

RESOLUTION NO. 1824

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, AUTHORIZING A PROFESSIONAL SERVICES AGREEMENT WITH HANNA, MCELDFOWNEY & ASSOCIATES TO PROVIDE PROFESSIONAL SERVICES FOR THE WILSONVILLE ROAD PROJECT PHASE 3.

WHEREAS, on June 17, 2002, the Wilsonville City Council adopted a Capital Improvement Program for the City that includes a FY 2002/03 appropriation of \$1,040,000 to fund the alignment study, public process, design, and a portion of the construction of the Wilsonville Road Phase 3 Project (Project No's. 900-49130-5000-488, 900-49130-5000-551, and 900-49130-5000-552); and

WHEREAS, on February 3, 2003, City Council adopted Resolution 1812 approving section and alignment of the Wilsonville Road Phase 3 project; and

WHEREAS, City staff seek the services of a right-of-way firm to provide professional services for the referenced project; and

WHEREAS, on the 18th 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, Engineering and Land Surveying Personal Services Contracts), 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 or Contracting Officer may determine."; and

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

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

WHEREAS, Section 2.314 (1) states that "All [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 (14) states that "all personal services contracts...will be awarded based on a competitive selection process [certain exceptions are granted]"; and

WHEREAS, Section 2.314 (14) (b) excepts from competitive process "selection from a list of consultants with similar qualifications in which selection is determined based on an annual qualification process"; and

WHEREAS, Hanna, McEldowney & Associates is on the Engineering Department's 2003 Consultant Qualification List, which list is updated annually; and

WHEREAS, staff has determined that the fees for the services as proposed by Hanna, McEldowney & Associates are fair and reasonable; and

WHEREAS, the estimated fees for the Wilsonville Road Phase 3 right-of-way acquisition services are \$112,000.

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

1. The City Council, acting as the Local Contract Review Board, does hereby exempt the award of a contract for professional services from competitive bidding and further concludes this personal services contract award is consistent with WC 2.314 (14) (b).
2. The City Council, acting as the Local Contract Review Board, does hereby approve and authorize a Professional Services Agreement between the City of

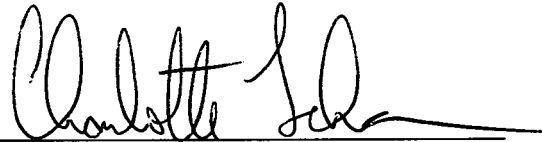
Wilsonville and Hanna, McEldowney & Associates, a copy of which is marked Exhibit "A", attached hereto and incorporated herein, to provide the professional services recited within for the referenced project.

3. Authorize the expenditures for this contract from the total FY 2002/03 budget amount:

<u>Account</u>	<u>Budget Amount</u>
900-49130-5000-552	\$840,000

4. This resolution is effective upon adoption.

ADOPTED by the Wilsonville City Council at a regular meeting thereof this 17th day of March, 2003, and filed with the Wilsonville City Recorder this date.



CHARLOTTE LEHAN, Mayor

ATTEST:


Sandra C. King, City Recorder, CMC

SUMMARY OF VOTES:

Mayor Lehan	Yes
Councilor Helser	Yes
Councilor Scott-Tabb	Yes
Councilor Kirk	Yes
Councilor Holt	Yes

EXHIBIT "A"

PROFESSIONAL SERVICES AGREEMENT

**CONSULTING SERVICES FOR WILSONVILLE ROAD PHASE 3
PROPERTY ACQUISITION**

**BETWEEN
HANNA, MCELLOWNEY & ASSOCIATES
AND
THE CITY OF WILSONVILLE**

This AGREEMENT is made and entered into by and between Hanna, McEldowney & Associates, 8835 SW Canyon Lane, Suite 405, Portland, OR 97225 ("CONSULTANT" herein) and the City of Wilsonville, a political subdivision of the State of Oregon ("CITY" herein).

ARTICLE 1. PURPOSE OF AGREEMENT

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

ARTICLE 2. WHOLE AGREEMENT

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

ARTICLE 3. NONDISCRIMINATION

No person shall be denied or subjected to discrimination in receipt of the benefits of any services or activities made possible by or resulting from this AGREEMENT on the grounds of sex, race, color, creed, marital status, age, or national origin. Any violation of

this provision shall be considered a material violation of this AGREEMENT and shall be grounds for cancellation, termination, or suspension in whole or in part by the CITY.

ARTICLE 4. DUTIES AND RESPONSIBILITIES OF THE CONSULTANT

The CONSULTANT shall perform services as described in Attachment "A" attached hereto and by this reference made a part hereof.

