



REQUEST FOR PROPOSALS

ARCHITECTURAL, ENGINEERING, AND RELATED SERVICES

SMART Facility Expansion Project

ADVERTISEMENT DATE: February 17, 2023

PROPOSALS DUE:

Thursday, March 16, 2023, 2:00 PM, Pacific Time

Address Proposals to:

City of Wilsonville SMART

Attn: Kelsey Lewis

29799 SW Town Center Loop East

Wilsonville, OR 97070

Proposals must be plainly marked as follows: "Request for Proposals – SMART Facility Expansion," and sent to the attention of Kelsey Lewis, Grants & Programs Manager. Include the name and address of the Proposer. Proposers must submit one (1) original of the Proposal and one (1) electronic copy on a USB flash drive. Proposers may instead electronically mail Proposals to kewis@ridesmart.com, including all the above information. Faxed Proposals will not be accepted. The City of Wilsonville reserves the right to reject any or all Proposals.

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PUBLIC NOTICE

**REQUEST FOR PROPOSALS
SMART Facility Expansion Project
City of Wilsonville**

Proposals due: Thursday, March 16, 2023, 2:00 PM, Pacific Time

The City of Wilsonville invites qualified individuals or firms to submit Proposals to provide services related to the **SMART Facility Expansion Project** based upon the Scope of Work contained in the Request for Proposals (RFP). Sealed Proposals, in writing, will be received by the City of Wilsonville, 29799 SW Town Center Loop East, Wilsonville, OR 97070, or by email to klewis@ridesmart.com until **Thursday, March 16, 2023, 2:00 PM, Pacific Time**. Facsimile Proposals will not be accepted. We strongly suggest that you confirm receipt of emailed proposals before the deadline.

RFP packets are available on the City's website <https://www.ci.wilsonville.or.us/rfps> (from Home Page, select the "Business" tab, select Bids & RFPs, and then select the project link). To obtain a paper copy of the RFP package, email klewis@ridesmart.com or call 503-682-4523.

The City of Wilsonville's programs, services, employment opportunities, and volunteer positions are open to all persons without regard to race, religion, color, national origin, sex, sexual orientation, age, marital status, disability, or political affiliation.

As advertised in the Daily Journal of Commerce on February 17, 2023.

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REQUEST FOR PROPOSALS

The City of Wilsonville, Oregon (“City”) requests Proposals in order to select a qualified consultant to provide architectural, engineering, and other related services for the SMART Facility Expansion Project (“Project”). Proposers are invited to demonstrate their experience and qualifications in performing work directly related to the services required by responding to this **Request for Proposals (RFP)**. Proposals will be evaluated in accordance with the qualifications based selection procedures of OAR 137-048-0220. This Project does involve federal funds. Because federal funds are involved, special federal requirements are contained within the attached draft Professional Services Agreement and must be carefully reviewed and complied with.

I. Project Description

The City of Wilsonville desires to design an expansion to the existing transit and fleet facility, including buildings, bus yard, underground electrical facilities, and other amenities, to address the long-term needs of the City and the City’s public transit agency.

Community

Wilsonville serves as a gateway between the Portland metropolitan area to the north and the agricultural lands of the Willamette Valley to the south. The City straddles I-5, has excellent freeway access, and is close to the I-205 interchange. Over 60% of Oregon’s population lives within 50 miles of the City. All these factors make Wilsonville an attractive employment hub, with over 800 local businesses, and one of Oregon’s most rapidly growing cities with over 25,000 residents. Throughout the growth, the City of Wilsonville has benefited from thoughtful planning, high development standards, and a beautiful natural environment.

South Metro Area Regional Transit (SMART)

SMART -- a department of the City of Wilsonville -- provides fixed route service within the City and connecting service to Canby, Tualatin, and Salem. SMART also provides an extensive demand response system (Dial-a-Ride) with priority to ADA-qualified riders, transporting the elderly and disabled to out-of-town medical appointments.

SMART operates its full array of services Monday through Friday from 5:00 a.m. to 8:30 p.m. and 8:00 a.m. to 5:00 p.m. Saturdays. SMART’s mission is to provide convenient, safe, and reliable transportation services in a fiscally responsible manner to meet the needs of Wilsonville, Oregon residents, employees, employers, and visitors of all ages, ethnicities, and income levels. SMART is dedicated to providing low to no cost mobility and creating viable, attractive transportation options for all. SMART carries about 15,000 passengers over 44,000 miles per month. Serving residents since 1989, SMART now has a fleet of 30 revenue vehicles and 30 full and part-time bus drivers.

SMART’s fleet consists of four diesel buses, twelve gasoline buses, two hybrid diesel buses, three battery-electric buses, and nine compressed natural gas (CNG) buses. Successful federal grant funding brought two all-electric Proterra buses to the agency, placed into service in 2019, and an additional bus

in 2021. Successful implementation resulted in the agency receiving the Public Transportation System Innovation Award from the Oregon Transit Association, which honors a public transportation system that has demonstrated innovative concepts or effective problem-solving techniques not previously applied in the transit industry.

SMART's fleet is maintained by four mechanics and two service workers; coordinated by two dispatchers; and supported by three administrative staff, three supervisors, and three managers. Transit Director Dwight Brashear is a nationally recognized leader in the field of public transit and Fleet Manager Scott Simonton is an award-winning leader in asset management.

Project Background

SMART's building and site area, located at 28879 SW Boberg Road, was developed in two phases. Phase I of SMART's current facility was built in 2012, with a drastic reduction in the original design to save money on construction and paving and to only accommodate immediate needs. The design for Phase II was completed at that time for expansion at a later date; however, enough has changed that we need to re-envision the expansion Project. There are existing conduits for power, low voltage, and water intended to supply a future wash building.

Project Overview

The City is seeking Proposals from highly qualified individuals, consulting firms, or teams of consultants ("Proposers") to: 1) prepare a SMART complex master plan that includes architectural and engineering, and preliminary site design; 2) cost estimates; and 3) intermediate and final design of the building additions, site, and amenities.

A successful Project will:

- Address the current and future needs of SMART
- Improve efficiency through consolidation, organization, and layout
- Provide adequate work and shop space, locker and shower areas, equipment and materials storage, disposal areas, and bus parking
- Include reconfiguration of driveway and security gate
- Include undergrounding of existing utilities
- Incorporate sustainability
- Follow all City and State requirements
- Meet current seismic standards
- Provide information for funding decisions and project timing

II. Scope of Work

The selected consultant will prepare draft conceptual plans, phasing plans, cost estimates, and preliminary site design for the property. The key elements will guide decision makers regarding recommended layout and uses, budgets, necessary capital improvements, and recommended

construction phasing. After the Phase 1 work has been created, the City may, in its sole and absolute discretion, move into subsequent intermediate and final design, permitting, and construction phases.

This Project will be divided into phases. As stated above, the first phase will be work related to the completion of an analysis of the existing facilities, including a review of current conditions and development of a master plan for the entire site, along with conceptual and preliminary designs, cost estimates, and phasing plan. If the City decides, in its sole and absolute discretion, to proceed, Phase 2 will involve preparation of intermediate and final improvement drawings; and Phase 3 will be to provide support during the construction of the improvements.

Phases 2 and 3 will only commence upon release of a written "Notice to Proceed" by the City. The City reserves the right to unilaterally decide how to proceed. The City may decide to issue a "Notice to Proceed" to the firm retained to perform work for Phase 1; decide not to proceed with Phases 2 and 3; elect to have this work completed by other means available to the City, including but not limited to the release of another RFP, or through direct award of a contract, subject to applicable procurement laws and regulations. Work on Phases 2 and 3 will be dependent on the results delivered for Phase 1 and a decision to proceed. Payments to the selected consultant will be limited to compensation for work authorized and performed and work products delivered and accepted.

At this time, no exact construction budget or timeline has been established for the full implementation of this Project.

Phase 1 – Preliminary Design

- A. Project Orientation/Start Up
 - 1. Coordinate with City of Wilsonville SMART management, Project Manager, City Engineer, and other identified individuals.
 - 2. Provide a schedule outlining milestones, projected timelines, and deliverables.
 - 3. Modify Scope of Work as needed to meet needs of Phase 1 of the Project.

