



Home of the Tualatin River National Wildlife Refuge

RESOLUTION 2008-063

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH OTAK FOR PLANNING AND ENGINEERING SERVICES FOR THE CEDAR CREEK TRAIL FEASIBILITY STUDY

WHEREAS, the Cedar Creek Trail is envisioned to follow the Cedar Creek Corridor and be a multi-use path from Stella Olsen Park to the Tualatin River Wildlife Refuge; and

WHEREAS, the Cedar Creek Corridor is considered an environmentally sensitive area with wetlands, complex terrains and inside floodplains; and

WHEREAS, any construction or improvements will need approvals from various regulatory agencies.

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


Section 1: The City Manager is authorized to enter into a contract with Otak, for planning and engineering services for an amount not to exceed \$150,000. Contract is attached as Exhibit A.

Section 2: This Resolution shall be effective upon its approval and adoption.

Duly passed by the City Council this 18th day of November 2008.


Keith S. Mays, Mayor

ATTEST:


Sylvia Murphy, City Recorder



**Community Development Division
Engineering Department**

22560 SW Pine St.
Sherwood, OR 97140
503-925-2309

CONTRACT FOR PROFESSIONAL SERVICES

PROJECT NAME: Cedar Creek Trail Feasibility Study

CONTRACT PARTIES: City of Sherwood and Otak, Inc.
[hereafter called City] [hereafter called Consultant]

C.O.S. PROJECT MANAGER:

ACCOUNT #: 6120 **FUND #:** 3 **DEPT:** 57 **REV SOURCE:** 0 **JOB #:** 8007 **PHASE:**
VENDOR #:

SCOPE of WORK: Please see Standard Contract Provisions, Paragraph 22 (a) List of Exhibits

SCHEDULE of WORK: effective date: November 19, 2008 expiration date: June 15, 2009

PAYMENT: City agrees to pay Consultant for the identified services a sum not to exceed **\$149,965.00** for the scope of work identified by attachment

ADJUSTMENTS:

CONSULTANT DATA, REGISTRATION, and SIGNATURE

CONSULTANT FIRM: Otak, Inc.
ADDRESS: 17355 SW Boones Ferry Road, Lake Oswego, OR 97035-5217
VOICE: 503-635-3618 **FAX:** 503-635-5395
CONTACT: Darrin Stairs, PE
TITLE: Project Manager

I, the undersigned, agree to perform the work outlined in this Contract in accordance to the terms and conditions listed on pages 2-4 and made part of this Contract, and in accordance with the exhibits attached and made part of this Contract. I certify, under penalty of perjury, that I/my business is not in violation of any Oregon tax laws; and certify that I am an independent contractor as defined in ORS 670.600.

CONSULTANT:

signature

date

CITY OF SHERWOOD APPROVALS

PROJECT MANAGER:

signature

date

CITY ENGINEER:

signature

date

CITY MANAGER:

signature

date

STANDARD CONTRACT PROVISIONS

1. Access to Records

The Consultant shall maintain, and the City of Sherwood ("City") and its duly authorized representatives shall have access during normal business hours to the books, documents, papers, and records of the Consultant which are directly pertinent to the specific Contract for the purpose of making audit, examination, excerpts, and transcripts for a period of three years after final payment. Copies of applicable records shall be made available upon reasonable request. Payment for cost of copies is reimbursable by the City.

2. Audits

(a) The City, either directly or through a designated representative, may conduct financial and performance audits of the billings and services specified in this agreement at any time in the course of the agreement and during the three (3) year period established by section 1, **Access to Records**. Audits will be conducted in accordance with generally accepted auditing standards as promulgated in Government Auditing Standards by the Comptroller General of the United States General Accounting Office.

(b) If an audit discloses that payments to the Consultant were in excess of the amount to which the Consultant was entitled, then the Consultant shall repay the amount of the excess to the City.

