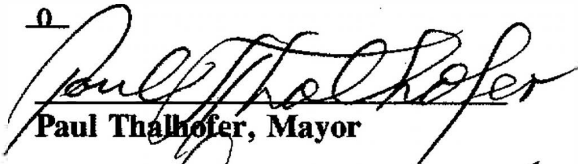


1 **BE IT FURTHER RESOLVED THAT:**

2 Funds for the above consulting services may be paid from unexpended appropriations in the
3 Storm Improvement Fund, Account No. 15.00-8350.

4 **ADOPTED BY THE COMMON COUNCIL OF THE CITY OF**
5 **TROUTDALE THIS 12TH DAY OF APRIL, 1994.**

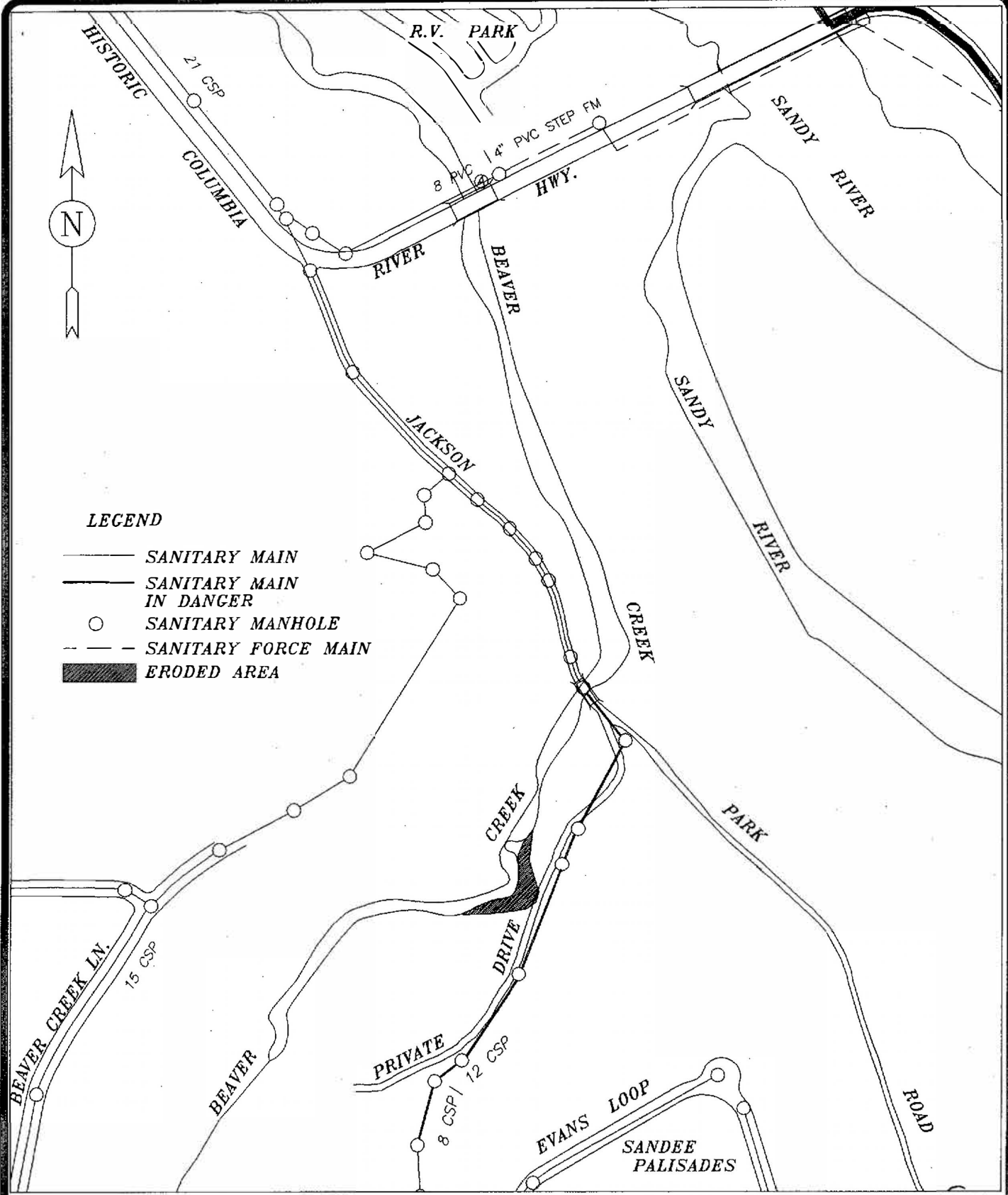
6 YEAS: 4
7 NAYS: 0
8 ABSTAINED: 0

9 
10 Paul Thalhoffer, Mayor
11 DATED: April 13, 1994

12 **ATTEST:**

13 
14 Valerie Raglione
15 City Recorder

16 C:\RESOL\CONSERV



FILE NAME: JKS_NLERS
 TITLE BLOCK: TBBX11
 EXTERNAL REFERENCES: NONE
 PLOT DATE: 04-04-94
 BY: J.M.
 PREVIOUS REVISION DATE: NONE



DEPARTMENT OF PUBLIC WORKS
CITY OF TROUTDALE
BEAVER CREEK
EROSION AREA
 MULTNOMAH COUNTY, OREGON
 APRIL 1994

CONSULTING AGREEMENT

This Agreement is between Consulting Engineering Services, Inc. (herein ENGINEER), and the City of Troutdale at 104 S.E. Kibling Avenue, Troutdale, OR 97060-2099 (herein CITY).

I. SCOPE OF SERVICES

ENGINEER will provide consulting services to CITY for the following project: Beaver Creek Bank Erosion, Phases 1, 2, 3A, 3B, and 3C as further described below:

- Phase 1. Perform geotechnical investigation, topographic survey, and hydrologic and hydraulic analysis needed to properly design the necessary bank protection.
- Phase 2. Review alternatives for the bank protection, including bio-engineering options that may be appropriate, and structural alternatives. Prepare the Corps of Engineers and Division of State Lands permit.
- Phase 3.
- A. Prepare final construction plans and specifications for bank protection. Prepare contract documents that show the general scope, extent and character of the work to be furnished and performed by contractor and prepare an estimate of probable construction cost based upon average unit prices taken from previous projects.
 - B. During construction, consult with and advise the CITY on the progress of the work and act as the CITY's representative.
 - C. Provide construction staking outlining the clearing limits and provide horizontal and vertical control for the bank protection (offset stakes at 50 foot intervals).