- B. Site Review (Needs Assessment and Gap Analysis)
 - 1. Review sites and facilities currently in use.
 - 2. Review the 2022 Facilities Master Plan.
 - 3. Review land survey and Phase 1 Environmental Site Assessment.
 - 4. Conduct site visits to document and map existing conditions to prepare a site assessment.
 - 5. Review existing aerial photography.
 - 6. Help to identify stakeholders.
 - 7. Conduct interviews with identified stakeholders, including but not limited to, SMART/Fleet personnel.
 - 8. Determine area needs for adequate work and shop space, locker and shower areas, covered and uncovered equipment and materials storage, disposal and decant areas, and vehicle parking.
 - 9. Review site constraints, including but not limited to:
 - i. Archaeological concerns;
 - ii. Geotechnical concerns;

- iii. Available land area;
 - iv. Vehicular flow through site;
 - v. Adjoining and surrounding land use;
 - vi. Points of access and access constraints;
 - vii. Environmental conditions and regulations, including the Significant Resource Overlay Zone and NEPA Exception or Review;
 - viii. Utility rights-of-way and crossings, including requirements, costs, and liabilities;
 - ix. Existing easements/encumbrances.
10. Access security concerns and options, and provide recommendations.
 11. Review of local and state requirements related to public building requirements.
 12. Other mutually agreed upon review subjects.
- C. Conceptual Designs/Cost Estimates (maximum three alternative concepts)
1. Prepare report of findings from Section B. Site Review.
 2. Prepare designs and management analysis with phasing recommendations, timetables, and cost estimates for each concept. Cost estimates shall include soft cost and escalation, as well as assumptions for each.
- D. Preliminary Design/Cost Estimate
1. Develop preliminary plans, construction phasing plan, and cost estimate for selected alternative based on results of Coordination and Stakeholder Meetings.
 2. Created architectural renderings of selected alternative.
- E. Coordination Meetings
1. Meetings with SMART and City Engineering Team to review results of study, conceptual drawings, and comments from interviews to determine next steps.
- F. Stakeholder Meetings
1. Develop agenda(s) and desired meeting outcomes, prepare all materials for display and handouts, attend stakeholder meetings, and document outcome results from meeting and distribute findings.
- G. Project Deliverables
1. Deliver final versions of all reports, plans, estimates, and supporting information.
 2. Digital copies of all reports and supporting documentation to be delivered in Word format; copies of all conceptual and preliminary design to be delivered in AutoCAD compatible formats; copies of spreadsheets, budgets, and related supporting financial data to be delivered in Excel compatible format.

Budget

Funding for the Preliminary Engineering phase of this Project is provided by Federal Transportation Administration Section 5307 formula funds. Phases 2 and 3 funding will be determined once Phase 1 is near complete or complete.

Phase 2 – Final Design

If the City decides to proceed and decides, in its sole and absolute discretion, to extend the contract with the successful Proposer:

- A. Intermediate Design (including but not limited to):
 - 1. Confirm scope of work with the City.
 - 2. Further develop selected alternative design.
 - 3. Perform civil, structural, plumbing, mechanical, and electrical engineering and landscape design work.
 - 4. Prepare 50% design plans.
 - 5. Prepare updated design development estimate.
 - 6. Revise design as required based on Coordination Meeting results.
- B. Coordination Meetings
 - 1. Meetings with SMART Staff and City Engineering Team to review preliminary drawings and to determine next steps.
- C. Final Design (including but not limited to):
 - 1. Prepare 90% design drawings.
 - 2. Prepare draft and final construction documents, including plans, specifications, and Request for Bids/Proposals.
 - 3. Prepare updated design cost estimate.
 - 4. Revise Final Design, as required, based on results of Stakeholders and City Team Meetings.
 - 5. Complete final construction documents – plans, specifications, cost estimate, and Request for Bids/Proposals.
 - 6. Oversee the Project permitting process.
- D. Stakeholder Meetings
 - 1. Develop agenda(s) and desired meeting outcomes, prepare all materials for display and handouts, attend stakeholder meetings, and document outcome results from meeting and distribute findings.
- E. Assist in solicitation for and selection of an Owners Representative for construction services.
 - 1. Develop selection criteria and documentation for public solicitation for services.
- F. Final Results
 - 1. Deliver final versions of all drawings, reports, and supporting information.
 - 2. Digital copies of all reports and supporting documentation to be delivered in Word format; copies of designs to be delivered in AutoCAD compatible format; copies of spreadsheets, budgets, and related supporting financial data to be delivered in Excel compatible format. All finalized documents are also to be delivered in PDF format.

Phase 3 – Services During Construction

If the City decides to proceed and decides, in its sole and absolute discretion, to extend the contract with the successful Proposer:

- A. Services During Construction
 - 1. Assist with public solicitation for construction services.
 - 2. Facilitate regular inspections of the public improvement project.
 - 3. Conduct regular progress/scheduling meetings with the construction contractor.
 - 4. Create and administer standard construction documentation.
 - 5. Research and prepare responses to Requests for Information (RFIs), submittals, and Change Order requests.
 - 6. Administer progress payments and pay requests.
 - 7. Prepare Project close-out documentation.

III. Term of Project

The City seeks to complete Phase 1 of this Project within a six (6) month period. The successful Proposer should be ready to begin work within 30 days of receiving notice of intent to award.

IV. Project Manager

The City's Project Manager shall be the sole point of contact for all questions, concerns, and protests. The Project Manager for this Project is:

Kelsey Lewis
Grants and Programs Manager
SMART

Contact at:
(503) 682-4523
klewis@ridesmart.com

V. Minimum Qualifications

- 1. Individuals and firms replying to this solicitation must have prior and relevant work experience in creating successful Public Works and fleet facilities for municipalities. Any firms replying to this solicitation must be licensed businesses registered within the State of Oregon, and individuals proposed to be the Architect or Engineer of Record shall possess a valid and current State of Oregon professional registration.
- 2. Proposer shall demonstrate a minimum of five (5) years' experience providing the types of services described within the Scope of Work of this Request for Proposals for public agencies. Proposers should have at least three (3) representative example projects that are specifically related to Fleet or Public Works related projects.
- 3. Proposers shall demonstrate successful experience working on federally funded projects.

4. Proposer shall not have a record of substandard workmanship, as verified by the City by communication with licensing authorities, former clients and references, and other means as the City deems appropriate.

VI. Proposal Requirements and Procedures

Proposers shall prepare and submit Proposals in accordance with the requirements stated within this RFP. Adherence to these requirements will ensure a fair and objective analysis of submitted Proposals. Proposals should provide a clear, concise description of the Proposer's capabilities to satisfy the requirements of this RFP. Emphasis should be placed on completeness, brevity, and clarity of content. Failure to comply with or complete any part of the RFP may result in rejection of the Proposal. The ability to follow these instructions demonstrates attention to detail.

Proposals are made at the Proposer's sole risk and expense. The solicitation may be suspended or delayed if it is determined to be in the best interest of the City to do so. The City is not liable to any Proposer for any loss or expense caused by, or resulting from, any cancellation, suspension, delay, or rejection.

Proposal Format

For printed Proposals, materials shall preferably be double-sided and stapled once or bound in the upper left-hand corner. The City requests that submittal materials contain post-consumer recycled content and be readily recyclable. The City discourages the use of materials that cannot be readily recycled, such as PVC binders, spiral bindings, and plastic or glossy covers or dividers.

Proposals shall be organized in accordance with the listed Proposal contents set forth in the Evaluation Criteria section. Supporting Information, as defined below, shall be provided in a separate section at the end of the Proposal, and not counted in the page limit requirements.

Proposals exceeding the specified number of pages or text font size may be considered non-responsive and the Proposal may be rejected. Pages exceeding the maximum page limit may not be reviewed.

Submittal Requirements

- Proposals should be clear, concise, and typewritten
- Number of copies: for mailed Proposals, one (1) printed and one (1) USB flash drive version (MS Word, MS Excel compatible, and PDF format files). For emailed Proposals, MS Word, MS Excel compatible, and PDF format files must be emailed to klewis@ridesmart.com
- Minimum font size: 12 point with a standard body text font (e.g. Calibri, Times New Roman, Garamond)
- Maximum number of pages: **30 pages**. One page is considered to be one side of a single 8½" x 11" sheet.
 - **Included in the page count:** Evaluation Criteria responses, charts, graphs, pictures, and all other text or graphics.

- **Not Included in the page count:** front cover sheet, one-page table of contents, letter of intent, section dividers, back cover, and resumes.

