

**City Council  
Agenda Memo**



**City Council  
Meeting Date: 05/08/2014**

**TO: Larry D. Gilley, City Manager**  
**FROM: Megan R. Santee, Director of Public Works**  
**SUBJECT: Oral Resolution authorizing the City Manager to enter into a Professional Services Contract with Wilson & Company for engineering services**

**GENERAL INFORMATION**

On March 27, 2014, the Engineering Division of the Public Works Department published a Request for Proposal for engineering services for the reconstruction of Hardison Lane from Maple Street to Oldham Lane. Three proposals were received and, following reviews and interviews of all three firms, Wilson & Company was selected as the successful proposer. Staff is recommending the City enter into a professional services contract for engineering services for Construction Plans and potential Contract Documents for the reconstruction of Hardison Lane from Maple Street to Oldham Lane.

**FUNDING/FISCAL IMPACT**

The total cost of the engineering services is not to exceed \$100,000. This contract will be funded with CIP funds.

**STAFF RECOMMENDATION**

Staff recommends that the City Council approve an oral resolution that authorizes the City Manager to enter into a Professional Services Contract with Wilson & Company.

**ATTACHMENTS**

Professional Services Contract

Prepared by:

Name: Megan R. Santee

Title: Director Public Works

Disposition by City Council

- Approved      Ord/Res# \_\_\_\_\_
- Denied      \_\_\_\_\_
- Other      \_\_\_\_\_

Item No. 6.3

\_\_\_\_\_  
City Secretary



**PROFESSIONAL SERVICES CONTRACT  
ENGINEERS AND ARCHITECTS**

This contract, dated \_\_\_\_\_, 2014, is between the City of Abilene ("City"), and Wilson R. Company, Inc. ("Consultant").

The City wants to contract for Engineering and Plans for Hardison Ln., and the Consultant will provide professional services to assist in accomplishing that objective.

**I. TERMS**

In consideration of the compensation stated in paragraph II, the Consultant must provide all services as described in Attachment A, which is incorporated by reference for all purposes. The Consultant must complete all services by a mutually agreed upon date.

**II. PAYMENT**

Payment is according to Attachment A.

**III. ASSIGNMENT**

The Consultant may not assign in whole or in part any rights, duties, obligations or interest arising from this agreement without the City's prior written consent.

**IV. AMENDMENT OR MODIFICATION**

This contract, including attachments, constitutes the entire agreement of the parties. Any statements, promises, or agreements made by either party or its agent which are not contained in this contract are of no effect. This contract may not be amended or modified except by both parties' written consent.

**V. OWNERSHIP OF DOCUMENTS AND MATERIALS**

All documents and materials prepared by Consultant under the terms of this contract are the Consultant's property from the time of preparation. Consultant will deliver copies of the documents and materials to the City or make them available for inspection *whenever requested*. City has the

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right to make duplicate copies of such documents or materials for its own file or use for any other such purposes as the City deems necessary and there shall be no additional costs incurred because of such copying or use.

## **VI. NONDISCLOSURE**

The Consultant may not show to any person or entity any documents, reports, plans, programs, reports, drawings, or any other material which Consultant prepares or acquires in performing this contract, including any duplicate copies kept by Consultant. The Consultant may not disclose to any person or entity any information regarding the City's activities. The City may, however, specifically authorize a limited disclosure at its discretion.

## **VII. INDEMNITY**

### **A. Definitions**

For the purpose of this section the following definitions apply:

“City” shall mean all officers, agents and employees of the City of Abilene.

“Claims” shall mean all claims, liens, suits, demands, accusations, allegations, assertions, complaints, petitions, proceedings and causes of action of every kind and description brought for damages.

“Consultant” includes the corporation, company, partnership, or other entity, its owners, officers, and/or partners, and their agents, successors, and assigns.

“Consultant’s employees” shall mean any employees, officers, agents, subcontractors, licensee and invitees of Consultant.

“Damages” shall mean each and every injury, wound, hurt, harm, fee, damage, cost, expense, outlay, expenditure or loss of any and every nature, including but not limited to:

- (i) injury or damage to any property or right
- (ii) injury, damage, or death to any person or entity
- (iii) attorneys fees, witness fees, expert witness fees and expenses, and
- (iv) all other costs and expenses of litigation

“Premise Defects” shall mean any defect, real or alleged, which now exists or which may hereafter arise upon the premises.

“Proven” shall mean that a court of competent jurisdiction has entered a final unappealable judgment on a claim adjudging an entity or person liable for a monetary judgment.

“Sole negligence” shall mean negligence of a party that is unmixed with the fault of any other person or entity.

