

RESOLUTION NO. 3166

A RESOLUTION OF THE CITY OF WILSONVILLE AUTHORIZING THE CITY MANAGER TO EXECUTE A GOODS AND SERVICES CONTRACT WITH ANDERSEN PACIFIC INC. FOR REPLACEMENT AND MAINTENANCE OF CITY WATER FEATURES.

WHEREAS, the City of Wilsonville has identified the need for Replacement and On-Call Repair Services of the Water Features at Murase Plaza and Town Center Park; and

WHEREAS, the City of Wilsonville Parks and Recreation Department have identified these projects as key improvements; and

WHEREAS, the City wishes to assure the usability of its assets; and

WHEREAS, the City issued a formal request for proposals for this project in accordance with the City's and State's procurement rules.

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

Section 1. The procurement process for the Project duly followed Oregon Contracting Rules, and Andersen Pacific Inc. was determined to be the most qualified proposer.

Section 2. The City of Wilsonville, acting as the Local Contract Review Board, authorizes the City Manager to enter into and execute, on behalf of the City of Wilsonville, a goods and services contract with Andersen Pacific Inc. substantially similar to Exhibit A attached hereto and incorporated by reference herein.

Section 3. This resolution is effective upon adoption.

ADOPTED by the Wilsonville City Council at a regular meeting there of this 7th Day of October 2024 and filed with the Wilsonville City Recorder this date.

Signed by:

8A974AF3ADE042E...

JULIE FITZGERALD, MAYOR

ATTEST:

DocuSigned by:
Kimberly Veliz
E781DE10276B498...

Kimberly Veliz, City Recorder

SUMMARY OF VOTES:

Mayor Fitzgerald	Yes
Council President Akervall	Yes
Councilor Berry	Excused
Councilor Dunwell	Yes
Councilor Linville	Yes

EXHIBIT:

A. Contract

Exhibit A to Res. No. 3166

Contract No. 252790
CIP No. 9177

CITY OF WILSONVILLE GOODS AND SERVICES CONTRACT

This Goods and Services Contract (“Contract”) for the Water Features Replacement and Maintenance Project (“Project”) is made and entered into on this ____ day of October 2024 (“Effective Date”) by and between the **City of Wilsonville**, a municipal corporation of the State of Oregon (hereinafter referred to as the “City”), and **Andersen Pacific, Inc.**, an Oregon corporation (hereinafter referred to as “Contractor”).

RECITALS

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

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

WHEREAS, Contractor 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

Contractor will perform the replacement and maintenance services, as more particularly described in the Scope of Work for the Project, attached hereto as **Exhibit A** and incorporated by reference herein (the “Work”). Contractor shall diligently perform the Work according to the requirements identified in the Scope of Work.

Section 2. Term

The term of this Contract shall be from the Effective Date until all Work required to be performed hereunder is completed and accepted, or no later than June 30, 2029, whichever occurs first, unless earlier terminated in accordance herewith or an extension of time is agreed to, in writing, by the City. The City, in its sole discretion, may exercise its option to extend the contract for two (2) two-year periods for continued maintenance and repair services.

Section 3. Contract Sum/Project Scope

3.1. Except as otherwise set forth in this **Section 3**, the City agrees to pay Contractor, on a time and materials basis, guaranteed not to exceed SIX HUNDRED FORTY-NINE THOUSAND ONE HUNDRED FORTY-EIGHT DOLLARS (\$649,148) for performance of the Work described in Task 1 in **Exhibit A** (“Contract Sum”). Any compensation in excess of the Contract Sum will require

an express written Change Order between the City and Contractor. All other Work identified in **Exhibit A** (Tasks 2 and 3) will be documented utilizing the Task Order Form attached hereto and incorporated by reference herein as **Exhibit B**, and such Work will be provided on a time and materials basis, in accordance with the Rate Schedule set forth on **Exhibit C**.

