

ORDINANCE NO. 786

AN ORDINANCE AUTHORIZING THE MAYOR AND CITY RECORDER OF THE CITY OF CANBY, COUNTY OF CLACKAMAS, OREGON TO EXECUTE A CONTRACT FOR ARCHITECTURAL SERVICES IN CONNECTION WITH THE CONSTRUCTION OF A JOINTLY OWNED PUBLIC WORKS AND CANBY UTILITY BOARD SHOP FACILITY, AND DECLARING AN EMERGENCY.

WHEREAS, the City of Canby and Canby Utility Board desire to jointly construct and operate a new Public Works and Canby Utility Board shop facility to be located at 1470 N.E. Territorial Road; and

WHEREAS, the City and Canby Utility Board desire to employ an architect to design and supervise such a project; and

WHEREAS, the City and Canby Utility Board heretofore requested architect quotations and proposals from area architects; and

WHEREAS, the Canby City Council and Canby Utility Board has determined that Eldon E. Edwards, 31840 Charbonneau Drive, Suite G, Wilsonville, Oregon, 97070, would be the candidate they desired to provide such service, now therefore,

THE CITY OF CANBY ORDAINS AS FOLLOWS:

Section 1. The Mayor, City Recorder and Canby Utility Board representative are thereby authorized and directed to make, execute, and deliver on behalf of the City of Canby and the Canby Utility Board, an appropriate contract, attached hereto as "Exhibit A", with Eldon E. Edwards for architectural services in connection with the construction of a new Public Works and Canby Utility Board Shop Facility for which the agreed upon price is twenty eight thousand dollars (\$28,000.00)

Section 2. An emergency is hereby declared to exist in order that the required construction can be started and completed as soon as possible to benefit the citizens of the City of Canby and this ordinance shall therefore take effect immediately upon its enactment after final reading.

SUBMITTED to the Canby City Council and read the first time at a regular meeting thereof on Wednesday, May 5, 1986; ordered posted as provided by the Canby City Charter and scheduled for second reading and action of the City Council at a regular meeting thereof to be held on May 19, 1986, after the hour of 7:30 o'clock p.m., at the Council meeting chambers at the Canby City Hall in Canby, Oregon.

Marilyn K. Berkett  
Marilyn K. Berkett, City Recorder

PASSED on final reading of the Canby City Council at a regular meeting thereof on the 19th day of May, 1986, by the following vote: YEAS 5 NAYS 0.

William F. Pulver  
William F. Pulver, Mayor

ATTEST:

Marilyn K. Berkett  
Marilyn K. Berkett, City Recorder

ATTACHMENT "A"

Please note that the City of Canby and Canby Utility Board reserves the right to reject any or all proposals, to disregard any irregularities in the proposal process, and otherwise to take whatever action it deems to be in the best interest of the citizens of Canby.

DESCRIPTION OF AREA USES:

AREA 1: Office structure. Approximately 4,875 square feet would contain seven offices, map and drafting room, conference room, lunch room, dry room, water meter test room, electric meter test room, mens restroom with lockers and showers, womens restroom with lockers and showers, and reception area with waiting room.

AREA 2: Covered parking and storage areas. A total of approximately 18,750 square feet of covered, but not enclosed area for parking of equipment and storage of materials. Needs at least 14-foot vertical clearance.

AREA 3: Mechanics Shop. An area of approximately 5,000 square feet that is secure, heated, insulated and designed for an exhaust venting system. Must have 20-foot eave height and be designed for one bay to house a double ram hoist for servicing equipment. Three bays need to have drive-through capability.

AREA 4: Secure warehouse. Twenty-foot eave height. Approximately 8,750 square feet total in two units.

AREA 5: Specialty shops. Three areas one of which will be a welding shop, another a paint shop and the third will be a wood-working shop. Heating, lighting, insulation, and ventilation must be considered. Each are expected to be approximately 1,250 square feet.

AREA 6: Toxic and hazardous waste storage. A secure building for storing used oil, solvents, transformers containing PCB, etc. Must be able to place and remove heavy items with a boom on forklift.

AREA 7: Equipment wash rack. Approximately 900 square feet plumbed for water. Needs drywell and grease-trap access.

AREA 8: Fueling station. Approximately 1,200 square feet. Include one regular gas pump, one unleaded gas pump, and one diesel pump. Needs to have drywell with grease-trap access. Needs to have lighting and be plumbed for water.

ATTACHMENT "A"

AREA 9: Fuel storage and containment area. Approximately 600 square feet with containment wall meeting legal capacity requirements for 2, six thousand gallon above-ground tanks and 2, one thousand gallon above-ground tank.

