

RESOLUTION NO. 1094

A RESOLUTION OF THE CITY OF WILSONVILLE EXEMPTING THE CITY FROM COMPETITIVE BIDDING REQUIREMENTS AND AUTHORIZING THE CITY MANAGER TO SIGN A PROFESSIONAL SERVICES AGREEMENT WITH MACKAY AND SPOSITO, INC. TO PROVIDE ENGINEERING SERVICES FOR THE PLANNED OVERLAY OF SOUTH WEST TOWN CENTER LOOP WEST.

WHEREAS, the City of Wilsonville adopted a motion at its regular meeting in June 1993, authorizing budget appropriations for the 1993-94 fiscal year; and

WHEREAS, the City Of Wilsonville adopted Resolution No. 1061 authorizing the addition of Town Center Loop West Overlay to the Street Capital Project Fund for fiscal year 1993-94; and

WHEREAS, the approved City budget Capital Project Fund for fiscal year 1993-94 includes \$156,000 to cover the cost of the design and construction of the project commonly known as the Town Center Loop West Overlay (Project No. 4019); and

WHEREAS, South West Town Center Loop West intersects with South West Wilsonville Road at the southerly terminus of the street and portions of South West Town Center Loop West are in dis-repair and overlay will improve the roadway system promoting the safe and efficient movement of vehicles in the area; and

WHEREAS, if timely made, the resurfacing will materially assist in maintaining the sub-surface of South West Town Center Loop West from additional traffic impacts which will continue to deteriorate the subject roadway; and

WHEREAS, the City Engineer has identified the overlay project as a systems development fund project at an estimated cost of \$156,000 which includes engineering and construction costs; and

WHEREAS, the City of Wilsonville adopted Resolution 1045 authorizing the City Manager to sign a Professional Services Agreement with MacKay and Sposito, Inc. to provide professional services for the planned overlay of South West Commerce Circle; and

WHEREAS, MacKay and Sposito, Inc. has completed the construction plans and specifications for the reconstruction of South West Commerce Circle in a timely and cost

effective manner; and

WHEREAS, the City Engineer wishes to have MacKay and Sposito, Inc. provide design, construction, surveying, geotechnical and project management services during the overlay of South West Town Center Loop West; and

WHEREAS, if timely made, the completion of the construction plans and specifications for the overlay of South West Town Center Loop West will allow the work to take place in the upcoming construction season; and

WHEREAS, after reviewing the fees associated with providing the requested design, construction, surveying, geotechnical and project management services, staff has determined that the fees for the services have been found to be in line with the previously approved South West Commerce Circle reconstruction with adjustments for inflation; and

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

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

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

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

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

WHEREAS, if, MacKay and Sposito, Inc. Consulting Engineers, Inc. provides the professional services for the above referenced project, the City will realize additional costs savings in completion of the proposed improvements during the upcoming construction season; and

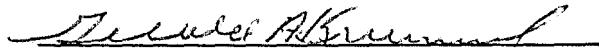
WHEREAS, these fees are calculated to be \$29,500.

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

1. That the City Council, serving in its role as Local Contract Review Board does hereby exempt the award of contract for Professional services for the planned South West Town Center Loop Overlay from competitive bidding and further concludes this award will not diminish competition and will result in substantial costs savings.
2. The City Council, serving as a Local Contract Review Board, does hereby approve and authorize the City Manager to sign a Professional Services Agreement between the City of Wilsonville and MacKay and Sposito, Inc. Consulting Engineering, Inc., a copy of which is marked Exhibit "A", attached hereto and incorporated herein, to provide professional services recited above for the referenced project.
3. Authorize the expenditures for this contract not to exceed budget amount from:

Account	Budget Amount
5000-540-7704019	\$156,000

ADOPTED by the City Council of the City of Wilsonville at a regular meeting thereof this 7th day of March, 1994, and filed with the Wilsonville City Recorder this date.



GERALD A. KRUMMEL, Mayor

ATTEST:



VERA. A. ROJAS, CMC/AAE, City Recorder

SUMMARY of Votes:

Mayor Krummel	<u>AYE</u>
Councilor Hawkins	<u>AYE</u>
Councilor Benson	<u>AYE</u>
Councilor Lehan	<u>AYE</u>
Councilor Sempert	<u>AYE</u>

ENGINEERING DEPARTMENT
STAFF REPORT

DATE: MARCH 7, 1994

TO: HONORABLE MAYOR AND CITY COUNCILORS
CITY OF WILSONVILLE

FROM: MICHAEL A. STONE, P.E.
CITY ENGINEER

SUBJECT: Professional Services Agreement with MacKay and Sposito for the
Overlay of South West Town Center Loop West.

