

**RESOLUTION NO. 1821**

**A RESOLUTION OF THE CITY OF WILSONVILLE ACTING IN ITS CAPACITY AS ITS LOCAL CONTRACT REVIEW BOARD EXEMPTING THE CITY FROM COMPETITIVE BIDDING REQUIREMENTS OF ORS 279.005 AND THE WILSONVILLE CODE, AND AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH MURASE ASSOCIATES TO PROVIDE DESIGN SERVICES FOR COMPLETING THE TOWN CENTER PARK PHASE 2 PROJECT.**

WHEREAS, Town Center Park is identified in the adopted Parks and Recreation Master Plan as a high priority project; and

WHEREAS, Town Center Park is identified in The Year 2000 Plan, the Urban Renewal Plan for the City of Wilsonville; and

WHEREAS, the County Tourism Development Council, Chamber of Commerce and City of Wilsonville executed a Memorandum of Understanding regarding development of the Town Center Park including the Regional Visitor Information Center; and

WHEREAS, Park schematic design was completed involving a public process in the decision-making; and

WHEREAS, the Development Review Board has approved a Stage II submittal; and

WHEREAS, Town Center Park Phase 1 construction was completed in fiscal year 1998-99; and

WHEREAS, Town Center Park Phase 2a construction was completed in fiscal year 2001-02 and;

WHEREAS, the Stage II design and Phases 1 and 2a construction documents were accomplished by Murase Associates and their subconsultants; and

WHEREAS, staff wishes to utilize the past experience and expertise of Murase Associates in working on the Town Center Park project to provide design services to complete the referenced project; and

WHEREAS, on the 18<sup>th</sup> day of October, 1999, the City of Wilsonville adopted Ordinance No. 511 amending WC 2.310 Contract Review Board Definitions by adopting State findings, policies and methods of fostering competition and definitions consistent therewith, amending WC 2.314 to provide for competitive bids or proposals, providing for contracting officers and the creation of procedures for the screening and selection of professional services; and

WHEREAS, finding (3), paragraph (10) subparagraph (b) states: "The City Council shall adopt by resolution and the contracting officer shall follow the Oregon Attorney General's Model Public Contracting Rules (Division 35, Consultant Selection: Architectural and Engineering

Personal Services Contracting), for screening and selection of persons to perform architectural and engineering personal services contracts for public improvement projects. Provided, however, any provisions in WC 2.310-2.314 for exemptions will also apply and shall take precedent over the Division 35 Model Rules as the Board of Contracting Officer may determine.”; and

WHEREAS, Section 2.310(1)(a) of the Wilsonville Code define public contracts as being other than agreements for personal services. The contract to be awarded for professional design services is for personal services; and

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

WHEREAS, Section 2.314(1) states, “All [certain exceptions are granted] contracts shall be based upon competitive bids or proposals . . .” which the City interprets to mean public contracts, but in the event it is construed to apply to any contract, the City recites and finds as set forth below; and

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

WHEREAS, Section 2.314(14)(c) exempts competitive bid requirements for professional services contracts where, “Follow-on work where a change in consultants would clearly result in increased costs or increased time”; and

WHEREAS, Murase Associates and their project design team have extensive and valuable information which could be utilized in the completion of the Town Center Park project thereby reducing the overall project costs; and

WHEREAS, after reviewing the fees associated with providing the requested professional services, staff has determined that the fees for the services as proposed by Murase Associates are found to be fair and reasonable reflecting the extensive and valuable information which will not have to be reconstructed or duplicated; and

WHEREAS, these fees are not to exceed the FY2002-03 budget adopted for this purpose.

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

1. That the City Council serving in its role as Local Contract Review Board does hereby exempt the award of contract for design services for the planned Town Center Park Phase

2 from competitive bidding and further concludes this award will not diminish competition and will result in substantial cost savings.

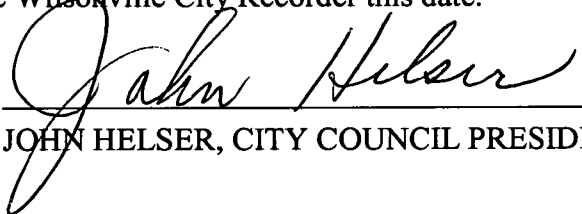
2. The City Council serving in its role as Local Contract Review Board does hereby approve and authorize the execution of a Professional Services Agreement between the City of Wilsonville and Murase Associates, a copy of which is marked Exhibit No.1, attached hereto and incorporated herein to provide the professional services recited within for the Town Center Park Phase 2 project.

3. The City Council authorizes the expenditures for this project not to exceed the authorized total fiscal year 2002/03 budget amounts from:


Account	900-49130-5000-936
Budgeted Amount	\$200,000

4. This resolution is effective upon adoption.

ADOPTED by the City Council of the City of Wilsonville at a regular meeting thereof this 3<sup>rd</sup> day of March 2003, and filed with the Wilsonville City Recorder this date.

  
\_\_\_\_\_  
JOHN HELSER, CITY COUNCIL PRESIDENT

ATTEST:

  
\_\_\_\_\_  
Sandra C. King, CMC, City Recorder

SUMMARY of votes:

Chair Lehan	Excused
Councilor Kirk	Yes
Councilor Helser	Yes
Councilor Scott-Tabb	Yes
Councilor Holt	Yes

**EXHIBIT NO. 1**  
**(To Resolution)**

**CITY OF WILSONVILLE**  
**PROFESSIONAL SERVICES AGREEMENT**

THIS AGREEMENT is made and entered into as of the date first indicated on the signature page, by and between the City of Wilsonville, Wilsonville, Oregon (hereinafter referred to as the "City"), and Murase Associates (hereinafter referred to as "Consultant") for the project commonly known as Town Center Park Phase 2 ("Project").