Supporting Information

Supporting materials may include full resumes, other references, sample documents, and photos. However, pertinent information should be covered in the body of the Proposal. Supporting information will not count toward the page limit, but brevity is encouraged. If there is no additional information to present in the Supporting Information, then state, *“There is no additional information we wish to present.”*

VII. Proposal Submission

Proposers shall submit one (1) original and one (1) USB flash drive of their written Proposal, plainly marked “Request for Proposals – SMART Facility Expansion Project,” and include the name and address of the Proposer. Proposals shall be addressed and submitted to the following location:

City of Wilsonville
Attn: Kelsey Lewis, Grants & Programs Manager
29799 SW Town Center Loop East
Wilsonville, OR 97070
--OR--
Email submission to kLewis@ridesmart.com

by 2:00 p.m., Pacific Time, on Thursday, March 16, 2023.

Proposals must arrive at the issuing office on or before the listed time and date due. We strongly suggest that you confirm receipt of emailed Proposals before the deadline. Proposals received after the listed date and time will not be accepted. The City of Wilsonville is not responsible for delays in delivery. Faxed Proposals will not be accepted.

VIII. RFP Documents

Request for Proposal (RFP) documents are available at <https://www.ci.wilsonville.or.us/rfps> (from Home Page, select “Business” tab, select Bids & RFPs, and then select project link). Contact Kelsey Lewis at 503-682-4523 to obtain RFP documents by mail. The City of Wilsonville shall not be held responsible for the delivery of the documents.

IX. Evaluation Process

A selection committee of at least three members, comprised of City staff (“Selection Committee”), will be appointed to evaluate the Proposals received. All written Proposals received by the deadline will be reviewed by the Selection Committee. Each Selection Committee member will independently evaluate each Proposal in accordance with the criteria stated in the Evaluation Criteria section of this RFP.

The City may also seek expert advice to help review Proposals. Advisors to the Selection Committee may attend evaluation meetings and consultant presentations, evaluate the Proposals, and lend any such expertise to the process as requested by the City. However, any such person that is contacted by the City for their expert advice shall not, from first being contacted until the RFP process is completed or otherwise brought to an end, have communications with any Proposers regarding their Proposals or the RFP process.

The City will determine the most qualified Proposer based on the Evaluation Criteria listed, using predetermined weights and the responsiveness of the Proposal. A subsequent round of interviews may be used to evaluate finalists.

If the City decides to conduct interviews, the interview sessions will be evaluated in a manner similar to the RFP response. Topics covered in the interview session shall include the topics listed hereinafter under the "Evaluation Criteria" section plus any additional, relevant topics which may arise during both the formal presentation and the question and answer portions of the interview. If interviews are conducted and your firm is selected for an interview, you will be contacted by the City for next steps.

At any point during the evaluation process, the City is permitted to seek clarification of any Proposal. The City retains the right to accept any Proposal that is deemed to best fit the needs of the City or no Proposal.

The Selection Committee will review, evaluate, and score written Proposals and interview candidates, as needed, to make the final selection. All information provided by the Proposer, including the written submittal, work product samples, and interview will be evaluated. The successful Proposer will demonstrate outstanding competence and experience relating to the criteria, convincing the Committee that the proposed team is the best one for this Project.

X. Evaluation Criteria

These instructions were prepared to aid in response development. They also provide for a structured format so the Selection Committee can systematically evaluate several Proposals. Each copy of the submittal package must include all of the sections in the order indicated. Attachments should be clearly referenced and identified to facilitate the review process. Each Proposal shall include:

Letter of Intent

The introductory letter should address the Proposer's willingness and commitment, if selected, to provide the services offered and a brief description of why the Proposer believes they should be selected.

The maximum letter length shall be two (2) pages.

The letter shall be addressed to the City's Project Manager and include the name of the Proposer firm, as well as the printed name, title, telephone number, and email address of the officer authorized to represent the consultant in any correspondence, negotiations, and signing of any contract that may

result. Include the address of the office that will be providing the service and the project manager's name, title, telephone number, and e-mail address. The Proposer's federal and state tax ID numbers and the state of incorporation, if applicable, shall also be included. The letter must be signed by the Proposer, if an individual, or by a legal representative of the Proposer's entity, authorized to bind the entity in contractual matters.

The letter of interest shall specifically stipulate the following statements:

"Proposer has received and examined, as part of the Proposal, Addenda No. ___ through ___. Proposer accepts all terms and conditions contained in the Request for Proposal and Professional Services Agreement, except as otherwise specifically noted as an Exception in the Proposal."

"The submitted Proposal is valid for a period of ninety (90) days from the time and date Proposals are due."

"All materials and documents acquired or produced by the consultant in conjunction with the resulting contract shall be delivered to and become property of the City of Wilsonville, without restriction or limitation of future use."

Proposer shall identify whether the Proposer (or which members of Proposer's team) is a "resident Proposer" as defined in ORS 279A.120(1).

Proposed Team Qualifications

Describe each member of the Proposer's team, including the proposed role for each firm or person on the Project, qualifications, expertise, previous related experience, and experience of the firms collaborating together.

- Identify the day-to-day project manager, the principal-in-charge, and all other key project team members, including sub-consultants, that will be utilized for the work. Identify the Project roles and responsibilities of all key personnel.
- Provide name, title, brief description of duties, years of pertinent experience, and availability of each staff member that will be assigned to this Project.
- Include a description of education, certificates or licenses, professional background, experience, skill, expertise, and training for the types of services required.
- Provide the name, title, and address of any sub-consultant that may perform work on this Project. Include what services they may provide, their pertinent experience, and years of related experience.
- Describe the extent of principal and project manager involvement.
- Estimate the percentage of time key personnel will be devoted to this Project for the duration of the Project, based on a 40-hour work week.
- To help the Selection Committee understand the team structure, provide an organizational chart that shows each of the key team members.

- Full resumes may be added in an appendix and will not be counted as part of the page limit.
- Upon selection, key project staff cannot be changed without written approval of the City.

Project Understanding and Scope of Work

This section of the Proposal should demonstrate Proposer's understanding of the intent and requirements of the Project and general Scope of Work. This section should include an explanation of any recommended modifications of the work items and Scope of Work presented in this RFP to best achieve the Project goals. Also provide suggestions of services that should be included for this Project that have not been requested, if any.

Project Approach and Schedule

This section should layout how Proposer intends to ensure a successful Project, including Project milestones, meetings, and deliverables. After reviewing the proposed Scope of Work included in this RFP, provide a detailed explanation of Proposer's approach to the work and the process Proposer plans to use. Each Proposer should demonstrate knowledge of the type of work requested, ability to solve the anticipated Project issues, and ability to offer innovative ideas. Proposer's ability to promptly complete the work should be made evident. The Proposal should include the following:

- Describe your team's unique approach to develop documents needed for an expansion of the SMART/Fleet facility and yard.
- Describe Proposer's approach and methodology for preparing Project cost estimates, including the services being solicited by this RFP, as well as the cost of future design and construction.
- Provide a detailed description of proposed services and the means and methods to be used to accomplish the tasks identified in the Scope of Work section. This work plan will detail team assignments, narratives of work approach and work force, and schedule of activities, with time allocations.
- Present a Project schedule. Identify and describe the deliverables that will result from each task and activity.
- If applicable, state the reasons why Phase 1 may take longer than six months to complete.
- Explain the end products/deliverables and what they will look like.
- Describe Proposer's quality assurance and quality control procedures to be implemented on this Project.
- Provide a detailed description of the team's approach to overall project management, allocation of resources, and integration of all activities required by the Scope of Work.
- Describe Proposer's approach and abilities to interact and engage stakeholders.
- Describe other resources your firm intends to commit to provide the required services for this Project, if any.
- Provide a list of best practices your firm utilizes when making design and budgetary recommendations.
- Describe Proposer's approach to unanticipated issues that may arise during the Project.
- Also provide any additional information that might be beneficial to the Selection Committee.

Experience

Provide an overview of Proposer’s organization size and experience; major clients; areas of expertise; unique qualifications of Proposer; and other matters that Proposer feels would assist the City in the evaluation process.

- Identify at least three (3) successful comparable projects completed by project team members within the last five years.
- The following information is required for each such project: client name, description of project, services provided, and when the project was completed, along with a reference from each of those comparable projects. Also briefly explain the relevance, lessons learned, or key tasks that apply to your Proposal for this Project.
- Providing links to completed and adopted work samples is welcome.
- Proposers shall demonstrate successful experience working on federally funded projects.

