2 Deliverables:

- Topographic survey in hardcopy and AutoCAD format
- Tree survey and arborist's report
- Geotechnical Report

Task 3 Preliminary Engineering

Identify a preferred site plan, details and cost estimates that will establish the basis for design and regulatory approval.

- 3.1 Conceptual Site Planning.** In collaboration with City staff, develop two basic site layout options for the parking area. Include locations and general footprint for walkways, landscape areas, access roadways, the bus turn out, and kiosk location. A matrix will be prepared to evaluate each alternative with regard to number of parking spaces, tree protection, vehicle/pedestrian circulation, intersection alignment, sequencing and constructability, and anticipated construction cost. The consultant team will make additional recommendations with regard to parking stall design sizes

for evaluation by City staff. This task will include two work shop meetings with City staff to develop the alternative layouts and identify a preferred alternative for further development.

3.2 Development of Preferred Plan Selection. The preferred layout will be developed into site plan that is approximately at a 50% design level. The design effort in this task will focus upon further refining the alignment of roadways, geometry and locations of trails, planter areas, bioswales and access roads. Preliminary design of stormwater management facilities will be completed. Options for paved surfacing, plantings, tree protection, and illumination, will also be identified and evaluated. Design features and a preliminary cost estimate will be developed. The developed site plan and features will be presented in up to three graphics ready for public viewing in association with Subtask 1.4.

Design, detail, or locating special park signs are not included in this scope of work. Possible locations park signage identified and designed by others may be incorporated into the preferred plan. Standard parking lot signage will be included.

3.3 Basis of Design Memorandum. A Memorandum will be prepared summarizing the conceptual design criteria, recommendations, and selections as determined from above. It will include preliminary plans of the preferred alternative as prepared in Subtask 3.2 and a preliminary cost estimate.

Task 3 Deliverables:

- Two Conceptual Site Layouts
- Preferred Alternative Selection
- Design selection matrix
- Presentation graphics
- Basis of Design Memorandum and preliminary cost estimate

Task 4 Hydrologic Analysis and Stormwater Management

Complete hydrologic and hydraulic analysis for the project site, and utilize that analysis to design effective stormwater management facilities, addressing the City's stormwater requirements, including flood plain permitting.

4.1 Site Evaluation. Site groundwater and soil conditions will be evaluated based on NRCS Custom Soils Report data and supplemented by results of geotechnical investigations for use in the hydrologic analysis. An investigation of upstream and downstream conditions will be undertaken.

4.2 Hydrologic Modeling. A hydrologic analysis of the existing site conditions will be completed using the rational method. It is our understanding that the City is revising its standards for the storm water quality design storm and this method will be used for this evaluation.

4.3 Stormwater Facility Design. Stormwater facilities will be designed in conjunction

with hydraulic and hydrologic analysis in order to determine the most effective design. Low Impact Development techniques will be utilized to the maximum extent feasible. Final facility design will be modeled to determine the impact on basin hydrology.

4.4 Drainage Report. A Drainage Report will be prepared in accordance with the City's Public Works Standards, summarizing the efforts listed above.

Task 4 Deliverables:

- Hydrologic analysis results
- Drainage Report

Task 5 Permitting Assistance

The consultant team will assist with applicable City land use permits necessary to obtain clearances for this project. We understand the following codes are applicable to this project: including:

- SROZ (Development Code Section 4.139) – assumed to be exempt per subsection (.06) and (.07)
- General Development Regulations (Development Code Sections 4.154 to 4.199)
- Tree Removal (Development Code Section 4.600.40) – Permit not required but mitigation of removed trees will be determined by the City.
- Development permit for work within the 100-year flood plain. The consultant team will prepare a development permit application and submittal package for the City Project Manager to submit on behalf of the project.

Task 5 Deliverables:

- Development permit application package.

Task 6 Final Engineering

Prepare contract documents for construction of project (if directed by the City).

6.1 50%, 90% and Final Plans, Specifications and Estimates. Plans will be prepared at the 50%, 90%, and 100% completion stages, using design parameters developed in Task 3 and 4. A plan set which includes the City's title block will be prepared using AutoCAD Civil 3D 2011. The title block will incorporate the Wallis Engineering logo as well as the logos of the design team subconsultants. The anticipated plan sheet list is as follows:

- | | |
|---|---------|
| 1. Cover Sheet | 1 sheet |
| 2. General Notes, Legend, and Abbreviations | 1 sheet |
| 3. Typical Sections and Details | 1 sheet |

4. Demolition and Staging Plan	1 sheet
5. Erosion Control Plan	2 sheets
6. Erosion Control Details	1 sheet
7. Horizontal Control Plan	2 sheets
8. Grading Plan	2 sheets
9. Drainage Plan	2 sheet
10. Signing and Striping Plan	1 sheet
11. Civil Details	4 sheets
12. Landscaping Plan	2 sheets
13. Irrigation Plan	2 sheets
14. Site Furnishings Details	2 sheets
15. Landscaping Details	4 sheets

Construction specifications will be based on the City's standard specifications and will be prepared at the 90% and 100% completion stages. The City will provide the front end contract documents and the consultant will prepare the technical special provisions in City-approved format.