AREA 10: Pole yard. Approximately 11,250 square feet for storing utility poles. Need not be paved for now, but must be graveled with base rock and top dressing gravel.

General yard area of approximately 169,145 square feet will be paved with asphalt. Approach areas in front of mechanic's shop doors shall be concrete. All areas under cover should be designed to accommodate traffic from trucks and forklifts. Perimeter fencing, yard lighting, public address system, and security system needs should be addressed. Successful bidder will be required to meet with owner's representatives and discuss facility uses and needs before design work begins.

THE AMERICAN INSTITUTE OF ARCHITECTS



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AIA Document B141

**Standard Form of Agreement Between  
Owner and Architect**

**1977 EDITION**

*THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES; CONSULTATION WITH  
AN ATTORNEY IS ENCOURAGED WITH RESPECT TO ITS COMPLETION OR MODIFICATION*

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**AGREEMENT**

made as of the TENTH                      day of    APRIL                      in the year of Nineteen  
Hundred and EIGHTY\_SIX

**BETWEEN** the Owner: CITY OF CANBY AND CANBY UTILITY BOARD

and the Architect:        ELDON E. EDWARDS

For the following Project:

*(Include detailed description of Project location and scope.)*

CANBY SHOP COMPLEX AS DESCRIBED IN ATTACHEMENT "A"

The Owner and the Architect agree as set forth below.

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**B141-1977 1**

"EXHIBIT A"

# TERMS AND CONDITIONS OF AGREEMENT BETWEEN OWNER AND ARCHITECT

## ARTICLE 1

### ARCHITECT'S SERVICES AND RESPONSIBILITIES

#### BASIC SERVICES

The Architect's Basic Services consist of the five phases described in Paragraphs 1.1 through 1.5 and include normal structural, mechanical and electrical engineering services and any other services included in Article 15 as part of Basic Services.

#### 1.1 SCHEMATIC DESIGN PHASE

**1.1.1** The Architect shall review the program furnished by the Owner to ascertain the requirements of the Project and shall review the understanding of such requirements with the Owner.

**1.1.2** The Architect shall provide a preliminary evaluation of the program and the Project budget requirements, each in terms of the other, subject to the limitations set forth in Subparagraph 3.2.1.

**1.1.3** The Architect shall review with the Owner alternative approaches to design and construction of the Project.

**1.1.4** Based on the mutually agreed upon program and Project budget requirements, the Architect shall prepare, for approval by the Owner, Schematic Design Documents consisting of drawings and other documents illustrating the scale and relationship of Project components.

**1.1.5** The Architect shall submit to the Owner a Statement of Probable Construction Cost based on current area, volume or other unit costs.

#### 1.2 DESIGN DEVELOPMENT PHASE

**1.2.1** Based on the approved Schematic Design Documents and any adjustments authorized by the Owner in the program or Project budget, the Architect shall prepare, for approval by the Owner, Design Development Documents consisting of drawings and other documents to fix and describe the size and character of the entire Project as to architectural, structural, mechanical and electrical systems, materials and such other elements as may be appropriate.

**1.2.2** The Architect shall submit to the Owner a further Statement of Probable Construction Cost.

#### 1.3 CONSTRUCTION DOCUMENTS PHASE

**1.3.1** Based on the approved Design Development Documents and any further adjustments in the scope or quality of the Project or in the Project budget authorized by the Owner, the Architect shall prepare, for approval by the Owner, Construction Documents consisting of Drawings and Specifications setting forth in detail the requirements for the construction of the Project.

**1.3.2** The Architect shall assist the Owner in the preparation of the necessary bidding information, bidding forms, the Conditions of the Contract, and the form of Agreement between the Owner and the Contractor.

**1.3.3** The Architect shall advise the Owner of any adjust-

ments to previous Statements of Probable Construction Cost indicated by changes in requirements or general market conditions.

**1.3.4** The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

#### 1.4 BIDDING OR NEGOTIATION PHASE

**1.4.1** The Architect, following the Owner's approval of the Construction Documents and of the latest Statement of Probable Construction Cost, shall assist the Owner in obtaining bids or negotiated proposals, and assist in awarding and preparing contracts for construction.

#### 1.5 CONSTRUCTION PHASE—ADMINISTRATION OF THE CONSTRUCTION CONTRACT

**1.5.1** The Construction Phase will commence with the award of the Contract for Construction and, together with the Architect's obligation to provide Basic Services under this Agreement, will terminate when final payment to the Contractor is due, or in the absence of a final Certificate for Payment or of such due date, sixty days after the Date of Substantial Completion of the Work, whichever occurs first.