3.2. Contractor's Contract Sum and the rates stated in **Exhibit C** 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 all other 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 Oregon Corporate Activity Tax (CAT).

3.3. Contractor will be paid for Work upon completion of the Work and within thirty (30) days of receipt of an itemized invoice, 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 Contractor as promptly as is reasonably possible.

Section 4. Prevailing Wages

This is a Contract for a Public Works Project, subject to ORS 279C.800 to 279C.870. Therefore, not less than the current applicable state prevailing wage must be paid on this Project. Wage rates for this Project are those published by the Oregon Bureau of Labor and Industries (BOLI), entitled "Prevailing Wage Rates for Public Works Contracts," effective July 5, 2024, and all subsequent amendments. The BOLI prevailing wage rate for public works contracts can be found at the following website: <http://www.oregon.gov/boli/employers/pages/prevailing-wage-rates.aspx>. Because this is a public works contract subject to payment of prevailing wages, each worker in each trade or occupation employed in the performance of the Work, either by Contractor, a subcontractor, or other person doing or contracting to do, or contracting for the whole or any part of the Work, must be paid not less than the applicable state prevailing wage for an hour's work in the same trade or occupation in the locality where such labor is performed, in accordance with ORS 279C.838 and 279C.840, if applicable. Contractor must comply with all public contracting wages required by law. If applicable, Contractor and any subcontractor, or their sureties, shall file a certificate of rate of wage as required by ORS 279C.845. If the City determines at any time that the prevailing rate of wages has not been or is not being paid as required herein, it may retain from the moneys due to Contractor an amount sufficient to make up the difference between the wages actually paid and the prevailing rate of wages, and may also cancel the Contract for breach. Contractor shall be liable to the workers affected for failure to pay the required rate of wage, including all fringe benefits under ORS 279C.840(5). If applicable, Contractor must include a contract provision in compliance with this paragraph in every subcontract and shall require each subcontractor to include it in subcontract(s).

Section 5. City's Rights and Responsibilities

5.1. The City will designate a Project Manager to facilitate day-to-day communication between Contractor 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 2024-25. 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 Dustin Schull. The City shall give Contractor prompt written notice of any re-designation of its Project Manager.

Section 7. Contractor's Project Manager

Contractor's Project Manager is Greg Andersen. In the event that Contractor's Project Manager is changed, Contractor shall give the City prompt written notification of such re-designation. Recognizing the need for consistency and knowledge in the administration of the Project, Contractor'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 Contractor that is not from Contractor's Project Manager, the City may request verification by Contractor's Project Manager, which verification must be promptly furnished.

Section 8. Subcontractors and Assignments

8.1. Unless expressly authorized in writing by the City, pursuant to **Subsection 10.1**, Contractor shall not subcontract with others for any of the Work prescribed herein. Contractor shall not assign any of Contractor's rights acquired hereunder without obtaining prior written approval from the City. Some Work may be performed by persons other than Contractor, provided Contractor advises the City of the names of such subcontractors and the services which they intend to provide, and the City specifically agrees, in writing, to such subcontracting. Contractor acknowledges such services will be provided to the City pursuant to a subcontract(s) between Contractor and subcontractor(s) and no privity of contract exists between the City and the subcontractor(s). Unless otherwise specifically provided by this Contract, the City incurs no liability to third persons for payment of any compensation provided herein to Contractor. Any attempted assignment of this Contract without the written consent of the City shall be void. Except as otherwise specifically agreed, all costs for services performed by others on behalf of Contractor shall not be subject to additional reimbursement by the City.

Section 9. Contractor Is Independent Contractor

Except as otherwise mandated by state law, the performance of Work under this Contract is at Contractor's sole risk. All damages or loss to Work, equipment, or materials incurred during the

performance of the Work shall be at Contractor's sole risk. Contractor is an independent contractor for all purposes and shall be entitled to no compensation other than the Contract Sum provided for under **Section 3** of this Contract. Contractor will be solely responsible for determining the manner and means of accomplishing the end result of Contractor's Work. The City does not have the right to control or interfere with the manner or method of accomplishing said Work. The City, however, will have the right to specify and control the results of Contractor's Work so such Work meets the requirements of the Project.