(c) If any audit shows performance of services is not efficient in accordance with Government Auditing Standards, or that the program is not effective in accordance with Government Auditing Standards, the City may pursue remedies provided under section 5, **Early Termination of Agreement** and section 7, **Remedies**.

3. Effective Date and Duration

The passage of the Contract expiration date shall not extinguish, prejudice, or limit either party's right to enforce this Contract with respect to any default or defect in performance that has not been cured.

4. Funds

The City certifies that sufficient funds are available and authorized for expenditure to finance the cost of this Contract.

5. Early Termination of Agreement

(a) The City and the Consultant, by mutual written agreement, may terminate this Agreement at any time.

(b) The City, on thirty (30) days written notice to the Consultant, may terminate this Agreement for any reason deemed appropriate in its sole discretion.

(c) Either the City or the Consultant may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination, however, the party seeking the termination shall give to the other party written notice of the breach and of the party's intent to terminate. If the party has not entirely cured the breach within fifteen (15) days of the notice, then the party giving the notice may terminate the Agreement at any time thereafter by giving a written notice of termination.

6. Payment on Early Termination

(a) In the event of termination under subsection 5(a) or 5(b), **Early Termination of Agreement** hereof, the City shall pay the Consultant for work performed in accordance with the Agreement prior to the termination date.

(b) In the event of termination under subsection 5(c), **Early Termination of Agreement** hereof, by the Consultant due to a breach by the City, then the City shall pay the Consultant as provided in subsection (a) of this section.

(c) In the event of termination under subsection 5(c), **Early Termination of Agreement** hereof, by the City due to a breach by the Consultant, then the City shall pay the Consultant as provided in subsection (a) of this section, subject to set off of excess costs, as provided for in section 7(a), **Remedies**.

(d) In the event of early termination, all of the Consultant's work product will become and remain property of the City.

7. Remedies

(a) In the event of termination under subsection 5(c), **Early Termination of Agreement**, hereof, by the City due to a breach by the Consultant, then the City may complete the work either itself, by agreement with another consultant, or by a combination thereof. In the event the cost of completing the work exceeds the remaining unpaid balance of the total compensation provided under this Contract, then the Consultant shall pay to the City the amount of the reasonable excess.

(b) The remedies provided to the City under section 5, **Early Termination of Agreement** and section 7, **Remedies** for a breach by the Consultant shall not be exclusive. The City also shall be entitled to any other equitable and legal remedies that are available.

(c) In the event of breach of this Agreement by the City, then the Consultant's remedy shall be limited to termination of the Agreement and receipt of payment as provided in section 5(c), **Early Termination of Agreement** and section 6(b), **Payment on Early Termination** hereof.

8. Subcontracts and Assignment

Consultant shall not subcontract, assign or transfer any of the work scheduled under this agreement, without the prior written consent of the City. Notwithstanding City approval of a sub-consultant, the Consultant shall remain obligated for full performance hereunder, and the City shall incur no obligation other than its obligations to the

Consultant hereunder. The Consultant agrees that if sub-consultants are employed in the performance of this Agreement, the Consultant and its sub-consultants are subject to the requirements and sanctions of ORS Chapter 656, Workers' Compensation.

9. Compliance with Applicable Law

In connection with its activities under this Agreement, Consultant shall use the standard of care in its profession to comply with all applicable federal, state and local laws and regulations.

10. Indemnity - Standard of Care

If Consultant's services involve engineering or consulting, the standard of care applicable to Consultant's service will be the degree of skill and diligence normally employed by professional engineers or consultants performing the same or similar services at the time such services are performed. Consultant will re-perform any services not meeting this standard without additional compensation.

11. Insurance

Consultant shall be licensed and comply with all State of Oregon laws and regulations.

