



**AGREEMENT**  
**for**  
**CONSULTING ENGINEERING SERVICES**

**THIS AGREEMENT** made and entered into on this 25 day of October, 1994, by and between the **CITY OF TROUTDALE**, a political subdivision of the State of Oregon (hereinafter referred to as the "City"), and **KPFF CONSULTING ENGINEERS**, whose address is 707 SW Washington Street, Portland, Oregon 97205.

**WHEREAS**, the City desires to employ a consulting engineer to provide engineering services for the Beaver Creek Pump Station Upgrade; and,

**WHEREAS**, the City has not sufficient qualified staff to perform the necessary engineering within a reasonable time, and the City deems it advisable and desires to engage the services and assistance of a qualified professional engineering firm to prepare the engineering work for the project; and,

**WHEREAS**, the Consultant has represented, and by entering into this Agreement now represents, that all personnel to be assigned to the work required under this Agreement are fully qualified to perform the work to which they will be assigned in a competent and professional manner; and,

**WHEREAS**, the Consultant has indicated that he desires to do the work set forth in the Agreement upon the terms and conditions set forth below; now, therefore,

**IN CONSIDERATION** of the terms, conditions, covenants and performances contained herein below, the parties hereto agree as follows:

**I. RETENTION OF CONSULTANT**

The City does hereby employ the Consultant to perform the engineering services upon the terms and conditions set forth herein. The Consultant shall conduct and complete the work in a competent and professional manner and shall furnish all labor, materials, equipment, supplies, and other incidentals to complete the work, except for those items to be furnished by the City to the Consultant as described in Section III hereof.

**II. OBJECTIVE AND SCOPE OF WORK**

The objective of this Agreement is to provide engineering services, as required by the City, for the preparation of construction contract documents, bidding and construction award,

and for services during construction for the Project as described in Exhibit "A", which is hereby made a part of this Agreement.

### **III. ITEMS TO BE FURNISHED BY THE CITY**

The City will furnish the Consultant with as-built documents of the existing Beaver Creek Pump Station and the 1993 Basin "C" Study performed by Gibbs & Olson, Inc.

### **IV. DOCUMENTS TO BE FURNISHED BY THE CONSULTANT**

The Consultant shall provide the City with all documents as specifically identified in Exhibit "B".

Upon completion of the work all such documents shall become and remain the property of the City and may be used by it for any other purposes with no time limit.

The City or any of its duly authorized representatives shall have access to any books, documents, papers, and records of the Consultant which are directly pertinent to this specific contract, for the purpose of making audit, examination, excerpts, and transcriptions. All required records must be maintained by the Consultant for three years after the City makes final payment and all other pending matters are closed.

### **V. TIME OF PERFORMANCE**

Design tasks under this contract (except for bidding and contract award) shall commence upon signature of the contract and shall be completed within 14 weeks. The City may extend the term of this Agreement by providing the Consultant with written notice of such.

### **VI. PAYMENT**

The Consultant shall be paid by the City for completed work for services rendered under this Agreement as provided hereinafter. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment and incidentals necessary to complete the work.

The total compensation to the Consultant under this Agreement for the design phase of the project (including bidding and contract award) shall not exceed a gross amount of THIRTY THOUSAND SIX HUNDRED FORTY DOLLARS (\$30,640.00). The total compensation to the consultant under this agreement for the construction phase of the project shall be at the

rate shown in Exhibit "C" and shall not exceed a gross amount of TWENTY-TWO THOUSAND TWO HUNDRED DOLLARS (\$22,200) without prior approval of the City.

Any modifications to the scope of work as specified in Exhibit "A", whether lessening or broadening the extent of services and/or compensation, shall be as agreed to by the parties to this Agreement in writing at the time modification is authorized. Payment for Extra Work shall be in accordance with Section IX, Extra Work.

## **VII EMPLOYMENT**

The Consultant warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant or subconsultant, to solicit or secure this contract, and that he has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Consultant or subconsultant, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of the contract. For breach or violation of this warranty, the City shall have the right to annul the Agreement without liability, or otherwise recover the full amount of such fee, commissions, percentage, brokerage fee, gift, or contingent fee.

Any and all employees of the Consultant or subconsultant, while engaged in performance of any work or services required by the Consultant under this Agreement, shall be considered employees of the Consultant or subconsultant only and not of the City, and any and all claims of said employees while so engaged, and any and all claims made by a third party as a consequence of any negligent act or omission on the part of the Consultant or subconsultant's employees while so engaged on any of the work or services provided to be rendered herein, shall be the sole obligation and responsibility of the Consultant or subconsultant.