Summary:

The current budget document for the 1993-94 fiscal year contains a project entitled Town Center Loop West Overlay (Project No. 4019).

Staff now wishes to proceed with the project and enlist the services of MacKay and Sposito Consulting Engineers, Inc. to provide the necessary professional engineering services. These fees are estimated at \$29,500.

Recommendation:

Staff respectfully recommends that the City Council authorize the City Manger to execute a Professional Services Agreement between the City and MacKay and Sposito Consulting Engineers, Inc. to provide professional services for the Overlay of South West Town Center West.

Discussion:

The portions of South West Town Center Loop West that are the subject of the referenced project were constructed as part of local improvement District No. 2 extending from the intersection of South West Town Center Loop West and South West Wilsonville Road, southerly to a point fronting the Incredible Universe building.


Since the initial construction of the roadway, there have been additional underground utilities installed and remedial repair work has been undertaken in the area. Some of the utility trenches are starting to show signs of failure and even with remedial repairs portions of the original surface are also starting to fail.

This proposed work would entail removal of the failed sectional areas, replacement with adequate granular material and then placing a new asphaltic wearing surface over these areas.

MacKay and Sposito Consulting Engineers, Inc. has provided engineering services to the City of Wilsonville on South West 95th Avenue, South West Town Center Loop East Extension (Memorial Drive) and South West Commerce Circle. City staff has found that their work has been completed on time, under budget and to a high degree of accuracy.

If the Council approves the professional services agreement, the necessary design work will commence immediately which should allow completion of the work in the upcoming construction season of 1994.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Michael A. Stone". The signature is fluid and cursive, with a large loop at the end.

Michael A. Stone, P.E.
City Engineer

MAS/dr

EXHIBIT "A"

PROFESSIONAL SERVICES AGREEMENT

**FOR DESIGN, BIDDING AND CONSTRUCTION ENGINEERING SERVICES
FOR THE PLANNED OVERLAY OF S.W. TOWN CENTER LOOP WEST**

WILSONVILLE, OREGON

This AGREEMENT is made and entered into by and between MacKay and Sposito Engineers, Inc. ("CONSULTANT" herein) and the City of Wilsonville, a political subdivision of the State of Oregon ("CITY" herein).

ARTICLE 1. PURPOSE OF AGREEMENT

- 1.1 The purpose of this AGREEMENT shall be to set forth responsibilities and to clarify the relationship between the CITY and the CONSULTANT. CONSULTANT shall supply professional services as herein described. In consideration for said services the CITY shall pay the CONSULTANT such monies and in such manner as herein described.

ARTICLE 2. WHOLE AGREEMENT

- 2.1 This AGREEMENT is the complete and exclusive statement of the AGREEMENT between the parties relevant to the purpose described above and supersedes all prior agreements or proposals, oral or written, and all another communication between the parties relating to the subject matter of this AGREEMENT. No modification of this AGREEMENT will be binding on either party except as a written addendum, signed by an authorized agent of each party.

ARTICLE 3. EFFECTIVE DATE OF AGREEMENT

- 3.1 This AGREEMENT shall be effective after signing by both parties and upon issuance of a written notice to proceed by the CITY.

ARTICLE 4. WRITTEN NOTICE

- 4.1 Any notice of change, termination or other communication having a material effect on this AGREEMENT shall be served in one or more of the following manners:
- a. In-person delivery to and signed acknowledgment of receipt by an authorized officer, employee, agent or other representative of the contracting parties.
 - b. Deposited in the U.S. mails posted to the address(es) given in this document.

ARTICLE 5. GOVERNING LAW/VENUE

- 5.1 This AGREEMENT shall be governed by the laws of the State of Oregon. Any action or suit commenced in connection with this AGREEMENT shall be in the Circuit Court of Clackamas County. The prevailing party shall be entitled to reasonable attorney fees and costs as awarded by the court.
- 5.2 All rights and remedies of the parties hereto shall be cumulative and may be exercised successively or concurrently. The foregoing is without limitation to or waiver of any other rights or remedies according to law. It is agreed that fifteen (15) calendar days shall constitute reasonable notice for the exercise of any right in the event that applicable law specifically required such notice.

ARTICLE 6. OREGON REVISED STATUTES

- 6.1 All requirements of the Oregon Revised Statutes Nos. 279.310 through 279.430, Public Contracting, as applicable, are incorporated herein by reference.

ARTICLE 7. JUDICIAL RULINGS

- 7.1 If any provision of this AGREEMENT as applied to either party or to any circumstance shall be adjudged by a court to be void or unenforceable, the same shall in no way affect any other provision of the AGREEMENT or the validity or enforceability of this AGREEMENT.

