

## CITY OF WILSONVILLE PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (“Agreement”) for the Community Service Block Master Plan Project (“Project”) is made and entered into on this 16<sup>th</sup> day of May 2023 (“Effective Date”) by and between the **City of Wilsonville**, a municipal corporation of the State of Oregon (hereinafter referred to as the “City”), and **FFA Architecture and Interiors, Inc.**, an Oregon corporation (hereinafter referred to as “Consultant”).

### RECITALS

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

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

WHEREAS, Consultant is prepared to provide such services as the City does hereinafter require.

NOW, THEREFORE, in consideration of these mutual promises and the terms and conditions set forth herein, the parties agree as follows:

### AGREEMENT

#### **Section 1. Scope of Work**

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

#### **Section 2. Term**

The term of this Agreement shall be from the Effective Date until all Services required to be performed hereunder are completed and accepted, or no later than May 31, 2024, whichever occurs first, unless earlier terminated in accordance herewith or an extension of time is agreed to, in writing, by the City.

#### **Section 3. Consultant’s Services**

3.1. All written documents, drawings, and plans submitted by Consultant in conjunction with the Services shall bear the signature, stamp, or initials of Consultant’s authorized Project Manager. Any documents submitted by Consultant that do not bear the signature, stamp, or initials of Consultant’s authorized Project Manager, will not be relied upon by the City. Interpretation of plans and answers to questions regarding the Services or Scope of Work given by Consultant’s Project Manager may be verbal or in writing, and may be relied upon by the City, whether given

verbally or in writing. If requested by the City to be in writing, Consultant's Project Manager will provide such written documentation.

3.2. Consultant will not be deemed to be in default by reason of delays in performance due to circumstances beyond Consultant's reasonable control, including but not limited to strikes, lockouts, severe acts of nature, or other unavoidable delays or acts of third parties not under Consultant's direction and control ("Force Majeure"). In the case of the happening of any Force Majeure event, the time for completion of the Services will be extended accordingly and proportionately by the City, in writing. Lack of labor, supplies, materials, or the cost of any of the foregoing shall not be deemed a Force Majeure event.

3.3. The existence of this Agreement between the City and Consultant shall not be construed as the City's promise or assurance that Consultant will be retained for future services beyond the Scope of Work described herein.

3.4. Consultant shall maintain the confidentiality of any confidential information that is exempt from disclosure under state or federal law to which Consultant may have access by reason of this Agreement. Consultant warrants that Consultant's employees assigned to the Services provided in this Agreement shall be clearly instructed to maintain this confidentiality. All agreements with respect to confidentiality shall survive the termination or expiration of this Agreement.

#### **Section 4. Compensation**

4.1. Except as otherwise set forth in this **Section 4**, the City agrees to pay Consultant on a time and materials basis, guaranteed not to exceed TWO HUNDRED FORTY-SEVEN THOUSAND NINE HUNDRED THIRTY-FIVE DOLLARS (\$247,935), for performance of the Services ("Compensation Amount"). Any compensation in excess of the Compensation Amount will require an express written Addendum to be executed between the City and Consultant.

4.2. During the course of Consultant's performance, if the City, through its Project Manager, specifically requests Consultant to provide additional services that are beyond the Scope of Work described on **Exhibit A**, Consultant shall provide such additional services and bill the City at the hourly rates outlined on Consultant's Rate Schedule, as set forth in **Exhibit A**. Any Additional work beyond the Scope of Work, or any compensation above the amount shown in **Subsection 4.1**, requires a written Addendum executed in compliance with the provisions of **Section 16**.

4.3. Except for amounts withheld by the City pursuant to this Agreement, Consultant will be paid for Services for which an itemized invoice is received by the City within thirty (30) days of receipt, unless the City disputes such invoice. In that instance, the undisputed portion of the invoice will be paid by the City within the above timeframe. The City will set forth its reasons for the disputed claim amount and make good faith efforts to resolve the invoice dispute with Consultant as promptly as is reasonably possible.

4.4. The City will be responsible for the direct payment of required fees payable to governmental agencies, including but not limited to plan checking, land use, zoning, permitting, and all other similar fees resulting from this Project, that are not specifically covered by **Exhibit A**.