12. Ownership of Work Product

All work products of the Consultant, which result from this Contract are the exclusive property of the City. The City shall not use these products for other projects outside the scope of this Agreement without written permission of the Consultant; provided, that Consultant is hereby granted an irrevocable, royalty free, worldwide, perpetual license to use, reproduce, copy, distribute and make derivatives of its work product, regardless of whether Consultant has resigned, this Contract has been terminated, Consultant's scope of services has been modified, or Consultant's services under this Contract have been completed.

13. Nondiscrimination

Consultant agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Consultant also shall comply with the Americans With Disabilities Act of 1990 (Pub L. No. 101-336) including Title II of that Act, ORS 659.425, and all regulations and administrative rules established pursuant to those laws.

14. Successors in Interest

The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and approved assigns.

15. Severability

The parties agree that if any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.

16. Waiver

The failure of the City to enforce any provision of this Contract shall not constitute a waiver by the City of that or any other provision.

17. Errors

The Consultant shall perform such additional work as may be necessary to correct errors in the work required under this Contract without undue delays and without additional cost.

18. Governing Law

The provisions of this Contract shall be construed in accordance with the provisions of the laws of the State of Oregon. Any action or suits involving any question arising under this Contract must be brought in the appropriate court in Washington County, Oregon.

19. Amendments

The City and the Consultant may amend this Agreement at any time only by written amendment executed by the City and the Consultant. Unless otherwise provided, if the original Contract required a Resolution, any amendment that increases the amount of compensation payable to the Consultant, exceeding the amount authorized in the previous Resolution, must be approved by Resolution of the City Council. If the original Contract did not require a Resolution, the City Manager, or City Engineer in certain instances, may approve an amendment increasing the amount of compensation, provided the total Contract price falls within the expenditure thresholds established in Resolution 2001-006. The City Engineer may agree to and execute any other amendment that does not affect Contract price, on behalf of the City, including modifications to scope of service or time of performance.

20. License

Prior to beginning work under this Agreement, the Consultant shall provide professional registration number in the space provided on page one of this Agreement, if required by the City.

21. Payment to Vendors and Sub-consultants

The Consultant shall timely pay all suppliers, lessors and sub-consultants providing it services, materials or equipment for carrying out its obligations under this Agreement. The Consultant shall not take or fail to take any action in a manner that causes the City or any materials that the Consultant provides hereunder to be subject to any claim or lien of any person without the City's prior written consent.

22. Exhibits

Each document that is attached to this Contract as an Exhibit shall be labeled with an Exhibit number and listed below. Provisions and covenants contained in Exhibits are hereby incorporated by reference and shall become a part of this Contract as if fully set forth herein. If any item in an Exhibit contradicts this Contract, this Contract shall take precedence over the conflicting item in the Exhibit.

a. List of Exhibits

Exhibit A – Scope of Work

Exhibit B – Fee Schedule

23. Merger Clause

This Contract and attached exhibits constitutes the entire agreement between the parties. No waiver, consent, modification, or change of terms of this Contract 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 specific instances and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Contract. Consultant, by the signature of its authorized representative, hereby acknowledges that he or she has read this Contract, understands it and agrees to be bound by its terms and conditions.

24. Mediation

- a. Should any dispute arise between the parties to this agreement it is agreed that such dispute will be submitted to a mediator prior to any litigation and the parties hereby expressly agree that no claim or dispute arising under the terms of this agreement shall be resolved other than first through mediation and only in the event said mediation efforts fail, through litigation.
- b. The parties shall exercise good faith efforts to select a mediator who shall be compensated equally by both parties. Mediation will be conducted in Portland, Oregon, unless both parties agree in writing otherwise. Both parties agree to exercise good faith efforts to resolve disputes covered by this section through this mediation process. If a party requests mediation and the other party fails to respond within ten (10) days, or if the parties fail to agree on a mediator within ten (10) days, a mediator shall be appointed by the presiding judge of the Washington County Circuit Court upon the request of either party. The parties shall have any rights at law or in equity with respect to any dispute not covered by this Section.