**1.5.2** Unless otherwise provided in this Agreement and incorporated in the Contract Documents, the Architect shall provide administration of the Contract for Construction as set forth below and in the edition of AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement.

**1.5.3** The Architect shall be a representative of the Owner during the Construction Phase, and shall advise and consult with the Owner. Instructions to the Contractor shall be forwarded through the Architect. The Architect shall have authority to act on behalf of the Owner only to the extent provided in the Contract Documents unless otherwise modified by written instrument in accordance with Subparagraph 1.5.16.

**1.5.4** The Architect shall visit the site at intervals appropriate to the stage of construction or as otherwise agreed by the Architect in writing to become generally familiar with the progress and quality of the Work and to determine in general if the Work is proceeding in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of such on-site observations as an architect, the Architect shall keep the Owner informed of the progress and quality of the Work, and shall endeavor to guard the Owner against defects and deficiencies in the Work of the Contractor.

**1.5.5** The Architect shall not have control or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, for the acts or omissions of the Contractor, Sub-

contractors or any other persons performing any of the Work, or for the failure of any of them to carry out the Work in accordance with the Contract Documents.

**1.5.6** The Architect shall at all times have access to the Work wherever it is in preparation or progress.

**1.5.7** The Architect shall determine the amounts owing to the Contractor based on observations at the site and on evaluations of the Contractor's Applications for Payment, and shall issue Certificates for Payment in such amounts, as provided in the Contract Documents.

**1.5.8** The issuance of a Certificate for Payment shall constitute a representation by the Architect to the Owner, based on the Architect's observations at the site as provided in Subparagraph 1.5.4 and on the data comprising the Contractor's Application for Payment, that the Work has progressed to the point indicated; that, to the best of the Architect's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to the results of any subsequent tests required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated in the Certificate for Payment); and that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment shall not be a representation that the Architect has made any examination to ascertain how and for what purpose the Contractor has used the moneys paid on account of the Contract Sum.

**1.5.9** The Architect shall be the interpreter of the requirements of the Contract Documents and the judge of the performance thereunder by both the Owner and Contractor. The Architect shall render interpretations necessary for the proper execution or progress of the Work with reasonable promptness on written request of either the Owner or the Contractor, and shall render written decisions, within a reasonable time, on all claims, disputes and other matters in question between the Owner and the Contractor relating to the execution or progress of the Work or the interpretation of the Contract Documents.

**1.5.10** Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in written or graphic form. In the capacity of interpreter and judge, the Architect shall endeavor to secure faithful performance by both the Owner and the Contractor, shall not show partiality to either, and shall not be liable for the result of any interpretation or decision rendered in good faith in such capacity.

**1.5.11** The Architect's decisions in matters relating to artistic effect shall be final if consistent with the intent of the Contract Documents. The Architect's decisions on any other claims, disputes or other matters, including those in question between the Owner and the Contractor, shall be subject to arbitration as provided in this Agreement and in the Contract Documents.

**1.5.12** The Architect shall have authority to reject Work which does not conform to the Contract Documents. Whenever, in the Architect's reasonable opinion, it is

necessary or advisable for the implementation of the intent of the Contract Documents, the Architect will have authority to require special inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work be then fabricated, installed or completed.

**1.5.13** The Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for conformance with the design concept of the Work and with the information given in the Contract Documents. Such action shall be taken with reasonable promptness so as to cause no delay. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

**1.5.14** The Architect shall prepare Change Orders for the Owner's approval and execution in accordance with the Contract Documents, and shall have authority to order minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time which are not inconsistent with the intent of the Contract Documents.

**1.5.15** The Architect shall conduct inspections to determine the Dates of Substantial Completion and final completion, shall receive and forward to the Owner for the Owner's review written warranties and related documents required by the Contract Documents and assembled by the Contractor, and shall issue a final Certificate for Payment.

**1.5.16** The extent of the duties, responsibilities and limitations of authority of the Architect as the Owner's representative during construction shall not be modified or extended without written consent of the Owner, the Contractor and the Architect.

## **1.6 PROJECT REPRESENTATION BEYOND BASIC SERVICES**

**1.6.1** If the Owner and Architect agree that more extensive representation at the site than is described in Paragraph 1.5 shall be provided, the Architect shall provide one or more Project Representatives to assist the Architect in carrying out such responsibilities at the site.

**1.6.2** Such Project Representatives shall be selected, employed and directed by the Architect, and the Architect shall be compensated therefor as mutually agreed between the Owner and the Architect as set forth in an exhibit appended to this Agreement, which shall describe the duties, responsibilities and limitations of authority of such Project Representatives.

