

PROFESSIONAL SERVICES

AGREEMENT

AMENDMENT NO. 3

FILE COPY

(2)(P)

Design Misc Sewer
Improvements

The following shall become an amendment to the Agreement for Professional Services dated June 18, 1979, between the CITY OF NEWBERG, Oregon, the OWNER, and ROBERT E. MEYER CONSULTANTS, the ENGINEER.

WHEREAS, the OWNER and ENGINEER desire to modify the scope of work and payment for certain Additional Services associated with Part I, Items (b), (c), and (e) of the Agreement.

NOW, THEREFORE, the parties agree as follows:

1. Add the following at the end of Item A.6. Part II, page 5:

Compensation for Additional Services shall be on a basis of employees' time at a multiple of 2.30 times the employees direct personnel expense plus other expenses at cost. Engineering charges for the following items shall not exceed the listed limits without prior authorization of the OWNER:

<u>Item</u>	<u>Authorization Limit</u>
1. Design Surveys	---- \$ 7,550
2. Construction Surveys	---- 5,500
3. Resident Inspection	---- 25,000
4. Hess Cr. Pump Station Control Re-design	---- 850

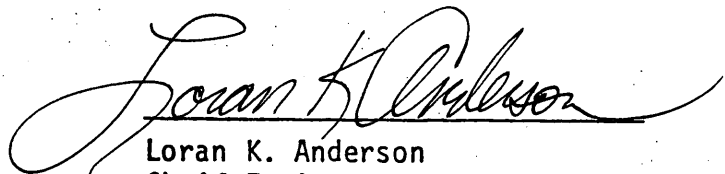
OWNER

ENGINEER

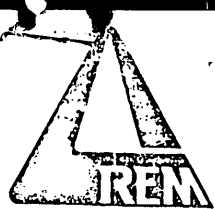


City Administrator

NOV. 19 1980



Loran K. Anderson
Chief Engineer



Robert E. Meyer Consultants, Inc.

915-31

• Beaverton & Redmond
14250 S.W. Allen Blvd. Beaverton, Oregon 97005 (503) 643-7531

September 26, 1980

Mr. Myrland C. Gilbert
City Administrator
City of Newberg
414 E. First St.
Newberg, Oregon 97132

Reference: City of Newberg - Sewerage System Improvements Project

Dear Myrland -

As we proceed with the administration of the construction contract for Newberg's Sewerage System Improvements Project, it has become apparent that we must expand the work scopes and budgets for three areas of additional Engineering services.

The first item which we would like to discuss is the field inspection of the Sewerage System Improvements Project. In May, 1979 when the original budget estimate was prepared, we anticipated construction in 1979 with less than full time inspection and a shorter construction period. Since that time, all of these criteria have been changed. The City Engineer, Bob Sanders, has requested that we provide a full time inspector who can observe the contractor's work progress and answer any construction questions as needed. In addition, we now must provide for using 1980-81 wage rates for inspecting the work for a longer period of time.

To meet the present requirements for inspection we must now ask that you raise the approved maximum fee for resident inspection from \$14,900 to a sum of \$25,000.

The second area of extra engineering services for which we are asking consideration is that for construction surveys. To date our surveyors have staked the entire "C" line (approx. 3200 lf) for clearing by the contractor and have provided construction line and grade stakes for the first 2500 lf of line "C". The \$2100 originally budgeted for construction surveys was made back in May, 1979 before the design of the

project. Due to the depth and density of the undergrowth encountered, the surveying costs have exceeded our budget figure and at this time we would expect the final construction stakeout cost to be approximately \$5,500. We are now asking that you approve a new maximum for construction surveys of \$5,500.