ARTICLE 8. NONDISCRIMINATION

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

ARTICLE 9. DUTIES AND RESPONSIBILITIES OF THE CONTRACTOR

- 9.1 The CONSULTANT shall perform services as described in Attachment "A" (Scope of Work), attached hereto and by this reference made a part hereof.

ARTICLE 10. STANDARD OF SERVICES AND WARRANTY

- 10.1 The CONSULTANT agrees to perform his services with that standard of care, skill and diligence normally provided by a professional individual in the performance of similar services. It is understood that the CONSULTANT must perform the services based in part on information furnished by the CITY and that the CONSULTANT shall be entitled to rely on such information. However, the CONSULTANT is given notice that the CITY will be relying on the accuracy, competence and completeness of the CONSULTANT'S services in utilizing the results of such services.

- 10.2 The CONSULTANT warrants that the recommendations, guidance and performance of any person assigned under this AGREEMENT shall be in accordance with sound engineering/technical practice and/or professional standards and the requirements of this AGREEMENT.

ARTICLE 11. INDEPENDENT AGENT

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

ARTICLE 12. IDENTIFICATION AND INSURANCE

- 12.1 CONSULTANT shall save harmless and indemnify CITY, its Commissioners, employees and agents for any and all claims, damages, losses and expenses, including but not limited to reasonable attorney's fees arising out of or resulting from negligent performance of or failure to perform the obligations of the AGREEMENT.
- 12.2 The CONSULTANT shall purchase and maintain insurance at his expense, and shall provide certification to the CITY-of insurance in the types and amounts specified in Attachment "B" (Insurance), attached hereto and by this reference made a part hereof.

ARTICLE 13. SUBCONTRACTING

- 13.1 No portion of the AGREEMENT may be subcontracted to any other individual, firm or entity, except as may be set forth in Attachment "A", without the express and prior approval of the CITY.

ARTICLE 14. NON ASSIGNMENT

- 14.1 No portion of nor any interest in this AGREEMENT may be assigned to a third party, except as may be set forth in ATTACHMENT "A", without the express and prior approval of the CITY.

ARTICLE 15. FUNDING

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

ARTICLE 16. CITY PRIORITIES

- 16.1 The CONSULTANT shall comply promptly with any requests by the CITY relating to the emphasis or relative emphasis to be placed on various aspects of the work or to such other matters pertaining to said work.

ARTICLE 17. PUBLICITY

- 17.1 CONSULTANT shall not use in its external advertising, marketing programs, or other promotional efforts, any data, pictures or other representations of the CITY except on prior specific written authorization from CITY.

ARTICLE 18. USE OF CITY FACILITIES

- 18.1 CONSULTANT and its employees or agents shall have the right to use only those facilities of the CITY that are necessary to perform services under this AGREEMENT and shall have no right of access to any other facilities of the CITY without the prior approval of the CITY.

ARTICLE 19. FEES AND PAYMENT

- 19.1 The CITY agrees to pay the CONSULTANT for services performed pursuant to this AGREEMENT according to the terms and amounts specified in Attachment "C" (Fees and Payment), attached hereto and by this reference made a part hereof. Said payment shall cover all costs associated with the performance of services as described in ATTACHMENT "A". The CITY shall have no liability for taxes, insurance or other expenses associated with the performance of CONSULTANT'S duties hereunder.

ARTICLE 21. CHANGES

- 21.1 The fee specified herein shall include all services specified herein. Any change in the frequency or type of services shall cause the fee to be adjusted plus or minus accordingly; provided, however, any fee increases will require written approval by the City of Wilsonville.

ARTICLE 22. OWNERSHIP OF WORK PRODUCT

- 22.1 All work products of the CONSULTANT which result from this AGREEMENT are the exclusive property of the CITY.

ARTICLE 23. TERMINATION OF AGREEMENT

- 23.1 This AGREEMENT may be terminated under the following conditions:
- a. By written mutual agreement of both parties. Termination under this provision may be immediate.
 - b. Upon thirty (30) calendar days written notice by either party to the other of intent to terminate.
 - c. If this AGREEMENT is terminated by either party, the CITY agrees to pay to the CONSULTANT all costs and expenses associated with services provided to the effective date of termination. Moneys due and payable will be calculated based on actual costs and the schedule set forth in Attachment ~A".

ARTICLE 24. SURVIVAL

24.1 The terms, conditions, representations, and all warranties contained in this AGREEMENT shall survive the termination or expiration of this AGREEMENT.

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

FOR THE CONSULTANT

FOR THE CITY OF WILSONVILLE

RICHARD SPOSITO



CITY MANAGER

PRESIDENT



RECORDING SECRETARY

MACKAY & SPOSITO CONSULTING ENG.
FIRM

3-16-94
DATE

1703 MAIN STREET
ADDRESS

MAILING ADDRESS
30000 S.W. Town Center Loop East
Wilsonville, OR 97070

VANCOUVER, WASHINGTON 98660
CITY AND STATE

EMPLOYER IDENTIFICATION NO.