Section 10. Contractor's Responsibilities

10.1. The City understands and agrees that Contractor may request that some Work be performed on the Project by persons or firms other than Contractor, through a subcontract with Contractor. Contractor acknowledges that if such Work is provided to the City pursuant to a subcontract(s) between Contractor and those who provide such services, Contractor may not utilize any subcontractor(s), or in any way assign its responsibility under this Contract, without first obtaining the express written consent of the City. In all cases, processing and payment of billings from subcontractors is solely the responsibility of Contractor. References to "subcontractor" in this Contract mean a subcontractor at any tier.

10.2. Contractor must comply with all applicable Oregon and federal wage and hour laws. Contractor shall make all required workers compensation and medical care payments on time. Contractor 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. Contractor shall also be fully responsible for payment of salaries, benefits, taxes, Industrial Accident Fund contributions, and all other charges on account of any employees. Contractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

10.3. Contractor must maintain a City of Wilsonville or Metro business license at all times while performing Work under this Contract.

10.4. No person shall be discriminated against by Contractor or any subcontractor in the performance of this Contract 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 Contract, in whole or in part, by the City. Contractor shall comply with all federal, state, and local laws, regulations, executive orders, and ordinances applicable to the Contract or to the implementation of the Project. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with the following laws, regulations, and executive orders to the extent they are applicable to the Contract or the implementation of the Project: (a) all applicable requirements of state civil rights and rehabilitation statutes, rules, and regulations; (b) Titles VI and VII of the Civil Rights Act of 1964, as amended; (c) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (d) the Americans with Disabilities Act of 1990, as amended, and ORS 659A.142; (e) Executive Order 11246, as amended; (f) the Health Insurance Portability and Accountability Act of 1996; (g) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (h) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (i) all regulations and

administrative rules established pursuant to the foregoing laws; and (j) all other applicable requirements of federal civil rights and rehabilitation statutes, rules, and regulations.

10.5. Contractor shall make payment promptly, as due, to all parties supplying to such Contractor labor or material for the prosecution of the Work provided for in the Contract.

10.6. Contractor shall make payment promptly, as due, to any party furnishing medical, surgical, hospital, or other needed care and attention, incident to sickness or injury, to the employees of Contractor, of all sums which Contractor agreed to pay or collected or deducted from the wages of employees pursuant to any law, contract, or agreement for the purpose of providing payment for such service.

10.7. With certain exceptions listed below, Contractor shall not require or permit any person to work more than ten (10) hours in any one (1) day, or forty (40) hours in any one (1) week, except in case of necessity, emergency, or where public policy requires it, and in such cases the person shall be paid at least time and a half for:

10.7.1. All overtime in excess of eight (8) hours in any one (1) day or forty (40) hours in any one (1) week when the work week is five (5) consecutive days, Monday through Friday; or

10.7.2. All overtime in excess of ten (10) hours in any one (1) day or forty (40) hours in any one (1) week when the work week is four (4) consecutive days, Monday through Friday; and

10.7.3. All work performed on the days specified in ORS 279B.020(1)(b) for public contracts.

10.8. Contractor must give notice to employees who work on a public contract, in writing, either at the time of hire or before commencement of Work on the Contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.

10.9. The hourly rate of wage to be paid by any Contractor to employed workers or other persons doing or contracting to do all or part of the work contemplated by a public contract shall be not less than the applicable wage required by law.

10.10. Contractor, and all employers working under the Contract, are subject employers under the Oregon Workers Compensation Law and shall comply with ORS 656.017 unless otherwise exempt under ORS 656.126.