A cost estimate will also be prepared for each submittal.

Standard signage details for park entry signage, pedestrian signage / wayfinding will be provided by City for incorporation into construction drawings.

- 6.2 Lighting Design.** Additional lighting is desired for the site and may be required if a new parking lot layout is selected. The City intends for any new lights to conform to dark sky lighting requirements. It is our understanding that the current lighting is owned and maintained by PGE. Any additional lighting will be designed by PGE. The consultant team will coordinate with PGE for preparation of lighting improvements. No trail lighting is anticipated. The fee estimate includes time to coordinate with PGE for the design and to include the infrastructure into the Contract Documents. Design fees required by PGE are not included and will be paid directly by the City.

Task 6 Deliverables:

- 50% Plans and Cost Estimate
- 90% Plans, Specifications, and Cost Estimate
- Final Plans, Specifications, and Cost Estimate

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Wilsonville Memorial Park Parking Lot & Stormwater Project
Exhibit B - Fee Estimate
 WE #1337A
 8-Jan-13

Task Description	Wallis Engineering Staff Estimated Hours										Expenses	Compass	Subconsultants		MHA	Total Cost	
	QC	E1	E2	JE	T1	T1	Staff Cost	GreenWorks	GeoDesign	MBG							
Task 1 Project Management																	
1.1 Project Coordination			32								\$3,808	\$118 (2)					\$3,926
1.2 Scope and Schedule		4									\$7,448		\$1,760	\$611			\$3,819
1.3 Meetings		8									\$3,808	\$172 (2)					\$3,980
1.4 Public Involvement		8	8	24	16						\$4,992	\$825 (3)		\$11,176			\$19,919
TASK 1 SUBTOTAL	0	12	80	24	16						\$14,056	\$1,114	\$1,760	\$11,787	\$0		\$31,643
Task 2 Survey and Geotechnical Investigation																	
2.1 Boundary Survey and Legal Descriptions		2									\$248						\$1,502
2.2 Topographic Survey		2		2							\$1,022						\$10,680
2.3 Tree Survey and Protection Plan		2		2							\$486						\$5,106
2.4 Geotechnical Investigation		2		2							\$486						\$5,106
TASK 2 SUBTOTAL	0	8	4	2	8						\$2,242	\$0	\$10,812	\$0	\$4,820		\$29,434
Task 3 Preliminary Engineering																	
3.2 Conceptual Site Planning		2	16	4	16	24					\$5,852	\$176 (2)					\$18,117
3.3 Alternative Site Plan Development and Preferred Plan Selection		4	16	4	16	16					\$5,548	\$500 (1)					\$6,048
3.4 Basis of Design Memorandum		8	8	2	8	8					\$1,830						\$1,830
TASK 3 SUBTOTAL	6	40	10	40	40	40					\$13,230	\$676	\$0	\$12,089	\$0	\$0	\$25,995
Task 4 Hydrologic Analysis and Stormwater Management																	
4.1 Site Evaluation		4			8						\$1,096	\$59 (2)					\$1,155
4.2 Hydrologic Modeling		8			24						\$2,792						\$2,792
4.3 Stormwater Facility Design		4			16	8					\$2,320						\$2,320
4.4 Drainage Report		8			16	8					\$2,816						\$3,960
TASK 4 SUBTOTAL	0	24	0	64	16	88					\$9,024	\$59	\$0	\$1,144	\$0	\$0	\$10,227
Task 5 Permitting Assistance																	
5.1 Permitting Assistance		8	8	8	24	4					\$4,056						\$4,056
TASK 5 SUBTOTAL	0	8	8	8	24	4					\$4,056	\$0	\$0	\$0	\$0	\$0	\$4,056
Task 6 Final Engineering																	
6.1 50%, 90% and Final Plans, Specifications and Estimates		8	60	24	80	80					\$23,816	\$118 (1)					\$46,110
6.2 Lighting Design		2	4	4	4	8					\$1,648						\$1,648
TASK 6 SUBTOTAL	8	62	28	84	88	88					\$25,464	\$118	\$0	\$22,176	\$0	\$0	\$47,758
GRAND TOTAL	14	154	130	238	172	172					\$69,072	\$1,967	\$13,420	\$11,787	\$4,820		\$149,113

Staff	Hours	Rate	Fees
QC - Quality Control	14	\$160	\$2,240
E1 - Engineer 1	154	\$124	\$19,096
E2 - Engineer 2	130	\$119	\$15,470
JE - Junior Engineer	238	\$75	\$17,850
T1 - Technician 1	172	\$78	\$13,416
Total Fees from Staff			\$68,072
Subconsultant			Fees
Surveyor - Compass Engineering			\$10,912
GreenWorks			\$36,335
GeoDesign			\$13,420
Mason, Bruce & Girard			\$11,787
Morgan Holen & Assoc.			\$4,620
Total Fees from Subconsultants			\$79,074
<i>NOTE: Fee includes 10% markup</i>			
Expenses			Cost
Printing (1)			\$618
Mileage @ \$0.565/mi (2)			\$524
Project Sign (3)			\$825
Total Fees from Expenses			\$1,967
TOTAL BUDGET			\$149,113