

AGREEMENT
for
PROFESSIONAL CONSULTING SERVICES

THIS AGREEMENT is made and entered into on this 28th day of February, 1995, by and between the CITY OF TROUTDALE, a political subdivision of the State of Oregon (hereinafter referred to as the "City"), and KCM, Inc., whose address is 7080 SW Fir Loop, Portland, Oregon 97223 (hereinafter referred to as the "Consultant").

WHEREAS, the City desires to employ a consultant to provide professional services for study of the Sandy (South Troutdale) Drainage Basin; and,

WHEREAS, the City has not sufficient qualified staff to perform the necessary study within a reasonable time, and the City deems it advisable and desires to engage the services and assistance of a qualified consultant to perform the study for the City; 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 professional 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 professional services, as required by the City, for the study of the Sandy (South Troutdale) Drainage Basin 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 the following:

- Base maps in digital format (AutoCAD Release 12).
- As-built drawings of existing storm drainage facilities upon request.
- Locations, sizes, types, and elevations of existing storm drainage lines.
- Current ordinances and resolutions pertaining to storm sewer user fees and system development charges.
- Aerial photograph of the City.
- City zoning map.
- City Comprehensive Plan.
- Flood Insurance Rate Map and Study.

IV. ITEMS TO BE FURNISHED BY THE CONSULTANT

The Consultant shall provide the City with the following:

- A draft report in five (5) copies.
- A final report in twenty (20) copies.
- A final report on 5 1/4" disk in Word Perfect 5.1 format.
- Maps and drawings on 3 1/2" disk in AutoCAD Release 12 format.

Upon completion of the work all such documents prepared by the Consultant under this contract shall become and remain the property of the City. Consultant will not be held liable for reuse of these documents or modifications thereof for any other purposes other than those authorized under this Agreement without the written authorization of Consultant. To the extent that the work product of Consultant is used for any purpose other than its intended purpose under this Agreement, City shall release Consultant from all liability of whatever nature related to such other use and the City shall indemnify and hold Consultant harmless from all liability related to such other purpose.

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

Work required under this contract shall commence within ten (10) calendar days following the last date signed and shall be completed within 215 calendar days thereafter.

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.

Services provided under this Agreement will be compensated for in the lump sum amount of \$51,831. Invoices for work accomplished may be submitted to the City by the consultant monthly based on estimated percent complete; payment will be made by the City within thirty (30) days after receipt of an accurate invoice. Invoices unpaid after thirty (30) days shall accrue interest at the rate of one and one-half percent per month.

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, utilizing the Consultant's Fee Schedule attached as Exhibit "B".

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 in accordance with the Scope of Work 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 reports prepared by the Consultant prior to termination shall become the property of the City.
- (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 endeavor to 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 negligent acts, errors, or omissions by the Consultant or its agents, but in no case more than \$500,000.

XVI. INTEGRATION

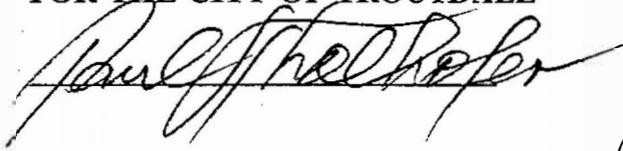
This Agreement contains all the terms and conditions agreed upon by the parties. No other understanding, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties. All parties have read and understand the above contract and now state that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

XVII. TAX INFORMATION

KCM, Inc. is a (check one): Professional Corporation Corporation
 Partnership Sole Proprietor

Whose Tax I.D. Number is 910888400.

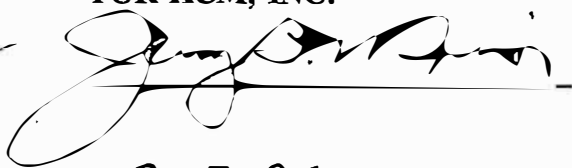
FOR THE CITY OF TROUTDALE



3-2-95

Date

FOR KCM, INC.



2-17-95

Date

C:\KCM

Exhibit "A"

SCOPE OF WORK

The following tasks outline the scope of work to complete the Storm Drainage Study of the Sandy (South Troutdale) Drainage Basin. The study will include areas within Troutdale which drain directly or via Beaver Creek into the Sandy River, and areas outside the City which would directly effect the city. Areas covered in the North Troutdale Storm Drainage Master Plan will not be analyzed.

TASK 1 - COMPILE / REVIEW BACKGROUND INFORMATION

Objective: *The objective of this task is to acquire/review previous planning efforts, studies, maps, data, policies and pertinent information to support the study effort.*

Subtask 1.1 - Review Reports, Maps, Data - The KCM project team will review information relating to the hydrology, water quality, natural resources and other pertinent components of the project. This information will include previous master plans, hydrologic/hydraulic studies, water quality data, aerial photography, National Wetland Inventory Maps, soil surveys, special sensitive area ordinance requirements, information on threatened and endangered species, protection requirements for both fisheries and wetlands resources, Local Wetland Inventories, land use plans, and overlay zones.

Subtask 1.2 - Review Existing Complaints / Problems - The KCM project team will review and document all past complaints and concerns. City staff will be interviewed to determine existing maintenance, engineering and planning issues. Organizations (Friends of Beaver Creek) and agencies which have a stake in the study will also be interviewed. Coordination with on-going studies in the area will be needed to develop a plan which meets the needs of the City and does not duplicate the work effort. The studies include the current FEMA study for the lower reach of Beaver Creek by the Army Corp. of Engineers, the Beaver Creek Basin Management Plan by the Oregon Department of Fish and Wildlife, and the Kelly Creek (tributary to Beaver Creek) Drainage Master Plan by the City of Gresham.

Subtask 1.3 - Review Existing Policies - The KCM project team will study the City's policies and regulations and make recommendations to assure that future development in Troutdale will adhere to the Drainage Master Plan. These recommendations will be presented in the alternatives evaluation. A fast-track review of the City's SDC and Storm Sewer Utility Fee will be conducted to assist in current policy decisions (Task 4).

Subtask 1.4 - Survey - Conduct survey operations to the minimum extent needed to complete the modeling, which would be relative elevations with approximate horizontal control. This would include cross sections relative to the creek bottom approximately every 100 feet, with elevations based on USGS maps. It would include the four major structures along the route.

End Product: *A bibliography will be included in the final report which will outline all documents reviewed.*

TASK 2 - EVALUATE EXISTING BASINS

Objective: *The objective of this task is to delineate the existing basins within the study area and to determine the natural resources which will effect future development and the runoff associated with the development.*