## **B. Indemnity**

**The Consultant must indemnify, hold harmless, and defend the City from and against liability for any claims arising out of the Consultant's work and activities conducted in connection with this Contract.**

**The Consultant is an independent contractor and is not, with respect to its acts or omissions, an agent or employee of the City.**

**Consultant must at all times exercise reasonable precautions on behalf of, and be solely responsible for, the safety of Consultant's employees while in the vicinity where the work is being done. The City is not liable or responsible for the negligence or intentional acts or omissions of the Consultant or Consultant's employees.**

**The City assumes no responsibility or liability for damages which are directly or indirectly attributable to premise defects. Responsibility for all such defects is expressly assumed by the Consultant.**

**The City and Consultant must provide the other prompt and timely notice of any covered event which in any way affects or might affect the Consultant or City. The City has the right to compromise and defend the same to the extent of its own interests.**

## **VIII. INSURANCE**

### **A. GENERAL REQUIREMENTS**

The Consultant agrees to maintain the type and amounts of insurance required in this contract throughout the term of the agreement. The Consultant is solely responsible for providing the required certificates of insurance. The City may terminate this agreement if the Consultant fails to timely comply with the insurance requirements.

The required insurance must be issued by a company or companies of sound and adequate financial responsibility and authorized to do business in the State of Texas. All policies are subject to examination and approval by the City's Office of Risk Management for their adequacy as to content, form of protection, and providing company.

The required insurance naming the City as additional insured must be primary insurance and not contributing with any other insurance available to City, under any third party liability policy.

Before the City executes the notice to proceed with any work under this agreement, the Consultant must provide the City Secretary with either an original certificate of insurance or a certified copy of the insurance policy evidencing the required insurance. Thereafter, the Consultant must furnish new certificates or copies of the policy before the expiration date.

### **B. ADDITIONAL REQUIREMENTS**

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The required liability insurances and their certificates shall:

1. Name the City as an additional insured with respect to operations for which this agreement is made.
2. Provide for 30-day advance written notice of cancellation or material change.

**C. TYPES AND AMOUNT OF INSURANCE**

The types of insurance required in this contract are those indicated by initials. If no initials appear on any of items 1 through 6, items 1 through 4 shall be required.

<u>Type</u>	<u>Amount</u>
<input checked="" type="checkbox"/> 1. Workers' Compensation Employer's Liability	Statutory \$100,000 per occurrence
<input checked="" type="checkbox"/> 2. Commercial (Public) Liability including but not limited to: . Premises/Operations . Independent Contractors . Products/Completed Operations . Contractual Liability (Insuring above indemnity) and where the exposures exist . Explosion Collapse and Underground	\$500,000 combined single limit for bodily injury and property damage (per occurrence)
<input checked="" type="checkbox"/> 3. Business Automobile Liability to include coverage for: . Owned/Leased Autos . Non-Owned Autos . Hired Cars	\$500,000 combined single limit for bodily injury and property damage (per occurrence)
<input checked="" type="checkbox"/> 4. Professional Liability	\$500,000 combined single limit (per occurrence)
<input type="checkbox"/> 5. See Addendum for Special Coverages and/or revisions	
<input type="checkbox"/> 6. No Insurance Required	

**IX. VENUE, CHOICE OF LAW AND INTERPRETATION**

Venue for any cause of action arising under this contract is Taylor County, Texas. This contract is governed by the laws of the State of Texas both as to interpretation and performance. This contract shall, in any dispute over its meaning or application, be interpreted fairly and

reasonably, and not more strongly for or against either party.

#### **X. TERMINATION**

This contract may be terminated at any time upon 30 days written notice by City to Consultant. In the event of termination, Consultant will be compensated for work satisfactorily performed before the termination date.

If, through any cause, the Consultant fails to fulfill his obligations under this contract, or if the Consultant violates any of the agreements of this contract, the City has the right to terminate the contract by giving five days written notice to the Consultant. The Consultant will be compensated for work satisfactorily performed before the termination date.

The Consultant, however, is not relieved of liability to the City for damages sustained by the City because of any breach of contract by Consultant. The City may withhold any payments to Consultant for the purpose of setoff until the exact amount of damages due the City from the Consultant is determined and paid.

#### **XI. PROJECT REPRESENTATION**

The City agrees to appoint a Project Representative to assist in obtaining information from various City departments as requested by Consultant and in coordinating, monitoring, and evaluating the project to its completion. The Project Representative has no control over the means, methods, techniques, or procedures employed by Consultant. The City is interested only in the results obtained under this contract; the manner and means of obtaining those results is solely under the Consultant's control.

#### **XII. NOTICE**

All notices must be in writing, hand-delivered or mailed by certified mail, to the other party at the address below. The name and address for notification may be changed by notice to the other party.