**1.6.3** Through the observations by such Project Representatives, the Architect shall endeavor to provide further protection for the Owner against defects and deficiencies in the Work, but the furnishing of such project representation shall not modify the rights, responsibilities or obligations of the Architect as described in Paragraph 1.5.

## **1.7 ADDITIONAL SERVICES**

The following Services are not included in Basic Services unless so identified in Article 15. They shall be provided if authorized or confirmed in writing by the Owner, and they shall be paid for by the Owner as provided in this Agreement, in addition to the compensation for Basic Services.

**1.7.1** Providing analyses of the Owner's needs, and programming the requirements of the Project.

**1.7.2** Providing financial feasibility or other special studies.

**1.7.3** Providing planning surveys, site evaluations, environmental studies or comparative studies of prospective sites, and preparing special surveys, studies and submissions required for approvals of governmental authorities or others having jurisdiction over the Project.

**1.7.4** Providing services relative to future facilities, systems and equipment which are not intended to be constructed during the Construction Phase.

**1.7.5** Providing services to investigate existing conditions or facilities or to make measured drawings thereof, or to verify the accuracy of drawings or other information furnished by the Owner.

**1.7.6** Preparing documents of alternate, separate or sequential bids or providing extra services in connection with bidding, negotiation or construction prior to the completion of the Construction Documents Phase, when requested by the Owner.

**1.7.7** Providing coordination of Work performed by separate contractors or by the Owner's own forces.

**1.7.8** Providing services in connection with the work of a construction manager or separate consultants retained by the Owner.

**1.7.9** Providing Detailed Estimates of Construction Cost, analyses of owning and operating costs, or detailed quantity surveys or inventories of material, equipment and labor.

**1.7.10** Providing interior design and other similar services required for or in connection with the selection, procurement or installation of furniture, furnishings and related equipment.

**1.7.11** Providing services for planning tenant or rental spaces.

**1.7.12** Making revisions in Drawings, Specifications or other documents when such revisions are inconsistent with written approvals or instructions previously given, are required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents or are due to other causes not solely within the control of the Architect.

**1.7.13** Preparing Drawings, Specifications and supporting data and providing other services in connection with Change Orders to the extent that the adjustment in the Basic Compensation resulting from the adjusted Construction Cost is not commensurate with the services required of the Architect, provided such Change Orders are required by causes not solely within the control of the Architect.

**1.7.14** Making investigations, surveys, valuations, inventories or detailed appraisals of existing facilities, and services required in connection with construction performed by the Owner.

**1.7.15** Providing consultation concerning replacement of any Work damaged by fire or other cause during con-

struction, and furnishing services as may be required in connection with the replacement of such Work.

**1.7.16** Providing services made necessary by the default of the Contractor, or by major defects or deficiencies in the Work of the Contractor, or by failure of performance of either the Owner or Contractor under the Contract for Construction.

**1.7.17** Preparing a set of reproducible record drawings showing significant changes in the Work made during construction based on marked-up prints, drawings and other data furnished by the Contractor to the Architect.

**1.7.18** Providing extensive assistance in the utilization of any equipment or system such as initial start-up or testing, adjusting and balancing, preparation of operation and maintenance manuals, training personnel for operation and maintenance, and consultation during operation.

**1.7.19** Providing services after issuance to the Owner of the final Certificate for Payment, or in the absence of a final Certificate for Payment, more than sixty days after the Date of Substantial Completion of the Work.

**1.7.20** Preparing to serve or serving as an expert witness in connection with any public hearing, arbitration proceeding or legal proceeding.

**1.7.21** Providing services of consultants for other than the normal architectural, structural, mechanical and electrical engineering services for the Project.

**1.7.22** Providing any other services not otherwise included in this Agreement or not customarily furnished in accordance with generally accepted architectural practice.

## **1.8 TIME**

**1.8.1** The Architect shall perform Basic and Additional Services as expeditiously as is consistent with professional skill and care and the orderly progress of the Work. Upon request of the Owner, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services which shall be adjusted as required as the Project proceeds, and shall include allowances for periods of time required for the Owner's review and approval of submissions and for approvals of authorities having jurisdiction over the Project. This schedule, when approved by the Owner, shall not, except for reasonable cause, be exceeded by the Architect. SEE ARTICLE 15,

## **15, 3 ARTICLE 2**

### **THE OWNER'S RESPONSIBILITIES**

**2.1** The Owner shall provide full information regarding requirements for the Project including a program, which shall set forth the Owner's design objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability, special equipment and systems and site requirements.

