

**ENGINEERING SERVICES AGREEMENT  
WITH THE CITY OF WEST LINN  
VOLPP STREET IMPROVEMENTS PROJECT**

**City:** City of West Linn, a municipal corporation of the State of Oregon.  
**Contractor:** KPFF, Inc.  
111 SW Fifth Avenue, Suite 2600  
Portland, OR 97204  
**Term:** January 31, 2022 – October 31, 2022  
**Compensation:** Not to exceed \$87,700

**RECITALS**

**WHEREAS**, the City's Fiscal Year **FY 22/23** budget provides for the design of Volpp Street Improvements;

**WHEREAS**, the accomplishment of the work and services described in this Agreement is necessary and essential to the public works improvement program of the City; and

**WHEREAS**, the City desires to engage the Engineer to render professional engineering services for the project described in this Agreement, and the Engineer is willing and qualified to perform such services;

**THEREFORE**, in consideration of the promises and covenants contained herein, the parties hereby agree as follows:

**1. Engineer's Scope of Services**

The Engineer shall perform professional engineering services relevant to the Project in accordance with the terms and conditions set forth herein, and as provided in Exhibit 1, which is attached hereto and by this reference made a part of this Agreement.

**2. Effective Date and Duration**

This agreement shall become effective upon the date of execution by the City and shall expire, unless otherwise terminated or extended, on completion of the work or **October 31, 2022**, whichever comes first. All work under this Agreement shall be completed prior to the expiration of this Agreement.

**3. Engineer's Fee**

**A. Basic Fee**

- 1)** As compensation for Basic Services as described in Exhibit 1 of this Agreement, and for services required in the fulfillment of Paragraph 1, the Engineer shall be paid on an hourly rate based upon the "Schedule of Rates" in Exhibit 1 of this agreement, which shall constitute full and complete payment for said services and all expenditures which may be made and expenses incurred, except as otherwise expressly provided in this Agreement. The Basic Fee shall not exceed

the amount of **eighty seven thousand and seven hundred** dollars (\$87,700) without prior written authorization.

- 2) The parties hereto do expressly agree that the Basic Fee is based upon the Scope of Services provided in Exhibit 1 and is not necessarily related to the estimated construction cost of the Project. In the event that the actual construction cost differs from the estimated construction cost, the Engineer's compensation will not be adjusted unless the Scope of Services changes and is authorized and accepted by the City.

**B. Payment Schedule for Basic Fee**

Payments shall be made upon receipt of billings based on the work completed. Billings shall be submitted by the Engineer periodically, but not more frequently than monthly. Payment by the City shall release the City from any further obligation for payment to the engineer for service or services performed or expenses incurred as of the date of the statement of services. Payment shall be made only for work actually completed as of the date of invoice. Payment shall not be considered acceptance or approval of any work or waiver of any defects therein.

**C. Payment for Special Services**

Only when directed in writing by the City, and signed by both parties as an addendum to this Agreement, the Engineer shall furnish or acquire for the City the professional and technical services based on the hourly rate schedule as described in Exhibit 1 of this contract for minor project additions and/or alterations.

**D. Certified Cost Records**

The Engineer shall furnish certified cost records for all billings pertaining to other than lump sum fees to substantiate all charges. For such purposes, the books of account of the Engineer shall be subject to audit by the City. The Engineer shall complete work and cost records for all billings in accordance with generally accepted accounting principles.

**E. Contract Identification**

The Engineer shall furnish to the City its employer identification number, as designated by the Internal Revenue Service, or social security number, as the City deems applicable.

**4. Ownership of Plans and Documents: Records**

- A. The field notes, design notes, and original drawings of the construction plans, including any copyright therein, as instruments of service, are and shall remain, the property of the Engineer; however, the City shall be furnished, at no additional cost, one set of previously approved reproducible drawings of the original drawings of the work. The City shall have non-exclusive, unlimited license to use the materials received from the Engineer in any way the City deems necessary. Any use, re-use or alteration of any materials other than as contemplated by the applicable Scope of Services shall be at the

City's sole risk, unless written permission has been received from Engineer prior to any such use.