The third point of discussion stems from changes which were recently made by the City to the electrical controls at the Hess Creek Pump Station. Our design of modifications to the Hess Creek Pump Station was completed and then reviewed by the City in December of 1979 and advertised for bid the beginning of July 1980. We just recently became aware that changes have been made to the electrical control system at the pump station which are incompatible with our design as bid or with our recommendations for best pump station operation. To date, we have spent approximately \$400 evaluating the effects of the changes and coordinating with City personnel and the electrical contractor. We estimate that the sum could reach \$850 before all coordination and review is completed to assure the City that the pump station will function in a desirable fashion. We now ask you to approve a budget of \$850 for redesign and evaluation of the pump controls at the Hess Creek Pump Station.

If you require further explanations or information regarding the requests as stated above, please do not hesitate to give me a call.

Sincerely,

Frank Galida, P.E.
Staff Engineer

FG:bjm



AGREEMENT BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES

PART I PARTIES AND PROJECT

THIS AGREEMENT is made on the 18 day of July in the year 1980 between the CITY OF NEWBERG, Oregon, a municipal corporation, the OWNER, and ROBERT E. MEYER CONSULTANTS, INC., the ENGINEER, for the following project:

Sewage Treatment Facility Improvements initially consisting of the design of the following:

- (A) The new treatment facilities will be located on or adjacent to the existing sewage treatment facility. The work will include a new influent structure to work in conjunction with the existing influent structure; two new 1.45 MGD oxidation ditches; one new 1.45 MGD secondary clarifier; the reuse of the two existing secondary clarifiers and chlorine contact basin; converting an existing aeration basin into a chlorine contact basin; expanding the chlorine storage and feed facilities; remodeling the existing lab/office room; and provisions for decommissioning the remainder of the plant.

Services under this item will commence with the Design Development Phase and continue through the Construction Contract Documents Phase.

- (B) Survey work required to prepare topographic information and locate property lines needed to design the facilities in (A) above are included in this work. The scope of work does not include easements or right-of-way preparation or property acquisition.



- (C) Additional system improvements for which the scope of work and compensation for engineering charges shall be subject to later negotiation by the OWNER and ENGINEER.
- (D) U.S. Environmental Protection Agency Regulations
As required by the U.S. Environmental Protection Agency, "Required Provisions - Consulting Engineering Agreements," 40 CFR Part 35, Subpart E, Appendix C-1 from the Federal Register, Vol. 41, No. 251, December 29, 1976, is attached and made a part of this agreement.

PART II ENGINEERING CHARGES

- (A) In accordance with the terms and conditions of this agreement, the ENGINEER shall provide professional services for which the OWNER shall compensate the ENGINEER as follows:
 - (1) For Part I(A) above, compensation for basic services shall be on the basis of a lump sum of \$235,000 assuming design is authorized to start prior to February, 1981. If authorization is delayed, then negotiations will be needed to cover additional expenses due to inflation.
 - (2) For Part I(B) above, compensation for basic services shall be on the basis of employees' time at a multiple of 2.3 times the employees' direct personal expenses. Reimbursable expenses shall be at cost. The total for Part I(B) shall not exceed \$3,000.00 without prior authorization of the OWNER.
 - (3) For Part I(C), scope of work and compensation for engineering charges shall be subject to later negotiations by OWNER and the ENGINEER.

Part III. TERMS AND CONDITIONS

Article 1. ENGINEER'S SERVICES

1.1 Basic Services

The ENGINEER agrees to perform professional services in connection with the Project, including normal civil, structural, mechanical and electrical services and normal architectural services related thereto, as set forth below and contained within this Agreement:

1.1.2 Schematic Design Phase

During the Schematic Design Phase the ENGINEER shall:

1.1.2.1 Consult with the OWNER to ascertain the OWNER's requirements for the Project.

1.1.2.2 Advise the OWNER as to the necessity of his obtaining additional services such as described within Article 1, paragraph 1.2 "Additional Services" and if authorized by the OWNER, shall provide, or assist him in procuring such additional services.

1.1.2.3 Prepare a preliminary engineering study and report, which will consist of schematic design documents and reports of studies as necessary for review and written approval by the OWNER.