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

WHEREAS, Consultant represents that it is qualified on the basis of specialized experience and technical competence and prepared to provide such services as City does hereinafter require;

NOW, THEREFORE, in consideration of those mutual promises and the terms and conditions set forth hereafter, the parties agreed as follows:

**A. Term**

The term of this Agreement shall be from the date of execution by both parties until tasks required hereunder are complete and accepted, unless earlier terminated in accordance herewith.

**B. Consultant's Services**

B.1 The scope of Consultant's services and time of performance under this Agreement are set forth in Exhibit A. All provisions and covenants contained in Exhibit A are hereby incorporated by reference and shall become a part of this Agreement as if fully set forth herein.

B.2 All written documents, drawings, and plans submitted by Consultant and intended to be relied on for the project shall bear the signature, stamp or initials of Consultant or Consultant's authorized Project Manager. Any documents submitted by Consultant which do not bear Consultant's signature, stamp or initials or those of the Consultant's authorized Project Manager shall not be relied upon by City. Interpretation of plans and answers to questions covering Plans given by Consultant or Consultant's Project Manager need not be put in writing unless requested by the City and may be relied upon by City.

B.3 All agreements on the Consultant's part are contingent upon, and the Consultant shall not be responsible for damages or be in default or be deemed to be in default by reason of delays in performance due to third party: strikes, lockouts, accidents; acts of God; other delays unavoidable or beyond the Consultant's reasonable control, or due to shortages or unavailability of labor at established area wage

rates or delays caused by failure of the City or City's agents to furnish information or to approve or disapprove the Consultant's work promptly, or due to late or slow, or faulty performance by the City, other contractors, other consultants not under Consultant's control or governmental agencies, the performance of whose work is precedent to or concurrent with the performance of the Consultant's work. In the case of the happening of any such cause of delay, the time of completion shall be extended accordingly.

- B.4 The existence of this Agreement between City and Consultant shall not be construed as City's promise or assurance that Consultant will be retained for future services unrelated to this public works project.
- B.5 Consultant shall maintain confidentiality of any private confidential information and any public information which is exempt from disclosure under state or federal law to which the Consultant may have access by reason of this Agreement. Consultant warrants that its employees assigned to work on services provided in this Agreement shall maintain confidentiality. All agreements with respect to confidentiality shall survive the termination or expiration of this Agreement.
- B.6 Consultant agrees to complete in satisfactory, proper and timely manner the services described in attached Exhibit A.

**C. Compensation**

- C.1 Except as otherwise set forth in this Section C, City agrees to pay Consultant not more than \$157,670.00 (One Hundred Fifty Seven Thousand Six Hundred Seventy and no/100 Dollars) for performance of those services provided hereunder. However, compensation may be less than such maximum amount and shall be actually determined on an hourly basis as shown on the Rate Schedule attached as Exhibit C, which is attached hereto and incorporated herein. Compensation shall be only for actual hours worked on this project and related direct expenses. Consultant shall furnish with each bill for services an itemized statement showing the amount of hours devoted to the project by Consultant as well as any agents or employees of Consultant and any direct expenses.
- C.2 During the course of Consultant's performance, if City or its Project Manager specifically requests Consultant to provide additional services which are beyond the scope of the services described on Exhibit A, Consultant shall provide such additional services and bill the City at the hourly rates outlined on the attached Standard Hourly Rate Schedule, provided the parties comply with the requirements of Section Q. No compensation for additional services shall be paid or owing unless both parties specifically agree to such additional compensation and services.
- C.3 Unless expressly set forth on Exhibit A as a reimbursable expense item, Consultant shall only be entitled to the compensation amount specified in subsections C.1 and C.2. Only those reimbursable expenses which are set forth on

Exhibit A and itemized on Consultant's bills for services shall be the basis for which payment of those expenses by City shall be owing.

- C.4 Except for amounts withheld by City pursuant to this Agreement, Consultant will be paid for services for which an itemized bill is received by City within 30 days.
- C.5 City shall be responsible for payment of required fees, payable to governmental agencies including, but not limited to plan checking, land use, zoning, building permits, and all other similar fees resulting from this project, and not specifically covered by Exhibit A.
- C.6 Consultant's compensation rate includes but is not limited to salaries or wages plus fringe benefits and contributions including payroll taxes, workers' compensation insurance, liability insurance, pension benefits and similar contributions and benefits.
- C.7 In the event Consultant's responsibilities as described on Exhibit A have been separated into two or more phases, then Consultant shall not be entitled to any compensation for work performed directly on a later category of responsibilities unless and until City specifically directs that Consultant proceed with such work.

**D. City's Project Manager**

City's Project Manager is Constance J. Sylvester. City shall give Consultant prompt written notice of any redesignation of its Project Manager.

**E. Consultant's Project Manager**

Consultant's Project Manager is Dan Jenkins. In the event that Consultant's designated Project Manager is changed, Consultant shall give City prompt written notification of such redesignation. In the event that City receives any communication from Consultant of whatsoever nature which is not executed by Consultant's designated Project Manager, City may request clarification by Consultant's Project Manager, which shall be promptly furnished.

**F. Project Information**

City shall provide full information regarding its requirements for the Project. Consultant agrees to share all project information, to fully cooperate with all 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 newspaper, magazines or television and radio stations, shall be made without the authorization of City's Project Manager.