II. COMPENSATION

CITY will reimburse the ENGINEER for services rendered according to the following Schedule of Fees attached as Exhibit "A", but not to exceed \$33,100 based upon the following estimates:

Phase 1	\$13,000
Phase 2	5,500
Phase 3A	5,000
Phase 3B	8,000
Phase 3C	1,600

III. METHOD OF PAYMENT & REIMBURSEMENT OF COSTS

ENGINEER may use the services of independent contractors to perform a portion of its obligations under this Agreement. Services performed by independent contractors will be billed to CITY by ENGINEER at actual cost.

All invoices billed by ENGINEER to CITY shall be paid within thirty (30) days of receipt. All billings that remain unpaid after thirty (30) days shall bear interest at the rate of 12.0 percent per annum until paid.

IV. PROJECT SCHEDULE

ENGINEER will complete phases of this project according to the following schedule:

<u>Phase</u>	<u>Performance Time</u>
1	3 Weeks
2	3 Weeks
3A	2 Weeks
3B	As Needed
3C	As Needed

V. RELATIONSHIP OF CONTRACTING PARTIES

ENGINEER is an independent contractor under this Agreement. ENGINEER is not an agent or employee of CITY. This Agreement gives no rights or benefits to anyone not named as a party to this Agreement and there are no third party beneficiaries to this Agreement.

VI. MODIFICATION OF AGREEMENT

This Agreement can only be modified in writing upon the consent of both parties.

VII. LIMITATION OF LIABILITY

To the extent permitted by law, the liability of ENGINEER for claims arising hereunder or for services performed under this Agreement shall be limited to the monetary liability incurred by the CITY or the monetary damage suffered by the CITY due to any error, negligence or misrepresentation by ENGINEER or its agents, but in no case more than \$500,000.

VIII. MUTUAL INDEMNIFICATION

ENGINEER and CITY each agree to indemnify and hold each other harmless against all personal injury, death and property damage claims made by third parties (including claims by employees of CITY OR ENGINEER) that arise as a result of their own sole or concurrent negligence, and against all losses, damages, costs, expenses and attorneys' fees associated therewith.

