

**RESOLUTION NO. 1108**

**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 OTAK CONSULTING ENGINEERS, INC. TO PROVIDE ENGINEERING SERVICES FOR THE CONSTRUCTION OF THE BOONES FERRY PARK-MEMORIAL PARK BIKEWAY.**

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. 1060 authorizing the addition of a bikeway from Boones Ferry Park to Memorial Park, to the Parks and Recreation Systems Capital Improvement Plan for fiscal year 1993-94; and

WHEREAS, the approved City budget Capital Projects Fund for 1993-94 contains \$111,500 to cover the costs for the design and construction of the project commonly known as the Boones Ferry Park-Memorial Park Bikeway (Project No. 9007); and

WHEREAS, the City now wishes to proceed with the design and construction of the Boones Ferry Park-Memorial Park Bikeway and seeks the services of a private consulting engineering firm to provide the professional services for the subject project; and

WHEREAS, if timely made, the project can proceed during the upcoming construction season which should allow completion before the annual celebration within the City known as Boones Ferry Days; and

WHEREAS, currently, there does not exist within the City a facility to provide for the safe and efficient transportation of pedestrians and bicycles within the southern portion of the City between the Boones Ferry Park and the Memorial Park; and

WHEREAS, the City Council has identified the project as a Parks System Development Fund project at an estimated cost of \$111,500 which could be financed from Parks System Development Fund monies; and

WHEREAS, the City of Wilsonville adopted Ordinance No. 423 adopting a Bicycle and Pedestrian Master Plan for the City which contains the subject project; and

WHEREAS, a portion of the work completed for the Bicycle and Pedestrian

Master Plan was done by the consulting engineering firm of OTAK; and

WHEREAS, the City Engineer wishes to utilize the past experience and expertise of OTAK in working on the Bicycle and Pedestrian Master Plan to provide design, construction, surveying and project management services during the construction of the referenced project; 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 personal service. The contract to be awarded for professional services is for personal services; 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 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, after reviewing the fees associated with providing the requested design, construction, surveying and project management services, staff has determined that the fees for the services as proposed by OTAK have found to be fair and reasonable; and

WHEREAS, if OTAK Consulting Engineers, Inc. provides the professional services for the above referenced project, the City will realize additional cost savings by completing the improvements during the upcoming construction season.; and

WHEREAS, these fees are calculated to be \$27,500.

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

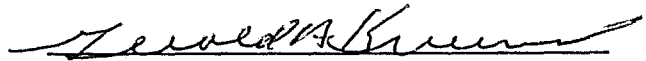
1. That the City Council, serving in its role as Local Contract Review Board

does hereby exempt the award of contract for Engineering services for the planned Memorial Park Sanitary Sewer Lift Station 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 OTAK Consulting Engineers, Inc., a copy of which is marked Exhibit "A", attached hereto and incorporated herein, to provide the engineering services recited above for the referenced project.
3. Authorize the expenditures for this contract not to exceed budget amount from:

Account	Budget Amount
5000-590-4901901	\$111,500

ADOPTED by the City Council of the City of Wilsonville at a regular meeting thereof this 20th day of June, 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 Lehan	<u>AYE</u>
Councilor Benson	<u>AYE</u>
Councilor Hawkins	<u>AYE</u>
Councilor Sempert	<u>AYE</u>

**ENGINEERING DEPARTMENT**  
**STAFF REPORT AND RECOMMENDATION**

**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 OTAK  
CONSULTING ENGINEERS, INC. FOR THE  
CONSTRUCTION OF THE BOONES FERRY PARK-  
MEMORIAL PARK BIKEWAY

**Summary:**

The current budget document for the 1993-94 fiscal year contains a project entitled Boones Ferry Park-Memorial Park Bikeway (Project No. 9007).

Staff now wishes to proceed with the project and enlist the services of OTAK Consulting Engineers, Inc. to provide the necessary professional engineering services. These fees are estimated at \$27,500.

**Recommendation:**

Staff respectfully recommends that the City Council authorize the City Manager to execute a Professional Services Agreement between the City and OTAK Consulting Engineers, Inc. to provide professional services for the Boones Ferry Park-Memorial Park Bikeway.

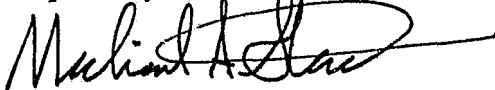
**Discussion:**

In anticipation of the need to construct a facility for the safe and efficient movement of pedestrians and bicyclists within the City, the City of Wilsonville adopted Resolution 1060 authorizing the addition of a bikeway from Boones Ferry Park to Memorial Park within the Parks and Recreation Systems Capital Improvement Plan for fiscal year 1993-94. The Capital Projects Fund contains an amount of \$111,500 to cover the costs for the design and construction of this project.

On December 20, 1993, the City of Wilsonville adopted Ordinance No. 423 adopting a Bicycle and Pedestrian Master Plan for the City which contains the subject project. Figure 5 as contained within the adopted Master Plan, designates the proposed project as a major off-street/pathway extending from the Boones Ferry Park southward then eastward crossing underneath the Interstate 5 bridge structure over the Willamette River, then northward and again eastward to connect with South West Parkway Avenue. OTAK Consulting Engineers, Inc. provided the basic engineering services to McKeever / Morris, Inc. in the preparation of the Bicycle and Pedestrian Master Plan. City staff has found their work to be completed on time with a high degree of accuracy.

Final implementation of the Bikeway will depend heavily on the planned construction of the Kalyca Terrace subdivision. This proposed project will complete the final portion of the project between the east right-of-way of Interstate 5 and South West Parkway Avenue.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Michael A. Stone". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Michael A. Stone, P.E.  
City Engineer

MAS/dr

EXHIBIT "A"

**PROFESSIONAL SERVICES AGREEMENT**

**FOR DESIGN, BIDDING AND CONSTRUCTION ENGINEERING SERVICES  
FOR THE BOONES FERRY PARK - MEMORIAL PARK BIKEWAY**

**WILSONVILLE, OREGON**

This AGREEMENT is made and entered into by and between OTAK, 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

\_\_\_\_\_  
MICHAEL W. FAIN

\_\_\_\_\_  
CITY MANAGER

\_\_\_\_\_  
PRINCIPAL-IN-CHARGE

\_\_\_\_\_  
RECORDING SECRETARY

\_\_\_\_\_  
OTAK, INC.  
FIRM

\_\_\_\_\_  
DATE

\_\_\_\_\_  
17355 SW BOONES FERRY ROAD  
ADDRESS

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

\_\_\_\_\_  
LAKE OSWEGO, OREGON 97035  
CITY AND STATE

\_\_\_\_\_  
EMPLOYER IDENTIFICATION NO.

\_\_\_\_\_  
DATE

## Attachment "A"

### SCOPE OF WORK BOONES FERRY PARK - MEMORIAL PARK BIKEWAY

The work consists generally of design, bidding and limited construction engineering services for The Boones Ferry Park - Memorial Park Bikeway.

#### OTAK RESPONSIBILITIES

##### A. PHASE 1 - DESIGN

The objective of the design phase is to survey the site, establish the final alignment, write the necessary legal descriptions and develop contract documents.

**Task 1A - Project Management:** This task includes:

1. Kick-off meeting with OTAK and City staff to refine scope of project, establish communication links, collect existing data, and finalize project schedule.
2. Meet with ODOT staff - assume 3 meetings (2 hours each) at Region 1 office.
3. Coordinate project with ODOT staff through phone calls and correspondence.
4. Correspond/meet/phone calls with City staff to coordinate project throughout the design phase - assume 5 meetings (2 hours each).
5. The City will secure all permits required for this project, such as Willamette Greenway Permit, Division of State Lands, ODOT, etc.

**Task 1B - Surveying:** This task will locate sufficient property corners within the project area to write legal descriptions and gather additional topographical data as needed for the design of the Bicycle/Pedestrian Trail. This includes:

1. Research existing survey records.
2. Locate existing monuments.
3. Survey monuments and gather additional topography.
4. Write legal descriptions for property acquisition and/or easements. Acquiring property and / or easement approval from the property owners will be by the City.