**2.2** If the Owner provides a budget for the Project it shall include contingencies for bidding, changes in the Work during construction, and other costs which are the responsibility of the Owner, including those described in this Article 2 and in Subparagraph 3.1.2. The Owner shall, at the request of the Architect, provide a statement of funds available for the Project, and their source.



**2.3** The Owner shall designate, when necessary, a representative authorized to act in the Owner's behalf with respect to the Project. The Owner or such authorized representative shall examine the documents submitted by the Architect and shall render decisions pertaining thereto promptly, to avoid unreasonable delay in the progress of the Architect's services.

**2.4** The Owner shall furnish a legal description and a certified land survey of the site, giving, as applicable, grades and lines of streets, alleys, pavements and adjoining property; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and complete data pertaining to existing buildings, other improvements and trees; and full information concerning available service and utility lines both public and private, above and below grade, including inverts and depths.

**2.5** The Owner shall furnish the services of soil engineers or other consultants when such services are deemed necessary by the Architect. Such services shall include test borings, test pits, soil bearing values, percolation tests, air and water pollution tests, ground corrosion and resistivity tests, including necessary operations for determining subsoil, air and water conditions, with reports and appropriate professional recommendations.

**2.6** The Owner shall furnish structural, mechanical, chemical and other laboratory tests, inspections and reports as required by law or the Contract Documents.

**2.7** The Owner shall furnish all legal, accounting and insurance counseling services as may be necessary at any time for the Project, including such auditing services as the Owner may require to verify the Contractor's Applications for Payment or to ascertain how or for what purposes the Contractor uses the moneys paid by or on behalf of the Owner.

**2.8** The services, information, surveys and reports required by Paragraphs 2.4 through 2.7 inclusive shall be furnished at the Owner's expense, and the Architect shall be entitled to rely upon the accuracy and completeness thereof.

**2.9** If the Owner observes or otherwise becomes aware of any fault or defect in the Project or nonconformance with the Contract Documents, prompt written notice thereof shall be given by the Owner to the Architect.

**2.10** The Owner shall furnish required information and services and shall render approvals and decisions as expeditiously as necessary for the orderly progress of the Architect's services and of the Work.

### **ARTICLE 3**

#### **CONSTRUCTION COST**

##### **3.1 DEFINITION**

**3.1.1** The Construction Cost shall be the total cost or estimated cost to the Owner of all elements of the Project designed or specified by the Architect.

**3.1.2** The Construction Cost shall include at current market rates, including a reasonable allowance for overhead and profit, the cost of labor and materials furnished by the Owner and any equipment which has been de-

signed, specified, selected or specially provided for by the Architect.

**3.1.3** Construction Cost does not include the compensation of the Architect and the Architect's consultants, the cost of the land, rights-of-way, or other costs which are the responsibility of the Owner as provided in Article 2.

##### **3.2 RESPONSIBILITY FOR CONSTRUCTION COST**

**3.2.1** Evaluations of the Owner's Project budget, Statements of Probable Construction Cost and Detailed Estimates of Construction Cost, if any, prepared by the Architect, represent the Architect's best judgment as a design professional familiar with the construction industry. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials or equipment, over the Contractor's methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Project budget proposed, established or approved by the Owner, if any, or from any Statement of Probable Construction Cost or other cost estimate or evaluation prepared by the Architect.

**3.2.2** No fixed limit of Construction Cost shall be established as a condition of this Agreement by the furnishing, proposal or establishment of a Project budget under Subparagraph 1.1.2 or Paragraph 2.2 or otherwise, unless such fixed limit has been agreed upon in writing and signed by the parties hereto. If such a fixed limit has been established, the Architect shall be permitted to include contingencies for design, bidding and price escalation, to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents, to make reasonable adjustments in the scope of the Project and to include in the Contract Documents alternate bids to adjust the Construction Cost to the fixed limit. Any such fixed limit shall be increased in the amount of any increase in the Contract Sum occurring after execution of the Contract for Construction.

**3.2.3** If the Bidding or Negotiation Phase has not commenced within three months after the Architect submits the Construction Documents to the Owner, any Project budget or fixed limit of Construction Cost shall be adjusted to reflect any change in the general level of prices in the construction industry between the date of submission of the Construction Documents to the Owner and the date on which proposals are sought.