10.11. In the performance of this Contract, Contractor shall comply with all applicable federal, state, and local laws and regulations, including but not limited to those dealing with the prevention of environmental pollution and the preservation of natural resources (and avoidance of natural resource damages) in the performance of the Contract, including but not limited to ORS 279C.525. If new or amended statutes, ordinances, or regulations are adopted, or Contractor

encounters a condition not referred to in this Contract, not caused by Contractor, and that was not discoverable by reasonable site inspection, which requires compliance with federal, state, or local laws or regulations dealing with the preservation of the environment, both the City and Contractor shall have all the rights and obligations set forth in ORS 279C.525.

10.12. Contractor shall be liable for any fine imposed against Contractor, the City, or the 'Project' as a result of a violation of any laws or permitting requirements by Contractor or any suppliers.

10.13. Contractor must maintain and provide proof of a statutory public works bond throughout the term of this Contract.

Section 11. Indemnity

11.1. Indemnification. Contractor acknowledges responsibility for liability arising out of the performance of this Contract, 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 Contractor's negligent acts, omissions, errors, or willful or reckless misconduct pursuant to this Contract, or from Contractor's failure to perform its responsibilities as set forth in this Contract. 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 Contractor 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 Contractor of its responsibility to perform in full conformity with the City's requirements, as set forth in this Contract, 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 Contractor's negligent performance of this Contract, failure of performance hereunder, violation of state or federal laws, or failure to adhere to the standards of performance and care described in **Subsection 11.2.** For those claims based on professional liability (as opposed to general liability or automobile liability), Contractor shall not be required to provide the City's defense but will be required to reimburse the City for the City's defense costs incurred in any litigation resulting from the negligent acts, omissions, errors, or willful or reckless misconduct by Contractor.

11.2. Standard of Care. In the performance of the Work, Contractor agrees to use at least that degree of care and skill exercised under similar circumstances by reputable members of Contractor's profession practicing in the Portland metropolitan area. Contractor will re-perform any Work not meeting this standard without additional compensation. Contractor's re-performance of any Work, 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 Contractor's failure to perform in accordance with the applicable standard of care of this Contract and within the prescribed timeframe.

Section 12. Insurance

12.1. Insurance Requirements. Contractor must maintain insurance coverage acceptable to the City in full force and effect throughout the term of this Contract. Such insurance shall cover all risks arising directly or indirectly out of Contractor's activities or work hereunder. Any and all agents or subcontractors with which Contractor contracts for any portion of the Work must have insurance

that conforms to the insurance requirements in this Contract. Additionally, if a subcontractor is an engineer, architect, or other professional, Contractor 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 Contractor's liability hereunder. The policy or policies maintained by Contractor shall provide at least the following minimum limits and coverages at all times during performance of this Contract:

12.1.1. Commercial General Liability Insurance. Contractor and all subcontractors shall obtain, at each of their own expense, and keep in effect during the term of this Contract, 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 Contract 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 Contract.

12.1.2. Business Automobile Liability Insurance. If Contractor or any subcontractors will be using a motor vehicle in the performance of the Work herein, Contractor shall provide the City a certificate indicating that Contractor 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**.

12.1.3. Workers Compensation Insurance. Contractor, its subcontractors, and all employers providing work, labor, or materials under this Contract 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. Contractors 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.

12.1.4. Insurance Carrier Rating. Coverages provided by Contractor 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.

12.1.5. Additional Insured and Termination Endorsements. The City will be named as an additional insured with respect to Contractor's liabilities hereunder in insurance coverages. Additional Insured coverage under Contractor'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. Contractor must be an additional insured on the insurance policies obtained by its subcontractors performing any of the Work contemplated under this Contract.

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

12.2. Primary Coverage. The coverage provided by these policies shall be primary, and any other insurance carried by the City is excess. Contractor shall be responsible for any deductible amounts payable under all policies of insurance. If insurance policies are “Claims Made” policies, Contractor will be required to maintain such policies in full force and effect throughout any warranty period.