Acknowledgement of Personal Services Agreement

Attachment A to this RFP is the Professional Services Agreement (PSA) the City intends to use for this Project. The PSA identifies the standard contract terms, minimum types and amounts of insurance that the successful Proposer is required to carry, and other City contracting requirements. You must identify any objections or questions concerning the form and content of the PSA in your Proposal. Any objection or proposed modification to contract language must be taken as a part of the submitted Proposal or the change will not be considered during negotiations. Making such an objection will put the term on the table for discussion purposes, but the City reserves the right to reject any Proposal based on a requirement to change any contract terms.

XI. Evaluation Scoring

Each Proposal received in response to this RFP will be evaluated based on:

CRITERIA	MAXIMUM SCORE
1. Requirements: Proposal adheres to submittal parameters -cover letter, acknowledgement of Personal Services Agreement, and within page limit.	Pass/Fail
2. Qualifications of Personnel: Capabilities of the Proposer’s team to meet the Scope of Work. Prior project-related experiences, educational and professional record, work products, and training of the proposed team members.	25
3. Project Understanding: Overall clarity and thoroughness of Proposal reflecting a clear understanding of Project goals, requirements, and Scope of Work.	10
4. Approach: Quality, detail, and creativity of Proposal in addressing tasks identified in the Scope of Work for completing a successful Project. Commitment to timely Project schedule.	30

5. Experience: Proposer team’s experience designing and implementing Admin/Fleet expansion or similar projects. Experience including master plans, conceptual and preliminary design, project phasing, cost estimating, and other required documents.	25
6. Performance: Proposal team has a proven record of accomplishment of clear communication, teamwork, and effective project management of a multidisciplinary project team, as reflected by past projects and references.	10
TOTAL	100

In addition to the above weighted scoring criteria, feedback from provided references will also be considered and may be determinative in the selection process.

Written Evaluation

Based on their evaluation, each member of the Selection Committee will score each Proposal according to the following scoring criteria. Each member will rank, in descending order, each Proposal by total score.

Interview Evaluation

If determined to be necessary or desirable by the City, finalists from the written evaluation may be invited to participate in an additional interview evaluation process. The Selection Committee will determine the number of finalists. The interview evaluation process will provide an opportunity for Proposers to make a presentation to clarify their Proposal and for the Selection Committee to ask additional questions related to the Proposal and Scope of Work. The City will notify finalists of the interview evaluation time and location and allow for a reasonable period of time for finalists to prepare presentations.

After the interviews, each member of the Selection Committee will re-evaluate and re-score each finalist interviewed according to the Evaluation Criteria. Each member will rank, in descending order, each interview by total score.

Successful Proposer Determination

The Proposer with the highest overall ranking, as determined by the Selection Committee, shall be identified as the Successful Proposer. Depending on the number of Proposers and the point spread among Proposals, the Selection Committee may determine that an interview evaluation is needed to determine the Successful Proposer. Those Proposers selected for interviews will be based on the Proposals with the highest overall ranking.

If interviews are conducted, the Successful Proposer will be determined based on the adjusted post-interview score and ranking in accordance with the Evaluation Criteria. The Proposer with the highest overall adjusted ranking, as determined by the Selection Committee, shall be identified as the Successful Proposer.

The City reserves the right to perform additional investigations of any Proposer, including communication with licensing authorities, former clients and references, and other means as the City deems appropriate, and may reject any Proposal upon finding a record of Proposer's substandard workmanship.

The Selection Committee shall determine the final ranking of Proposers, and the Committee's decision is final. Upon determination of the Successful Proposer and performance of additional investigations, the City will issue a Notice of Intent to Award letter notifying all Proposers of the City's selection of a Successful Proposer and protest procedures.

The City reserves the right to negotiate a final contract that is in the best interest of the City. The City will only negotiate those provisions of the Professional Services Agreement that were noted as Exceptions in the Proposal. The City will attempt to reach a final agreement with the Successful Proposer. The City may, in its sole discretion, terminate negotiations and reject the Proposal in the event agreement cannot be reached. The City may then attempt to reach final agreement with the next highest ranked Proposer, and so on with the remaining Proposers, until an agreement is reached. In the alternative, the City may at any time elect to reject all Proposals and begin the RFP process over.

After the City has reached final agreement with the Proposer, the Selection Review Committee will make a recommendation to the Wilsonville City Council, for contracts over \$100,000. The Wilsonville City Council will then make the final contract award decision.

Award Protest

A Proposer believing to have been adversely affected or aggrieved by the selection of the Successful Proposer may submit a protest to the City in accordance with OAR 137-048-0240. The protest must be in writing and submitted to:

City of Wilsonville
Attn: Kelsey Lewis
29799 SW Town Center Loop East
Wilsonville, OR 97070
klewis@ridesmart.com

Award protests shall include "Award Protest — SMART Facility Expansion Project" in the subject line or written on the front of the envelope. The written protest must be received by the City no later than seven (7) calendar days after the date the Notice of Intent to Award letter was issued. The protest should demonstrate that all higher ranked Proposers failed to meet the requirements of the RFP or are not qualified to perform the services described in the RFP. Protests received after the deadline will not be considered.

No contract associated with the RFP will be awarded until any protests have been resolved. The City will evaluate and resolve all award protests submitted before the deadline within a reasonable time

following receipt of the protest. The City will promptly issue a written decision on the protest to the Proposer who submitted the protest. If the City’s written decision on the protest results in a change to the RFP, the City shall cancel the Notice of Intent to Award, revise the RFP documents accordingly, and solicit for new Proposals. The City’s decision regarding the protest is final and concludes the administrative appeals process.

XII. Schedule

The following is the anticipated timeline for receiving and evaluating Proposals and awarding a contract to the most qualified firm or individual. *These dates are estimates and are subject to change.*

Advertise Request for Proposals	February 17, 2023
RFP Change Request Deadline	March 9, 2023, 5:00 p.m.
RFP Question Submission Deadline	March 9, 2023, 5:00 p.m.
Answers Posted	March 13, 2023
Addenda Issuance Deadline	March 13, 2023
Proposals Due	March 16, 2023, 2:00 p.m.
Interviews <i>(if needed)</i>	TBD
Evaluation of Proposals Complete	March 27, 2023 <i>(or no later than one week after interviews are completed, if necessary)</i>
Notice of Intent to Award.....	March 31, 2023
Award Protest Deadline	April 7, 2023, 5:00 p.m.
City Council Award (if over \$100,000).....	April 17, 2023, 7:00 p.m.
Notice of Award/Finalize Contract	April 2023

XIII. Pre-Proposal Meeting

There will be no pre-submittal meeting or site visit scheduled for this RFP.

XIV. RFP Questions

Proposers shall direct all questions regarding RFP documents in writing or by email to:

City of Wilsonville
Attn: Kelsey Lewis
29799 SW Town Center Loop East
Wilsonville, OR 97070
klewis@ridesmart.com

For the sake of fairness, Proposers are not to contact any City staff or official other than the Project Manager concerning this RFP. Contact with any other City staff or official concerning this RFP will be grounds for disqualification.

All questions shall include “RFP Questions – SMART Facility Expansion Project” in the subject line or written on the front of the envelope and be submitted in writing by **5:00 p.m., Pacific Time, on Thursday, March 9, 2023**. Questions submitted after that time will not be addressed.

During this time, Proposers are encouraged to ask as many questions as needed to prepare a viable Proposal. Access to the City’s Project Manager for telephone calls, emails, or other communication will be unrestricted during the RFP preparation period up until **5:00 p.m., Pacific Time, on Thursday, March 9, 2023**.

Questions and answers will be posted on the City’s website by **March 13, 2023** to share clarifying information with all potential Proposers. Notification of that posting will be provided by email to all firms on the RFP holders list.

Proposers are hereby notified that verbal communication may not be relied upon as official communication concerning this RFP. Only answers to those questions responded to by the Project Manager via email or by written addendum may be relied upon.

XV. General RFP Information

Contract Award

The City reserves the right to cancel the procurement or reject any or all Proposals when the cancellation or rejection is in the best interest of the City.

The City may elect to award the Contract to the highest ranked Proposer based on successful negotiation of scope, price, and terms. However, the City may, in its sole discretion, terminate negotiations and reject the Proposal if it appears agreement cannot be reached. The City may then attempt to reach a final agreement with the next highest scoring Proposer and may continue on, in the same manner, with remaining Proposers until an agreement is reached.

