

**RESOLUTION NO. 2019**

**A RESOLUTION OF THE CITY OF WILSONVILLE AUTHORIZING EXECUTION OF A CONTRACT FOR SPECIALLY PROCURED SERVICES PREVIOUSLY EXEMPTED FROM COMPETITIVE SELECTION BY RESOLUTION 1978 FOR REHABILITATION OF THE STEIN HOMESTEAD BARN, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONSTRUCTION CONTRACT WITH O'BRIEN CONSTRUCTORS, LLC, AND APPROPRIATING BUDGET FOR THE BARN REHABILITATION PROJECT**

WHEREAS, on March 6, 2006, the Wilsonville City Council adopted Resolution No. 1978 determining the contract for renovations to the Stein Homestead Barn (the "Project") will be a special procurement contract exempt from formal competitive solicitation requirements, identifying O'Brien Constructors, LLC as the contractor, and directing that the contract with O'Brien Constructors, LLC return to Council at a later date for execution; 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, with time being of the essence to maintain construction pricing and schedule, City desires to execute a Contract with O'Brien Constructors, LLC for the Project forthwith.

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

1. Based on the above recitals and the contents of the documents and actions set forth therein, and the staff report of record in this matter, the City of Wilsonville acting as its Local Contract Review Board finds and concludes that allowing a special procurement for the execution of the Construction Contract for Project will substantially promote the public interest.
2. City Council hereby approves the form of the Construction Contract between the City of Wilsonville and O'Brien Constructors, LLC., and authorizes the City Manager and such persons as she may direct to execute the Construction Contract for the Project, a copy of which is attached hereto and incorporated herein as if fully set forth as shown in Exhibit A.

3. For this Project, Council authorizes expenditures in excess of the amount consistent with the adopted FY 20056-07 Budget as follows:

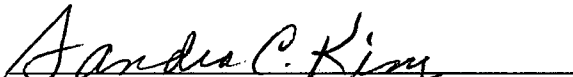
<u>Account</u>	<u>Budgeted Amount for Project</u>	<u>Construction Contract Amount</u>	<u>Supplemental Budget Needed</u>
8055	\$450,000.00	\$428,000.00	\$125,000.00

4. As required by state law and in keeping with annual budget appropriations, that portion of the total project cost not included in the FY 2006-07 budget shall be included in the FY 2006-07 Supplemental Budget.

ADOPTED by the Wilsonville City Council at a regular meeting thereof this 21st day of August 2006, and filed with the Wilsonville City Recorder, this date.

  
\_\_\_\_\_  
CHARLOTTE LEHAN, MAYOR

ATTEST:

  
\_\_\_\_\_  
SANDRA C. KING, City Recorder

SUMMARY of Votes:

Mayor Lehan	Yes
Councilor Kirk	Yes
Councilor Holt	Yes
Councilor Ripple	Yes
Councilor Knapp	Yes

Attachment:

Exhibit A – Construction Contract

**CONSTRUCTION AGREEMENT**

AGREEMENT made on the \_\_\_ day of August 2006, by and between the City of Wilsonville, party of the first part hereinafter referred to as the "Owner", and O'Brien Constructors, LLC, party of the second part hereinafter referred to as the "Contractor", for the project commonly known as the Stein Homestead Barn and Nut Drying Shed Rehabilitations ("Project").

WITNESSETH, that the Contractor and the Owner, for the considerations hereinafter named, agree as follows:

**ARTICLE I - SCOPE OF THE WORK**

The Contractor hereby agrees to furnish all of the materials and all of the equipment necessary, and to perform all of the work shown on the Drawings and described in the Specifications for the project entitled: **HISTORIC BARN AND NUT DRYING SHED REHABILITATIONS.**

All in accordance with the requirements and provisions of the Contract Documents, the following Addenda are included and considered as a part of these Contract Documents:

None

**ARTICLE II - TIME OF COMPLETION**

The work will be complete by January 15, 2007.

Owner and Contractor recognize that time is of the essence in this agreement and that the Owner will suffer financial loss if the work is not substantially completed within the time specified above, plus any extensions thereof allowed. They also recognize the delays, expenses and difficulties involved in proving in a legal proceeding, the actual loss suffered by Owner if the work is not substantially complete on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay Owner \$500.00 for each calendar day that expires after the time specified for substantial completion until the work is substantially complete.