Section 13. Bonding Requirements

13.1. Payment and Performance Bonds. Contractor shall obtain a Payment Bond and a Performance Bond, each in a form acceptable to the City and from a surety acceptable to the City, and each in the full amount of the Contract Sum.

13.2. Public Works Bond. Pursuant to ORS 279C.830(2), in addition to the Payment and Performance bonds, before starting work on this Contract or any subcontract hereunder, Contractor and all subcontractors, unless exempt under ORS 279C.836(4), (7), (8), or (9), must have on file with the Construction Contractors Board a public works bond with a corporate surety authorized to do business in the State of Oregon in the minimum amount of **\$30,000**. The bond must provide that the Contractor or subcontractor will pay claims ordered by the Bureau of Labor and Industries to workers performing labor upon public works projects. The bond must be a continuing obligation, and the surety’s liability for the aggregate of claims that may be payable from the bond may not exceed the penal sum of the bond. The bond must remain in effect continuously until depleted by claims paid under ORS 279C.836, unless the surety sooner cancels the bond. Contractor further certifies that Contractor will include in every subcontract a provision requiring a subcontractor to have a public works bond filed with the Construction Contractors Board before starting work on the Project, unless exempt under ORS 279C.836(4), (7), (8), or (9).

13.3. Bond Claims. Any notice of claim on a payment or performance bond or public works bond shall comply with the requirements of ORS 279C.605.

Section 14. Warranty

14.1. In addition to, and not in lieu of, any other warranties provided by various manufacturers and suppliers, Contractor fully warrants all Work and materials for a period of one (1) year from the date of Final Acceptance of the Work and shall make all necessary repairs and replacements to remedy, in a manner satisfactory to the City's Project Manager and at no cost to the City, any and all defects, breaks, or failures of the Work or materials occurring within one (1) year following the date of completion due to faulty or inadequate materials or workmanship. Repair of damage or disturbances to other improvements under, within, or adjacent to the Work, whether or not caused by settling, washing, or slipping, when such damage or disturbance is caused, in whole or in part, from activities of Contractor in performing Contractor's duties and obligations under this Contract, is also covered by the warranty when such defects or damage occur within the warranty period. The one (1) year warranty period shall, with relation to such required repair, be extended one (1) year from the date of completion of such repair.

14.2. Contractor warrants to the City that any materials and equipment furnished under this Contract will be new and of good quality, unless otherwise required or permitted by this Contract, that the Work will be free from defects, and that the Work will conform to the requirements of this Contract. Work not conforming to these requirements, including substitutions not properly approved and authorized in writing by the City, may be considered defective.

Section 15. Suspension

The City may suspend, delay, or interrupt all or any part of the Work for such time as the City deems appropriate for its own convenience by giving written notice thereof to Contractor. An adjustment in the time of performance or method of compensation shall be negotiated as a result of such delay or suspension, unless the reason for the delay was within Contractor's control. The City shall not be responsible for Work performed by any subcontractors after notice of suspension is given by the City to Contractor.

Section 16. Early Termination; Default

16.1. This Contract 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 Contractor by mail or in person; or

16.1.3. By Contractor, 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 Contractor, 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 Contract in whole or in part, due to default or failure of Contractor to perform Work in accordance with the Contract, 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, Contractor shall be liable for all costs and damages incurred by the City as a result of the default by Contractor, including, but not limited to all costs incurred by the City in procuring services from others as needed to complete this Contract. This Contract shall be in full force to the extent not terminated by written notice from the City to Contractor. In the event of a default, the City will provide Contractor with written notice of the default and a period of three (3) days to cure the default. If Contractor notifies the City that it cannot, in good faith, do so within the three (3) 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 Contract for its own convenience not due to any default by Contractor, payment of Contractor shall be prorated to, and include the day of, termination and shall be in full satisfaction of all claims by Contractor against the City under this Contract.