The City will only negotiate those provisions of the Professional Services Agreement that were noted as Exceptions in the Proposal.

Changes to the RFP Solicitation by Addenda

At any time before the Proposal Due Date, the City may issue addenda to the Request for Proposals, which will be published on the City website. The Addenda will be issued at least three (3) calendar days before the Proposal Due Date or the deadline will be extended to allow the three-day period to elapse. All who notify the City of their intent to propose will be notified of official written addenda.

The Project Manager shall issue all official communication as written addenda to the RFP. All addenda shall have the same binding effect as though contained in the main body of the RFP and Scope of Work.

No addenda will be issued later than March 13, 2023, except by an addendum, if necessary, postponing the date for receipt of Proposals or withdrawing the RFP altogether.

Each Proposer is responsible for obtaining all addenda prior to submitting a Proposal, and shall acknowledge in the Proposal receipt of each addendum as part of the Proposal. Failure to acknowledge receipt of all addenda as part of the Proposal may result in rejection of the Proposal.

Confidentiality

All information submitted by Proposers shall become and remain the property of the City and, as such, is considered public information and subject to disclosure pursuant to the Oregon Public Records Act, except such portions of the Proposal for which the Proposer requests exception from disclosure as being proprietary information exempt from disclosure, consistent with Oregon law. If a Proposal contains any information that is considered a trade secret under ORS 192.501(2), each sheet of such information must be marked with the following legend:

“This data constitutes a trade secret and shall not be disclosed except in accordance with the Oregon Public Records Law, ORS Chapter 192.”

Identifying the Proposal in whole as a trade secret is not acceptable. Failure to identify a portion of the Proposal as a trade secret shall be deemed a waiver of any future claim of that information as a trade secret. Nondisclosure of documents or any portion of a document submitted as part of a Proposal may depend upon official or judicial determinations made pursuant to the Oregon Public Records Law.

The City will make available to any person requesting information through the City processes for disclosure of public records, any and all information submitted as a result of this RFP not exempted from disclosure without obtaining permission from any Proposer to do so after the Notice of Intent to Award has been released.

The City accepts no liability for the inadvertent or unavoidable release of any confidential information submitted. If a public record request is made for material marked as proprietary, the City will attempt to notify the impacted Proposer prior to the deadline for release of the material but will not defend against any legal challenge for release. Therefore, claims arising out of any public record request for such information shall be at the Proposer’s sole expense, if the Proposer wishes to deny or withhold the information.

Cancellation

The City reserves the right to cancel this RFP or the contract award at any time before execution of the contract by both parties, if cancellation is deemed to be in the best interest of the City. In no event shall the City have any liability for the cancellation of a contract award.

Late Proposals

All Proposals that are not received by the Proposal Due Date and Time will not be considered. Electronically mailed or faxed Proposals will not be accepted. Delays due to mail and/or delivery handling, including but not limited to delays within the City's internal distribution systems, do not excuse the Proposer's responsibility for submitting the Proposal to the correct location by the Proposal Due Date.

Disputes

In case of any doubt or differences of opinion as to the items or services to be furnished hereunder, or the interpretation of the provisions of the RFP, the decision of the City shall be final and binding upon all parties.

Proposer Certifications

By the act of submitting a Proposal in response to this RFP, the Proposer certifies that:

1. Proposer has carefully examined all RFP documents, including the draft Professional Services Agreement (attached as **Attachment A**), all addenda, and all other attachments, fully understands the RFP intent, is able to perform all tasks as described in the Scope of Work of this RFP, and the Proposal is made in accordance therewith. Except as otherwise noted as part of the Proposal, Proposer certifies that Proposer is ready, willing, and able to comply with all terms of the attached Professional Services Agreement.
2. Proposer is familiar with the local conditions under which the work will be performed.
3. The Proposal is based upon the requirements described in the RFP, without exception, unless clearly stated in the response.
4. Proposer accepts all of the terms of the City's Professional Services Agreement and warrants that Proposer will fully meet all of the insurance requirements contained therein. **If Proposer wishes to amend or modify any terms of the Professional Services Agreement, such amendment or modification must be stated in particularity in the Proposal. Proposed changes to the draft Professional Services Agreement not stated at the time of Proposal submission will not be considered.** Changes stated will be considered but may not be agreed upon by the City for contract award. If the City does not agree with such noted changes, Proposer may withdraw the proposed change or the entire Proposal and the City may elect to award to the next highest ranked Proposer.
5. Proposer certifies, and in the case of sole proprietorship, partnership, or corporation, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of Proposer's knowledge and belief, no elected official, employee, or person whose salary is payable in whole or part by the City has a direct or indirect financial interest in the Proposal, or in the services to which it relates, or in any of the profits thereof, other than as fully described in the Proposer's response to this solicitation.
6. Proposer has examined all parts of the RFP, including all requirements and contract terms and conditions thereof, and if its Proposal is accepted, the Proposer shall accept the contract

documents thereto, unless substantive changes are made in same without the approval of the Proposer.

7. Proposer, if an individual, is of lawful age; is the only one interested in this Proposal; and no person, firm, or corporation, other than that named, has any interest in the Proposal, or in the proposed contract.
8. Proposer has quality experience providing the types of services and duties as described within the Scope of Work of this RFP.
9. Proposer shall also certify Proposer's state of residence.

Nondiscrimination

By the act of submitting a Proposal in response to this RFP, the Proposer certifies, under penalty of perjury, that ***the Proposer has not discriminated, and will not discriminate, against minorities, women, emerging small business enterprises, or any business enterprise that is owned or controlled by or that employs a disabled veteran, in obtaining any required subcontracts.***

Competition

Prospective Proposers are encouraged to comment, either with their Proposals or at any other time, in writing, on any specification or requirement within this RFP which the Proposer believes will inordinately limit competition.

RFP Protests and Change Requests

A prospective Proposer may protest anything contained in the RFP documents and request a supporting change to any provision, specification, or contract term contained in the RFP documents by submitting a written request to:

City of Wilsonville
Attn: Kelsey Lewis
29799 SW Town Center Loop East
Wilsonville, OR 97070
klewis@ridesmart.com

All change requests shall include "RFP Protest — SMART Facility Expansion Project" in the subject line or written on the front of the envelope and be submitted, in writing, by **5:00 p.m., Pacific Time, on April 7, 2023**. Each protest and request for change must specify the provisions, specifications, or contract terms of the RFP in question and contain reasons for the requested change and any proposed changes.

The City will evaluate and resolve all protests and related change requests submitted before the listed time and date due within a reasonable time following receipt of the protest. The City will issue a written decision on the protest to the Proposer who submitted the protest. Changes that are accepted by the City shall be issued in the form of an addendum to the RFP.

Proposal Liability

Proposers responding to this RFP do so solely at their expense, and the City is not responsible for any Proposer expenses associated with the RFP. By proposing, Proposers agree that doing so is at their own risk and the City shall have no liability related thereto. Finalists invited to participate in interview evaluations are responsible for scheduling and paying for their own travel arrangements. The City is not liable for any cost incurred by a Proposer in protesting any portion of the RFP documents or the City's selection decision.

City Requests for Clarification, Additional Research, and Revisions

The City reserves the right to obtain clarification of any portion of a Proposal or to obtain additional information necessary to properly evaluate a particular Proposal. Failure of a Proposer to timely respond to such a request for additional information or clarification may result in a finding that the Proposer is non-responsive and consequent rejection of the Proposal.

The City may obtain information from any legal source for clarification of any Proposal. The City need not inform the Proposer of any intent to perform additional research in this respect or of any information thereby received.

The City may perform, at its sole option, investigations of any Proposer. Information may include, but shall not necessarily be limited to, current litigation and contracting references. All such documents, if requested by the City, become part of the public record and may be disclosed accordingly.

The City reserves the right to request revisions of any Proposal after the date and time due and before award for the purpose of obtaining best and final offers.

Rejection of Proposals

The City reserves the right to reject any or all irregularities or omissions in Proposals submitted in response to this RFP to the extent it is determined to be in the best interest of the City to do so. Furthermore, the City reserves the right to reject any or all Proposals or portions thereof submitted in response to this RFP. Proposals may be rejected for one or more of the following reasons, including but not limited to:

1. Failure of the Proposer to adhere to one or more of the provisions established in the RFP.
2. Failure of the Proposer to submit a Proposal in the format specified herein.
3. Failure of the Proposer to submit a Proposal within the time requirements established herein.
4. Failure of the Proposer to provide information that is specifically requested in the RFP.
5. Failure of the Proposer to adhere to ethical and professional standards before, during, or following the Proposal process.