IX. RESOLUTION OF DISPUTES

The laws of the State of Oregon shall govern the interpretation of and the resolution of disputes under this Agreement if such disputes cannot first be resolved by negotiation between the CITY and ENGINEER.

X. ATTORNEYS' FEES

In the event of dispute as provided in paragraph IX above, the prevailing party, as determined by the Court, will be awarded its attorneys' fees and costs.

XI. MISCELLANEOUS

If any provision contained in this Agreement is held for any reason to be invalid, illegal or unenforceable, the other provisions will remain in full force and effect. Neither party will assign all or any part of this Agreement to any third party without the prior written consent of the other party. Neither party will be liable for damages or delay in its performance or for the direct or indirect costs that may result from acts of God, acts of higher governmental authorities, strikes, riots, wars, lockouts, accidents, extraordinary weather conditions, natural catastrophes, or other events beyond their control.

XII. EXECUTION OF AGREEMENT

This Agreement is entered into on the latest date indicated below.

For the City:

Date: 4-13-94

By: *Paul J. DePaola*

Title: Mayor

C:\BEAVERO

For the Engineer:

Date: 4/4/94

By: *Anthony R. Weller*

Title: Vice President



CONSULTING ENGINEERING SERVICES, INC.

14780 S.W. Osprey Drive • Suite 395 • Beaverton, Oregon 97007 • (503) 579-4509 • FAX (503) 579-8966

Professional Service Fee Schedule

JANUARY 1993

PROFESSIONAL SERVICE FEES

Principal Engineer	\$86/Hour
Project Manager	\$75/Hour
Professional Staff Engineer	\$65/Hour
Professional Land Surveyor	\$75/Hour
Field Engineer	\$65/Hour
Project Designer	\$48-60/Hour
Technician/CAD Operator	\$48/Hour
Survey Crew - 2 Man	\$85/Hour
Survey Crew - 3 Man	\$95/Hour
Clerical	\$33/Hour

PROJECT EXPENSES

Direct project related expenses from outside vendors are reimbursed at cost plus ten percent.

Direct project related expenses provided by CES are included in the above hourly rates except travel expenses which are reimbursed at:

Vehicle Mileage	\$0.30/Mile
Other Travel Expenses	At Cost

RZA AGRA, Inc.

(Formerly: Rittenhouse-Zeman & Associates, Inc.)
Engineering & Environmental Services

7477 SW Tech Center Drive
Portland, Oregon 97223-8024
(503) 639-3400
FAX (503) 620-7892

1993 SCHEDULE OF CHARGES AND GENERAL CONDITIONS - PORTLAND, OREGON OFFICE

Compensation to RZA AGRA, Inc. will be computed, and the terms of our services will be provided, in accordance with the conditions set forth below.

Personnel Charges

Charges for employees are determined by the hourly rates listed below. Time spent in either local or inter-city travel, when travel is in the interest of work, will be charged for in accordance with this schedule; when traveling by public carrier, a maximum charge of eight hours per day will be made.

Principal	\$120/hour	Technician	\$48/hour
Associate	\$100/hour	Project Administration	\$45/hour
Senior Project Manager	\$85/hour	Clerical II	\$40/hour
Project Manager	\$80/hour	Clerical I	\$35/hour
Engineer/Geologist Staff III	\$80/hour	Fax charges	\$1.00/page
Engineering/Science Staff II	\$70/hour	Reproduction	\$0.10/page
Chief Technician	\$70/hour	Mileage	\$0.35/mile
Senior Drafter	\$58/hour	Outside Services or Subcontractors (includes purchase and transportation expenses)	Cost plus 12%
Engineering/Science Staff I	\$55/hour	Surcharge Applicable to Hazardous/ Dangerous Materials Projects	5%
Drafter	\$53/hour	Per Diem	\$75/day
Senior Technician	\$53/hour		
Accounting	\$50/hour		

Equipment Charges - See Schedule A **Chemistry Charges** - See Schedule B **Laboratory Charges** - See Schedule C

Overtime - Hours worked on any project in excess of eight hours per day or that are worked on Saturday or Sunday will be billed at 50% above the rates listed when these overtime hours are requested by the Client or are reasonably necessary to meet job schedules.