- B. The Engineer shall furnish to the City, copies of all maps, records, field notes, and soil tests which were developed in the course of work for the City and for which compensation has been received by the Engineer at no additional expense to the City except as provided elsewhere in this Agreement.

5. **Assignment/Delegation**

Neither party shall assign, sublet or transfer any interest in or duty under this Agreement without the written consent of the other and no assignment shall be of any force or effect whatsoever unless and until the other party has so consented. If City agrees to assignment of tasks to a subcontract, the approval by City of any subcontractor nor anything contained herein shall be deemed to create any contractual relation between the subcontractor and City.

6. **Engineer is Independent Contractor**

- A. The City's project director, or designee, shall be responsible for determining whether Engineer's work product is satisfactory and consistent with this agreement, but Engineer is not subject to the direction and control of the City. Engineer shall be an independent contractor for all purposes and shall be entitled to no compensation other than the compensation provided for under Section 3 of this Agreement.
- B. Engineer is an independent contractor and not an employee of City. Engineer acknowledges Engineer's status as an independent contractor and acknowledges that Engineer is not an employee of the City for purposes of workers compensation law, public employee benefits law, or any other law. All persons retained by Engineer to provide services under this contract are employees of Engineer and not of City. Engineer acknowledges that **KPFF, Inc.** is not entitled to benefits of any kind to which a City employee is entitled and that **KPFF, Inc.** shall be solely responsible for workers compensation coverage for **KPFF, Inc.** employees and all other payments and taxes required by law. Furthermore, in the event that Engineer is found by a court of law or an administrative agency to be an employee of the City for any purpose, City shall be entitled to offset compensation due, or to demand repayment of any amounts paid to Engineer under the terms of the agreement, to the full extent of any benefits or other remuneration Engineer receives (from City or third party) as a result of said finding and to the full extent of any payments that City is required to make (to Engineer or to a third party) as a result of said finding.
- C. The undersigned Engineer hereby represents that no employee of the City or any partnership or corporation in which a City employee has an interest, has or will receive any remuneration of any description from the Engineer, either directly or indirectly, in connection with the letting or performance of this Agreement, except as specifically declared in writing.

- D. If this payment is to be charged against Federal funds, Engineer certifies that he/she is not currently employed by the Federal Government and the amount charged does not exceed his/her normal charge for the type of service provided.
- E. Engineer and its employees, if any, are not active members of the Oregon Public Employees Retirement System and are not employed for a total of 600 hours or more in the calendar year by any public employer participating in the Retirement System.
- F. Engineer certifies that it currently has a City business tax receipt or will obtain one prior to delivering services under this Agreement.
- G. Engineer is not an officer, employee, or agent of the City as those terms are used in ORS 30.265.

**7. Indemnity**

- A. The City has relied upon the professional ability and training of the Engineer as a material inducement to enter into this Agreement. Engineer represents to the City that the work under this contract will be performed in accordance with the professional standards of skill and care ordinarily exercised by members of the engineering profession under similar conditions and circumstances as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Engineer's work by the City shall not operate as a waiver or release. Acceptance of documents by City does not relieve Engineer of any responsibility for negligent or wrongful design deficiencies, errors, or omissions.
- B. Claims for other than Professional Liability. Engineer shall defend, save and hold harmless the City of West Linn, its officers, agents, and employees from all claims, suits, or actions and all expenses incidental to the investigation and defense thereof, of whatsoever nature, including intentional acts to the extent resulting from or arising out of the activities of Engineer or its subcontractors, sub-consultants, agents or employees under this contract. Nothing in this section requires the Contractor or its insurer to indemnify City for any claims or losses caused by the City. If any aspect of this indemnity shall be found to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this indemnification.
- C. Claims for Professional Liability. Engineer shall defend, save and hold harmless the City of West Linn, its officers, agents, and employees from all claims, suits, or actions and all expenses incidental to the investigation and defense thereof, to the extent arising out of the professional negligent acts, errors or omissions of Engineer or its subcontractors, sub-consultants, agents or employees in performance of professional services under this agreement. Nothing in this section requires the Contractor or its insurer to indemnify City for any claims or losses caused by the City.
- D. As used in subsections B and C of this section, a claim for professional responsibility is a claim made against the City in which the City's alleged liability results directly from the quality of the professional services provided by Engineer, regardless of the type of claim

made against the City. A claim for other than professional responsibility is a claim made against the City in which the City's alleged liability results from an act or omission by Engineer unrelated to the quality of professional services provided by Engineer.

**8. Insurance**

Engineer and its subcontractors shall maintain insurance acceptable to City in full force and effect throughout the term of this contract. Such insurance shall cover risks arising directly or indirectly out of Engineer's activities or work hereunder, including the operations of its subcontractors of any tier. Such insurance shall include provisions that such insurance is primary insurance with respect to the interests of City and that any other insurance maintained by City is excess and not contributory insurance with the insurance required hereunder.

The policy or policies of insurance maintained by the Engineer and its subcontractors shall provide at least the following limits and coverages:

**A. Commercial General Liability Insurance**

Engineer shall obtain, at Engineer's expense, and keep in effect during the term of this contract, Commercial General Liability Insurance covering Bodily Injury and Property Damage on an "occurrence" form. This coverage shall include Contractual Liability insurance for the indemnity provided under this contract and Product and Completed Operations. Such insurance shall be primary and non-contributory. The following insurance will be carried:

<u>Coverage</u>	<u>Limit</u>
General Aggregate	\$3,000,000
Products-Completed Operations Aggregate	3,000,000
Personal & Advertising Injury	2,000,000
Each Occurrence	2,000,000
Fire Damage (Any one fire)	500,000
Medical Expense (Any one person)	5,000

**B. Professional Liability**

Engineer shall obtain, at Engineer's expense, and keep in effect during the term of this contract, Professional Liability Insurance covering any damages caused by an error, omission or any negligent act. Combined single limit per occurrence shall not be less than \$2,000,000, or the equivalent. Annual aggregate limit shall not be less than \$3,000,000 and filed on a "claims-made" form.

**C. Commercial Automobile Insurance**

Engineer shall also obtain, at engineer's expense, and keep in effect during the term of the contract Commercial Automobile Liability coverage on an "occurrence" form including coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than \$2,000,000.

**D. Workers' Compensation Insurance**

The Engineer, its subcontractors, if any, and all employers providing work, labor or materials under this Contract who 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. Out-of-state employers must provide Oregon workers' compensation coverage for their workers that complies with ORS 656.126. This shall include Employer's Liability Insurance with coverage limits of not less than \$500,000 each accident.

**E. Additional Insured Provision**

The Commercial General Liability Insurance Policy and Automobile Policy shall include the City its officers, directors, and employees as additional insureds with respect to this contract. Coverage will be endorsed to provide a per project aggregate.

**F. Extended Reporting Coverage**

If any of the aforementioned liability insurance is arranged on a "claims made" basis, Extended Reporting coverage will be required at the completion of this contract to a duration of 24 months or the maximum time period the Engineer's insurer will provide such if less than 24 months. Engineer will be responsible for furnishing certification of Extended Reporting coverage as described or continuous "claims made" liability coverage for 24 months following contract completion. Continuous "claims made" coverage will be acceptable in lieu of Extended Reporting coverage, provided its retroactive date is on or before the effective date of this contract. Coverage will be endorsed to provide a per project aggregate.

**G. Notice of Cancellation**

There shall be no cancellation, material change, or intent not to renew insurance coverage without 30 days written notice to the City. Any failure to comply with this provision will not affect the insurance coverage provided to the City. The 30 days' notice of cancellation provision shall be physically endorsed on to the policy.

**H. Insurance Carrier Rating**

Coverage provided by the Engineer must be underwritten by an insurance company deemed acceptable by the City. The City reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.

**I. Certificates of Insurance**

As evidence of the insurance coverage required by the contract, the Engineer shall furnish a Certificate of Insurance to the City. No contract shall be effected until the required certificates have been received and approved by the City. A renewal certificate will be sent to the address below 30 days prior to coverage expiration.

Certificates of Insurance should read "Insurance certificate pertaining to contract for (Name of project). The City of West Linn, its officers, directors and employees shall be added as additional insureds with respects to this contract. Insured coverage is primary" in the description portion of certificate.

J. Primary Coverage Clarification

The parties agree that Engineer's coverage shall be primary to the extent permitted by law. The parties further agree that other insurance maintained by the City is excess and not contributory insurance with the insurance required in this section.

K. Cross-Liability Clause

A cross-liability clause or separation of insureds clause will be included in general liability.

Engineer's insurance policy shall contain provisions that such policies shall not be canceled or their limits of liability reduced without 30 days prior notice to City. A copy of each insurance policy, certified as a true copy by an authorized representative of the issuing insurance company, or at the discretion of City, in lieu thereof, a certificate in form satisfactory to City certifying to the issuance of such insurance shall be forwarded to:

Erich Lais, PE, Assistant City Engineer City of West Linn 22500 Salamo Road West Linn, OR 97068	Ph: 503- 722-3434 Fax: 503-insert # Email: elais@westlinnoregon.gov
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Such policies or certificates must be delivered prior to commencement of the work. Thirty days cancellation notice shall be provided City by mail to the name at the address listed above in event of cancellation or non-renewal of the insurance.

The procuring of such required insurance shall not be construed to limit Engineer's liability hereunder. Notwithstanding said insurance, Engineer shall be obligated for the total amount of any damage, injury, or loss to the extent caused by negligence or wrongful acts in the performance of services with this contract.

9. Termination Without Cause

At any time and without cause, City shall have the right, in its sole discretion, to terminate this Agreement by giving notice to Engineer. If City terminates the contract pursuant to this paragraph, it shall pay Engineer for services rendered to the date of termination. In no circumstance shall profit or overhead on unperformed work be due to Engineer.

10. Termination With Cause

A. City may terminate this Agreement effective upon delivery of written notice to Engineer, or at such later date as may be established by City, under any of the following conditions:

- 1) If City funding from federal, state, local, or other sources is not obtained and continued at levels sufficient to allow for the purchase of the indicated quantity of services. This Agreement may be modified to accommodate a reduction in funds.
- 2) If Federal or State regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Agreement.

- 3) If any license or certificate required by law or regulation to be held by Engineer, its subcontractors, agents, and employees to provide the services required by this Agreement is for any reason denied, revoked, or not renewed.
- 4) If Engineer becomes insolvent, if voluntary or involuntary petition in bankruptcy is filed by or against Engineer, if a receiver or trustee is appointed for Engineer, or if there is an assignment for the benefit of creditors of Engineer.

Any such termination of this agreement under paragraph (A) shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

- B.** City, by written notice of default (including breach of contract) to Engineer, may terminate the whole or any part of this Agreement:
- 1) If Engineer fails to provide services called for by this agreement within the time specified herein or any extension thereof, or
  - 2) If Engineer fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this agreement in accordance with its terms, and after receipt of written notice from City, fails to correct such failures within ten days or such other period as City may authorize.

The rights and remedies of City provided in the above clause related to defaults (including breach of contract) by Engineer shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

If City terminates this Agreement under paragraph (B), Engineer shall be entitled to receive as full payment for all services satisfactorily rendered and expenses incurred, an amount which bears the same ratio to the total fees specified in this Agreement as the services satisfactorily rendered by Engineer bear to the total services otherwise required to be performed for such total fee; provided, that there shall be deducted from such amount the amount of damages, if any, sustained by City due to breach of contract by Engineer. Damages for breach of contract shall be those allowed by Oregon law, reasonable and necessary attorney fees, and other costs of litigation at trial and upon appeal. No payment shall be due to Engineer until City's damages are fully complete and calculated. If the amount of damage owed to the City is more than the amount owed to Engineer, Engineer shall tender the balance owed to City upon demand.

Any wrongful exercise of a termination for cause shall be converted to a termination without cause and Engineer's remedy shall be as limited therein

**11. Non-Waiver**

The failure of either party to insist upon or enforce strict performance by the other party of any of the terms of this Agreement or to exercise any rights hereunder, should not be construed as a waiver or relinquishment to any extent of its rights to assert or rely upon such terms or rights on any future occasion.

**12. Method and Place of Giving Notice, Submitting Bills and Making Payments**



All notices, bills and payments shall be made in writing and may be given by personal delivery, mail, or by fax. Payments may be made by personal delivery, mail, or electronic transfer. The following addresses shall be used to transmit notices, bills, payments, and other information:

<b>City of West Linn</b>	<b>Contractor</b>
Attn: Finance Department	Attn: Jessica Adams, Associate
22500 Salamo Road West Linn, OR 97068	Address: 111 SW Fifth Avenue, Suite 2600 Portland, OR 97204
Phone: 503-657-0331	Phone: 503-542-3860
Fax: 503-650-9041	Fax: 503-274-4681
Email: acctspayable@westlinnoregon.gov	Email Address: Jessica.Adams@kpff.com

and when so addressed, shall be deemed given upon deposit in the United States mail, postage prepaid, or when so faxed, shall be deemed given upon successful fax. In all other instances, notices, bills and payments shall be deemed given at the time of actual delivery. Changes may be made in the names and addresses of the person to whom notices, bills and payments are to be given by giving written notice pursuant to this paragraph.

**13. Merger**

This writing is intended both as a final expression of the Agreement between the parties with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement. No modification of this Agreement shall be effective unless and until it is made in writing and signed by both parties.

**14. Force Majeure**

Neither City nor Engineer shall be considered in default because of any delays in completion and responsibilities hereunder due to causes beyond the control and without fault or negligence on the part of the parties so disabled, including but not restricted to, an act of God or of a public enemy, civil unrest, volcano, earthquake, fire, flood, epidemic, quarantine restriction, area-wide strike, freight embargo, unusually severe weather or delay of subcontractor or supplies due to such cause; provided that the parties so disabled shall within ten days from the beginning of such delay, notify the other party in writing of the cause of delay and its probable extent. Such notification shall not be the basis for a claim for additional compensation. Each party shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon cessation of the cause, diligently pursue performance of its obligation under the Agreement.

**15. Non-Discrimination**

Engineer agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Engineer also shall comply with the Americans with Disabilities Act of 1990, as amended, ORS 659A.142, and all regulations and administrative rules established pursuant to those laws.

**16. Errors**

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

**17. Extra (Changes) Work**

Only **Lance Calvert, PE – City Engineer/Public Works Director** may authorize extra (and/or change) work. Failure of Engineer to secure authorization for extra work shall constitute a waiver of all right to adjustment in the contract price or contract time due to such unauthorized extra work and Engineer thereafter shall be entitled to no compensation whatsoever for the performance of such work.

**18. Governing Law**

The provisions of this Agreement 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 Agreement must be brought in the appropriate court of the State of Oregon.

**19. Compliance With Applicable Law**

Engineer shall comply with all applicable federal, state, local laws and ordinances, including but not limited to:

- A. Engineer shall pay promptly, as due, all persons supplying labor or materials for the prosecution of the work provided for in the contract, and shall be responsible for such payment of all persons supplying such labor or material to any Subcontractor.
- B. Engineer shall promptly pay all contributions or amounts due the Industrial Accident Fund from such Engineer or Subcontractor incurred in the performance of the contract.
- C. Engineer shall not permit any lien or claim to be filed or prosecuted against the City on account of any labor or material furnished and agrees to assume responsibility for satisfaction of any such lien so filed or prosecuted.
- D. Engineer and any Subcontractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.617.
- E. If Engineer fails, neglects or refuses to make prompt payment of any claim for labor or materials furnished to the Engineer or a Subcontractor by any person in connection with the contract as such claim becomes due, the City may pay such claim to the persons furnishing the labor or material and charge the amount of payment against funds due or to become due Engineer by reason of the contract. The payment of a claim in the manner authorized hereby shall not relieve the Engineer or his surety from his or its obligation with respect to any unpaid claim. If the City is unable to determine the validity of any claim for labor or material furnished, the City may withhold from any current payment due Engineer an amount equal to said claim until its validity is determined and the claim, if valid, is paid.