**G. 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 any portion thereof, any

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

## **H. Consultant is Independent Contractor**

- H.1 Consultant shall be and herein declares that it is an independent contractor for all purposes and shall be entitled to no compensation other than compensation provided for under Section C of this Agreement. Consultant binds itself, its partners, officers, successors, assigns and legal representatives to the City. Consultant shall be completely independent and solely determine the manner and means of accomplishing the end result of this Agreement, and City does not have the right to control or interfere with the manner or method of accomplishing said results. City, however, has the right to specify and control the results of the Consultant's responsibilities.
- H.2 Subcontracting: City understands and agrees that only those special consulting services identified on Exhibit B may be performed by those persons identified on Exhibit B and not by Consultant. Consultant acknowledges such services are provided to City pursuant to a subcontract(s) between Consultant and those who provide such services. Consultant may not utilize any subcontractors or in any way assign its responsibility under the Agreement without first obtaining the express written consent of the City.
- H.3 Consultant shall be responsible for and indemnify and defend City against any liability, cost or damage arising out of Consultant's use of such subcontractor(s) and subcontractor's negligent acts, omissions, or errors. Subcontractors will be required to meet the same insurance requirements of Consultant under this Agreement. Unless otherwise specifically agreed to by City, Consultant shall require that subcontractors also comply with and be subject to the provisions of this Section H.
- H.4 Consultant shall make prompt payment of any claim for labor, materials or services furnished to the Consultant by any person in connection with this Agreement as such claim becomes due. Consultant shall not permit any lien or claim to be filed or prosecuted against the City on account of any labor or material furnished to or on behalf of the Consultant. If the Consultant fails, neglects or refuses to make prompt payment of any such claim, the City may pay such claim to the person furnishing the labor, materials or services and charge the amount of the payment against funds due or to become due the Consultant under this Agreement.
- H.5 No person shall be employed under the terms of this Agreement as described herein in violation of all wage and hour laws.

- H.6 Should Consultant elect to utilize employees on any aspect of this Agreement, Consultant shall be fully responsible for payment of all withholding 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 incidental to the hiring of assistants or employees shall be Consultant's responsibility. Consultant shall indemnify, defend and hold City harmless from claims for payment of all such expenses. Unless otherwise expressly set forth on Exhibit A as a reimbursable expense item, specific costs associated with items set forth in this paragraph shall be deemed as fully and conclusively included in the rate upon which consultants compensation is based.
- H.7 No person shall be denied or subjected to discrimination in receipt of the benefits of any services or activities made possible by or resulting from this Agreement on the grounds of sex, race, color, creed, marital status, age, disability or national origin. Any violation of this provision shall be grounds for cancellation, termination or suspension of the Agreement in whole or in part by the City.

## **I. Indemnity and Insurance**

- I.1 Consultant acknowledges responsibility for liability arising out of the performance of this Agreement and the attachments thereto, and all liability resulting from the negligent acts, performance or errors or omissions of the Consultant or anyone acting on behalf of Consultant in connection with or incidental to the work performed under the contract. Consultant shall hold City harmless from and indemnify City of loss or damages including reasonable costs, expenses, and attorney's fees to the extent resulting from Consultant's negligent acts, omissions, errors or willful misconduct provided pursuant to this Agreement or from Consultant's failure to perform its responsibilities as set forth in this Agreement. The review, approval or acceptance by City, its Project Manager or City of Wilsonville employees of documents or other work prepared or submitted by Consultant shall not relieve Consultant of its responsibility to provide such materials in full conformity with City's requirements as set forth in this Agreement and to indemnify City from losses and damages resulting from Consultant's failure to adhere to the standard of performance described in Section I.2.3. The provisions of this section shall survive termination of this Agreement.
- I.2 Insurance Requirements and Consultant's Standard of Care.
- I.2.1 Consultant shall provide City with evidence of the following insurance coverages prior to the commencement of the work. A copy of each insurance policy, issued by a company currently licensed in the State of Oregon, and certified as a true copy by an authorized representative of the issuing company or at the discretion of the City, in lieu thereof, a



certificate in a form satisfactory to City certifying to the issuance of such insurance shall be furnished to City. Expenses relating to the cost of insurance shall not be the basis for additional reimbursement to Consultant.

- I.2.2 The City agrees that in accordance with generally accepted construction practices, the construction contractor will be required to assume sole and complete responsibility for job site conditions during the course of construction of the project, including safety of all persons and property.
- I.2.3 In the performance of its professional services, the Consultant shall use that degree of care and skill ordinarily exercised under similar circumstances by reputable members of its profession practicing in the Portland Metropolitan Area. The Consultant will reperform any services not meeting this standard without additional compensation. Consultant's reperformance of any services, even if done at City's request, shall not be considered as a limitation or waiver by 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 or this Agreement.
- I.2.4 Consultant shall furnish the City a certificate evidencing the date, amount and type of insurance that has been procured pursuant to this Agreement. All policies shall be written on an "occurrence basis," except for Consultant's Professional Liability Insurance which may be written on a "claims made" basis, provided it shall endeavor to be maintained in full force for not less than four (4) years following Consultant's performance under this Agreement. All policies shall provide for not less than 30 days' written notice to the City before they may be canceled or reduced or materially changed by endorsement. The Consultant shall endeavor to provide for not less than 30 days' written notice to the City before the policy coverage may be reduced. Excepting professional liability and worker's compensation coverage, all policies shall provide an endorsement naming the City, its officers, employees and agents as additional insureds. In the event the policy lapses during performance, the City may: treat said lapse as a breach; terminate this Agreement and seek damages; withhold progress payments without impairing obligations of Consultant to proceed with work; pay an insurance carrier (either Consultants' or a substitute) the premium amount and withhold that amount from payments; and, use any other remedy provided by this Agreement or by law.
- I.2.5 Insurance Requirements. The Consultant, its subcontractors, if any, and all employers working under this Agreement are subject employers under the Oregon Worker's Compensation Law and shall comply with ORS 656.017 which requires them to provide workers' compensation coverage for all their subject workers. The Consultant will maintain throughout this Agreement the following insurance:

- I.2.5.1 Workers' compensation and employers liability insurance as required by the State where the work is performed.
- I.2.5.2 Comprehensive automobile and vehicle liability insurance covering claims for injuries to members of the public and/or damages to property of others arising from the use of motor vehicles, including on-site and off-site operations, and owned, non-owned, or hired vehicles, with \$500,000 combined single limits.
- I.2.5.3 Commercial general liability insurance covering claims for injuries to members of the public or damage to property of others arising out of any covered negligent act or omission of the Consultant or of any of its employees, agents or subcontractors, with \$1,000,000 per occurrence and in the aggregate.
- I.2.5.4 Professional liability insurance of \$1,000,000 per occurrence and in the aggregate, including contractual liability coverage. If Consultant proposes using subcontractors, in addition to any other requirements of this Agreement, City may require subcontractors to provide Professional Liability Insurance, provided the amount and form of coverage complies with the requirements of paragraphs I.2.1, I.2.3, I.2.4 and I.2.5.4.
- I.2.5.5 City will be named as an additional insured with respect to Consultant's liabilities hereunder in insurance coverages identified in items I.2.5.2 and I.2.5.3.
- I.2.6 The coverage provided by these policies shall be primary and any other insurance carried by City is excess. Consultant shall be responsible for any deductible amounts payable under all policies of insurance. In the event a dispute arises between City and Consultant for which Consultant has obtained insurance, the maximum amount which may be withheld by City for all such claims shall be no more than the amount of the applicable insurance deductible.

**J. Early Termination**

- J.1 This Agreement may be terminated prior to the expiration of the agreed upon terms:
  - J.1.1 By mutual written consent of the parties;
  - J.1.2 By City for any reason within its sole discretion, effective upon delivery of written notice to Consultant by mail or in person, or at such later date as

may be established by the City; and

- J.1.3 By Consultant, effective upon seven days prior written notice in the event of substantial failure by the City to perform in accordance with the terms through no fault of the Consultant.
- J.2 If City terminates the Agreement in whole or in part due to default or failure of Consultant to perform services in accordance with this Agreement, 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, Consultant shall be liable for all costs and damages incurred by City in procuring such similar service, and the Contract shall be in full force to the extent not terminated.
- J.3 If City terminates the Agreement for its own convenience, 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 City under this Agreement.
- J.4 Termination under any provision of this paragraph shall not affect any right, obligation or liability of Consultant or City which accrued prior to such termination. Consultant shall surrender to City items of work or portions thereof, referred to in Section N for which Consultant has received payment, or City has made payment. City retains the right to elect whether or not to proceed with actual construction of the project.

**K. Suspension of Work**

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

**L. Subconsultants and Assignments**

- L.1 Consultant shall not enter into any subcontracts for any of the work scheduled under this contract without obtaining prior written approval from the Project Manager. The Consultant shall ensure that in all subcontracts entered into by the Consultant pursuant to this contract, the City is named as an express third party beneficiary of such subcontracts with full rights as such. Consultant acknowledges such services are provided to City pursuant to a subcontract(s) between Consultant and subcontractor(s). City incurs no liability to third persons for payment of any compensation provided herein to Consultant. Any attempted assignment of this contract without the written consent of City shall be void. Except as otherwise specifically agreed, all costs for services performed by others on behalf of Consultant shall not be subject to additional reimbursement by City.

L.2 City shall have the right to let other agreements be coordinated with this Agreement. Consultant shall cooperate with other firms, engineers or subconsultants on the project and the City so that all portions of the project may be completed in the least possible time within normal working hours. Consultant shall furnish other engineers and subconsultants and affected public utilities, whose designs are fitted into Consultant's design, detail drawings giving full information so that conflicts can be avoided.

**M. Access to Records**

The City, Secretary of State's Office of the State of Oregon, the Federal Government and the duly authorized representatives of any of the above, shall have access to the books, documents, papers, records and receipts of the Consultant which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts and transcripts. The City, Secretary of State's Office of the State of Oregon, the Federal Government and authorized representatives shall have the authority to inspect, audit and copy from time to time, any records of the Consultant regarding billings or work under this Agreement for a period of four years after the completion or termination of this contract.

**N. Work is Property of City**

N.1 Originals or Certified copies of the original work forms, including but not limited to documents, drawings, tracings, surveying records, mylars, papers, diaries, inspection reports and photographs, performed or produced by Consultant under this Agreement shall be the exclusive property of City and shall be delivered to City prior to completion or termination of this contract and 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 City upon request without additional compensation. Upon City's approval and provided City is identified in connection therewith Consultant may include Consultant's work in its promotional materials.

N.2 Consultant shall not be held liable for any damage, loss, increased expenses or otherwise caused by or attributed to the reuse, by City or their designees, of all work performed by Consultant pursuant to this contract without the express written permission of the Consultant.

**O. Law of Oregon**

The Agreement shall be governed by the laws of the State of Oregon. The Agreement provisions required by ORS Chapter 279 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. Consultant shall adhere to all applicable federal and state laws, including but not limited to laws, rules, regulations, and policies concerning employer and employee relationships, workers' compensation, and minimum and prevailing wage requirements. Any certificates, licenses or permits which Consultant is required by law to obtain or maintain in order to perform work described on Exhibit A, shall be obtained and maintained throughout the term of this Agreement.