4.5. Consultant's Compensation Amount and Rate Schedule are all inclusive and include, but are not limited to, all work-related costs, expenses, salaries or wages, plus fringe benefits and contributions, including payroll taxes, workers compensation insurance, liability insurance, profit, pension benefits and similar contributions and benefits, technology and/or software charges, licensing, trademark, and/or copyright costs, office expenses, travel expenses, mileage, and all other indirect and overhead charges, including, but not limited to, the recently enacted Oregon Corporate Activity Tax (CAT).

## **Section 5. City's Rights and Responsibilities**

5.1. The City will designate a Project Manager to facilitate day-to-day communication between Consultant and the City, including timely receipt and processing of invoices, requests for information, and general coordination of City staff to support the Project.

5.2. Award of this contract is subject to budget appropriation. Funds are approved for Fiscal Year 2022-23. If not completed within this fiscal year, funds may not be appropriated for the next fiscal year. The City also reserves the right to terminate this contract early, as described in **Section 14**.

## **Section 6. City's Project Manager**

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

## **Section 7. Consultant's Project Manager**

Consultant's Project Manager is Christine Rumi. In the event that Consultant's designated Project Manager is changed, Consultant shall give the City prompt written notification of such re-designation. Recognizing the need for consistency and knowledge in the administration of the Project, Consultant's Project Manager will not be changed without the written consent of the City, which consent shall not be unreasonably withheld. In the event the City receives any communication from Consultant that is not from Consultant's designated Project Manager, the City may request verification by Consultant's Project Manager, which verification must be promptly furnished.

## **Section 8. Project Information**

Except for confidential information designated by the City as information not to be shared, Consultant agrees to share Project information with, and to fully cooperate with, those corporations, firms, contractors, public utilities, governmental entities, and persons involved in or associated with the Project. No information, news, or press releases related to the Project, whether

made to representatives of newspapers, magazines, or television and radio stations, shall be made without the written authorization of the City's Project Manager.

## **Section 9. Subcontractors and Assignments**

9.1. Unless expressly authorized in **Exhibit A** or **Section 10** of this Agreement, Consultant shall not subcontract with others for any of the Services prescribed herein. Consultant shall not assign any of Consultant's rights acquired hereunder without obtaining prior written approval from the City, which approval may be granted or denied in the City's sole discretion. Some Services may be performed by persons other than Consultant, provided Consultant advises the City of the names of such subcontractors and the work which they intend to perform, and the City specifically agrees in writing to such subcontracting. Consultant acknowledges such work will be provided to the City pursuant to a subcontract(s) between Consultant and subcontractor(s) and no privity of contract exists between the City and the subcontractor(s). Unless otherwise specifically provided by this Agreement, the City incurs no liability to third persons for payment of any compensation provided herein to Consultant. Any attempted assignment of this Agreement without the written consent of the City shall be void. Except as otherwise specifically agreed, all costs for work performed by others on behalf of Consultant shall not be subject to additional reimbursement by the City.

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

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

## **Section 10. Consultant Is Independent Contractor**

10.1. Consultant is an independent contractor for all purposes and shall be entitled to no compensation other than the Compensation Amount provided for under **Section 4** of this Agreement. Consultant will be solely responsible for determining the manner and means of accomplishing the end result of Consultant's Services. The City does not have the right to control or interfere with the manner or method of accomplishing said Services. The City, however, will have the right to specify and control the results of Consultant's Services so such Services meet the requirements of the Project.

10.2. Consultant may request that some consulting services be performed on the Project by persons or firms other than Consultant, through a subcontract with Consultant. Consultant acknowledges that if such services are provided to the City pursuant to a subcontract(s) between Consultant and those who provide such services, Consultant may not utilize any subcontractor(s), or in any way assign its responsibility under this Agreement, without first obtaining the express written consent of the City, which consent may be given or denied in the City's sole discretion.

For all Services performed under subcontract to Consultant, as approved by the City, Consultant shall only charge the compensation rates shown on the approved Rate Schedule (**Exhibit A**). Rate schedules for named or unnamed subcontractors, and Consultant markups of subcontractor billings, will only be recognized by the City as set forth in Consultant's Rate Schedule, unless documented and approved, in writing, by the City pursuant to a modification to Consultant's Rate Schedule, per **Section 16** of this Agreement. In all cases, processing and payment of billings from subcontractors is solely the responsibility of Consultant.