- F. If the Engineer fails, neglects or refuses to pay a person that provides labor or materials in connection with the public improvement contract within 30 days after receiving payment from the contracting agency, the Engineer owes the person the amount due plus interest charges that begin at the end of the 10-day period within which payment is due under ORS 279C.580 (4) and that end upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest on the amount due is nine percent per annum. The amount of interest may not be waived.
- G. Engineer shall promptly, as due, make payment to any person, copartnership, association, or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to employees of such Engineer, of all sums which the Engineer agrees to pay for such services and all monies and sums which the Engineer collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service.
- H. Engineer shall pay employees for overtime work performed under the contract in accordance with ORS 653.010 to 653.261 and the Fair Labor Standards Act of 1938 (29 USC 201, *et seq.*).
- I. The Engineer must give notice to employees who work on this contract in writing, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and the days per week that the employees may be required to work.
- J. All subject employers working under the Engineer are either employers that will comply with ORS 656.017, or employers that are exempt under ORS 656.126.
- K. All sums due the State Unemployment Compensation Fund from the Engineer or any Subcontractor in connection with the performance of the contract shall be promptly so paid.
- L. Engineer certifies compliance with all applicable Oregon tax laws, in accordance with ORS 305.385.
- M. Engineer certifies that it has not and will not discriminate against a subcontractor in awarding a subcontract because the subcontractor is a disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emerging small business that is certified under ORS 200.055. Without limiting the foregoing, Consultant expressly agrees to comply with: (i) Title VI of the Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990, (iv) ORS 659.425, (v) all regulations and administrative rules established pursuant to those laws; and (vi) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

- N. The Engineer represents and warrants that Engineer (i) is not currently an employee of the federal government or the State of Oregon, and (ii) meets the specific independent contractor standards of ORS 670.600.
- O. If Engineer is a foreign contractor as defined in ORS 279A.120, Engineer shall comply with that section and the Contracting Agency must satisfy itself that the requirements of ORS 279A.120 have been complied with by Engineer before Contracting Agency issues final payment under this agreement.
- P. If this Contract exceeds \$50,000, is not otherwise exempt, and includes work subject to prevailing wage, Engineer shall comply with ORS 279C.838, ORS 279C.840, and federal law.
- Q. Engineer shall not provide or offer to provide any appreciable pecuniary or material benefit to any officer or employee of City in connection with this Agreement in violation of ORS chapter 244.
- R. Engineer shall ensure that any lawn and landscape maintenance shall contain a condition requiring the contractor to salvage, recycle, compost or mulch yard waste material at an approved site, if feasible and cost-effective.

Any other condition or clause required by law to be in this Agreement shall be considered included by this reference. In the event of conflict, these required conditions and clauses control over any contrary or different conditions or terms of this Agreement

**20. Conflict Between Terms**

It is further expressly agreed by and between the parties that should there be any conflict between the terms of this Agreement and any of the exhibits or attachments that together comprise the contract, this Agreement shall control and inclusion of any exhibit or attachment that has conflicting terms shall not be considered acceptance of the conflicting terms. If there is a conflict between the terms of this Agreement and any exhibit or attachment, the terms of this Agreement shall control.

**21. Access to Records**

City shall have access to such books, documents, papers and records of Engineer as are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts and transcripts.

**22. Audit**

Engineer shall maintain records to help assure conformance with the terms and conditions of this Agreement, and to help assure adequate performance and accurate expenditures within the contract period. Engineer agrees to permit City, the State of Oregon, the federal government, or

their duly authorized representatives to audit all records pertaining to this Agreement to help assure the accurate expenditure of funds.