**3.2.4** If a Project budget or fixed limit of Construction Cost (adjusted as provided in Subparagraph 3.2.3) is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall (1) give written approval of an increase in such fixed limit, (2) authorize rebidding or re-negotiating of the Project within a reasonable time, (3) if the Project is abandoned, terminate in accordance with Paragraph 10.2, or (4) cooperate in revising the Project scope and quality as required to reduce the Construction Cost. In the case of (4), provided a fixed limit of Construction Cost has been established as a condition of this Agreement, the Architect, without additional charge, shall modify the Drawings and Specifications as necessary to comply

with the fixed limit. The providing of such service shall be the limit of the Architect's responsibility arising from the establishment of such fixed limit, and having done so, the Architect shall be entitled to compensation for all services performed, in accordance with this Agreement, whether or not the Construction Phase is commenced.

#### **ARTICLE 4**

##### **DIRECT PERSONNEL EXPENSE**

**4.1** Direct Personnel Expense is defined as the direct salaries of all the Architect's personnel engaged on the Project, and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, pensions and similar contributions and benefits.

#### **ARTICLE 5**

##### **REIMBURSABLE EXPENSES**

**5.1** Reimbursable Expenses are in addition to the Compensation for Basic and Additional Services and include actual expenditures made by the Architect and the Architect's employees and consultants in the interest of the Project for the expenses listed in the following Subparagraphs:

**5.1.1** Expense of transportation in connection with the Project; living expenses in connection with out-of-town travel; long distance communications; and fees paid for securing approval of authorities having jurisdiction over the Project.

**5.1.2** Expense of reproductions, postage and handling of Drawings, Specifications and other documents, excluding reproductions for the office use of the Architect and the Architect's consultants.

**5.1.3** Expense of data processing and photographic production techniques when used in connection with Additional Services.

**5.1.4** If authorized in advance by the Owner, expense of overtime work requiring higher than regular rates.

**5.1.5** Expense of renderings, models and mock-ups requested by the Owner.

**5.1.6** Expense of any additional insurance coverage or limits, including professional liability insurance, requested by the Owner in excess of that normally carried by the Architect and the Architect's consultants.

#### **ARTICLE 6**

##### **PAYMENTS TO THE ARCHITECT**

###### **6.1 PAYMENTS ON ACCOUNT OF BASIC SERVICES**

**6.1.1** An initial payment as set forth in Paragraph 14.1 is the minimum payment under this Agreement.

**6.1.2** Subsequent payments for Basic Services shall be made monthly and shall be in proportion to services performed within each Phase of services, on the basis set forth in Article 14.

**6.1.3** If and to the extent that the Contract Time initially established in the Contract for Construction is exceeded

or extended through no fault of the Architect, compensation for any Basic Services required for such extended period of Administration of the Construction Contract shall be computed as set forth in Paragraph 14.4 for Additional Services.

**6.1.4** When compensation is based on a percentage of Construction Cost, and any portions of the Project are deleted or otherwise not constructed, compensation for such portions of the Project shall be payable to the extent services are performed on such portions, in accordance with the schedule set forth in Subparagraph 14.2.2, based on (1) the lowest bona fide bid or negotiated proposal or, (2) if no such bid or proposal is received, the most recent Statement of Probable Construction Cost or Detailed Estimate of Construction Cost for such portions of the Project.

###### **6.2 PAYMENTS ON ACCOUNT OF ADDITIONAL SERVICES**

**6.2.1** Payments on account of the Architect's Additional Services as defined in Paragraph 1.7 and for Reimbursable Expenses as defined in Article 5 shall be made monthly upon presentation of the Architect's statement of services rendered or expenses incurred.

###### **6.3 PAYMENTS WITHHELD**

**6.3.1** No deductions shall be made from the Architect's compensation on account of penalty, liquidated damages or other sums withheld from payments to contractors, or on account of the cost of changes in the Work other than those for which the Architect is held legally liable.

###### **6.4 PROJECT SUSPENSION OR TERMINATION**

**6.4.1** If the Project is suspended or abandoned in whole or in part for more than three months, the Architect shall be compensated for all services performed prior to receipt of written notice from the Owner of such suspension or abandonment, together with Reimbursable Expenses then due and all Termination Expenses as defined in Paragraph 10.4. If the Project is resumed after being suspended for more than three months, the Architect's compensation shall be equitably adjusted.

#### **ARTICLE 7**

##### **ARCHITECT'S ACCOUNTING RECORDS**

**7.1** Records of Reimbursable Expenses and expenses pertaining to Additional Services and services performed on the basis of a Multiple of Direct Personnel Expense shall be kept on the basis of generally accepted accounting principles and shall be available to the Owner or the Owner's authorized representative at mutually convenient times.