10.3. Consultant shall be responsible for, and defend, indemnify, and hold the City harmless against, any liability, cost, or damage arising out of Consultant's use of such subcontractor(s) and subcontractor's negligent acts, errors, or omissions. Unless otherwise agreed to, in writing, by the City, Consultant shall require that all of Consultant's subcontractors also comply with, and be subject to, the provisions of this **Section 10** and meet the same insurance requirements of Consultant under this Agreement.

## **Section 11. Consultant Responsibilities**

11.1. Consultant must make prompt payment for any claims for labor, materials, or services furnished to Consultant by any person in connection with this Agreement as such claims become due. Consultant shall not permit any liens or claims to be filed or prosecuted against the City on account of any labor or material furnished to or on behalf of Consultant. If Consultant fails, neglects, or refuses to make prompt payment of any such claim, the City may, but shall not be obligated to, pay such claim to the person furnishing the labor, materials, or services and offset the amount of the payment against funds due or to become due to Consultant under this Agreement. The City may also recover any such amounts directly from Consultant.

11.2. Consultant must comply with all applicable Oregon and federal wage and hour laws, including BOLI wage requirements, if applicable. Consultant shall make all required workers compensation and medical care payments on time. Consultant shall be fully responsible for payment of all employee withholdings required by law, including but not limited to taxes, including payroll, income, Social Security (FICA), and Medicaid. Consultant shall also be fully responsible for payment of salaries, benefits, taxes, Industrial Accident Fund contributions, and all other charges on account of any employees. Consultant shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. All costs incident to the hiring of assistants or employees shall be Consultant's responsibility. Consultant shall defend, indemnify, and hold the City harmless from claims for payment of all such expenses.

11.3. No person shall be discriminated against by Consultant or any subcontractor in the performance of this Agreement on the basis of sex, gender, race, color, creed, religion, marital status, age, disability, sexual orientation, gender identity, or national origin. Any violation of this provision shall be grounds for cancellation, termination, or suspension of the Agreement, in whole or in part, by the City. References to "subcontractor" mean a subcontractor at any tier.

## **Section 12. Indemnity**

12.1. Indemnification. Consultant acknowledges responsibility for liability arising out of the performance of this Agreement, and shall defend, indemnify, and hold the City harmless from any and all liability, settlements, loss, costs, and expenses in connection with any action, suit, or claim resulting or allegedly resulting from Consultant's negligent acts, omissions, errors, or willful or reckless misconduct pursuant to this Agreement, or from Consultant's failure to perform its responsibilities as set forth in this Agreement. The review, approval, or acceptance by the City, its Project Manager, or any City employee of documents or other work performed, prepared, or submitted by Consultant shall not be considered a negligent act, error, omission, or willful misconduct on the part of the City, and none of the foregoing shall relieve Consultant of its responsibility to perform in full conformity with the City's requirements, as set forth in this Agreement, and to indemnify the City as provided above and to reimburse the City for any and all costs and damages suffered by the City as a result of Consultant's negligent performance of this Agreement, failure of performance hereunder, violation of state or federal laws, or failure to adhere to the standards of performance and care described in **Subsection 12.2**. Consultant shall defend the City (using legal counsel reasonably acceptable to the City) against any claim that alleges negligent acts, omissions, errors, or willful or reckless misconduct by Consultant. As used herein, the term "Consultant" applies to Consultant and its own agents, employees, and suppliers, and to all of Consultant's subcontractors, including their agents, employees, and suppliers.

12.2. Standard of Care. In the performance of the Services, Consultant agrees to use at least that degree of care and skill exercised under similar circumstances by reputable members of Consultant's profession practicing in the Portland metropolitan area. Consultant will re-perform any Services not meeting this standard without additional compensation. Consultant's re-performance of any Services, even if done at the City's request, shall not be considered as a limitation or waiver by the City of any other remedies or claims it may have arising out of Consultant's failure to perform in accordance with the applicable standard of care of this Agreement and within the prescribed timeframe.