**23. Severability**

In the event any provision or portion of this Agreement is held to be unenforceable or invalid by any court of competent jurisdiction, the validity of the remaining terms and provisions shall not be affected to the extent that it did not materially affect the intent of the parties when they entered into the agreement.

**24. Complete Agreement**

This Agreement and attached exhibit(s) constitute 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 specific instances and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. Engineer, by the signature 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.

**IN WITNESS WHEREOF**, City has caused this Agreement to be executed by its duly authorized undersigned officer and Engineer has executed this Agreement on the date hereinabove first written.

**ENGINEER**

By: KPFF, Inc. \_\_\_\_\_  
Print Firm's Name

Jessica Adams, Associate \_\_\_\_\_  
Print Name & Title of Engineer's Authorized Representative

Jessica Adams \_\_\_\_\_  
Signature of Firm's Representative

1/25/22 \_\_\_\_\_  
Date

**CITY OF WEST LINN**

[Signature] \_\_\_\_\_  
By: Signature

JOHN WILLIAMS, DEPUTY CITY MGR \_\_\_\_\_  
Print Name & Title

3/10/22 \_\_\_\_\_  
Date



## SCOPE OF SERVICES AND FEE

### **Volpp St Improvements – Concept Design**

#### **A. PROJECT UNDERSTANDING**

The proposed project site is located in West Linn, OR, at the southwest edge of Willamette Park, adjacent to the Willamette River. The City of West Linn (City) would like to improve Volpp St between 4<sup>th</sup> St and 12<sup>th</sup> St. The City would also like a design created that can be further developed.

Proposed improvements may include:

- Widening Volpp St to 28-ft in width with on-street parking.
- Construction of a new curb and sidewalk on the south side of the street between 4<sup>th</sup> St and 12<sup>th</sup> St. This work is likely to include relocating power poles and streetlights to accommodate the revised section.
- The design will be adjusted to avoid retaining walls to the extent feasible.
- Provide for pedestrian crossing(s) with curb ramps on Volpp St at key locations between 4<sup>th</sup> St and 12<sup>th</sup> St.
- Improvements will likely include installation of a new storm drainage system to accommodate the revised section.
- All improvements shall follow the City's Public Works Design Standards.

The goals of our efforts during this concept phase of work include:

- Working with the City to determine the preferred section for Volpp St to better match conditions along the corridor.
- Development of conceptual design drawings for use in determining costs for proposed improvements.
- Support City staff in public involvement (graphics and attendance, and notes).

KPFF will achieve the proposed efforts with Angelo Planning Group, who will provide code and regulatory compliance services as further described in Task 4 on the following page.

#### **B. TASK BREAKDOWN**

We are proposing to provide the following services under this initial phase of work:

##### **Task 1: Project Management and Administration**

- Process contract.
- Develop and maintain project schedule.
- Prepare and process invoices on a monthly basis.
- ***Deliverables:***
  - Project schedule.
  - Monthly invoices.

##### **Task 2: Research and Data Gathering**

- Attend kick off meeting with City staff. *This proposal assumes attendance at one, two-hour web based virtual meeting.*
- Research available existing data provided by the City.

## SCOPE OF SERVICES AND FEE

Volpp St Improvements – Concept Design

January 7, 2022

Page 2

- Coordinate our work with the City.
- Review design standards relevant to the proposed improvements and define design criteria.
- Conduct site investigation and existing condition assessment.
- Develop design criteria and work with City staff to develop the preferred roadway section for Volpp St.
- **Deliverables:**
  - Technical letter documenting design criteria.

### **Task 3A: Field Control and Boundary Survey**

- Establish horizontal and vertical control.
  - Horizontal datum will be based on Oregon Coordinate Reference System (OCRS).
  - Vertical datum will be based on NAVD88.
- Locate and tie existing monuments.
- Resolve tax lot 500 on tax map 31E02 Clackamas County.
- Review title report provided by Owner.