The City may reject any Proposal not in compliance with all prescribed public procurement procedures and requirements, and may reject for good cause any or all Proposals upon a finding by the City that it is in the public interest to do so.

Modification or Withdrawal of Proposal by Proposer

A Proposal may not be modified, withdrawn, or canceled by the Proposer following the time and date the Proposals are due. Proposals submitted early may be modified or withdrawn only by notice to the City, at the Proposal submittal location, prior to the time and date the Proposals are due. Such notice shall be submitted to the Project Manager, in writing, executed and signed by a duly authorized representative of the firm/individual submitting the Proposal. All such communication shall be so worded as not to reveal the contents of the original Proposal.

Withdrawn Proposals may be resubmitted prior to the time and date the Proposals are due, provided that they are then fully in conformance with the RFP.

Duration of Proposal

Proposal prices, terms, and conditions shall be firm for a period of at least ninety (90) days from the time and date Proposals are due. Proposals shall not be subject to future price escalation or changes of terms during the ninety (90) day period.

Local and Federal Requirements

The City of Wilsonville intends to select a consultant in accordance with OAR 137-048-0220 and the City's municipal code. Selection of a consultant under this process is not a guarantee of a contract award, nor is the award of a contract for any portion of the work a guarantee of award of a contract for any subsequent work. All work is subject to budgetary and funding constraints of the City of Wilsonville.

The selected consultant shall comply with all federal, state, and local laws, regulations, executive orders, and ordinances applicable to the work under the contract, including, without limitation, the provisions of: (i) Title VI of the Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations.

The selected consultant is subject to the Oregon Workers Compensation Law and shall comply with ORS 656.017, which requires the provision of Workers Compensation coverage for all employees working under the contract. The City of Wilsonville's programs, services, employment opportunities, and volunteer positions are open to all persons without regard to race, religion, color, national origin, sex, sexual orientation, gender identity, age, marital status, disability, or political affiliation.

Because federal funds are utilized in conjunction with this Project, special federal contracting requirements apply and are set forth in the draft Professional Services Agreement.

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Attachment A

Sample Professional Services Agreement

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**CITY OF WILSONVILLE
PROFESSIONAL SERVICES AGREEMENT**

This Professional Services Agreement (“Agreement”) for the SMART Fleet Facility Expansion Project (“Project”) is made and entered into on this ____ day of _____ 2023 (“Effective Date”) by and between the **City of Wilsonville**, a municipal corporation of the State of Oregon (hereinafter referred to as the “City”), and _____, a(n) _____ [corporation/LLC] (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. Scope of Work

Consultant shall diligently perform the design services according to the requirements identified in the Scope of Work for the Project, attached hereto as **Exhibit A** and incorporated by reference herein (the “Services”).

Section 2. Term

The term of this Agreement shall be from the Effective Date until all Services required to be performed hereunder are completed and accepted, or no later than _____, 20__, whichever occurs first, unless earlier terminated in accordance herewith or an extension of time is agreed to, in writing, by the City.

Section 3. Consultant’s Services

3.1. 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 that 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 Work 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.

3.2. Consultant will not be deemed to be in default by reason of delays in performance due to circumstances 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 and proportionately 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.

3.3. 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 Work described herein.

3.4. 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 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 4. Compensation

4.1. Except as otherwise set forth in this **Section 4**, the City agrees to pay Consultant on a time and materials basis, guaranteed not to exceed _____ DOLLARS (\$ _____), for performance of the Services ("Compensation Amount"). Any compensation in excess of the Compensation Amount will require an express written Addendum to be executed between the City and Consultant. Consultant's Rate Schedule is set forth in **Exhibit B**, attached hereto and incorporated by reference herein.

4.2. During the course of Consultant's performance, if the City, through its Project Manager, specifically requests Consultant to provide additional services that are beyond the Scope of Work 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**. Any Additional work beyond the Scope of Work, or any compensation above the amount shown in **Subsection 4.1**, requires a written Addendum executed in compliance with the provisions of **Section 18**.

4.3. 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.

4.4. 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, permitting, and all other similar fees resulting from this Project, that are not specifically covered by **Exhibit A**.

4.5. Consultant's Compensation Amount and Rate Schedule are all inclusive and include, but are not limited to, all work-related costs, expenses, 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, licensing, trademark, and/or copyright costs, office expenses, travel expenses, mileage, and all other indirect and overhead charges, including, but not limited to, the recently enacted Oregon Corporate Activity Tax (CAT).

Section 5. City's Rights and Responsibilities

5.1. 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.

5.2. Award of this contract is subject to budget appropriation. Funds are approved for Fiscal Year 2022-23. If not completed within this fiscal year, funds may not be appropriated for the next fiscal year. The City also reserves the right to terminate this contract early, as described in **Section 16**.

Section 6. City's Project Manager

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

Section 7. Consultant's Project Manager

Consultant's Project Manager is _____. In the event that Consultant's designated Project Manager is changed, Consultant shall give the City prompt written notification of such re-designation. Recognizing the need for consistency and knowledge in the administration of the Project, 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 8. 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 9. 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 Work, 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 10. Subcontractors and Assignments

10.1. Unless expressly authorized in **Exhibit A** or **Section 11** of this Agreement, Consultant shall not subcontract with others for any of the Services prescribed herein. Consultant shall not 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. Some Services 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 work 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 work performed by others on behalf of Consultant shall not be subject to additional reimbursement by the City.

10.2. 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.

10.3. Consultant shall include this Agreement by reference in any subcontract and require subcontractors to perform in strict compliance with this Agreement.

Section 11. Consultant Is Independent Contractor

11.1. 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.

11.2. 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 the approved Rate Schedule (**Exhibit B**). 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 18** of this Agreement. In all cases, processing and payment of billings from subcontractors is solely the responsibility of Consultant.

11.3. 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 11** and meet the same insurance requirements of Consultant under this Agreement.

Section 12. Consultant Responsibilities

12.1. Consultant must 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, but shall not be obligated to, pay such claim to the person 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.

12.2. Consultant must comply with all applicable Oregon and federal wage and hour laws, including BOLI wage requirements, if applicable. 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.

12.3. No person shall be discriminated against by Consultant or any subcontractor in the performance of this Agreement on the basis of sex, gender, race, color, creed, religion, marital status, age, disability, sexual orientation, gender identity, 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. References to “subcontractor” mean a subcontractor at any tier.

12.4. Because this contract is funded, in part, by federal funds, Consultant must comply with all the required federal provisions of the Federal Transit Administration (FTA), as set forth in **Section 13**, below, some of which may overlap with those stated in this Section. Should a conflict exist, the stricter provision shall apply unless otherwise specifically pre-empted by federal law.

Section 13. Required Federal Provisions

This Agreement is funded, in whole or in part, with federal funds. Consultant must therefore comply with all of the following, in addition to the provisions listed above:

13.1. **Energy Conservation.** Consultant agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

13.2. **Recovered Materials.** Consultant agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended (42 USC § 6962), and U.S. Environmental Protection Agency, “Comprehensive Procurement Guideline for Products Containing Recovered Materials” (40 CFR Part 247).

13.3. **Lobbying Restrictions.** Consultant certifies, to the best of its knowledge and belief, that:

13.3.1. No federal appropriated funds have been paid or will be paid, by or on behalf of Consultant, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

13.3.2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, Consultant will complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.

13.3.3. Consultant will require that the language of this certification be included in the award documents for all sub-awards, at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements), and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

13.4. Access to Records and Reports. The following federal access to records requirements apply to this Agreement:

13.4.1. Record Retention. Consultant agrees to retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to this Agreement, including but not limited to documents, reports, data, statistics, subcontracts, sub-agreements, leases, arrangements, other third party agreements of any type, and supporting materials related to those records.

13.4.2. Retention Period. Consultant agrees to comply with the record retention requirements in accordance 2 CFR § 200.333. Consultant will maintain all books, records, accounts, and reports required under this Agreement for a period of not less than three (3) years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case records will be maintained until the City, SMART, the Federal Transit Administration (FTA) Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims, or exceptions related thereto.

13.4.3. Access to Records. Consultant agrees to provide the City, SMART, the FTA Administrator, the Comptroller General of the United States, or any of their duly authorized representatives, sufficient access to any books, documents, papers, and records of Consultant which are related to performance of this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions, as reasonably may be required. Consultant also agrees to permit any of the foregoing parties (at their costs) to reproduce by any means whatsoever any excerpts and transcriptions as reasonably needed.

13.4.4. Access to the Sites of Performance. Consultant agrees to permit the FTA and its contractors access to the sites of performance under this Agreement as reasonably may be required.

13.5. Contract Work Hours and Safety Standards. Consultant will comply with all federal laws, regulations, and requirements providing wage and hour protections for non-construction employees, in accordance with 40 USC § 3702, Contract Work Hours and Safety Standards Act, and other relevant parts of that Act; 40 USC § 3701 *et seq.*; and U.S. Department of Labor regulations, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted

Construction (also Labor Standards Provisions Applicable to Non-Construction Contracts Subject to the Contract Work Hours and Safety Standards Act) (29 CFR Part 5).

13.5.1. Records Retention. Consultant will maintain payrolls and basic payroll records during the course of performance of the Services under this Agreement and will preserve them for a period of three (3) years from the completion of the Services for all laborers and mechanics, including guards and watchmen, working on the Services. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

13.5.2. Access to Records. The records maintained pursuant to **Subsection 13.5.1** will be made available by Consultant for inspection, copying, or transcription by authorized representatives of the FTA and the Department of Labor, and Consultant will permit such representatives to interview employees during working hours on the job.

13.5.3. Subcontracts. Consultant will require the inclusion of the language of this **Section 13.5** within subcontracts of all tiers.

13.6. **Civil Rights Requirements.**

Under this Agreement, Consultant will, at all times, comply with the following requirements and will include these requirements in each subcontract entered into as part thereof.

13.6.1. Nondiscrimination. In accordance with Title VI of the Civil Rights Act of 1964, as amended (42 USC § 2000d), Section 303 of the Age Discrimination Act of 1975, as amended (42 USC § 6102), Section 202 of the Americans with Disabilities Act of 1990, as amended (42 USC § 12132), and federal transit laws at 49 USC § 5332, Consultant agrees that it will not discriminate against any employee or applicant for employment on the basis of race, color, religion, sex, age, disability, or national origin. In addition, Consultant agrees to comply with applicable federal implementing regulations and other implementing requirements the FTA may issue.

13.6.2. Race, Color, Religion, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended (42 USC § 2000e *et seq.*), and federal transit laws at 49 USC § 5332, Consultant agrees to comply with all applicable equal employment opportunity requirements of the U.S. Department of Labor regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor" (41 CFR Chapter 60), and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965; 42 USC § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 USC § 2000e note. Consultant agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their sex, gender, race, color, creed, religion, marital status, age, disability, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of

compensation; and selection for training, including apprenticeship. In addition, Consultant agrees to comply with any implementing requirements the FTA may issue.

13.6.3. Age. In accordance with the Age Discrimination in Employment Act of 1967, as amended (29 USC §§ 621-634); U.S. Equal Employment Opportunity Commission regulations, “Age Discrimination in Employment Act” (29 CFR Part 1625); the Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*); U.S. Department of Health and Human Services implementing regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance” (45 CFR Part 90); and federal transit law at 49 USC § 5332, Consultant agrees to refrain from discrimination against present and prospective employees on the basis of age. In addition, Consultant agrees to comply with any implementing requirements the FTA may issue.

13.6.4. Disabilities. In accordance with Section 504 of the Rehabilitation Act of 1973, as amended (29 USC § 794); the Americans with Disabilities Act of 1990, as amended (42 USC § 12101 *et seq.*); the Architectural Barriers Act of 1968, as amended (42 USC § 4151 *et seq.*); and federal transit law at 49 USC § 5332, Consultant agrees that it will not discriminate against individuals on the basis of disability. In addition, Consultant agrees to comply with any implementing requirements the FTA may issue.

13.7. **Disadvantaged Business Enterprises.**

If the City must adopt a Disadvantaged Business Enterprise (DBE) program, the parties will execute a written amendment so that this Agreement becomes subject to the City’s DBE program.

13.7.1. This Agreement is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The percentage of SMART’s overall goal for DBE participation will be determined when and if the City adopts a DBE program. Consultant will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

13.7.2. Consultant shall not discriminate on the basis of sex, gender, race, color, creed, religion, marital status, age, disability, sexual orientation, gender identity, or national origin in the performance of this Agreement. Consultant shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by Consultant to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the City deems appropriate.

13.7.3. Consultant is required to pay its subcontractors performing work related to this Agreement for satisfactory performance of that work no later than 30 days after Consultant’s receipt of payment for that work from the City. In addition, ***Consultant may not hold retainage from its subcontractors.***

13.7.4. Consultant must promptly notify the City whenever a DBE subcontractor performing work related to this Agreement is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. Consultant may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without the prior written consent of the City.

13.8. Program Fraud and False or Fraudulent Statements and Related Acts.

13.8.1. Consultant acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended (31 USC § 3801 *et seq.*), and U.S. Department of Transportation regulations, “Program Fraud Civil Remedies” (49 CFR Part 31), apply to its actions pertaining to this Project. Upon execution of this Agreement, Consultant certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to this Agreement or the FTA assisted Project for which the Services are being performed. In addition to other penalties that may be applicable, Consultant further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on Consultant to the extent the Federal Government deems appropriate.

13.8.2. Consultant also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with federal assistance originally awarded by the FTA under the authority of 49 USC Chapter 53, the Government reserves the right to impose the penalties of 18 USC § 1001 and 49 USC § 5323(l) on Consultant, to the extent the Federal Government deems appropriate.

13.8.3. Consultant agrees to include the above two clauses in each subcontract financed in whole or in part with federal assistance provided by the FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

13.9. Suspension and Debarment.

13.9.1. Consultant must comply with and facilitate compliance with U.S. Department of Transportation regulations, “Nonprocurement Suspension and Debarment” (2 CFR Part 1200), which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)” (2 CFR Part 180). Consultant is required to verify that its principals, affiliates, and any subcontractors are eligible to participate in this federally funded Contract and are not presently declared by any federal department or agency to be debarred, suspended, proposed for debarment, voluntarily excluded, disqualified, or declared ineligible from participation in any federally assisted award.

13.9.2. Consultant is required to comply with Subpart C of 2 CFR Part 180, as supplemented by 2 CFR Part 1200, and must include the requirement to comply with Subpart C of 2 CFR Part 180 in any lower tier covered transaction it enters into. By signing and submitting its bid or proposal, Consultant has certified as follows:

The certification in this clause is a material representation of fact relied upon by the City. If it is later determined that Consultant knowingly rendered an erroneous certification, in addition to remedies available to the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. Consultant agrees to comply with the requirements of 2 CFR Part 180, Subpart C, as supplemented by 2 CFR Part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. Consultant further agrees to include a provision requiring such compliance in its lower tier covered transactions.

13.10. Trafficking in Persons.

13.10.1. Consultant agrees that it and its employees that participate in the Project covered under this Agreement may not:

13.10.1.1. Withhold monthly progress payments;

13.10.1.2. Engage in forms of trafficking in persons during the period of time that this Agreement is in effect;

13.10.1.3. Procure a commercial sex act during the period of time that this Agreement is in effect; or

13.10.1.4. Use forced labor in the performance of the Agreement or any subcontracts thereunder.

13.10.2. Consultant agrees to comply, and assures the compliance of each subrecipient, with federal requirements and guidance, including:

13.10.2.1. Section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended, 22 USC § 7104(g); and

13.10.2.2. The terms of this Section, which have been derived from U.S. OMB regulatory guidance, "Award Term for Trafficking in Persons," 2 CFR Part 175, per U.S. OMB's direction.

13.10.3. Consultant agrees to, and assures that each subrecipient will:

13.10.3.1. Inform the FTA immediately of any information it receives from any source alleging a violation of the prohibitions listed in this clause; and

13.10.3.2. Include the substance of this clause in all agreements or subcontracts with recipients, subrecipients, suppliers, and subcontractors at every tier, including this requirement to flow down the clause.

13.11. Safe Operation of Motor Vehicles. Consultant is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles. Consultant agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies that ban text messaging while using an electronic device supplied by an employer and driving a vehicle the driver owns or rents, a vehicle Consultant owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this Agreement.