ARTICLE 5. STANDARD OF SERVICES AND WARRANTY

The CONSULTANT agrees to perform his/her services with that standard of care, skill, and diligence normally provided by a professional individual in the performance of similar services. The CONSULTANT warrants that the recommendations, guidance, and performance of any person assigned under this AGREEMENT shall be in accordance with the professional standards and requirements of this AGREEMENT.

ARTICLE 6. INDEPENDENT AGENT

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

ARTICLE 7. INDEMNIFICATION

The CONSULTANT shall save harmless and indemnify the CITY, its City Councilors, employees, and agents for any and all claims, damages, losses, and expenses, including but not limited to reasonable attorney's fees arising out of or resulting from negligent performance or of failure to perform the obligations of the AGREEMENT.

ARTICLE 8. SUBCONTRACTING

No portion of the AGREEMENT may be subcontracted to any other individual, firm, or entity without the express and prior approval of the CITY.

ARTICLE 9. NON ASSIGNMENT

No portion of nor any interest in this AGREEMENT may be assigned to a third party without the express and prior approval of the CITY.

ARTICLE 10. PUBLICITY

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

ARTICLE 11. FEES AND PAYMENT

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

ARTICLE 12. CHANGES

The fee specified herein shall include all services specified herein. Any fee increases will require written approval by the CITY.

ARTICLE 13. OWNERSHIP OF WORK PRODUCT

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

ARTICLE 14. TERMINATION OF AGREEMENT

This AGREEMENT may be terminated under the following condition:

By written mutual agreement of both parties. Termination under this provision may be immediate.

ARTICLE 15. SURVIVAL

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

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

FOR THE CONSULTANT:

FOR THE CITY:

Signature

Roger Hanna
Principal

Signature

C. J. Sylvester
Redevelopment Director

MEMO

DATE: 3/7/03

TO: C.J. Sylvester

FROM: Roger Hanna

RE: Wilsonville Road Phase 3 - R/W Acquisition Proposal

It looks like the Wilsonville Road Phase 3 project involves the acquisition of right of way and/or easements from 25 separate parcels. The acquisition process is divided into two phases: 15 parcels for immediate acquisition (for summer 2003 construction) and 10 parcels to be acquired later (for summer of 2004 construction).

Considering the size of most of the right of way takings, it is not certain if any of the parcels can be valued by administrative determination; they may all require appraisals. (At this time, it is best to budget for all appraisals. If any of the takings can be downsized to less than \$2,500, we will use the administrative valuation which is significantly less expensive than an appraisal.) It is our intention to do the appraisals in-house (myself and David Johnson) and we should realize some savings to the City due to the economy of scale. But if that is not possible, we will contract with one or more qualified independent fee appraisers. However, we have budgeted for outside appraisers just in case (fees typically range from \$2,300 to \$2,500 per appraisal). In addition, the cost for three appraisals has been increased because they involve "proximity" issues.

We are anticipating that negotiations will be typical for this kind of project; some willing and some not so willing. Given the limited time we have to acquire the right of way, it is our expectation that the City is prepared to initiate condemnation if needed, but this remains the City's call. We have already received preliminary title reports on the 15 files for the first phase. The easement documents will be prepared upon approval of the document by the City or you can e-mail to us the documents you prefer to use. It is not necessary for us to have the legal descriptions now as long as we have an accurate R/W map and exhibit for the appraisal inspection and a preliminary copy of the construction plans.

The General Information Notice is ready to send out with your brochure. We will probably spend about a week collecting data and appraisal information and then follow the general notice with the 15-day appraisal notification letter, and begin appraisal inspections as soon as we can make contact with the owners.

We estimate our right of way services cost to be in the range of \$85,000 to \$112,000, depending on the circumstances. The primary factors affecting cost include the number of appraisals (we are assuming 25) or the number of ADJC reports in lieu of appraisals, and the difficulty of negotiations. We are assuming that you would review the appraisals and give us the go ahead to make an offer.

We are also assuming, at this time, that there will be no relocations. This cost does not include our cost for condemnation, if necessary. Our monthly invoices are based on the actual time spent during the period and include an attached statement detailing the work. Following is a proposed cost estimate by activity assuming that all parcels will be appraised:

<u>Activity</u>	<u>Estimate</u>
Appraisals (billed @ \$95/hr):	\$65,000
Negotiations (billed @ \$85/hr):	37,500
Admin (billed @ \$54/hr):	4,500
R/W Project Management (billed @ \$100/hr):	<u>5,000</u>
	\$112,000

In addition to appraising and negotiating for the right of way, and preparing the easement documents, our service includes assisting in the closing process. In this regard, we assume that you will want to acquire the right of way easements free and clear of encumbrances backed up with title insurance. We also assume that we would request the setup of escrow accounts for closing the transactions with the same title insurance company that provided the preliminary reports (unless the City elects to close in-house).

If you have any questions about this proposal or would like to modify the assignment, please call me.