## **Section 13. Insurance**

13.1. Insurance Requirements. Consultant must maintain insurance coverage acceptable to the City in full force and effect throughout the term of this Agreement. Such insurance shall cover all risks arising directly or indirectly out of Consultant's activities or work hereunder. Any and all agents or subcontractors with which Consultant contracts for any portion of the Services must have insurance that conforms to the insurance requirements in this Agreement. Additionally, if a subcontractor is an engineer, architect, or other professional, Consultant must require the subcontractor to carry Professional Errors and Omissions insurance and must provide to the City proof of such coverage. The amount of insurance carried is in no way a limitation on Consultant's liability hereunder. The policy or policies maintained by Consultant shall provide at least the following minimum limits and coverages at all times during performance of this Agreement:

13.1.1. Commercial General Liability Insurance. Consultant and all subcontractors shall obtain, at each of their own expense, and keep in effect during the term of this Agreement, comprehensive Commercial General Liability Insurance covering Bodily

Injury and Property Damage, written on an “occurrence” form policy. This coverage shall include broad form Contractual Liability insurance for the indemnities provided under this Agreement and shall be for the following minimum insurance coverage amounts: The coverage shall be in the amount of **\$2,000,000** for each occurrence and **\$3,000,000** general aggregate and shall include Products-Completed Operations Aggregate in the minimum amount of **\$2,000,000** per occurrence, Fire Damage (any one fire) in the minimum amount of **\$50,000**, and Medical Expense (any one person) in the minimum amount of **\$10,000**. All of the foregoing coverages must be carried and maintained at all times during this Agreement.

13.1.2. Professional Errors and Omissions Coverage. Consultant agrees to carry Professional Errors and Omissions Liability insurance on a policy form appropriate to the professionals providing the Services hereunder with a limit of no less than **\$2,000,000** per claim. Consultant shall maintain this insurance for damages alleged to be as a result of errors, omissions, or negligent acts of Consultant. Such policy shall have a retroactive date effective before the commencement of any work by Consultant on the Services covered by this Agreement, and coverage will remain in force for a period of at least three (3) years after termination of this Agreement.

13.1.3. Business Automobile Liability Insurance. If Consultant or any subcontractors will be using a motor vehicle in the performance of the Services herein, Consultant shall provide the City a certificate indicating that Consultant and its subcontractors have business automobile liability coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than **\$2,000,000**.

13.1.4. Workers Compensation Insurance. Consultant, its subcontractors, and all employers providing work, labor, or materials under this Agreement that are subject employers under the Oregon Workers Compensation Law shall comply with ORS 656.017, which requires them to provide workers compensation coverage that satisfies Oregon law for all their subject workers under ORS 656.126. Out-of-state employers must provide Oregon workers compensation coverage for their workers who work at a single location within Oregon for more than thirty (30) days in a calendar year. Consultants who perform work without the assistance or labor of any employee need not obtain such coverage. This shall include Employer’s Liability Insurance with coverage limits of not less than **\$500,000** each accident.

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

13.1.6. Additional Insured and Termination Endorsements. The City will be named as an additional insured with respect to Consultant’s liabilities hereunder in insurance coverages. Additional Insured coverage under Consultant’s Commercial General Liability, Automobile Liability, and Excess Liability Policies, as applicable, will

be provided by endorsement. Additional insured coverage shall be for both ongoing operations via ISO Form CG 2010 or its equivalent, and products and completed operations via ISO Form CG 2037 or its equivalent. Coverage shall be Primary and Non-Contributory. Waiver of Subrogation endorsement via ISO Form CG 2404 or its equivalent shall be provided. The following is included as additional insured: “The City of Wilsonville, its elected and appointed officials, officers, agents, employees, and volunteers.” An endorsement shall also be provided requiring the insurance carrier to give the City at least thirty (30) days’ written notification of any termination or major modification of the insurance policies required hereunder. Consultant must be an additional insured on the insurance policies obtained by its subcontractors performing any of the Services contemplated under this Agreement.

13.1.7. Certificates of Insurance. As evidence of the insurance coverage required by this Agreement, Consultant shall furnish a Certificate of Insurance to the City. This Agreement shall not be effective until the required certificates and the Additional Insured Endorsements have been received and approved by the City. Consultant agrees that it will not terminate or change its coverage during the term of this Agreement without giving the City at least thirty (30) days’ prior advance notice and Consultant will obtain an endorsement from its insurance carrier, in favor of the City, requiring the carrier to notify the City of any termination or change in insurance coverage, as provided above.

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

#### **Section 14. Early Termination; Default**

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

14.1.1. By mutual written consent of the parties;

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

14.1.3. By Consultant, effective upon seven (7) days’ prior written notice in the event of substantial failure by the City to perform in accordance with the terms through no fault of Consultant, where such default is not cured within the seven (7) day period by the City. Withholding of disputed payment is not a default by the City.