1.1.2.4 Prepare a statement of the ENGINEER's Opinion of the Construction Cost based upon the preliminary designs developed under this Phase.

1.1.2.5 Furnish _____ copies of the Schematic Design Documents for the OWNER's review and approval.

1.1.3 Design Development Phase

Upon receipt of the OWNER's written authorization to proceed with the Design Development Phase, the ENGINEER shall:

1.1.3.1 Advise the OWNER as to the necessity of his obtaining further additional services and if authorized by the OWNER, shall provide, or assist him in procuring such services.

1.1.3.2 Prepare from the approved Schematic Design Studies, for approval by the OWNER, the Design Development Documents consisting of design criteria, drawings and outline specifications to develop and establish the scope of the Project.

1.1.3.3 Prepare a statement of the ENGINEER's Opinion of the Construction Cost for the Project based upon designs established to this point.

1.1.3.4 Furnish Five (5) copies of the Design Development Documents for the OWNER's review and approval.

1.1.4 Construction Contract Documents Phase

Upon receipt of the OWNER's written authorization to proceed with the Construction Contract Documents Phase, the ENGINEER shall:

1.1.4.1 Prepare the required Contract forms including proposal forms and notice to bidders, drawings, technical specifications and other documents as required to complete the Construction Contract Documents.

1.1.4.2 Furnish to the OWNER engineering data and documents so that the OWNER may secure approval from governmental authorities having jurisdiction over the Project.

1.1.4.3 Advise the OWNER of any adjustments to previous ENGINEER's Opinion of the Construction Cost when changes in requirements, general market conditions or other conditions so warrant.

1.1.4.4 At the OWNER's request, assist the OWNER's legal counsel in connection with his review of the Construction Contract Documents for their legally related aspects.

1.1.4.5 Furnish twenty (20) copies of the Construction Contract Documents for the OWNER's review and approval.

1.1.5 Bidding or Negotiating Phase

Upon receipt of the OWNER's written approval of the Construction Contract Documents Phase and latest Opinion of the Construction Cost, and written authorization to proceed with the Bidding or Negotiating Phase, the ENGINEER shall:

1.1.5.1 Assist the OWNER in obtaining bids or negotiating bid proposals, in analyzing bids and proposals, and in awarding the Construction Contract.

1.1.6 Construction Phase

Upon award of any Construction Contract based upon the Construction Contract Documents compiled by the ENGINEER, the Construction Phase of this Agreement shall commence and the ENGINEER shall:

1.1.6.1 Act as the OWNER's representative with duties and responsibilities and limitations of authority as described in the General Conditions to the Construction Contract. The OWNER shall not modify the Construction Contract Documents without the written consent of the ENGINEER.

1.1.6.2 Advise and consult with the OWNER during the Construction Phase and the ENGINEER shall issue the OWNER's authorized instructions to the Contractor.

1.1.6.3 Make periodic visits to the site of the construction to observe the progress and quality of the construction work and to determine, in general, if the results of the construction work are in accordance with the Drawings and the Specifications. On the basis of his on-site observations as an ENGINEER, he shall endeavor to guard the OWNER against apparent defects and deficiencies in the permanent work constructed by the Contractor but does not guarantee the performance of the Contractor. The ENGINEER shall not be required to make exhaustive or continuous on-site observations to check the quality or quantity of the construction work. The ENGINEER is not responsible for construction means, methods, techniques, sequences or procedures, time of performance, programs, or for any safety precautions in connection with the construction work. The ENGINEER is not responsible for the Contractor's failure to execute the work in accordance with the Construction Contract.