#### **ARTICLE 8**

##### **OWNERSHIP AND USE OF DOCUMENTS**

**8.1** Drawings and Specifications as instruments of service are and shall remain the property of the Architect whether the Project for which they are made is executed or not. The Owner shall be permitted to retain copies, including reproducible copies, of Drawings and Specifications for information and reference in connection with the Owner's use and occupancy of the Project. The Drawings and Specifications shall not be used by the Owner on

other projects, for additions to this Project, or for completion of this Project by others provided the Architect is not in default under this Agreement, except by agreement in writing and with appropriate compensation to the Architect.

**8.2** Submission or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's rights.

## ARTICLE 9

### **ARBITRATION** see 15.4

**9.1** All claims, disputes and other matters in question between the parties to this Agreement, arising out of or relating to this Agreement or the breach thereof, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining unless the parties mutually agree otherwise. No arbitration, arising out of or relating to this Agreement, shall include, by consolidation, joinder or in any other manner, any additional person not a party to this Agreement except by written consent containing a specific reference to this Agreement and signed by the Architect, the Owner, and any other person sought to be joined. Any consent to arbitration involving an additional person or persons shall not constitute consent to arbitration of any dispute not described therein or with any person not named or described therein. This Agreement to arbitrate and any agreement to arbitrate with an additional person or persons duly consented to by the parties to this Agreement shall be specifically enforceable under the prevailing arbitration law.

**9.2** Notice of the demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. The demand shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

**9.3** The award rendered by the arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

## ARTICLE 10

### **TERMINATION OF AGREEMENT**

**10.1** This Agreement may be terminated by either party upon seven days' written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination.

**10.2** This Agreement may be terminated by the Owner upon at least seven days' written notice to the Architect in the event that the Project is permanently abandoned.

**10.3** In the event of termination not the fault of the Architect, the Architect shall be compensated for all services performed to termination date, together with Reimbursable Expenses then due and all Termination Expenses as defined in Paragraph 10.4.

**10.4** Termination Expenses include expenses directly attributable to termination for which the Architect is not otherwise compensated, plus an amount computed as a percentage of the total Basic and Additional Compensation earned to the time of termination, as follows:

- .1 20 percent if termination occurs during the Schematic Design Phase; or
- .2 10 percent if termination occurs during the Design Development Phase; or
- .3 5 percent if termination occurs during any subsequent phase.

## ARTICLE 11

### **MISCELLANEOUS PROVISIONS**

**11.1** Unless otherwise specified, this Agreement shall be governed by the law of the principal place of business of the Architect.

**11.2** Terms in this Agreement shall have the same meaning as those in AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement.

**11.3** As between the parties to this Agreement: as to all acts or failures to act by either party to this Agreement, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the relevant Date of Substantial Completion of the Work, and as to any acts or failures to act occurring after the relevant Date of Substantial Completion, not later than the date of issuance of the final Certificate for Payment.

**11.4** The Owner and the Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages covered by any property insurance during construction as set forth in the edition of AIA Document A201, General Conditions, current as of the date of this Agreement. The Owner and the Architect each shall require appropriate similar waivers from their contractors, consultants and agents.

SEE  
15.5

## ARTICLE 12

### **SUCCESSORS AND ASSIGNS**

**12.1** The Owner and the Architect, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither the Owner nor the Architect shall assign, sublet or transfer any interest in this Agreement without the written consent of the other.

## ARTICLE 13

### **EXTENT OF AGREEMENT**

**13.1** This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

**ARTICLE 14**  
**BASIS OF COMPENSATION**

The Owner shall compensate the Architect for the Scope of Services provided, in accordance with Article 6, Payments to the Architect, and the other Terms and Conditions of this Agreement, as follows:

**14.1** AN INITIAL PAYMENT of **TWO THOUSAND EIGHT HUNDRED** dollars (\$2,800,00) shall be made upon execution of this Agreement and credited to the Owner's account as follows:

To be charged to final payment.

**14.2** BASIC COMPENSATION **TWENTY-EIGHT THOUSAND DOLLARS (\$28,000,00)**

**14.2.1** FOR BASIC SERVICES, as described in Paragraphs 1.1 through 1.5, and any other services included in Article 15 as part of Basic Services, Basic Compensation shall be computed as follows:

*(Here insert basis of compensation, including fixed amounts, multiples or percentages, and identify Phases to which particular methods of compensation apply, if necessary.)*

Billed monthly on the per cent of completion of the phases below.