14.2. If the City terminates this Agreement, in whole or in part, due to default or failure of Consultant to perform Services in accordance with the Agreement, the City may procure, upon reasonable terms and in a reasonable manner, services similar to those so terminated. In addition to any other remedies the City may have, both at law and in equity, for breach of contract, Consultant shall be liable for all costs and damages incurred by the City as a result of the default



by Consultant, including, but not limited to all costs incurred by the City in procuring services from others as needed to complete this Agreement. This Agreement shall be in full force to the extent not terminated by written notice from the City to Consultant. In the event of a default, the City will provide Consultant with written notice of the default and a period of ten (10) days to cure the default. If Consultant notifies the City that it wishes to cure the default but cannot, in good faith, do so within the ten (10) day cure period provided, then the City may elect, in its sole discretion, to extend the cure period to an agreed upon time period, which agreed upon extension must be in writing and signed by the parties prior to the expiration of the cure period. Unless a written, signed extension has been fully executed by the parties, if Consultant fails to cure prior to expiration of the cure period, the Agreement is automatically terminated.

14.3. If the City terminates this Agreement for its own convenience not due to any default by Consultant, payment of Consultant shall be prorated to, and include the day of, termination and shall be in full satisfaction of all claims by Consultant against the City under this Agreement.

14.4. Termination under any provision of this Section shall not affect any right, obligation, or liability of Consultant or the City that accrued prior to such termination. Consultant shall surrender to the City items of work or portions thereof, referred to in **Section 18**, for which Consultant has received payment or the City has made payment.

## **Section 15. Suspension of Services**

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

## **Section 16. Modification/Addendum**

Any modification of the provisions of this Agreement shall not be enforceable unless reduced to writing and signed by both the City and Consultant. A modification is a written document, contemporaneously executed by the City and Consultant, which increases or decreases the cost to the City over the agreed Compensation Amount in **Section 4** of this Agreement, or changes or modifies the Scope of Work or the time for performance. No modification shall be binding or effective until executed, in writing, by both Consultant and the City. In the event Consultant receives any communication of whatsoever nature from the City, which communication Consultant contends gives rise to any modification of this Agreement, Consultant shall, within five (5) days after receipt, make a written request for modification to the City's Project Manager in the form of an Addendum. Consultant's failure to submit such written request for modification in the form of an Addendum shall be the basis for refusal by the City to treat said communication as a basis for modification or to allow such modification. In connection with any modification to this Agreement affecting any change in price, Consultant shall submit a complete breakdown of labor,



discussions, representations, or agreements. In case of conflict among these or any other documents, the provisions of this Agreement shall control, and the terms most favorable to the City, within the City's sole discretion, will apply.

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

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

20.4. Adherence to Law. In the performance of this Agreement, Consultant shall adhere to all applicable federal, state, and local laws (including the Wilsonville Code and Public Works Standards), including but not limited to laws, rules, regulations, and policies concerning employer and employee relationships, workers compensation, and minimum and prevailing wage requirements. Any certificates, licenses, or permits that Consultant is required by law to obtain or maintain in order to perform the Services described on **Exhibit A**, shall be obtained and maintained throughout the term of this Agreement.

20.5. Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Oregon, regardless of any conflicts of laws. All contractual provisions required by ORS Chapters 279A, 279B, 279C, and related Oregon Administrative Rules to be included in public agreements are hereby incorporated by reference and shall become a part of this Agreement as if fully set forth herein.

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

20.7. Legal Action/Attorney Fees. If a suit, action, or other proceeding of any nature whatsoever (including any proceeding under the U.S. Bankruptcy Code) is instituted in connection with any controversy arising out of this Agreement or to interpret or enforce any rights or obligations hereunder, the prevailing party shall be entitled to recover attorney, paralegal, accountant, and other expert fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, as determined by the court or body at trial or on any appeal or review, in addition to all other amounts provided by law. If the City is required to seek legal assistance to enforce any term of this Agreement, such fees shall include all of the above fees, whether or not a proceeding is initiated. Payment of all such fees shall also apply to any administrative proceeding, trial, and/or any appeal or petition for review.

20.8. Nonwaiver. Failure by either party at any time to require performance by the other party of any of the provisions of this Agreement shall in no way affect the party's rights hereunder to enforce the same, nor shall any waiver by the party of the breach hereof be held to be a waiver of any succeeding breach or a waiver of this nonwaiver clause.