**City -**

**James M. Rogge, P.E.  
Interim City Engineer  
City of Abilene  
P.O. Box 60  
Abilene, TX 79604**

**Consultant - ATTN:**

### **XIII. COMPLIANCE WITH LAWS, CHARTER, ORDINANCES**

Consultant, its agents, employees and subcontractors must comply with all applicable federal and state laws, the charter and ordinances of the City of Abilene, and with all applicable rules and regulations promulgated by local, state and national boards, bureaus and agencies. Consultant must obtain all necessary permits and licenses required in completing the work contracted for in this agreement.

### **XIV. NO INDEBTEDNESS**

Consultant agrees that no payments owed by him of any nature whatsoever to the City, including payment in advance for service charges or any sums of any character whatsoever, shall become delinquent or in arrears.

The City will not knowingly award contracts for goods or services to any bidder in arrears to the City for any debt, claim, demand, or account whatsoever, including taxes, penalty and interest. Consultant is responsible for ensuring that no indebtedness exists.

Section 130 of the City Charter authorizes the City to counterclaim and offset against any debt, claim, demand or account owed by the City to any person, firm or corporation in arrears to the City for any debt, claim, demand or account of any nature whatsoever, including taxes, penalty and interest.

### **XV. EQUAL EMPLOYMENT OPPORTUNITY**

It is the policy of the City to recruit, employ, and to provide compensation, promotion, and other conditions of employment without regard to race, color, religion, sex, age, national origin, or disability. The City affirms that employment decisions shall be made only on the basis of bonafide occupational qualifications. The City shall continually review its employment practices and personnel procedures and take positive steps to assure that equality of employment opportunity in the City of Abilene, Texas, is a fact as well as an ideal.

### **XVI. VERIFICATION OF EMPLOYMENT ELIGIBILITY**

Consultant must comply with the Immigration Reform and Control Act (IRCA) and may not knowingly obtain labor or services of an unauthorized alien. Consultant -- not City -- must verify eligibility for employment as required by IRCA.

### **XVII. MINORITY AND WOMEN BUSINESS ENTERPRISES**

The City hereby gives notice that Minority and Women Business Enterprises will be afforded equal opportunities to submit bids in for this contract and will not be discriminated against on the grounds of race, ethnicity, color, sex, religion or national origin in awarding the contract. Technical assistance



is available to Minority and Women Business Enterprises through the Texas Tech University Small Business Development Center, 500 Chestnut St., 6<sup>th</sup> floor, Abilene, Texas, 79602, 325-690-0300.

**XVIII. SALES TAX**

The City qualifies as an exempt agency under the Texas Limited Sales, Excise and Use Tax Act (the "Tax Act"), and is not subject to any State or City sales taxes on materials incorporated into the project. Labor used in the performance of this contract is also not subject to State or City sales taxes. The City will provide an exemption certificate to the Consultant. The Consultant must have a sales tax permit issued by the Comptroller of Public Accounts and shall issue a resale certificate complying with the Tax Act, as amended, when purchasing said materials. The Consultant is responsible for any sales taxes applicable to equipment purchases, rentals, leases, consumable supplies which are not incorporated into the project, tangible personal property purchased for use in the performance of this contract and not completely consumed, or other taxable services used to perform this contract, or other taxes required by law in connection with this contract.

IN WITNESS HEREOF the parties have executed this agreement.

CITY OF ABILENE

WILSON & COMPANY, INC., ENG. + ARCH.  
[INSERT CONSULTANT'S NAME]

By: \_\_\_\_\_  
Larry D. Gilley

By: Derek D. Meier  
DEREK D. MEIER

Title: City Manager

Title: SHAREHOLDER

ATTEST:

Address: 1013 ENERGY DRIVE  
ABILENE, TX

Phone Number: 325-439-8225

Fax Number: 325-695-3299

Federal Tax I.D.# 48-1176300

APPROVED:

\_\_\_\_\_  
City Attorney

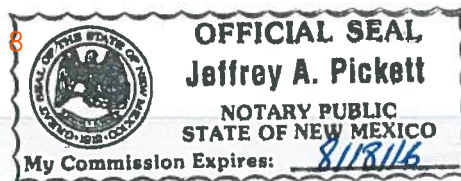
ATTEST: (If Corporation)

\_\_\_\_\_  
Risk Manager

[Signature]  
Corporation's Secretary

Corporate Seal (if available):

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## ATTACHMENT A SCOPE OF SERVICES

This project is to provide the City with Construction Plans and potential Contract Documents for the reconstruction of Hardison Lane from Maple Street to Oldham Lane.

The Consultant will prepare a schedule work plan that indicates each phase of the project from beginning to completion with a goal of completed construction by no later than December 31, 2014.