13.12. Federal Changes. Consultant shall at all times comply with all applicable FTA regulations, policies, procedures, and directives, including without limitation those listed directly or by reference in any Master Agreement between the City and the FTA, as they may be amended or promulgated from time to time during the term of this Agreement. Consultant's failure to so comply shall constitute a material breach of this Agreement.

13.13. Violation and Breach of Contract; Termination. The clauses concerning violation and breach of this Agreement and termination of this Agreement can be found in **Section 16**, below.

13.14. No Obligation by the Federal Government.

13.14.1. The City and Consultant acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of this contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the City, Consultant, or any other party (whether or not a party to that contract) pertaining to any matter resulting from this contract.

13.14.2. Consultant agrees to include the above clause in each subcontract financed in whole or in part with federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

13.15. Federal Transit Administration (FTA) Terms Controlling. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. Consultant shall not perform any act, fail to perform any act, or refuse to comply with any City requests which would cause the City to be in violation of the FTA terms and conditions.

Section 14. Indemnity

14.1. Indemnification. 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 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 14.2**. 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. As used herein, the term "Consultant" applies to Consultant and its own agents, employees, and suppliers, and to all of Consultant's subcontractors, including their agents, employees, and suppliers.

14.2. Standard of Care. In the performance of the 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.

Section 15. Insurance

15.1. Insurance Requirements. Consultant shall maintain insurance coverage 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. Any and all agents, contractors, or subcontractors with which Consultant contracts to work on the Services must have insurance that conforms to the insurance requirements in this Agreement. Additionally, if a subcontractor is an engineer, architect, or other professional, Consultant must require the subcontractor to carry Professional Errors and Omissions insurance and must provide to the City proof of such coverage. The amount of insurance carried is in no way a limitation on Consultant's liability hereunder. The policy or policies maintained by Consultant shall provide at least the following minimum limits and coverages at all times during performance under this Agreement:

15.1.1. Commercial General Liability Insurance. Consultant and all subcontractors shall obtain, at each of their own expense, and keep in effect during the term of this Agreement, comprehensive Commercial General Liability Insurance covering Bodily Injury and Property Damage, written on an "occurrence" form policy. This coverage shall include broad form Contractual Liability insurance for the indemnities provided under this Agreement and shall be for the following minimum insurance coverage amounts: The coverage shall be in the amount of **\$2,000,000** for each occurrence and **\$3,000,000** general aggregate and shall

include Products-Completed Operations Aggregate in the minimum amount of **\$2,000,000** per occurrence, Fire Damage (any one fire) in the minimum amount of **\$50,000**, and Medical Expense (any one person) in the minimum amount of **\$10,000**. All of the foregoing coverages must be carried and maintained at all times during this Agreement.

15.1.2. 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, and coverage will remain in force for a period of at least three (3) years after termination of this Agreement.

15.1.3. Business Automobile Liability Insurance. If Consultant or any subcontractors will be using a motor vehicle in the performance of the Services herein, Consultant shall provide the City a certificate indicating that Consultant and its subcontractors have 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**.

15.1.4. Workers Compensation Insurance. Consultant, its subcontractors, 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 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.

15.1.5. Insurance Carrier Rating. Coverages provided by Consultant and its subcontractors must be underwritten by an insurance company deemed acceptable by the City, with an AM Best Rating of A or better. The City reserves the right to reject all or any insurance carrier(s) with a financial rating that is unacceptable to the City.

15.1.6. Additional Insured and Termination Endorsements. The City will be named as an additional insured with respect to Consultant's liabilities hereunder in insurance coverages. Additional Insured coverage under Consultant's Commercial General Liability, Automobile Liability, and Excess Liability Policies, as applicable, will be provided by endorsement. Additional insured coverage shall be for both ongoing operations via ISO Form CG 2010 or its equivalent, and products and completed operations via ISO Form CG 2037 or its equivalent. Coverage shall be Primary and Non-Contributory. Waiver of Subrogation endorsement via ISO Form CG 2404 or its equivalent shall be provided. The following is included as additional insured: "The City of Wilsonville, its elected and appointed officials, officers, agents, employees, and volunteers." An endorsement shall also be provided requiring the insurance carrier to give the City at least thirty (30) days'

written notification of any termination or major modification of the insurance policies required hereunder. Consultant must be an additional insured on the insurance policies obtained by its subcontractors performing work on the Services contemplated under this Agreement.

15.1.7. 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 and Consultant will obtain an endorsement from its insurance carrier, in favor of the City, requiring the carrier to notify the City of any termination or change in insurance coverage, as provided above.

15.2. Primary Coverage. 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. If insurance policies are "Claims Made" policies, Consultant will be required to maintain such policies in full force and effect throughout any warranty period.

Section 16. Early Termination; Default

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

16.1.1. By mutual written consent of the parties;

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

16.1.3. 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.

16.2. 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, which agreed upon extension must be in writing and signed by the parties prior to the expiration of the cure period. Unless a written, signed extension has been fully executed

by the parties, if Contractor fails to cure prior to expiration of the cure period, the Contract is automatically terminated.

16.3. 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.

16.4. 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 20**, for which Consultant has received payment or the City has made payment.

Section 17. Suspension of Services

The City may suspend, delay, or interrupt all or any part of the Services 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 Services performed by any subcontractors after notice of suspension is given by the City to Consultant. Should the City suspend, delay, or interrupt the Services 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 18. Modification/Addendum

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 Work 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 an Addendum. Consultant's failure to submit such written request for modification in the form of an Addendum 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 Addendum. To be enforceable, the Addendum must describe with particularity the nature of the change, any delay in time the Addendum will cause, or any increase or decrease in the Compensation Amount. The Addendum must be signed and dated by both Consultant and the City before the Addendum may be implemented.

Section 19. 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 during the term of this Agreement and for a period of four (4) years after termination of the Agreement, unless the City specifically requests an extension. This clause shall survive the expiration, completion, or termination of this Agreement.

Section 20. Property of the City

Originals or certified copies of the original work forms, including but not limited to documents, drawings, tracings, surveying records, mylars, spreadsheets, charts, graphs, modeling, data generation, 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.

Section 21. 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: Kelsey Lewis, Grants and Programs Manager
29799 SW Town Center Loop East
Wilsonville, OR 97070

To Consultant: _____
Attn: _____

Section 22. Miscellaneous Provisions

22.1. 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 or any other documents, the provisions of this Agreement shall control, and the terms most favorable to the City, within the City’s sole discretion, will apply.

22.2. 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.

22.3. No Assignment. Consultant may not assign this Agreement, nor delegate the performance of any obligations hereunder, unless agreed to in advance and in writing by the City.

22.4. Adherence to Law. In the performance of this Agreement, Consultant shall adhere to all applicable federal, state, and local laws (including the Wilsonville Code and Public Works Standards), 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 the Services described on **Exhibit A**, shall be obtained and maintained throughout the term of this Agreement.

22.5. Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Oregon, regardless of any conflicts of laws. All contractual provisions required by ORS Chapters 279A, 279B, 279C, and related Oregon Administrative Rules 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.

22.6. Jurisdiction. Jurisdiction and venue for any dispute will be in Clackamas County Circuit Court.

22.7. 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.

22.8. 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.

22.9. 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.

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

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

22.12. Calculation of Time. Except where the reference is to business days, 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 observed by the City, the period shall be extended to include the next day which is not a Saturday, Sunday, or legal holiday. Where the reference is to business days, periods of time referred to herein shall exclude Saturdays, Sundays, and legal holidays observed by the City. 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.

22.13. 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.

22.14. 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.

22.15. 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.”

22.16. 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.

22.17. 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 Agreement, the prevailing party shall be entitled to recover from the other party all expenses which it may reasonably incur in taking such action, including attorney fees and costs, whether incurred in a court of law or otherwise.

22.18. Entire Agreement. This Agreement and all documents attached to this Agreement represent the entire agreement between the parties.

22.19. 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.

22.20. 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:

By: _____

Print Name: _____

As Its: _____

EIN/Tax I.D. No.: _____

CITY:

CITY OF WILSONVILLE

By: _____

Print Name: _____

As Its: _____

APPROVED AS TO FORM:

Amanda Guile-Hinman, City Attorney
City of Wilsonville, Oregon

Attachment B

Supporting Information

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