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

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

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

20.12. Calculation of Time. Except where the reference is to business days, all periods of time referred to herein shall include Saturdays, Sundays, and legal holidays in the State of Oregon, except that if the last day of any period falls on any Saturday, Sunday, or legal holiday observed by the City, the period shall be extended to include the next day which is not a Saturday, Sunday, or legal holiday. Where the reference is to business days, periods of time referred to herein shall exclude Saturdays, Sundays, and legal holidays observed by the City. Whenever a time period is set forth in days in this Agreement, the first day from which the designated period of time begins to run shall not be included.

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

20.14. Number, Gender and Captions. In construing this Agreement, it is understood that, if the context so requires, the singular pronoun shall be taken to mean and include the plural, the masculine, the feminine and the neuter, and that, generally, all grammatical changes shall be made, assumed, and implied to individuals and/or corporations and partnerships. All captions and paragraph headings used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Agreement.

20.15. Good Faith and Reasonableness. The parties intend that the obligations of good faith and fair dealing apply to this Agreement generally and that no negative inferences be drawn by the absence of an explicit obligation to be reasonable in any portion of this Agreement. The obligation to be reasonable shall only be negated if arbitrariness is clearly and explicitly permitted as to the specific item in question, such as in the case of where this Agreement gives the City “sole discretion” or the City is allowed to make a decision in its “sole judgment.”

20.16. Other Necessary Acts. Each party shall execute and deliver to the other all such further instruments and documents as may be reasonably necessary to carry out this Agreement in order to provide and secure to the other parties the full and complete enjoyment of rights and privileges hereunder.

20.17. Interpretation. As a further condition of this Agreement, the City and Consultant acknowledge that this Agreement shall be deemed and construed to have been prepared mutually by each party and it shall be expressly agreed that any uncertainty or ambiguity existing therein shall not be construed against any party. In the event that any party shall take an action, whether judicial or otherwise, to enforce or interpret any of the terms of the Agreement, the prevailing party

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

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

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

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

The Consultant and the City hereby agree to all provisions of this Agreement.

**CONSULTANT:**

**CITY:**

**FFA Architecture and Interiors, 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

### SCOPE OF BASIC SERVICES

The following describes the Scope of Work for this proposal:

#### Task 1 – Discovery

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In this task we will establish how the project team will function and interact and the goals, values, and requirements on which the project design will be based. We will:

- Conduct a kickoff meeting with stakeholders.
- Review relevant background information.
- Conduct a Visioning Workshop with stakeholders and users to understand the values of the City of Wilsonville, the PD, and PPR and discuss how those values might apply to the project.
- Conduct a Sustainability and Resilience Workshop with stakeholders and users to understand project expectations within the context of the City of Wilsonville and the needs of each facility.
- Present findings of workshops and draft Guiding Principles to stakeholders.
- Submit draft and final Discovery Summary Report.

Deliverables include: Kickoff Meeting Notes, Project Schedule, Summary Report, Project Guiding Principles, Verdict Log documenting all design decisions

Meetings / Site visits include:

- (1) Kick Off meeting and Site Visit
- (1) Initial meeting with Community Development
- (1) Progress meeting
- (1) Visioning Workshop
- (1) Sustainability and Resilience Workshop
- (1) Programming and O&M interviews
- (1) Presentation of Workshop Findings

#### Task 2 – Needs Assessment

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In this task we will evaluate your existing facilities and site and perform programming activities with stakeholders and users to understand departmental space, functional, and operational needs. Buildings assessed include: Police, Community Center, and Art Tech.

Facility/Site Assessments

- Analyze existing building sites and facility conditions, capacities and constraints. Review existing conditions considering such factors as suitability for the current functions, level of obsolescence, seismic rating, suitability of current location, impacts on neighbors, etc.
- Conduct site visits to document and map existing conditions.

## Programming

- Prepare programming questionnaires for stakeholders and users in each department.
- Conduct assessment and programming interviews with stakeholders, including but not limited to Facilities Project Team, Police Department and Parks and Recreation personnel
- Document current department sizes, their future growth, and correlate with functional issues of the existing facilities and area under study.
- Identify and determine space needs and priorities for adequate work and office space, meeting rooms, breakrooms, locker and shower areas, equipment and storage, programs and event space and work vehicle, staff and customer parking.
- Develop preliminary adjacency and stacking diagrams.
- Present findings and draft programming information in Programming Workshop for discussion.
- Make revisions based on stakeholder comments.
- Submit draft and final Needs Assessment Report

Deliverables include: Needs Assessment Report, including final Programming Documentation, Verdict Log documenting all design decisions

Meetings include:

- (2) Progress meetings
- (2) Programming interviews (full days)
- (2) Programming Workshops
- (1) Site Visit for Facility and Site Assessment

## Task 3 – Gap Analysis

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In this task we will perform the analyses necessary to provide the City of Wilsonville with options for how best to use the Community Service Block and their buildings in the near term and into the future.