16.4. Termination under any provision of this **Section 16** shall not affect any right, obligation, or liability of Contractor or the City that accrued prior to such termination. Contractor shall surrender to the City items of work or portions thereof, for which Contractor has received payment or the City has made payment.

Section 17. Contract Modification; Change Orders

Any modification of the provisions of this Contract shall not be enforceable or binding unless reduced to writing and signed by both the City and Contractor.

Section 18. Notices

Any notice required or permitted under this Contract 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: Dustin Schull, Parks Maintenance Supervisor
 29799 SW Town Center Loop East
 Wilsonville, OR 97070

To Contractor: Andersen Pacific, Inc.
 Attn: Greg Andersen
 15722 S Redland Road
 Oregon City, OR 97045

Section 19. Miscellaneous Provisions

19.1. Integration. This Contract, 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 Contract shall control, and the terms most favorable to the City, within the City's sole discretion, will apply.

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

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

19.4. Adherence to Law. This Contract shall be subject to, and Contractor 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 Contractor is required by law to obtain or maintain in order to perform the Work described in this Contract shall be obtained and maintained throughout the term of the Contract.

19.5. Governing Law. This Contract 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 Contract as if fully set forth herein.

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

19.7. 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 Contract 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 Contract, 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.

19.8. Nonwaiver. Failure by either party at any time to require performance by the other party of any of the provisions of this Contract 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.

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

19.10. Modification. This Contract may not be modified except by written instrument executed by Contractor and the City.

19.11. Time of the Essence. Time is expressly made of the essence in the performance of this Contract.

19.12. 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 Contract, the first day from which the designated period of time begins to run shall not be included.

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

19.14. Number, Gender and Captions. In construing this Contract, 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 Contract.

19.15. Good Faith and Reasonableness. The parties intend that the obligations of good faith and fair dealing apply to this Contract generally and that no negative inferences be drawn by the absence of an explicit obligation to be reasonable in any portion of this Contract. 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 Contract gives the City “sole discretion” or the City is allowed to make a decision in its “sole judgment.”

19.16. 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 Contract in order to provide and secure to the other parties the full and complete enjoyment of rights and privileges hereunder.

19.17. Interpretation. As a further condition of this Contract, the City and Contractor acknowledge that this Contract shall be deemed and construed to have been prepared mutually by

each party and it shall be expressly agreed that any uncertainty or ambiguity existing therein shall not be construed against any party. In the event that any party shall take an action, whether judicial or otherwise, to enforce or interpret any of the terms of the contract, the prevailing party shall be entitled to recover from the other party all expenses which it may reasonably incur in taking such action, including attorney fees and costs, whether incurred in a court of law or otherwise.

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

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

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

The Contractor and the City hereby agree to all provisions of this Contract.

CONTRACTOR:

CITY:

ANDERSEN PACIFIC, INC.

CITY OF WILSONVILLE

By: _____

By: _____

Print Name: _____

Print Name: _____

As Its: _____

As Its: _____

EIN/Tax I.D. No. _____

APPROVED AS TO FORM:

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

Exhibit A

Scope of Work

Project Scopes

This Scope of Work consists of three identified tasks: (1) Replacement of the two Murase Plaza Water Feature systems; (2) Replacement of the one Town Center Park Water Feature system; and (3) on-call maintenance and repair of the three water feature systems. Each task may include sub-tasks. Work anticipated beyond Fiscal Year 2024-25 is subject to future budget appropriations and may require a Task Order (Exhibit B).

Task 1: Murase Plaza Water Feature Replacement (FY 2024-25)

Design, build and install a modern and updated water feature operating system for both systems in the Murase Plaza water feature vault.

Existing Conditions.

The work is to take place in a 10' x 20' underground equipment vault that is approximately 11' feet in depth. The vault is a permit-required confined space that may be deemed an alternate entry if all hazards can be mitigated. Forced air, lighting and continuous gas monitoring will still be required when working in the space.

The existing vault equipment will be removed by City staff, leaving in place a mostly stripped-down vault apart from some electrical conduit, electrical gear, five elevated concrete pump bases, and two wall mounted manifolds.

The existing vault is configured to have two separate water feature systems within the same vault. The first is the spray deck feature, consisting of one 20 hp jet pump that feeds the spray deck manifold, and one 3 hp variable speed filter pump. The second is the runnel feature consisting of two 30 hp weir pumps that feed the runnel manifold and one 3 hp variable speed filter pump. The contractor will have the existing schedule 80 pipe stubs that penetrate the vault wall to plumb from in order to recreate the two water feature systems.

Each water feature has a separate underground surge tank located in close proximity of the equipment vault. The spray surge tank is approximately 8 feet by 8 feet, and the runnel is approximately 8 feet by 16 feet.

Sub-Task 1.1. Design.

Each water feature system in Murase Plaza should be designed to have a workstation with the pool controller, probes, test pit cocks, and worktable adequate to perform required testing. The design and placement of the new equipment should be constructed in a manner to allow pool operators as much unimpeded access to the equipment and allow for as much operating room as possible.

All penetrations will need to have a flanged fitting just inside the surface of the vault wall followed by an isolation valve. The jet and weir penetrations will need to be metal butterfly valves whereas the other penetrations need to be schedule 80 PVC IPEX true union ball valves.

Each surge tank will need to be designed with a screen wall constructed across the entire run, in front of the intake pipes. The walls need to be of fiberglass grating with 1 inch by 1 inch spacing. It must connect to the walls and run from the floor of the vault to 3" above the overflow level. There is to be no spaces greater than the 1 inch by 1 inch over the entire wall assembly. Connection points will need to be of corrosive resistant material and allow for easy removal for periodic maintenance.

Contractor will meet with City staff on-site to review existing conditions prior to beginning its design for new installation. Contractor will provide at least two (2) rounds of draft designs of the new water feature systems installation in Murase Plaza for City staff review and comment prior to beginning installation. Design must note any demolition/removal of current components and procurement of needed components, both of which Contractor will undertake upon City approval of the design.

**Concrete pump blocks may need to be removed and repoured in order to accommodate the new pump design. If warranted, Contractor should explicitly note such need in its design.

Sub-task 1.2. Installation

Each of the replacement water feature systems in Murase Plaza must be installed according to Contractor's design. Any changes from the approved design must be approved in writing by the City prior to performing the changed work. Contractor is responsible for coordinating work with all needed subcontractors. Contractor must account for confined space entries and alternate entries into confined spaces for all contractors and subcontractors involved in the Project. Contractor must perform dry fit installation of all components and must install all components following City written approval on dry fit installation. In addition, the following equipment and items must be replaced in the water features:

- Six butterfly valves
- Weir pump #1- 30 hp Badu Block Multi Series with 10" coated cast iron strainer (replace with same or equivalent)
- Weir pump #2 - 30 hp Badu Block Multi Series with 10" coated cast iron strainer (replace with same or equivalent)
- Jet pump - 20 hp Normblock Multi with 6" x 8" FRP basket strainer (replace with same or equivalent)
- Runnel filter pump - Intelliflo 3 variable speed pump with i/o board and keypad (replace with same or equivalent)
- Spray deck filter pump - Intelliflo 3 variable speed pump with i/o board and keypad (replace with same or equivalent)
- Spray deck sand filter – Triton II
- Runnel sand filter baffles and median
- All gaskets, gauges and ball valves
- Blower Fan
- All check valves
- UV systems

- Accu-Tab chlorination systems with booster pumps
- BECSys 5 controllers
- Flow cells with ORP, PH, and PPM probes compatible with BECSys 5 controllers
- All tubing

Existing items to be reinstalled:

- Co2 Tank
- Co2 Feeders
- Runnel Sand Filter
- Bilge pumps (2)
- Aqua Star valves (2)

Contractor will also need to reconnect all electrical and controls.

The City, or its authorized representative(s), will inspect the installation for conformance with the design prior to performance of any system testing.

Sub-task 1.3. Testing and Acceptance.

Contractor will perform all testing necessary to ensure that the newly installed water feature systems are functioning properly. Contractor will provide the City with at least five (5) days' prior written notice of its intention to test the systems. City staff must be present for any and all testing of the systems. Any issues identified during testing must be resolved by Contractor at no additional cost to the City. Once the City is satisfied that the water feature systems are operating properly, it will provide Contractor with written acceptance of Contractor's installation work, which will trigger the commencement of the warranty period stated in the contract.

Sub-task 1.4. Operations and Maintenance Manual

Contractor will document, in writing, all equipment installed and will draft an Operations and Maintenance Manual for use by the City. City staff will be provided at least two (2) rounds of reviewing a draft Operations and Maintenance Manual for feedback to Contractor. The Operations and Maintenance Manual must provide details of equipment used, products needed for maintenance, and procedures to continually maintain the water features. Contractor must also provide relevant personnel contact information for any installation, maintenance, or repair issues.

Phase 2: Town Center Park Water Feature (FY 2025-26)

Design, build and install a modern and updated water feature operating system for a single system in the Town Center Park water feature vault similar to Task 1. The specifications for Task 2 will be documented in a Task Order utilizing the Task Order Form attached hereto as Exhibit B.

General work associated with Task 2 may include but is not limited to:

- Demolition and removal of all current components
- Design new modern system components
- Procurement of needed components following review by city team
- Coordination of all needed subcontractors

- Confined space entries and alternate entries into confined spaces for all contractors involved in the project
- Dry fit installation of all components
- Installation of all components following city sign off on dry fit
- Test run and confirmation of all components in the system
- Additional or updated Operations and Maintenance Manual

Task 3: Ongoing on Call Service and Maintenance (FY 2024-25 through FY 2028-29)

- Trouble shoot and diagnose technical issues over the phone or in person
- Respond onsite within 24 hours during peak season (May-September)
- Respond onsite within 72 hours during non-peak season (October- April)
- Procure needed components and install
- Make suggestions for areas of improvement as applicable.

For work conducted under this task, the parties will enter into task orders utilizing the form attached hereto as Exhibit B.

Exhibit B

TASK ORDER # _____

Water Feature Replacement and Maintenance

DATE: _____

City Reference #: _____

This Task Order is executed pursuant to a Goods and Services Contract for **Water Features Replacement and Maintenance** (“Contract”), by and between Andersen Pacific, Inc. (Contractor) and the City of Wilsonville (City), dated October _____, 2024. All Terms and Conditions of the Contract shall remain in full force and effect during performance of this Task Order, except as otherwise specifically identified below:

(Describe any exception, if any, or indicate Not Applicable)

Scope of Services

Contractor shall perform all of the Tasks as attached hereto as Exhibit 1 on a time and materials not-to-exceed basis, according to Contractor’s Rate Schedule attached to the Contract and the Task-Specific cost proposal, attached hereto. The total Task Order not-to-exceed price is \$_____.

Term

This Task Order commences on the date shown above, and must be completed on or before _____, 20___. All Services shall be completed by said date, unless extended by the parties, in writing.

Contractor

City of Wilsonville

Signature

Signature

Printed Name and Title

Printed Name and Title

EXHIBIT C RATE SCHEDULE

	<u>24 hr. Response</u> <u>Hourly Rate 2025*</u>	<u>72 hr. Response</u> <u>Hourly Rate 2025*</u>
<u>Labor - Andersen Pacific Inc.</u>		
-Greg Andersen	\$ 225.00	\$ 175.00
<u>Labor - Crown Pool</u>		
-Phil Helland	\$ 275.00	\$ 225.00
*Hourly rates for subsequent years will need to be negotiated annually.		
Materials Markup 40%		