The plans will be accomplished under the direction of the City of Abilene's Engineering Division. A copy of "SAMPLE" plans and Contract Documents will be furnished to the Consultant to use as a guide, if needed. Included within the Contract Documents will be an Engineers Estimate. This estimate and the contract items of work will be as described and in accordance with the 2006 City of Abilene's Standard Specifications for Construction. If the Consultant does not have a copy, the City will furnish one for use during this project.

The Consultant will be required to make ample exploration of the existing street section (existing base material, pavement, etc.) to determine the quantity and quality of the existing materials that could be utilized during construction. This will require a minimum amount of cores and testing to insure uniformity of the existing and proposed roadway section. The City will furnish the Consultant with available traffic data. If no traffic data is available, the Consultant will obtain the needed traffic data for the pavement design.

The Consultant will complete the NOI for Stormwater Discharges Associated with Construction Activity under TPDES General Permit. The City will pay for the application fee.

The plans will include: a typical section, to be approved by the City Engineer, which will indicate the design for the street structure, profiles and grade lines, design of drainage structures and existing driveway connections, and a traffic control plan.

This area has been surveyed, and the survey information will be electronically transferred to the Consultant for their use. If City performs the construction with in-house labor, the City will provide survey services; otherwise it will be the responsibility of the Consultant to include that item within the Contract Documents.

After the Construction Plans and potential Contract Documents have been approved by the City Engineer and the Project Management Team, the project may be advertised for bid (if City in-house labor is not utilized). Once the City Council has awarded any bid, the Consultant's major role will be accomplished. The Consultant will remain on a stand-by basis for any field changes that may be necessary or other duties that may be required until the construction is complete.

Each month throughout the project, the Consultant shall submit an invoice using the agreed upon wage rates, and a progress report, which describes the work that has been completed during the billing period and the work in progress. If there should be revisions required in the proposed work plan, they should be submitted at this time.

**ATTACHMENT A**  
**PAYMENT SCHEDULE**

Compensation is based on actual hours of work/time devoted to providing the described Engineering services and will be paid according to agreed rate schedule not to exceed \$100,000.00.

The Consultant must submit monthly invoices to City accompanied by an explanation of charges, professional fees, and services. City will pay invoices according to its normal payment procedures.

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Lockton Companies 444 W. 47th Street, Suite 900 Kansas City MO 64112-1906 (816) 960-9000	CONTACT NAME:	
	PHONE (A/C, No, Ext):	FAX (A/C, No):
	E-MAIL ADDRESS:	
	INSURER(S) AFFORDING COVERAGE	
	INSURER A : Zurich American Insurance Company	NAIC # 16535
INSURED 4011 Wilson & Company 4900 Lang Ave., NE, Ste. 200 Albuquerque NM 87109	INSURER B :	
	INSURER C :	
	INSURER D :	
	INSURER E :	
	INSURER F :	

COVERAGES WILCO15 CERTIFICATE NUMBER: 12910501 REVISION NUMBER: XXXXXXXX

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input checked="" type="checkbox"/> LOC <input checked="" type="checkbox"/> OTHER	Y	N	GLO 5944326-04	6/1/2013	6/1/2014	EACH OCCURRENCE	\$ 1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 300,000
							MED EXP (Any one person)	\$ 10,000
							PERSONAL & ADV INJURY	\$ 1,000,000
							GENERAL AGGREGATE	\$ 2,000,000
							PRODUCTS - COMP/OP AGG	\$ 2,000,000
								\$
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	Y	N	BAP 5944327-04	6/1/2013	6/1/2014	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
							BODILY INJURY (Per person)	\$ XXXXXXXX
							BODILY INJURY (Per accident)	\$ XXXXXXXX
							PROPERTY DAMAGE (Per accident)	\$ XXXXXXXX
								\$ XXXXXXXX
	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB DED RETENTION \$			NOT APPLICABLE			EACH OCCURRENCE	\$ XXXXXXXX
							AGGREGATE	\$ XXXXXXXX
								\$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	N/A	WC 5944328-05	6/1/2013	6/1/2014	<input checked="" type="checkbox"/> PER STATUTE	<input type="checkbox"/> OTHER
							E.L. EACH ACCIDENT	\$ 1,000,000
							E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000
							E.L. DISEASE - POLICY LIMIT	\$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
 RE: ENGINEERING AND PLANS FOR HARDISON LANE. THE CITY OF ABILENE IS AN ADDITIONAL INSURED AS RESPECTS TO GENERAL AND AUTO LIABILITY, THESE COVERAGES ARE PRIMARY AND NON-CONTRIBUTORY AS REQUIRED BY WRITTEN CONTRACT

CERTIFICATE HOLDER  12910501  CITY OF ABILENE P.O BOX ABILENE TX 79604	CANCELLATION  SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE  