

**CITY OF LAFAYETTE, OREGON
PERSONAL SERVICES CONTRACT
for
ENGINEERING SERVICES
with
HBH CONSULTING ENGINEERS**

A CONTRACT between THE CITY OF LAFAYETTE, OREGON ("CITY"), and HBH CONSULTING ENGINEERS ("ENGINEER") entered into this 3 day of September, 2002.

WHEREAS, the CITY and ENGINEER believe it in their respective interests to enter into a written contract setting out their understandings concerning ENGINEER'S provision of *Pre-design and Preliminary design* engineering of the CITY's proposed Wastewater Treatment Plant.

NOW THEREFORE, based on the foregoing, the CITY and ENGINEER hereby agree as follows:

ARTICLE 1 - SERVICES OF ENGINEER

- A. Once this Agreement becomes effective, ENGINEER is authorized to begin and shall provide the Basic and Additional Services set forth in Exhibit A. ENGINEER shall perform or furnish professional engineering and related services in all phases of the Project to which this Agreement applies.
- B. ENGINEER's opinions of probable Construction Cost provided for herein are to be made on the basis of ENGINEER's experience and qualifications and represent ENGINEER's best judgment as an experienced and qualified professional generally familiar with the industry.
- C. The standard of care for all professional engineering and related services performed or furnished by ENGINEER under this Agreement will be the care and skill used by members of ENGINEER's profession practicing under similar circumstances in the same general locale.
- D. ENGINEER shall be responsible for the technical accuracy of its services and documents resulting therefrom and CITY shall not be responsible for discovering deficiencies therein. ENGINEER shall correct such deficiencies without additional compensation unless the deficiency is directly attributable to a deficiency in CITY-furnished information.
- E. ENGINEER shall not be required to sign any documents, no matter by whom requested, that would result in the ENGINEER's having to certify, guarantee or warrant the existence of conditions whose existence the ENGINEER cannot ascertain.

ARTICLE 2 - CITY'S RESPONSIBILITIES

- A. CITY shall provide ENGINEER full and free access to enter upon all property required for the performance of ENGINEER'S services under this contract.

- B. CITY shall give ENGINEER access to all available files, records, maps, reports, charts, drawings and data which pertain to the CITY'S wastewater system.
- C. CITY shall act promptly to consider and reach decisions on recommendations submitted by ENGINEER.

ARTICLE 3 - TIMES FOR RENDERING SERVICES

- A. ENGINEER's services and compensation under this Agreement have been agreed to in anticipation of the orderly and continuous progress of the Project through completion. Unless specific periods of time or specific dates for providing services are specified in this Agreement, or in the relevant Exhibits, ENGINEER's obligation to render services will be for the period reasonably required for completion of said services.
- B. It is understood that if CITY requests changes in the scope, extent or character of the Project, the time of performance of ENGINEER's services may require adjustment. Such work shall only be performed after receipt of written approval from the CITY by the ENGINEER specifying the work to be performed and the maximum engineering fee to be received for such work.

ARTICLE 4 - PAYMENTS TO ENGINEER

- A. CITY shall pay ENGINEER for services performed and allowable expense consistent with the terms of Exhibit B. Invoices will be prepared in accordance with ENGINEER's standard invoicing practices modified as necessary to meet funding agency requirements, and submitted to CITY by ENGINEER, unless otherwise agreed and shall be paid within 30 days of receipt.
- B. In the event of a disputed or contested invoice only that portion so contested may be withheld with the undisputed portion paid.
- C. In the event of any termination, ENGINEER will be entitled to invoice CITY and be paid for all services performed or furnished and all Reimbursable Expenses incurred through the date of termination.
- D. Records of ENGINEER's costs pertinent to ENGINEER's compensation under this Agreement shall be kept in accordance with generally accepted accounting practices. Upon CITY's timely request, copies of such records will be made available to CITY at no cost.

ARTICLE 5 - INDEMNITY AND INSURANCE

- A. Indemnity. ENGINEER acknowledges responsibility for any and all liability arising out of the negligent performance of this contract and shall hold CITY harmless from, indemnify and defend CITY for any and all liability, settlements, loss, costs, and expenses in connection with any action, suit, or claim to the extent resulting or allegedly resulting from ENGINEER'S acts, omissions, activities, or services in the course of performing this contract.
- B. Liability Insurance: ENGINEER shall maintain occurrence form commercial general liability and automobile liability insurance for the protection of ENGINEER, the CITY, its council, officers, agents, and employees. Coverage shall include personal injury, bodily injury (including death) and broad form property damage, including loss of use of property, occurring in the course of or in any way related to

ENGINEER's operations, in an amount not less than \$2,000,000 combined single limit per occurrence. Such insurance shall name the CITY as an additional insured.

- C. Workers' Compensation Coverage: ENGINEER certifies that ENGINEER has qualified for State of Oregon Workers' Compensation coverage for all ENGINEER's employees who are subject to Oregon's Workers' Compensation statute, either as a carrier-insured employer as provided by ORS 656.407 or as a self-insured employer. ENGINEER shall provide to CITY within 10 days after contract award a certificate of insurance evidencing coverage of all subject workers under Oregon's Workers' Compensation statutes insured by an insurance company satisfactory to CITY, if any. The certificate and policy shall indicate that the policy shall not be terminated by the insurance carrier without thirty (30) days' advance written notice to CITY. A copy of the certificate of self-insurance issued by the State shall be provided to CITY if the ENGINEER is self-insured.
- D. Professional Errors and Omissions: ENGINEER shall provide CITY with evidence of professional errors and omissions liability insurance for the protection of ENGINEER and its employees, insuring against bodily injury and property damage and arising out of or resulting from ENGINEER's negligent acts, omissions, activities or services, in an amount not less than \$2,000,000 combined single limit per claim. Such insurance shall be endorsed to include contractual liability.
- E. Certificates: ENGINEER shall furnish the CITY certificates evidencing the date, amount, and type of insurance required by this contract. All policies will provide for not less than thirty (30) days' written notice to the CITY before they may be canceled.
- F. Primary Coverage: The coverage provided by liability insurance required under this contract shall be primary, and any other insurance carried by CITY shall be excess.

ARTICLE 6 - TERMINATION

The obligation to provide further services under this Agreement may be terminated:

- A. For cause, by either party upon thirty (30) days written notice if the other party fails to perform in accordance with the terms of the Agreement.
- B. By ENGINEER, if they are being requested to furnish/perform services contrary to ENGINEER's responsibilities as a licensed professional; or
- C. by ENGINEER upon seven days written notice if the ENGINEER's services for the Project are delayed or suspended for more than 90 days for reasons beyond ENGINEER's control, except that the Agreement will not terminate as a result of such failure if within seven days of receipt of such notice the CITY proceeds to cure such failure in no more than 30 days of receipt of the notice.
- D. The CITY, at any time for its own convenience by written notice to Engineer. Upon termination under this paragraph, ENGINEER shall be entitled to compensation for all services rendered prior to actual notice of the termination or the receipt of the CITY's written notice of termination, whichever is earlier, plus ENGINEER's reasonable costs actually incurred in closing out the contract.

ARTICLE 7 - SUCCESSORS, ASSIGNS AND BENEFICIARIES

- A. CITY and ENGINEER each is hereby bound and the partners, successors, executors, administrators and legal representatives of CITY and ENGINEER are hereby bound to the other party to this Agreement and to the partners, successors, executors,

administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.

- B. Neither CITY nor ENGINEER may assign, sublet or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment is mandated or restricted by law
- C. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of CITY and ENGINEER and not for the benefit of any other party.

ARTICLE 8 - DISPUTE RESOLUTION

- 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 Article 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 Yamhill 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 Article.
- C. The contract shall be governed by the laws of the State of Oregon. Venue shall be in Yamhill County, Oregon.

ARTICLE 9 - GENERAL TERMS

- A. ENGINEER and CITY shall comply with applicable Laws or Regulations and CITY-mandated standards. This Agreement is based on these requirements as of its Effective Date. Changes to these requirements after the Effective Date of this Agreement may be the basis for modifications to CITY's responsibilities or to ENGINEER's scope of services, times of performance, or compensation.
- B. CITY's Project Manager is the City Administrator. ENGINEER's Project Manager is Michael D. Henry. Each party shall give the other written notification of any change in their respective Project Manager.
- C. ENGINEER agrees to share all Project information, to fully cooperate with all corporations, firms, contractors, governmental entities, and persons involved in or associated with the Project. No information, news, or press releases related to the Project shall be made to representatives of newspapers, magazines, television and radio stations, or any other news medium without the prior authorization of CITY's Project Manager.
- D. ENGINEER shall give prompt written notice to CITY's Project Manager if, at any time during the performance of this contract, ENGINEER becomes aware of actual or potential problems, faults, or defects in the project, any nonconformity with the contract, or with any federal, state, or local law, rule, or regulation, or has any

objection to any decision or order made by CITY. Any delay or failure on the part of CITY to provide a written response to ENGINEER shall constitute neither agreement with nor acquiescence in ENGINEER's statement or claim, and shall not constitute a waiver of any of CITY's rights.

- E. CITY may make and retain copies of Documents for information and reference in connection with use on the Project by CITY. Such Documents are not intended or represented to be suitable for reuse by CITY or others on extensions of the Project or on any other project. Any such reuse or modification without written verification or adaptation by ENGINEER, as appropriate for the specific purpose intended, will be at CITY's sole risk and without liability to ENGINEER. CITY shall, to the extent permitted by law and only then to the limits of the Oregon Tort Claims Act (OTCA) indemnify and hold harmless ENGINEER from all claims, damages, losses, and expenses (including attorneys' fees) arising out of or resulting therefrom.
- F. The interest in any intellectual property, including but not limited to copyrights and patents of any type, arising from the performance of this contract shall vest in the CITY. ENGINEER shall execute any assignment or other documents necessary to effect this paragraph. ENGINEER may retain a nonexclusive right to use any intellectual property that is subject to this paragraph. ENGINEER shall transfer to the CITY any data or other tangible property generated by ENGINEER under this contract and necessary for the beneficial use of intellectual property covered by this paragraph.
- G. All work, including but not limited to documents, drawings, papers, computer programs and photographs performed or produced by ENGINEER under this contract shall be the property of CITY.
- H. Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address and given personally, by mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
- I. All express representations, indemnifications or limitations of liability included in this Agreement will survive its completion or termination for any reason.
- J. Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon CITY and ENGINEER, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- K. Non-enforcement of any provision by either party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- L. The headings used in this Agreement are for general reference only and do not have special significance.

ARTICLE 10 - REQUIRED PROVISIONS

- A. ENGINEER shall pay all contributions or amounts due the Industrial Accident Fund from ENGINEER incurred in the performance of this contract, and shall ensure that all subcontractors pay those amounts due from the subcontractors. (ORS 279.312)