The Consultant shall not engage on full, part-time, or other basis, during the period of the contract, any professional or technical personnel who are, or who have been at any time during the period of this contract, in the employ of the City, except regularly retired employees, without the written consent of the public employer of such person.

## **VIII. NONDISCRIMINATION**

The consultant agrees not to discriminate against any client, employee, or applicant for employment or for services because of race, creed, color, national origin, marital status, sex, age, or handicap except for a bona fide occupational qualification, with regard to, but not limited to the following: employment upgrading, demotion or transfer, recruitment or any recruitment advertising, layoff or terminations, rates of pay or other forms of compensation, selection for training, or rendition of services. The Consultant understands

and agrees that if it violates this Nondiscrimination provision, this Agreement may be terminated by the City and further that the Consultant shall be barred from performing any services for the City now or in the future, unless a showing is made satisfactory to the City that discriminatory practices have terminated and that recurrence of such action is unlikely.

#### **IX. EXTRA WORK**

The City may desire to have the Consultant perform work or render services in connection with this Project in addition to or other than work provided for in the expressed intent of this Agreement. Such work will be considered as Extra Work and will be specified in a written supplement to this Agreement which will set forth the nature and scope thereof. Work under a supplemental agreement shall not proceed until authorized in writing by the City.

#### **X. TERMINATION OF AGREEMENT**

- (A) This Agreement may be terminated by mutual consent by both parties at any time or by either party upon thirty (30) days written notice delivered by certified mail or in person in the event of the other party's failure to perform in accordance with the terms of this Agreement.
- (B) In the event of the death of a member, partner, or officer of the Consultant, or any of its supervisory personnel assigned to the project, the surviving members of the Consultant hereby agree to complete the work under the terms of this Agreement, if requested to do so by the City. This section shall not be a bar to renegotiations of this Agreement between surviving members of the Consultant and the City, if the City so chooses.
- (C) In the event the services of the Consultant are terminated by the City for fault on the part of the Consultant, the amount to be paid shall be determined by the City with consideration given to the actual costs incurred by the Consultant in performing the work to the date of termination, the amount of work originally required which was satisfactorily completed to date of termination, whether that work is in a form or of a type which is usable to the City at the time of termination, the cost to the City of employing another firm to complete the work required and the time which may be required to do so, and other factors which affect the value to the City of the work performed at the time of termination.
- (D) In the event this Agreement is terminated prior to completion of the work, the original copies of all plans, prints, photos, drawings, test reports and field notes

prepared by the Consultant prior to termination shall become the property of the City for its use without restriction.

- (E) Payment for any part of the work by the City shall not constitute a waiver by the City of the remedies of any type it may have against the Consultant for any breach of this Agreement by the Consultant, or for failure of the Consultant to perform work required of it by the City.

## **XI. DISPUTES**

Any dispute concerning questions of facts in connection with work not disposed of by agreement between the Consultant and the City shall be referred for determination to the City Council, whose decision in the matter may be appealed to a Court of competent jurisdiction.

## **XII. LEGAL RELATIONS**

The Consultant shall comply with all Federal, State and Local laws and ordinances applicable to the work to be done under this Agreement.

## **XIII. EXHIBITS**

Should any conflicts between any exhibit and text of this Agreement arise, the text shall prevail.

## **XIV. RELATIONSHIP OF PARTIES**

The parties intend that an independent contractor relationship will be created by this Agreement. The City is interested in the results to be achieved, and the conduct and control of all services or work will lie solely with the Consultant. No agent, employee, servant or otherwise of the Consultant shall be or shall be deemed to be an employee, agent, servant or otherwise of the City for any purpose, and the employees of the Consultant are not entitled to any of the benefits that the City provides for City employees. The Consultant will be solely and entirely responsible for its acts and for the acts of its agents, employees, servants, subconsultants or otherwise during the performance of this contract. In the performance of the services herein contemplated, the Consultant is an independent contractor with the authority to control and direct the performance and details of the work, the City being interested only in the results obtained; however, the work contemplated herein must meet the approval of the City pursuant to the provisions of the proposal under which the services and work were let to the Consultant.

**XV. LIABILITY**

To the extent permitted by law, the liability of the Consultant 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 error, negligence or misrepresentation by the Consultant or its agents, but in no case more than \$500,000.

**XVI. INTEGRATION**

This Agreement contains all the terms and conditions agreed upon by the parties. No other understanding, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties. All parties have read and understand the above contract and now state that no representations, promises, or agreements not expressed by this Agreement have been made to induce the other to execute the same.

**FOR THE CITY OF TROUTDALE**



10/25/94  
Date

**FOR KPFF CONSULTING ENGINEERS**



18 OCT, 1994  
Date

CA:ENGCONS

## **EXHIBIT A: Scope of Work**

- A. The Consultant will accomplish the following tasks for design of this project:**
- 1. Perform necessary site investigation and review as-built documents to determine existing conditions.**
  - 2. Evaluate and recommend to the City a preferred alternative between installation of constant speed pumps with additional wet well volume versus installation of variable speed pumps and retention of the existing wet well without any additional volume. The evaluation should consider cost, ease of operation, and future maintenance requirements.**
  - 3. Design and prepare contract documents for the upgrade of the pump station, including upsizing the pumps to 2,100 GPM per pump, construction of a new 820-foot long 10-inch force main, addition of 16,450 gallons of wet well volume (unless the evaluation in paragraph 2 above determines that variable speed pumps without additional wet well volume is preferred), and backup power. Advise the City if this proposed design criteria appears inappropriate based upon actual conditions encountered. Three meetings between the consultant and the City should be planned during the design process: a pre-design meeting, a mid-design meeting, and a final design meeting.**
  - 4. Obtain approval of the recommended design package from the Oregon Department of Environmental Quality.**
  - 5. Provide to prospective bidders, at a reasonable cost, copies of the contract documents.**
  - 6. Provide, at no cost, copies of the contract documents to five Plan Room Services.**
  - 7. Respond to inquiries from prospective bidders and the City during the bidding process. Prepare and distribute addenda if necessary to resolve questions or make corrections.**
  - 8. Attend the bid opening, assist the City in bid evaluation, and make a recommendation for award of the construction contract.**
- B. The Consultant will accomplish the following tasks for construction management of this project:**
- 1. Attend and participate in the pre-construction conference.**

2. Furnish inspection of the Contractor's work on behalf of the City by periodic visits to the site to observe the progress and quality of the Contractor's work and his conformance to the plans and specifications. Direct the Contractor to correct any deficiencies noted.
3. Provide daily activity logs documenting construction activities, to include quantities placed, public contacts, problems encountered, etc.
4. Assist City staff and/or the contractor with any needed interpretation of plans and/or specifications.
5. Review and approve or reject any Contractor submittals.
6. Review and recommend appropriate action to the City regarding the Contractor's progress payment requests.
7. Issue clarifications or change orders as necessary when plans and/or specifications are ambiguous, conflicting, or in error.
8. Review and recommend appropriate action to the City regarding any Contractor-requested changes.
9. Make red-line notations to construction drawings indicating any field changes, deviations from plans or specifications, or differing site conditions encountered so that accurate "as-built" drawings can be prepared.
10. Prepare and issue Change Orders on behalf of the City when so directed. The City will compensate you for this additional work according to the standard fee schedule in Exhibit C.
11. Attend and participate in the on-site final inspection of the construction work.
12. Prepare "as-built" drawings and submit to the City one reproducible (mylar), three blue-line copies, and a diskette in AutoCAD format.
13. Provide an O & M manual for new equipment furnished.

## **EXHIBIT B: Products**

The Consultant will provide the following products:

- A. Four (4) copies of preliminary contract documents for City review and comment.
- B. Thirty (30) copies of final construction contract documents. Five (5) are for City use, five (5) are to be sent by the consultant to the Plan Room Services, and twenty (20) are to be made available by the consultant to prospective bidders. The contract documents are to include Instructions to Bidders, a Bid form, a Bid Bond form, Prevailing Wage Rates for Public Works Contracts in Oregon, a Contract Agreement form, separate Performance and Payment Bond forms, the necessary general and special technical provisions, and drawings.
- C. As-built drawings (one mylar set, three blueline copies, and a diskette with drawings in Auto CAD format).
- D. An Operations and Maintenance Manual for the new pumps and the generator, to include recommended spare parts lists.

## EXHIBIT C: Consultant Fee Schedule

1. <u>Staff Classification</u>	<u>Hourly Rate</u>
Senior Project Manager	\$ 90.00
Project Manager	85.00
Project Engineer	58.00
Civil Designer	52.00
Structural Engineer	60.00
Electrical Engineer	72.00
Associate Electrical Engineer	57.00
Architect	60.00
Civil Design Technician	55.00
Draft Technician	37.00
Electrical Draft Technician	47.00
Clerical	35.00

2. Other expenses will be billed at actual cost.

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