**P. Adherence to Law**

Consultant shall comply with all federal, state and local laws and ordinances, rules and regulations applicable to the work under this contract. Consultant agrees that the public contract law provisions contained in ORS Chapter 279 shall apply to and govern the performance of this contract. Consultant shall certify compliance with ORS 670.600. Further, Consultant agrees to comply with applicable provisions of and amendments to the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973 and with all applicable requirements of federal and state and rehabilitation statutes, rules and regulations. Contractor shall also comply with the Americans with Disabilities Act of 1990, ORS 659.425, and all regulations and administrative rules established pursuant to those laws. Further, all certificates, licenses (including a City business license) or permits, which the consultant is required by law to obtain or maintain in order to perform work described in Exhibit A, shall be obtained and maintained throughout the term of this Agreement.

**Q. Modification**

Any modification of the provisions of this Agreement shall not be enforceable unless reduced to writing and signed by both parties. A modification is a written document, contemporaneously executed by City and Consultant, which increases or decreases the cost to City over the agreed sum or changes or modifies the scope of service or time of performance. No modification shall be binding unless executed in writing by Consultant and City. In the event that Consultant receives any communication of whatsoever nature from City, which communication Consultant contends to give rise to any modification of this Agreement, Consultant shall, within thirty (30) days after receipt, make a written request for modification to City's Project Manager. Consultant's failure to submit such written request for modification in the manner outlined herein may be the basis for refusal by the City to treat said communication as a basis for modification. In connection with any modification to the contract 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 which were reasonably expected as part of the original agreement or any mutually approved modifications, then City shall be responsible for payment of only those costs for which it has agreed to pay.

**R. Other Conditions**

R.1 Except as otherwise provided in paragraphs R.1.1, R.1.2, and R.1.3 Consultant represents and agrees that the contract specifications and plans, if any, prepared by the Consultant will be adequate and sufficient to accomplish the purposes of the project; and further, that any review or approval by the City of the plans and specifications shall not be deemed to diminish the adequacy of Consultant's work.

R.1.1 Subsurface Investigations. In soils, foundation, ground water, and other subsurface investigations, the actual characteristics may vary significantly between successive test points and sample intervals and at locations other than where observations, exploration, and investigations have been made. Because of the inherent uncertainties in subsurface evaluations, changed or

unanticipated underground conditions may occur that could affect total Project cost and/or execution. These conditions and cost/execution effects are not the responsibility of the Consultant.

R.1.2 Opinions of Cost, Financial Considerations, and Schedules. In providing opinions of cost, financial analyses, economic feasibility projections, and schedules for the Project, Consultant has no control over cost or price of labor and materials; unknown or latent conditions of existing equipment or structures that may affect operation or maintenance costs; competitive bidding procedures and market conditions; time or quality of performance by third parties; quality, type, management, or direction of operating personnel; and other economic and operational factors that may materially affect the ultimate Project cost or schedule. Therefore, Consultant makes no warranty that City's actual Project costs, financial aspects, economic feasibility, or schedules will not vary from Engineer's opinions, analyses, projections, or estimates.

R.1.3 Record Drawings. Record drawings, if required, will be prepared, in part, on the basis of information compiled and furnished by others, and may not always represent the exact location, type of various components, or exact manner in which the Project was finally constructed. Consultant is responsible for any errors or omissions about which the Consultant knew or should have known in the information from those employees or firms employed by the Consultant under the terms of the contract as stated therein that is incorporated into the record drawings.

R.2 Notwithstanding any acceptance or payments, City shall not be precluded or stopped from recovering from Consultant, or its insurer or surety, such damages as may be sustained by reason of Consultant's failure to comply with the terms of this Agreement. A waiver by City of any breach by Consultant shall not be deemed to be a waiver of any subsequent breach by Consultant.

#### **S. Assignments of Products Rights**

The Consultant hereby assigns to the City all rights, title and interest, including but not limited to copyright rights, all notes, designs, drawings, specifications, technical data reports, computer programs and documentation, and other materials resulting from the Consultant's work under this Agreement.

#### **T. Dispute Resolution**

T.1 Claims, disputes or other matters in question between the parties to this Agreement arising out of or relating to this Agreement or breach thereof shall be subject to and decided by mediation or arbitration. Such mediation or arbitration shall be conducted in accordance with the Construction Industry Mediation or Arbitration Rules of the American Arbitration Association currently in effect.

T.2 In addition to and prior to arbitration, the parties shall endeavor to settle disputes

by mediation. Demand for mediation shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. A demand for mediation shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for mediation be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of repose or limitations.

T.3 Demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. A demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statutes of repose or limitations.

T.4 No other arbitration arising out of or relating to this Agreement shall include, by consolidation, joinder or in any other manner, an additional person or entity not a party to this Agreement except by written consent containing a specific reference to this Agreement signed by the City, the Consultant and all other persons or entities sought to be joined. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by the parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

T.5 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

#### **U. Integration**

This Agreement constitutes the entire agreement between the parties. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. Consultant, by the signature below of its authorized representative, hereby acknowledges that he/she has read this Agreement, understands it and agrees to be bound by its terms and conditions.

#### **V. Miscellaneous / General**

Consultant binds itself, its partners, officers, successors, assigns and legal representatives to the City under the terms and conditions of this Agreement as described herein.

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

IN WITNESS WHEREOF, the parties by their signatures below enter into this Agreement this \_\_\_\_ day of \_\_\_\_\_, 2003.



CITY OF WILSONVILLE

CONSULTANT:

By \_\_\_\_\_  
C. J. Sylvester  
Redevelopment Director

By \_\_\_\_\_  
Robert Murase  
Murase & Associates

Mailing Address:  
30000 SW Town Center Loop E.  
Wilsonville, Oregon 97070

Mailing Address:  
926 NW 13th Avenue, Suite 240  
Portland, Oregon 97209

Attest:

Employer ID No. \_\_\_\_\_

\_\_\_\_\_  
Sandra C. King  
City Recorder

Approved as to form:

\_\_\_\_\_  
Michael E. Kohlhoff  
City Attorney

## EXHIBIT A

### **PROJECT OVERVIEW**

Murase Associates, Inc. (Murase) is pleased to submit the following proposal for park design services to the City of Wilsonville (Owner) for the third phase of improvements to Town Center Park (Project) in Wilsonville, Oregon. The scope of services and methodology is based on our current understanding of the project requirements based on our continued involvement with the Project's development and subsequent meetings with the City. In general, project improvements include a water feature, multi-use sports court, small picnic shelter, park irrigation for the existing lawn area and various walkway and planting improvements to the existing park.

The attached scope of work assumes the following:

1. The schematic design concept as approved by the City of Wilsonville Development Review Board on December 8, 1997 will serve as the basis for the preparation of design development drawings, construction documents, and construction administration. Site development revisions will be incorporated as requested by the City and approved under a Class 2 administrative review.
2. Murase will assume the role of prime consultant and coordinate complete design services for the project including architectural, civil engineering, structural engineering, electrical engineering, water feature engineering and landscape architectural services.
3. Murase will provide project management and administration services to the project sub-consultants and City of Wilsonville (Project Team) as necessary. This will include scheduling and facilitating regular team meetings, preparing regular project management updates and project scheduling.
4. The work is to be complete in the following phases: Design Development; Construction Documents; Bid Assistance and Construction Administration.
5. Reimbursable expenses, including mileage expenses to the project site or City of Wilsonville are in addition to the base fee.
6. Construction of the Project begins the beginning of August 2003.
7. A current site survey showing existing utilities, topography, and site elements is available for our use.
8. The total site work construction budget is \$1,000,000.

### **I. SCOPE OF WORK**

A. Murase and their sub-consultants will provide park design for the following scope items:

1. Landscape Architectural (Murase Associates)

- a. Overall layout and design.
  - b. Finish grading of all Project improvements.
  - c. Pedestrian paving including fountain plaza and walkways.
  - d. Low walls, ramps and other site non-structural items.
  - e. Finish and surface treatments of all surfaces.
  - f. Fixed site furnishings including, but not limited to, benches, bicycle racks, trash receptacles, and signage.
  - g. Water feature design incorporating a stone flume channel and pool with recirculating water.
  - h. One multi-use sports court with all surfacing, equipment and seating.
  - i. Irrigation for central lawn area using existing controller and point of connection.
  - j. Planting and soil preparation to replace existing columnar tulip trees, lawn area, and other planting necessary within the project scope.
  - k. Signage.
2. Civil Engineering (Mackay and Sposito)
    - a. Site drainage and connection to on-site storm drainage features.
    - b. Water and Sewer connections to proposed water feature.
  3. Architectural (Opsis Architecture)
    - a. Open-air shelter, approximately 25'x 50', including structural engineering.
  4. Electrical Engineering (HDR Consulting)
    - a. Shelter and water feature lighting.
    - b. Electrical hookup, control and coordination for water feature.
    - c. Event electrical hookups.
  5. Water Feature Engineering (Richard Findlay)
    - a. Water feature electrical and mechanical design, layout and details.

## **II. PERMITTING**

- A. Murase will prepare drawings and exhibits as necessary to reflect site revisions for a Class 2 administrative review. These documents will include an annotated site plan, furnishing cut sheets, and a narrative describing changes, if any, to the site plan.

## **III. DESIGN DEVELOPMENT**

- B. Murase and their sub-consultants will provide design development drawings for all park features outlined in the above scope of work. A 100% Design Development package will be issued to the Owner for pricing information.

- C. Design development drawings will include plans, sections, and elevations illustrating final material selections, site furnishings, size relationships, quantities, and overall refinement of the Project features sufficient to conduct a detailed cost estimate.

#### **IV. CONSTRUCTION DOCUMENTS/BIDDING**

- A. Construction documents will be prepared per Owner format; plans will be prepared on AutoCAD 2000; technical specifications will be prepared per Owner specified format and software.

1. Prepare plans for park construction at 1" = 10'-0" or 1" = 20'-0" to describe and locate all on and off-site site elements and utilities necessary for complete park construction including but not limited to:
  - a. Demolition Plan.
  - b. Landscape Site Construction Plan
  - c. Landscape Horizontal Control
  - d. Grading Plan
  - e. Civil Utility Plan, including drainage
  - f. Park shelter plans and elevations
  - g. Water Feature Mechanical and Electrical Plans
  - h. Landscape Detail Plans that may include Water Feature; Half-court basketball area; and other items as necessary.
  - i. Planting Plan.
  - j. Irrigation Plan.
  - k. Electrical Engineering Plans. Prepare sections, elevations and details required for the construction of the site elements defined on the above plans.
3. Prepare notes, schedules and legends to describe all equipment, material and finishes identified on the above plans.
4. Prepare complete technical specifications for the sections pertaining to all project improvements that describe materials, finishes and workmanship. Specifications shall be written to pre-select the qualified contractors to participate in the bidding process.
5. Murase and their consultants shall prepare construction documents to conform to applicable codes and regulations of government bodies having jurisdiction over the work at the time of preparation.
6. Submit Documents at 75% and 90% for review and comments.

B. Bid assistance:

1. Assist City in qualification of contractors.
2. Provide response to RFI's.
3. Issue any necessary addenda.
4. Conduct prebid conference.

## **V. CONSTRUCTION ADMINISTRATION**

1. Murase shall provide construction observation services, including:
  - a. Review the Contractors' shop drawing submittals, product samples and product data for conformance with the Contract. All submittal review shall be performed with reasonable promptness in accordance with the Submittal Schedule provided by the Contractor and approved by the Owner.
  - b. Provide documentation of revisions requested or approved by the Owner, to incorporate such revisions into the Contract Documents. Assist the Owner in evaluating Change Orders for the Landscape Architecture and Fountain components.
  - c. Working with the Landscape Contractor, confirm the plant material source(s) for the plants to be installed under the Contract Documents.
  - d. Visit the site during construction to determine, in general, if such work is proceeding in accordance with the Contract Documents. Prepare written and photographic summary of visits to the site within five working days of visit for each of the site visits performed.
  - e. Based on observations at the site and on evaluations of the Contractor's Applications for Payment, assist the Owner in determining the amounts owing to the Contractor for this part of the Project.
  - f. Furnish written and/or graphic interpretations of the Contract Documents.
  - g. Attend local construction meetings as required related to landscape architectural elements.
  - h. Conduct site inspections to determine the dates of Substantial Completion and Final Completion.
2. Murase shall endeavor to secure compliance by the Contractor to the plans and specifications. On the basis of its observations while at the site, Murase will keep Owner informed of the progress of construction. Murase may recommend to the Owner the rejection of work failing to conform to the design intent of the contract documents. Murase shall not be responsible for construction means, methods, techniques, sequences or procedures in connection with the work and Murase shall not be responsible for the contractor's errors of omission or failure to carry out the work in accordance with the Contract Documents.

## **VI. EXCLUSIONS TO SCOPE OF WORK**

The Owner shall provide the following information or services required for performance of the work. Should Murase be required to provide services obtaining this information, or altering our work due to errors or omissions outside of Murase' control, such services shall be charged as Extra Services.

1. Presentations at hearings, community groups or review committees beyond that described herein.

2. Plan processing or costs of permits and fees.
3. Perspective drawings or other illustrative materials.
4. Coordination of site situated artwork.
5. Engineering other than that provided in the scope of work.
6. Soil fertility analysis, if required.
7. Analysis of existing planting by an arborist or horticulturalist, if so required.
8. As-built drawings.
9. Cost estimating.

## VII. EXTRA SERVICES

Extra services shall be provided only upon Architect's request and approval, and will be billed according to the Murase Hourly Fee Schedule. Extra services include but are not limited to the following:

1. Preparation of revisions to approved drawings when such revisions are inconsistent with data or approvals previously given by the Owner.
2. Changes in the design program, budget or schedule.
3. Providing services as listed in the Exclusions to Scope of Work.
4. Any other service not described within the scope described herein.

## VIII. HOURLY RATES, BASIC FEES, ADDITIONAL FEES AND EXPENSES

### A. Hourly Rates

1. Fees for services described herein, and any extra services shall be based on the following hourly rates:

Design Principal	\$160.00
Principal-in-Charge	\$115.00
Project Manager	\$75.00
Landscape Designer	\$65.00
CADD	\$55.00
Clerical	\$40.00

2. Fees for Professional services, for this scope of work shall be billed on a percentage of completion basis as follows:

Design Development	\$34,960
Construction Documentation	\$74,660
Bidding	\$3,180
Construction Administration	\$40,870
<b>Total</b>	<b>\$153,670</b>

B. Consultant Fees

1. Fees for Professional services, for the scope of work as provided by our consultants are as follows (inclusive of overhead markup and the above total fee):

Architectural	\$29,500
Civil Engineer	\$10,000
Electrical Engineer	\$8,040
Fountain Engineer	\$13,570

C. Expenses

Reimbursable and consultant expenses are in addition to compensation for professional services and include expenditures required by the Project or requested by the Owner, such as printing reproduction, long distance telephone calls, mileage, faxes, postage, and similar project related expenses are charged at cost plus 10% administration.

Estimated Reimbursable Costs:                      \$2,000 - \$4,000

**Fee Breakdown**  
Wilsonville Town Center Park  
February 26, 2003

	Principal 160/hr.	Principal 115/hr.	PM 75/hr.	LA 55/hr.	Admin 40/hr	Phase Total
<b>Design Development</b>						
Design Refinement	4	20	32	40		\$7,540.00
Construction Layout		4	12	24		\$2,680.00
Grading Plans		4	12	12		\$2,020.00
Construction Details	8	8	16	24		\$4,720.00
Irrigation Plans				16		\$880.00
Planting Plan	2	2	8	16		\$2,030.00
Planting Details				4		\$220.00
Specifications		2	8		8	\$1,150.00
Coordination Meetings (2 meetings total)	3	6	6			\$1,620.00
Subtotal Landscape Architectural:	17	46	94	136	8	\$22,860.00
Architectural Consultant						\$7,500.00
Civil Consultant						\$0.00
Electrical Consultant						\$0.00
Fountain Consultant						\$4,600.00
<b>Total:</b>						<b>\$34,960.00</b>
<b>100% Construction Documents</b>						
Construction Layout		8	32	60		\$6,620.00
Detail Plans			32	60		\$5,700.00
Grading Plans	2	4	16	40		\$4,180.00
Construction Details	4	8	40	60		\$7,860.00
Irrigation Plans			8	40		\$2,800.00
Planting Plan	2	2		40		\$2,750.00
Planting Details				24		\$1,320.00
In-house Plan check	2	8	8			\$1,840.00
Specifications			20		16	\$2,140.00
Coordination Meetings (2 meetings total)		9	9			\$1,710.00
Subtotal Landscape Architectural:	10	39	165	324	16	\$36,920.00
Architectural Consultant						\$17,000.00
Civil Consultant						\$8,000.00
Electrical Consultant						\$6,300.00
Fountain Consultant						\$6,440.00
<b>Total:</b>						<b>\$74,660.00</b>
<b>Bid Assistance</b>						
Addendum, Bib Assistance		4	12	24		
Subtotal Landscape Architectural:	0	4	12	24	0	\$2,680.00
Architectural Consultant						500
<b>Total:</b>	0	4	12	24	0	<b>\$3,180.00</b>
<b>Construction Administration</b>						
RFI, Clarifications, Submittals		8	32			
Construction Meetings	4	4	40			
Site Visits	32	8	120			
Coordination/Coorspondence		8	32			
Final Acceptance	4	8	24			
Subtotal Landscape Architectural:	40	36	248	0	24	\$30,100.00
Architectural Consultant						\$4,500.00
Civil Consultant						\$2,000.00
Electrical Consultant						\$1,740.00
Fountain Consultant						\$2,530.00
<b>Total:</b>						<b>\$40,870.00</b>
<b>Grand Total:</b>						<b>\$153,670.00</b>



**EXHIBIT B**

**SPECIAL CONSULTING SERVICES**

Civil Engineering

Architectural

Electrical Engineering

Water Feature Engineering

Mackay and Sposito

Opsis Architecture

HDR Consulting

Richard Findlay

**EXHIBIT C**

**HOURLY RATES, BASIC FEES, ADDITIONAL FEES AND EXPENSES**

**Hourly Rates**

Fees for services described herein, and any extra services shall be based on the following hourly rates:

Design Principal	\$160.00
Principal-in-Charge	\$115.00
Project Manager	\$75.00
Landscape Designer	\$65.00
CADD	\$55.00
Clerical	\$40.00

City of

**WILSONVILLE**  
in OREGON



30000 SW Town Center Loop E  
Wilsonville, Oregon 97070  
(503) 682-1011  
(503) 682-1015 Fax  
(503) 682-0843 TDD

COMMUNITY DEVELOPMENT DEPARTMENT  
STAFF REPORT

Date: March 3, 2003  
To: Honorable Mayor and Councilors  
From: C. J. Sylvester, Redevelopment Director *cl*  
Re: Town Center Park – Final Phase  
Professional Services Agreement

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**Recommendation:** Council adopt resolution authorizing execution of a professional services agreement between the City and Murase Associates to provide professional design services to complete the Town Center Park project.

**Background:** Capital Realty was required to dedicate to the City a five acre parcel for park purposes as a condition of the shopping center's development approval. This dedication occurred in 1994. At that time, the value of the land was estimated at \$1 million dollars.

The City's Urban Renewal Plan identifies a "Town Center Square" in this location as a "people-gathering place" including decorative paved and landscaped surfaces, shade shelters, kiosks, lighting and other amenities.

The Parks and Recreation Master Plan further identified the "Town Center Park" as a high priority project. The plan commented that the park "is intended to be an urban park in a village plaza setting".

In 1996 a funding opportunity presented itself through the Clackamas County Tourism Development Council. The County offered up to \$1 million dollars to fund the design and construction of a visitor information center and supporting infrastructure that would then also house the Wilsonville Chamber of Commerce offices. The building further includes public restrooms that also serve the park and a meeting room for public use on a non-interference basis.

The City contracted with Murase Associates of Portland to provide a fast-track, interactive public design process for the Town Center Park. Multiple public workshops, a design charette and public meetings were held in 1996.

A design emerged from this public process, which was brought before the Development Review Board in October of 1996. The Stage II final approval was granted at that time.



"*Serving The Community With Pride*"

Cost estimates were subsequently completed and ballot Measures 47 and 50 were approved by the voters. As a result of cost, it was necessary to simplify the park plan--not precluding future inclusion of all amenities identified in the October 1996 Stage II approval but not providing their capital improvements as part of construction efforts in these initial phases. As a result of changes in revenue projections post-Measure 50, it has been necessary to develop the park in phases.

On December 8, 1997 the simplified and phased Town Center Park site and design plans were approved by the Development Review Board.

Reducing the plan to meet cost considerations included simplifying the system of paths in the southeast corner of the park; reducing two water features to one moderate sized feature; providing one shelter rather than two; eliminating trellis other than immediately adjacent to the building; eliminating the unspecified "landmark feature"; eliminating the amphitheater shelter but providing appropriate electrical conduit to the site for future use; eliminating demonstration gardens and formal seating arrangements; and eliminating the wall proposed for a possible graphic history of Wilsonville.

Phase 1 construction (FY1998/99) included appropriate infrastructure throughout the site, Parkway extension to Thunder Way, transit island, northern parking lot, visitor center, tot lot, picnic area, some walkways and landscaping improvements. Further, the balance of the site was graded and seeded to form an appropriate backdrop for the improvements. The Korean War Memorial was approved by separate DRB action and constructed in FY1999/00.

Phase 2a, constructed in FY2002/03, included the improvements to the south street and parking area consistent with the approved plan and the requirements of our Development Agreement with Capital Realty.

This final phase recommended for Council action will include the balance of the DRB approved park improvements including picnic shelter, site furnishings, water feature, multi-purpose play surface (½ court basketball), walkways, irrigated turf and landscaping.

For informational purposes, attached please find a summary of project costs to date and projected through completion.

**Town Center Park, Visitors Center and Park Place Improvements  
(All Phases) January 2003**

	<b>Phase 1 (actual)</b>	<b>Phase 2a (actual)</b>	<b>Phase 2b (proposed)</b>	<b>Total by Service</b>
<b>Design &amp; Administration</b>	\$ 277,369	\$ 113,000	\$ 160,000	\$ 550,369
<b>Construction</b>	\$ 1,804,934	\$ 190,246	\$ 1,000,000	\$ 2,995,180
	\$ 2,082,303	\$ 303,246	\$ 1,160,000	\$ 3,545,549

Phase 1 funded by Clackamas County (\$1 million), Parks SDCs and Stormwater SDCs.

Phase 2a funded by Urban Renewal.

Phase 2b proposed for Urban Renewal funding.