- B. ENGINEER shall pay to the Oregon Department of Revenue all sums withheld from employees pursuant to ORS 316.167. (ORS 279.312)
- C. If ENGINEER fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to ENGINEER or a subcontractor by any person in connection with this contract as the claim becomes due, the CITY may pay the claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due to ENGINEER pursuant to this contract. The CITY's payment of a claim under this Paragraph shall not relieve ENGINEER or ENGINEER's surety, if any, from responsibility for those claims. (ORS 279.314)
- D. ENGINEER is a subject employer that will comply with ORS 656.017. ENGINEER warrants that all persons engaged in contract work and subject to the Oregon workers compensation law are covered by a workers compensation plan or insurance policy that fully complies with Oregon law. ENGINEER shall indemnify the CITY for any liability incurred by the CITY as a result of ENGINEER's breach of the warranty under this Paragraph. (ORS 279.320).
- E. ENGINEER shall make payment of all sums to any person, co-partnership, association or corporation, furnishing medical, surgical and/or hospital care incident to the sickness or injury of ENGINEER's employee(s), all sums which ENGINEER agrees to pay for such services and all moneys and sums which 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. (ORS 279.320).
- F. ENGINEER shall demonstrate at the request of the CITY that it has, at the time of the execution of the Agreement, a drug-testing program in place. (ORS 279.312(2)).
- G. ENGINEER shall make payment promptly, as due, to all persons supplying to ENGINEER labor or material for the prosecution of the work provided for in this contract. (ORS 279.312).
- H. Work under this contract may be funded in part with federal grant funds from the Oregon Community Development Block Grant program.
- I. The following statement, prominently placed, shall appear on all plans, reports, bid documents and advertisements produced under this contract unless specifically directed to be removed by the CITY: "This project was funded in part with a financial award from the Water/Wastewater Financing Program funded by the Oregon State Lottery and administered by the State of Oregon, Economic and Community Development Department."
- J. Conflict of Interest: No officer or employee of the CITY, or its designees or agents, no member of the CITY's governing body and no other public official of the CITY who exercises any function or responsibility with respect to this Contract during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in Work performed in connection with this Contract. All contractors shall incorporate (or cause to be incorporated) in all subcontracts a provision prohibiting such interest."
- K. Certification Regarding Lobbying. The undersigned signatories certify, to the best of their knowledge and belief, that:
- No Federal appropriated funds have been paid or will be paid, by or on behalf of the local government, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the

awarding of any Federal loan, the entering into of any cooperative agreement and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.


- If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the local government shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly. **IT IS EXPRESSLY UNDERSTOOD AND AGREED** this certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 USC §1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

ARTICLE 11 - INTEGRATION

This Agreement consisting of pages 1 to 7 inclusive, together with the Exhibits A and B identified above and constitutes the entire agreement between CITY and ENGINEER and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

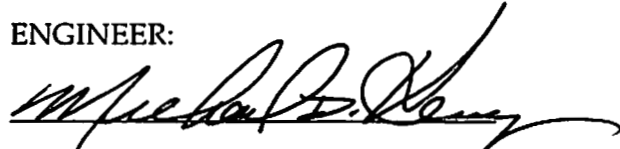
IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

CITY:



9-3-02

ENGINEER:



8-22-02

EXHIBIT A TO
PERSONAL SERVICES CONTRACT FOR
ENGINEERING SERVICES WITH
HBH CONSULTING ENGINEERS

SECTION I - SCOPE OF WORK

Services to be provided by ENGINEER under this contract are as specified on pages 1 and 2 of Exhibit A of ENGINEER'S June 26, 2002, Letter of Interest/Proposal, Lafayette Sewerage Facility Plan Update, attached hereto and made a part of this Exhibit A.

Item 1 - Facilities Plan Update

It is noted the revised Wastewater Facilities Plan will be submitted to DEQ within the body of the Pre-Design Report.

Item 2 - Pre-Design Report

- a. Based upon selected treatment alternative, ENGINEERS will prepare a pre-design report in accordance with DEQ standards.
- b. ENGINEERS shall submit Facilities Plan Update and Pre-Design Report to DEQ for review and approval.

MD to
8-22-02

EXHIBIT B TO
PERSONAL SERVICES CONTRACT FOR
ENGINEERING SERVICES WITH
HBH CONSULTING ENGINEERS

COMPENSATION

- A. For services as described in Exhibit A, above, ENGINEER shall be entitled to compensation totaling \$24,900 (Twenty-four thousand nine hundred and no/100 dollars).
- B. Invoices, in amounts indicated, shall be submitted by ENGINEER at the following milestones.
1. When Facilities Plan Update is presented to the Lafayette City Council \$10,000.00
 2. When the Pre-design Report has been submitted to DEQ--\$10,000.
 3. When Pre-design Report and revisions to the wastewater facilities plan have been approved by DEQ--\$4,900.00

MDA
8-22-02