1.1.6.4 Review the Contractor's request for progressive payment, and based upon said on-site observation, advise the OWNER as to the ENGINEER's opinion of the extent of the work completed in accordance with the terms of the Construction Contract as of the date of the Contractor's payment request and issue, for processing by the OWNER, a Certificate for Payment in the amount owed the Contractor. The issuance of Certificates for Payment shall constitute a declaration by the ENGINEER to the OWNER, based upon said on-site observations, review and data accompanying the request for payment, that the Contractor's work has pro-

gressed to the point indicated; that to the best of the ENGINEER's knowledge, information and belief, the quality of the Contractor's work is in accordance with the Construction Contract Documents (subject to subsequent tests and review required by the Construction Contract Documents, to correction of minor deviations from the Construction Contract Documents and to qualifications stated in the Certificate for Payment); and that the Contractor is entitled to the amount stated. The issuing of the Certificate for Payment by the ENGINEER shall not represent that he has made any investigation to determine the uses made by the Contractor of sums paid to the Contractor.

1.1.6.5 Make recommendations to the OWNER on all claims relating to the execution and progress of the construction work. The ENGINEER's decisions in matters relating to the ENGINEER's design shall be final.

1.1.6.6 Notify the OWNER of permanent work which does not conform to the result required in the Construction Contract, prepare a written report describing any apparent non-conforming permanent work and make recommendations to the OWNER for its correction and, at the request of the OWNER, have recommendations implemented by the Contractor.

1.1.6.7 Review shop drawings, samples, and other submittals of the Contractor only for general conformance to the design concept of the Project and for general compliance with the Construction Contract.

1.1.6.8 Prepare Change Orders for the OWNER's approval.

1.1.6.9 Conduct a construction progress review related to the Contractor's date of completion; receive written guarantees and related data assembled by the Contractor; and issue to the OWNER a Certificate of Final Payment.

1.1.6.10 The ENGINEER shall not be responsible for the defects or omissions in the work result of the Contractors, or any Subcontractors, or any of the Contractor's or Subcontractor's employees, or that of any other persons or entities responsible for performing any of the work result as contained in the Construction Contract.

1.2 Additional Services

If authorized in writing by the OWNER, the ENGINEER agrees to furnish or obtain from others, additional professional services in connection with the Project, as set forth below and contained within this Agreement:

1.2.1 Preparation of applications and supporting documents for government grants, loans or advances.

1.2.2 Making drawings from field measurements of existing construction when required for planning additions or alterations thereto.

1.2.3 Services due to changes in the scope of the Project or its design, including but not limited to, changes in size, complexity, schedule or character of construction.

1.2.4 Revising studies, reports, design documents, drawings or specifications which have previously been approved by the OWNER, or when such revisions are due to causes beyond the control of the ENGINEER.

1.2.5 Preparation of design documents for alternate bids or for out-of-sequence work requested by the OWNER.

1.2.6 Preparation of detailed renderings, exhibits or scale models for the Project.

1.2.7 Providing special analysis of the OWNER's needs such as owning and operating analysis, OWNER's operating and maintenance manuals, OWNER's special operating drawings or charts, and any other similar analysis.

1.2.8 Providing planning surveys, site evaluations and comparative studies of prospective sites.

1.2.9 Providing any type of field surveys for design purposes, "stake out" of the location of the work, and any other special field surveys.

1.2.10 Furnishing additional copies of reports and additional prints of Drawings and Specifications in excess of those stipulated in the Agreement.

1.2.11 Investigations involving detailed consideration of operations, maintenance and overhead expenses; the preparation of rate schedules, earnings and expense statements, feasibility studies, appraisals and valuations; detailed quantity surveys of material and labor; and material audits or inventories required by the OWNER.

1.2.12 Additional services when the Project involves more than one Construction Contract, or separate equipment contracts.

1.2.13 Preparing special Change Orders when requested by the OWNER which are not within the scope of Article 1, "ENGINEER'S SERVICES," paragraph 1.1.6.8.

1.2.14 Making a review of the Project prior to expiration of the guarantee period and reporting observed discrepancies under guarantees provided by the Construction Contract.

1.2.15 Preparing a set of reproducible record drawings conforming to construction records provided to the ENGINEER, made by the Contractor during the construction process.

1.2.16 Additional or extended services during construction made necessary by (1) work damaged by fire or other cause during construction, (2) defective or incomplete work of the Contractor, (3) prolongation of the initial Construction Contract time beyond the contract time, (4) acceleration of the work schedule involving services beyond established office working hours, and (5) the Contractor's default under Construction Contract due to delinquency or insolvency.

1.2.17 Providing assistance in the initial start-up, testing, adjusting or balancing, or operation of equipment or systems, or training personnel for operation or maintenance of equipment or system.

1.2.18 Providing design services relating to future facilities, systems and equipment which are not intended to be constructed or operated as a part of the Project.

1.2.19 Providing services as an expert witness for the OWNER in connection with litigation or other proceedings involving the Project.

1.2.20 Providing other services not otherwise provided for in this Agreement, including services normally furnished by the OWNER as described in Article 2, "OWNER'S RESPONSIBILITIES."

1.2.21 Providing Resident Project Representative services to give the OWNER more extensive on-site representation during the Construction Phase.

Article 2. OWNER'S RESPONSIBILITIES

The OWNER shall:

- 2.1 Provide to the ENGINEER all criteria, design and construction standards and full information as to the OWNER's requirements for the Project.
- 2.2 Designate in writing a person authorized to act as the OWNER'S representative. The OWNER or his representative shall receive and examine documents submitted by the ENGINEER, interpret and define the OWNER's policies and render decisions and authorizations in writing promptly to prevent unreasonable delay in the progress of the ENGINEER's services.
- 2.3 Furnish to the ENGINEER a complete land survey of the Project site which shall include but not be limited to service and utilities locations with depths and invert grades, easements, rights-of-way, contours, grades, streets, alleys, pavements, adjoining property, encroachments, zoning and deed restrictions, existing buildings, improvements and tree locations.
- 2.4 Furnish soils data including but not limited to reports, test borings, test pits, probings, subsurface exploration, soil bearing values, percolation tests, ground corrosion and resistivity tests, all with appropriate professional interpretation.
- 2.5 Furnish laboratory tests, air and water pollution tests, reports and inspections of samples, materials or other items required by law or by governmental authorities having jurisdiction over this Project.
- 2.6 Provide legal, accounting, and insurance counseling services necessary for the Project, legal review of the Construction Contract Documents, and such auditing services as the OWNER may require to account for expenditures of sums paid to the Contractor.
- 2.7 Furnish permits and approvals from all governmental authorities having jurisdiction over this Project and from others as may be necessary for completion of the Project.
- 2.8 Furnish above services at the OWNER's expense and in such manner that the ENGINEER may rely upon them in the performance of his services under this Agreement.
- 2.9 Obtain bids or proposals from contractors for work relating to this Project and bear all costs relating thereto.
- 2.10 Protect and preserve all survey stakes and markers placed at the Project site prior to the assumption of this responsibility by the Contractor and bear all costs of replacing stakes or markers damaged or removed during said time interval.
- 2.11 Guarantee full and free access for the ENGINEER to enter upon all property required for the performance of the ENGINEER's services under this Agreement.
- 2.12 Give prompt written notice to the ENGINEER whenever the OWNER observes or otherwise becomes aware of any defect in the Project or other event which may substantially affect the ENGINEER's performance of services under this Agreement.
- 2.13 Compensate the ENGINEER for services rendered under this Agreement.

Article 3 DIRECT PERSONNEL EXPENSE

Direct Personnel Expense shall be defined as the direct labor costs incurred by the ENGINEER directly attributable to the Project by the payment of actual salary and wages to the ENGINEER's employees for work performed on the OWNER's Project, plus a stipulated percentage of such salaries to cover all payroll-related taxes, payments, premiums and benefits.