- Develop list of facilities/communities to be compared and determine what element(s) to compare.
- Provide graphic and data matrices with comparison findings for review.
- Prepare feasibility/test fits for alternate approaches to facility design: major renovation, demolition, and new construction.
- Confirm building and zoning code are met with the alternatives.
- Provide cost/benefit analysis for the alternatives using Rough Order of Magnitude (ROM) cost per square foot estimation.
- Present findings and facilitate discussion regarding selection of preferred alternatives.
- Present findings of Gap Analysis to City Council (timing TBD)
- Submit draft and final Gap Analysis Summary Report.

Deliverables include: Gap Analysis Summary Report, Verdict Log documenting all design decisions

Meetings include:

- (2) Progress meetings
- (1) Presentation of Gap Analysis findings and alternatives
- (1) City Council Meeting (timing TBD)

## Task 4 – Community Service Block Master Plan

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In this task, we will develop options for site utilization of the Community Service Block using the building alternative selections determined through the Gap Analysis process and workshop.

- Perform Site Analysis (including context, climatic, zoning, geography, infrastructure, access characteristics)
- Develop master plan options including phasing plans for each.
- Present options in site planning workshop
- Refine preferred options based on stakeholder comments
- Submit draft and final master plan documents.

Deliverables include: Community Service Block Site Utilization and Phasing Plan documents, Verdict Log documenting all design decisions

Meetings include:

- (2) Progress Meetings
- (1) 'Pre-Application' Meeting with Community Development
- (1) Presentation of master plan options

## Task 5 – Concept Designs

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In this task, we will produce three Concept Design options with cost estimates for the buildings on the Community Service Block using the preferred master plan/phasing plan.

- Develop three concept designs for pricing and review with stakeholders.
- Conduct draft and final design charrettes for each department.
- Provide cost estimates for each option.
- Refine preferred design option based on stakeholder comments.
- Refine cost estimates of refined preferred design options
- Present final concept design to stakeholders
- Present final concept design to City Council (timing TBD)
- Submit final concept design drawings and estimate.

Deliverables include: Concept Design Drawings and Cost Estimate, Verdict Log documenting all design decisions

Meetings include:

- (3) Progress meetings
- (1) Building Design Review with Community Development
- (2) Departmental design charrettes (for each department)
- (1) Draft Concept presentation
- (1) Final Concept presentation
- (1) City Council Meeting (timing TBD)

### CONSULTANTS

RLB Cost Estimation

### SCOPE OF SUPPLEMENTAL SERVICES

The following describes the supplemental scope of work for this proposal.



### SS-1 Community Engagement

FFA will work with the City of Wilsonville during the project to determine when and how to engage the community for feedback on this project. For the purposes of this proposal, we have assumed:

- Develop a format for engagement event
- Prepare graphics or other presentation materials
- Facilitate engagement event
- Synthesize community feedback for stakeholder review and use in the design

Deliverables include: Materials for event, Event Summary

Meetings include:

(1) Community Event

Planning discussions and review of Event Summary assumed to occur in progress meetings already noted Basic Services tasks.

### SS-2 Existing Facility Tours

FFA will work with the City of Wilsonville to arrange tours of existing police and parks facilities in the NW Oregon/SW Washington region.

- Determine with City of Wilsonville which facilities to tour.
- Arrange tours with each facility.
- Conduct tours with representative from each facility.
- Provide written notes from tour discussions, including visual and written documentation of preferred design elements exhibited during tours

Deliverables include: Tour Notes

Meetings / Site Visits include:

(1) Tour day

### SS-3 Gap Analysis Cost Estimates

RLB will work closely with the design team to provide costs for a range of proposed new construction and/or renovation options, as well as sitework and building demolition. Using Unifomat II & III as their work breakdown structure, they will then generate a direct construction cost per square foot for each element based on recent historical data on projects of similar size and complexity, current market rates, and forecasts of future costs. Construction indirect costs will be based on a reasonable assumption of likely project start date, duration, and procurement strategy. FFA will review the estimates to ensure they align with our design assumptions.