### **Task 3B: Topographic Survey**

- Locate and map existing above ground features of the subject property as shown in section E. Project Limits.
- Locate and map existing above ground features 35-feet south of existing edge of asphalt along Volpp St as shown in section E. Project Limits.
- Locate and map all trees 6-inches and larger diameter at breast height (DBH).
- Map a 1-foot contour interval.
- Map underground utilities within the entire right-of-way fronting the subject property based on the following hierarchy of information – (1) above ground evidence, (2) locate paint marks, and (3) reference maps made available by the various utility providers. Note – (a) Some utility providers do not release mapping information to the public; (b) Locate paint marks are limited to those areas within public right-of-way and may not reflect actual locations; and (c) All utility locations should be field verified (potholed) prior to construction.
- **Deliverables:**
  - Final signed boundary and topographic survey.

### **Task 4: Code and Regulatory Compliance Support**

- Prepare West Linn Development Code and Regulatory Audit that identifies key requirements that will influence project design alternatives.
- Evaluate project design alternatives against the audit findings and provide input to the project team on design / regulatory issues.
- Prepare summary memo of audit and key findings.
- Meet with City Planning Department staff to review the audit and confirm requirements.
- **Deliverables:**
  - Summary memo of audit findings.

**Task 5: Conceptual Design**

- Prepare for, attend, and document up to three, two-hour web-based meetings with City staff to solicit input regarding the existing conditions as well as alternative solutions.
- Review alternative layouts with City staff.
- Coordinate our work with the City.
- Coordinate work with City Planning staff to solicit input relative to needed land use approvals.
- Develop concept level exhibits for the preferred design. Plans will include a horizontal layout and typical sections.
- Develop cost estimates for the preferred design.
- Develop a technical memorandum evaluating the pros and cons of the preferred design and the alternative as well as anticipated permitting challenges associated with each. This will include a list of anticipated permits required for the proposed construction and an estimate of the timelines needed for the required permits.
- Work with City staff to define a preferred design.
- Refine the plan and construction cost estimate for the preferred design based on City feedback.
- ***Deliverables:***
  - Draft Technical Memorandum and exhibits for City review and comment.
  - Final Technical Memorandum and exhibits incorporating City comments.
  - Final Concept Plan and Estimates for the preferred design.

**Task 6: Public Involvement Support**

- Attend City coordinated and led public involvement meetings. *This proposal assumes attendance at two, two-hour web-based virtual meetings.*
- Prepare up two exhibits to support Public Involvement meetings as needed by the city.
- ***Deliverables:***
  - Exhibits to support City-led meeting.
  - Meeting notes summary.

**C. ASSUMPTIONS & CLARIFICATIONS**

- Floodplain, wetland, and environmental work is not included in this proposal.
- Final design of proposed improvements is not included as part of this proposal.
- Power pole and street light relocation is not included as part of this proposal.
- Access to the site is provided to KPFF crews.
- Preparation of land-use applications are not included with this phase of work but would be covered within a later phase of work.
- This proposal assumes that the work as defined herein will begin within three months of the proposal date. If the project is placed on hold or delayed, KPFF reserves the right to adjust the fee based on the project start date.



## SCOPE OF SERVICES AND FEE

Volpp St Improvements – Concept Design

January 7, 2022

Page 4

### D. PROPOSED FEES

Our not-to-exceed fee for this project is outlined below and is based on the Scope of Services from the previous sections and the Project Limits in the following section E. We will bill for our work monthly based on the hours expended during that month. Reimbursable expenses will be billed at our direct cost.

Volpp St Improvements		
Task 1:	Project Management and Administration	3,800
Task 2:	Research and Data Gathering	6,750
Task 3A:	Field Control and Boundary Survey	7,780
Task 3B:	Topographic Survey	31,860
Task 4:	Code and Regulatory Compliance	3,500
Task 5:	Conceptual Design	27,800
Task 6:	Public Involvement Support	6,210
<b>Total Not-to-Exceed Fee Included Reimbursables</b>		<b>\$87,700</b>

Should additional services, including site visits, beyond those noted in the above Scope of Services become necessary, the scope and fee will be negotiated as part of an Additional Service Request (ASR).

### E. PROJECT LIMITS