Billing - Invoices will be submitted once per month and are payable upon receipt unless otherwise agreed. Interest of 1-1/2% per month (but not exceeding the maximum allowable by law) will be added to any account not paid within 30 days. Any attorney's fees or other cost incurred in collecting any delinquent amount shall be paid by the Client.

Termination - In the event that the Client requests termination of the work prior to completion, we reserve the right to complete such analyses and records as required to place our files in order as we consider necessary to protect our professional reputation. At our discretion, a termination charge may also be made to cover our proposal and administrative costs relating to the project.

Right of Entry/Client Furnished Information - Unless otherwise agreed, we will be furnished right-of-entry on the land to make planned borings, observations and other explorations. We will take reasonable precautions to minimize damage from use of equipment, but have not included in our fee the cost for restoration of damage which may result from our operations. If the Client desires us to restore the property to the former condition, we can accomplish this and add the cost of our fee. The Client is responsible to provide, by map or drawing, a description of the property, its location and the location of any buried utilities or structures. We shall not be liable for damage or injury arising from damage to subterranean structures (pipes, tanks, telephone lines, etc.) which are not called to our attention and correctly shown on the plans furnished by the Client in connection with work performed under this agreement.

Sample Retention - All samples of soil and rock will be discarded 30 days after submission of our report. Extended storage can be provided at Client's expense. RZA AGRA, Inc. retains the right to return hazardous/dangerous waste samples to the Client.

Ownership of Documents - All designs, drawings, specifications, notes, data, sample materials, report reproducibles and other work developed by us are instruments of service and as such remain the property of RZA AGRA, Inc. The Client agrees that all reports and other work furnished to the Client or his agents and assigns, which is not paid for, will be returned upon demand and will not be used for any purpose whatsoever. RZA AGRA, Inc. will retain all pertinent summaries and reports relating to the services performed for a period of at least five years following submission of the report, during which period the records will be made available to the Client at all reasonable times. RZA AGRA, Inc. reserves the right at any time to discard field notes, laboratory test sheets, calculation sheets, etc., which are included or summarized in said report.

General Liability Insurance - RZA AGRA, Inc. maintains General Liability Insurance for bodily injury and property damage with an aggregate limit of at least \$1,000,000.00 per occurrence and we will furnish certificates of such insurance upon request. In the event the Client desires additional coverage of this type, we will upon the Client's written request, obtain additional insurance (if possible) at the Client's expense. Our liability to the Client for bodily injury or property damage arising out of work performed for the Client for which legal liability may be found to rest upon us, other than for professional errors and omissions, will be limited to our General Liability Insurance coverage.

Limitations of Professional Liability - The findings of RZA AGRA, Inc., recommendations, specifications or professional opinions will be presented, within the limits prescribed by the Client, after being prepared in accordance with generally accepted engineering and geologic practice. We make no other warranty, either expressed or implied. For any injury or loss sustained on account of any error, omission or other professional negligence, the Client agrees to limit RZA AGRA, Inc. and/or its professional employees or other employees' liability to the Client and to all agents, contractors and subcontractors arising out of the performance of its professional services, such that the total aggregate liability to all named shall not exceed \$1,000,000.00, plus the amount of any professional fees paid to RZA AGRA, Inc., on account of the performance of this contract.

Hazardous/Dangerous Materials - For services involving or relating to any hazardous or dangerous material elements of this Agreement, it is further agreed that the Client shall indemnify and hold harmless RZA AGRA, Inc. and their consultants, agents and employees from and against all claims, damages, losses and expenses, direct and indirect, or consequential damages, including but not limited to fees and charges of attorneys and court and arbitration costs, arising out of or resulting from, the performance of the work by RZA AGRA, Inc. or claims against RZA AGRA, Inc. arising from the work of others, related to hazardous or dangerous materials.

The above indemnification provision extends to claims against RZA AGRA, Inc. which arise out of, are related to, or are based upon the dispersal, discharge, escape, release or saturation of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids, gases or any other material, irritant, contaminant or pollutant in or into the surface or subsurface (a) soil, (b) water or water-courses, (c) objects, or (d) any tangible or intangible matter, whether sudden or not. In the event that unanticipated hazardous or dangerous materials are identified in the field during work associated with this agreement, we will stop work and request instructions from the Client. Should unanticipated hazardous or dangerous substances be disclosed, our fees will be increased by 5% as noted above under Charges.



AGRA

Earth & Environmental Group