Deliverables include: ROM cost estimates for Gap Analysis alternatives

## ASSUMPTIONS

- The following are Owner-Provided items and information and are excluded from FFA's scope of services:
  - Existing Documentation (previous studies or analyses, previous programming documentation)
  - Site Surveys
  - Soils Investigations and Reports
  - Geotechnical Evaluations/Reports
  - Environmental and Hazardous Materials Services: discovery, determination of types and quantities and/or remediation
  - Drawings/Specifications (if available of existing buildings).

- Services listed in the attached “Exclusions” document to be excluded unless requested to be added as an additional service.
- Client review and decisions must be made in a timely fashion to maintain project schedule.

FEE SCHEDULE - BASIC SERVICES

PHASE	DURATION	COMPLETION DATE*	FEE DISTRIBUTION
Task 1 – Discovery	6 weeks		\$ 29,290.00
Task 2 – Needs Assessment	8 weeks		\$ 39,440.00
Task 3 – Gap Analysis	8 weeks		\$ 26,650.00
Task 4 – Master Plan/Phasing	6 weeks		\$ 28,155.00
Task 5 – Concept Designs	10 weeks	March 1, 2024	\$ 95,425.00
		Reimbursables	\$ 5,475.00
<b>Total Basic Services</b>			<b>\$ 224,435.00</b>

FEE SCHEDULE - SUPPLEMENTAL SERVICES

SCOPE	FEE DISTRIBUTION
SS-1: Community Engagement (FFA)	\$ 7,500.00
SS-2: Existing Facility Tours (FFA)	\$ 6,000.00
SS-3: ROM Gap Analysis Cost Estimates	\$ 10,000.00
<b>Total Supplemental Services</b>	<b>\$ 23,500.00</b>

**ATTACHMENTS:**

- Exclusions, Billing Rates, Workplan

## EXCLUSIONS

The following services, **unless explicitly stated in the proposal**, are excluded. The services can be added at the Owner's request and will be considered additional services.

- The following phases of service:
  - Schematic Design
  - Design Development
  - Construction Documents
  - Construction Administration
  - Post-Occupancy/Warranty Period
- Measured Drawings and Field Verification of Owner provided documentation
- Special Engineering or Design Consultants other than those specifically listed in the proposal:
  - Telecommunications/ Data /Low Voltage/ Audio/ Video (Technology specialties) Design
  - Fire Protection Design (Fire Alarm, Fire Sprinkler, etc)
  - Acoustic Engineering Services
  - Security Evaluation and System Design
  - Graphics or Signage Design
  - Tenant Improvements, Test Fits and BOMA Calculations
  - Energy or daylighting modeling
  - Commissioning
- Alternates, revisions after acceptance
- Value Analysis
- Owners Representative (On-Site Project Representation)
- Change of construction contract type (example: CMGC change to Hard bid)
- Conformed Construction Documents
- As-Designed Record Drawings
- Operations & Maintenance Manuals
- Specialty Design Processes: LEED Certification, Living Building Challenge, Passive House, HUD, etc.
- Disabled access compliance design beyond Oregon Structural Specialty Code and Americans with Disabilities Act current at the time of project permitting.
- Meetings with Public Agencies and Community Meetings other than listed in proposal (Design Review, Land Use Review, Historic Landmarks)
- Energy Incentive Program Assistance
- Post-Occupancy Evaluation, Facility Support Services, Tenant-related Services
- Historic Design
- Furniture, Furnishings, and Equipment Design

**BILLING RATES**

**FFA**

<u>EMPLOYEE TITLE</u>	<u>EMPLOYEE NAME</u>	<u>HOURLY RATE</u>
Principal	Troy Ainsworth	\$255.00
Design Lead	Ian Gelbrich	\$225.00
Senior Project Manager	Christine Rumi	\$200.00
Parks Facility Programming Expert	Laura Roark	\$200.00
Police Facility Programming Expert	John Pete	\$190.00
Arch II / Sustainable Design Expert	Andrew Loia	\$125.00
Arch II	TBD	\$125.00

**Rider Levett Bucknall**

Cost Estimating

<u>EMPLOYEE TITLE</u>	<u>EMPLOYEE NAME</u>	<u>HOURLY RATE</u>
Principal	Daniel Junge	\$250.00