DATE

Attachment "A"

**SCOPE OF WORK
OVERLAY OF S.W. TOWN CENTER LOOP WEST**

The work consists generally of design, bidding and limited construction engineering services for the Overlay of S.W. Town Center Loop West.

MACKAY & SPOSITO RESPONSIBILITIES

A. DESIGN PHASE

1. Attend meetings with adjacent property owners and City staff to coordinate project.
2. Prepare pavement removal reconstruction plans and Specifications (includes Aerial Photograph and GRI services).

B. BIDDING SERVICES

1. Answer City staff and contractor questions during the bidding process.
2. Attend bid opening.
3. Assist the City staff in the review of the three lowest bids and recommend award.
4. Attend pre-construction meeting.

C. PROJECT MANAGEMENT

1. Answer City staff and contractor questions during construction.
2. Review shop drawing.
3. Review change order requests.
4. Visit site (4) times to observe construction progress.
5. Field layout of project.

D. ADDITIONAL SERVICES

It is agreed that additional services, if required by the CITY will be authorized by work orders, which will specify in detail the scope and requirements of such additional services.

For scope of work and requirements including the time of completion for each work order shall be as mutually agreed upon between the CITY and CONSULTANT.

Compensation for these services shall be paid by the CITY at a rate as mutually agreed upon between the CITY and the CONSULTANT.

All of the above services would be done by MacKay and Sposito Consulting Engineers, Inc., Geotechnical & Resources, Inc.

E. CITY RESPONSIBILITIES

1. Arrange for public and private utility locations along the street.
2. Provide construction inspection, testing and prepare pay estimates.
3. Provide as-constructed plans, maps and copies of pertinent file data for existing site.
4. Pothole utilities, as need, prior to site survey.
5. Conduct public meeting, if needed , and respond to citizen inquiries concerning project.
6. Prepare bid documents.

ATTACHMENT "B"

INSURANCE

The CONSULTANT shall purchase and maintain, at his expense, the following types of insurance covering the CONSULTANT, his employees and agents.

1. Workers' Compensation with limits as required by statute. Employer's liability shall be a minimum of \$100,000.
2. Comprehensive general liability insurance covering personal injury & property damage, in an amount not less than \$50,000 for property damage, and \$500,000 per occurrence.
3. Automobile liability insurance in an amount not less than \$50,000 for property damage, and \$500,000 per occurrence.
4. Professional liability insurance covering any personal injury or property damage caused by error, omission, or any negligent act, in an amount not less than \$500,000 per occurrence.

The City of Wilsonville, its Council members, employees and agents shall be Named Insured for Items No. 2 and 3 above.

A copy of the policy or Certificate of Insurance acceptable to the CITY shall be filed with the CITY prior to the effective date of this AGREEMENT. The policy or Certificate of Insurance shall provide for thirty (30) days' notice of cancellation or material change.

(11474 . INS)

ATTACHMENT "C"

FEES AND PAYMENT

CONSULTANT agrees to perform the work tasks identified in Attachment "A"- Scope of Work Payment shall be made to the CONSULTANT for all work performed as included in Attachment "A". Payment to CONSULTANT shall be due upon receipt of itemized invoice and CITY agrees to make payment within 30 days thereafter.

Compensation for these services to be paid to MacKay and Sposito Consulting Engineers, Inc. shall be in accordance with the following payment schedule. Without prior authorization from the CITY, the total compensation under this agreement shall not exceed amounts listed below.

PAYMENT SCHEDULE

DESIGN, BIDDING & PROJECT MANAGEMENT SERVICES

Billing shall be on an hourly basis, in accordance with the attached schedule, as the work progresses, with a not to exceed figure of \$29,500.

Attachment "C"
HOURLY RATE SCHEDULE
MACKAY & SPOSITO, INC.
EFFECTIVE THROUGH MAY 31, 1994

Senior Principal	\$ 109.00
Principal	92.00
Planning Manager	60.00
Engineer V	62.00
Engineer IV	58.00
Engineer III	54.00
Engineer I/II	46.00
Land Surveyor II	58.00
Land Surveyor I	44.00
Technician II	53.00
Technician I	42.00
3 Person Survey Crew	111.00
2 Person Survey Crew	90.00
Clerical	24.00
Blueprints	.44/S.F.
Xerox Copies	.32/EA.
Computer & Plotter	Incl. in the above schedule
Survey Total Station	Incl. in the above schedule

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

All other materials, expenses and subconsultants cost on an actual cost plus 10% basis.

Engineering categories are in accordance with ASCE Classifications.
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