**ARTICLE III - CONTRACT AMOUNT**

**RESOLUTION NO. 2019**

N:\City Recorder\Resolutions\Res2019.doc

Contract amount is Four Hundred Twenty Eight Thousand and No/100 Dollars (\$428,000.00).

In consideration of the faithful performance of the work herein embraced, as set forth in these Contract Documents, and in accordance with the direction of the Owner and in satisfaction to the extent required in the Contract Documents, the Owner agrees to pay to the Contractor the total amount bid, to make periodic payment in the manner and times provided in the following paragraph: On not later than the fifth day of every month the Contractor shall prepare and submit an estimate covering the total quantities under each item that have been completed from the start of the job up to and including the last day of the preceding month, and the value of the work so completed determined in accordance with the Proposal Bid Schedule for such items together with such supporting evidence as may be required by the Owner and/or Engineer. Failure by the Contractor to submit complete and clear documentation will delay payment.

On not later than the fifteenth day of the month, the Owner shall, after deducting previous estimates and any liquidated damages, pay to the Contractor 95% of the amount of the estimate as approved by the Engineer. The 5% retained percentage will be held by the Owner until the final completion of all the work under the Contract. The retained amount will be deposited by the City in the State Investment Pool and held until the final payment is made.

#### **ARTICLE IV – PREVAILING WAGE RATES**

The Contractor hereby agrees to pay all workers prevailing wage rates in accordance with ORS 279C.800 to 279C.870. Contractor shall pay the prevailing wage rate fee to BOLI (ORS 279C.845). The Contractor shall pay daily/weekly/holiday and weekend overtime as required by (OAR 839-016-0020(1)(a)). If Contractor fails to pay labor and services, the City can pay and withhold these amounts from payments due the Contractor (OAR 839-016-0020(1)(a)).

#### **ARTICLE V - PERFORMANCE BOND AND PAYMENT BOND**

The Contractor shall, within ten (10) days after the receipt of the "Notice of Award", and before the commencement of any operations hereunder, execute the Contract and furnish the Owner with a signed copy of the Performance Bond, which amount is not less than 100% of the total bid, and a signed copy of the Payment Bond, which amount is not less than 100% of the total bid, constituting a portion of the Contract Documents.

#### **ARTICLE VI - ACCEPTANCE AND FINAL PAYMENT**

Upon receipt of written notice that the work is ready for final inspection and acceptance, the Owner shall make such inspection, and when the work is acceptable under the Contract fully performed, promptly issue a final certificate, stating that the work required by the Contract has been completed under the terms and conditions thereof and the entire balance found to be due the Contractor by the Owner will be paid.

Before final payment is due, the Contractor shall submit evidence satisfactory to the Owner that all payrolls, material bills, and other indebtedness connected with the work have been paid, except that in case of disputed indebtedness or liens the Contractor may submit in lieu of

evidence of payment, a surety bond satisfactory to the Owner guaranteeing payment of all such disputed amounts when adjudicated in cases where such payment has not already been guaranteed by surety bond.

The making and acceptance of the final payment shall constitute a waiver of all claims by the Contractor, except those previously made and still unsettled.

If, after the work has been substantially completed, full completion thereof is materially delayed through no fault of the Contractor, the Owner shall, without terminating the Contract, make payment of the balance due for the portion of the work fully completed. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims. Substantial completion for this section shall be when the barn and nut dryer shed improvements have been completed as required, including plumbing, the sprinkler system, lighting and electrical systems, carpentry, roofing, grading, storm drainage, landscaping and any miscellaneous necessary site work.

Final payment of all monies shall be made within thirty (30) days of the completion and acceptance of the work by the Owner.

#### **ARTICLE VII – DRUG TESTING POLICY**

In accordance with ORS 279C.505(2), the Contractor shall demonstrate that an employee drug testing program is in place. The contractor shall provide a copy of the drug testing policy to demonstrate such a program is in place.

#### **ARTICLE VIII - MAINTENANCE OF THE SYSTEM**

The Contractor agrees to indemnify and save harmless the Owner from any and all defects appearing or developing in the workmanship or materials performed or furnished under this contract for a period of one (1) year after the date of final acceptance of the entire project by the Owner.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the day and year first above written.

**CONTRACTOR:**  
**O'BRIEN CONSTRUCTORS, LLC**

By: \_\_\_\_\_

Dated: \_\_\_\_\_

**ATTEST:**

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

**APPROVED AS TO FORM:**

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

**OWNER:**  
**CITY OF WILSONVILLE**

By: \_\_\_\_\_  
**Arlene Loble, City Manager**

Dated: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_