**14.2.2** Where compensation is based on a Stipulated Sum or Percentage of Construction Cost, payments for Basic Services shall be made as provided in Subparagraph 6.1.2, so that Basic Compensation for each Phase shall equal the following percentages of the total Basic Compensation payable:

*(Include any additional Phases as appropriate.)*

Program	Percent
Schematic Design Phase:	6%
Design Development Phase:	percent (13 %)
Construction Documents Phase:	percent ( 6 %)
Bidding or Negotiation Phase:	percent (54 %)
Construction Phase:	percent ( 3 %)
	percent (18 %)

**14.3** FOR PROJECT REPRESENTATION BEYOND BASIC SERVICES, as described in Paragraph 1.6, Compensation shall be computed separately in accordance with Subparagraph 1.6.2.

**14.4 COMPENSATION FOR ADDITIONAL SERVICES**

**14.4.1 FOR ADDITIONAL SERVICES OF THE ARCHITECT**, as described in Paragraph 1.7, and any other services included in Article 15 as part of Additional Services, but excluding Additional Services of consultants, Compensation shall be computed as follows:

*(Here insert basis of compensation, including rates and/or multiples of Direct Personnel Expense for Principals and employees, and identify Principals and classify employees, if required. Identify specific services to which particular methods of compensation apply, if necessary.)*

**14.4.2 FOR ADDITIONAL SERVICES OF CONSULTANTS**, including additional structural, mechanical and electrical engineering services and those provided under Subparagraph 1.7.21 or identified in Article 15 as part of Additional Services, a multiple of ( ) times the amounts billed to the Architect for such services.

*(Identify specific types of consultants in Article 15, if required.)*

**14.5 FOR REIMBURSABLE EXPENSES**, as described in Article 5, and any other items included in Article 15 as Reimbursable Expenses, a multiple of ( ) times the amounts expended by the Architect, the Architect's employees and consultants in the interest of the Project.

**14.6** Payments due the Architect and unpaid under this Agreement shall bear interest from the date payment is due at the rate entered below, or in the absence thereof, at the legal rate prevailing at the principal place of business of the Architect.

*(Here insert any rate of interest agreed upon.)*

*(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Architect's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Specific legal advice should be obtained with respect to deletion, modification, or other requirements such as written disclosures or waivers.)*

**14.7** The Owner and the Architect agree in accordance with the Terms and Conditions of this Agreement that:

**14.7.1** IF THE SCOPE of the Project or of the Architect's Services is changed materially, the amounts of compensation shall be equitably adjusted.

**14.7.2** IF THE SERVICES covered by this Agreement have not been completed within

( ) months of the date hereof, through no fault of the Architect, the amounts of compensation, rates and multiples set forth herein shall be equitably adjusted.

**ARTICLE 15**  
**OTHER CONDITIONS OR SERVICES**

- 15.1 Omit Section 1.7.17 and 11.4
- 15.2 Owner to Appoint a Project Coordinator, Bob Rapp
- 15.3 The work to be performed under this Contract shall commence April 15, 1986 and the construction Documents Phase shall be completed by July 15, 1986. This time schedule, when approved by the owner, shall not be exceeded by the Architect except for delays caused by Acts of God, damages or destruction to the building or plans and specifications, bid documents, required changes initiated by the owner or other such delays caused by the owner.
- 15.4 Paragraph 9.1 is void and replaced with the following: All claims, disputes and other matters in question between the owner, architect, and contractor arising out of the Contract Documents or the breach thereof shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining unless both parties mutually agree otherwise. The foregoing agreement to arbitrate should be specifically enforceable under the prevailing arbitration law. The award rendered by the arbitrators shall be final, and judgement may be entered upon it in accordance with the applicable law in any court having jurisdiction thereof.
- 15.5 As between the parties to this Agreement: as to all acts or failure to act by either party to this Agreement, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of actual discovery of the act or failure to act or from the date that the party should reasonably have discovered such act or failure.
- 15.6 In the event of litigation to establish, obtain or enforce any of the provisions of this Contract, or in the event of appeal from a judgement or decree therein, or in the event of arbitration in accordance with the provisions of this Contract, the prevailing party in such action, suit, appeal or arbitration, shall be entitled to reasonable attorney fees in addition to such costs and disbursements of said action, suit, appeal or arbitration.
- 15.7 Compensation for any work approved by the owner that is outside the scope of this Contract shall be billed at the following scale:  
Principle - \$36.00 per hour  
Draftsman - \$24.00 per hour  
Clerical - \$18.00 per hour

This Agreement entered into as of the day and year first written above.

OWNER CITY OF CANBY

ARCHITECT ELDON E. EDWARDS

BY: Bud Sturrod  
CANBY UTILITY BOARD

[Signature]

BY: [Signature]  
X Wm Pulver  
William F. Pulver, Mayor

BY: \_\_\_\_\_

X Marilyn K. Perkett  
Marilyn K. Perkett, City Recorder