**Task 1C - Preliminary Design:** Includes:

1. Inspect site for proposed improvements.
2. On ACAD base maps supplied by the City, establish horizontal and vertical alignment, drainage requirements, create a TIN for profiles and cross-sections, and determine what additional survey data is required.
3. Prepare preliminary plans, two strip map at 1"=20', for City and ODOT review and approval. Plan will contain topographical information, property lines, contours, and the proposed alignment.
4. Create cross sections every 50' with existing and proposed finished grade.
5. Prepare preliminary cost estimate.

**Task 1D - Final Design:** This task will incorporate all review comments and produce final construction documents, including:

1. Title sheet with typical sections.
2. Final plan / profile sheets.
3. Detail sheet (if needed).
4. Final cost estimate.

5. Special Specifications. OTAK will supply the City with a camera-ready special specifications section.

**Task 1E - Advertising and Bidding:** OTAK will cooperate with the City during the bidding phase to answer technical questions from bidders and to review bids received.

## **PHASE II - CONSTRUCTION**

The construction phase will be primarily managed by the City, with OTAK supplying technical support. The City will inspect and provide necessary testing for the project. OTAK will:

1. Attend the Pre-construction Meeting.
2. Evaluate submittals, test results, and material certifications.
3. Assist City/Contractor with document interpretation and clarification.
4. Recommend approval / disapproval of proposed contract changes.
5. Perform final inspection to create a "punch list" for the Contractor.
6. Keep a diary of all conversations between interested parties throughout the project's construction phase and deliver a copy of the diary to the City upon completion.
7. Provide centerline subgrade and finished grade stakes, 25' o/c.

B. 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 OTAK, Inc.

C. CITY RESPONSIBILITIES

OTAK anticipates the City will:

1. Provide a City Project Manager this project.
2. Provide OTAK with a disk of all available topographical data in AUTOCAD format (Release 12).
3. Provide OTAK with data the City has, such as subdivision plans, sewage treatment plant property and site plans, utility plans, survey documents, etc.
4. Right-of-way acquisition and/or easement approvals plus all required filming of documents.
5. Acquire approvals/permits from all agencies and property owners, such as City, ODOT, Division of State Lands, etc.
6. Incorporate OTAK's special specifications into City's standard construction document format. Print all contract documents for bidding purposes.
7. Advertise for bids and award contract.
8. Provide Construction management, inspection and testing.

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 OTAK, 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 \$27,500.

**PROFESSIONAL FEE SCHEDULE**

OTAK, INC. - OTAK ARCHITECTS, P.C.

Engineering Services

Principal Engineer	\$90.00 - \$120.00
Project Manager/Senior Engineer	\$75.00 - \$90.00
Project Engineer	\$80.00 - \$75.00
Design Engineer	\$45.00 - \$60.00
Senior Engineering Technician	\$40.00 - \$55.00
Engineering Technician/Draftsperson	\$35.00 - \$45.00

Construction Observation

\$35.00 - \$50.00

Surveying Services

Survey Manager	\$70.00 - \$90.00
Registered Land Surveyors	\$55.00 - \$65.00
Survey Technician	\$40.00 - \$55.00
Two-Person Survey Party	\$80.00 - \$90.00
Three-Person Survey Party	\$115.00 - \$135.00

Architectural Services

Principal Architect	\$95.00 - \$115.00
Senior Architect	\$50.00 - \$65.00
Architect	\$45.00 - \$50.00
Architectural Illustrator	\$35.00
Architectural Intern	\$35.00

Landscape Architectural Services

Principal Landscape Architect	\$75.00
Senior Landscape Architect	\$50.00 - \$60.00
Landscape Architect	\$40.00 - \$55.00
Draftsperson	\$40.00

Planning/Environmental Services

Environmental Project Manager	\$70.00 - \$90.00
Senior Planner/Environmental Planner	\$65.00 - \$75.00
Planner	\$40.00 - \$55.00
Wetland Biologist	\$40.00 - \$60.00

Administrative Support

\$30.00 - \$40.00

Computer Time

CADD Services	\$11.00
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Expenses

Including deliveries,  
supplies and outside services,  
in-house prints and copies

(Billed at cost plus 10%)