Article 4 REIMBURSABLE EXPENSES

- 4.1 Reimbursable Expenses are in addition to compensation to the ENGINEER for Basic and Additional Services and include expenditures made by the ENGINEER, his employees or his consultants in the interest of the Project. Reimbursable Expenses include but are not limited to:
 - 4.1.1 Expense of transportation, subsistence and lodging when traveling in connection with the Project.
 - 4.1.2 Expense of long distance or toll telephone calls, telegrams, messenger service, field office expenses, and fees paid for securing approval of authorities having jurisdiction over the Project.
 - 4.1.3 Expense of all reproduction, postage and handling of Drawings, Specifications, reports or other Project-related work product of the ENGINEER.
 - 4.1.4 Expense of computer time including charges for proprietary programs.
 - 4.1.5 When authorized in advance by the OWNER, expense of overtime work requiring higher than normal rates, and expense of preparing perspectives, renderings or models.

Article 5 PAYMENTS TO THE ENGINEER

- 5.1 Progress payments shall be made in proportion to services rendered and as indicated within this Agreement and shall be due and owing within thirty days of the ENGINEER's submittal of his monthly statement. Past due amounts owed shall include a charge at the maximum legal rate of interest from the thirtieth day.
- 5.2 If the OWNER fails to make monthly payments due the ENGINEER, the ENGINEER may, after giving seven days written notice to OWNER, suspend services under this Agreement.
- 5.3 No deductions shall be made from the ENGINEER's compensation on account of penalty, liquidated damages or other sums withheld from payments to Contractors.
- 5.4 If the Project is delayed or if the ENGINEER's services for the Project are delayed or suspended for more than three months for reasons beyond the ENGINEER's control, the ENGINEER may, after giving seven days written notice to the OWNER, terminate this Agreement and the OWNER shall compensate the ENGINEER in accordance with the termination provision contained hereafter in this Agreement.

Article 6 GENERAL PROVISIONS

6.1 Ownership of Documents

All Drawings, Specifications and other work product of the ENGINEER for this Project are instruments of service for this Project only and shall remain the property of the ENGINEER whether the Project is completed or not. Reuse of any of the instruments of service of the ENGINEER by the OWNER on extensions of this Project or on any other project without the written permission of the ENGINEER shall be at the OWNER's risk and the OWNER agrees to defend, indemnify and hold harmless the ENGINEER from all claims, damages, and expenses including attorneys' fees arising out of such unauthorized reuse of the ENGINEER's instruments of service by the OWNER OR BY OTHERS ACTING THROUGH THE OWNER. Any reuse or adaptation of the ENGINEER's instruments of service occurring after the written agreement of the ENGINEER shall entitle the ENGINEER to further compensation in amounts to be agreed upon by the OWNER and the ENGINEER.

6.2 Delegation of Duties

Neither the OWNER nor the ENGINEER shall delegate his duties under this Agreement without the written consent of the other.

6.3 Termination

This Agreement may be terminated by either party by seven days written notice in the event of substantial failure to perform in accordance with the terms of this Agreement by the other party through no fault of the terminating party. If this Agreement is terminated, the ENGINEER shall be paid for services performed to the termination notice date including Reimbursable Expenses due plus Termination Expenses. Termination Expenses are defined as Reimbursable Expenses directly attributable to termination, plus 15% of the total compensation earned to the time of termination to account for ENGINEER's rescheduling adjustments, reassignment of personnel and related costs incurred due to termination.

6.4 Extent of Agreement

This Agreement represents the entire and integrated agreement between the OWNER and the ENGINEER and supercedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only

by written instrument signed by both the OWNER and the ENGINEER.

6.5 Governing Law

Unless otherwise specified within this Agreement, this Agreement shall be governed by the law of the principal place of business of the ENGINEER.

6.6 General

6.6.1 Should litigation or arbitration occur between the two parties relating to the provisions of this Agreement, all litigation or arbitration expenses, collection expenses, witness fees, court costs and attorneys fees incurred by the prevailing party shall be paid by the non-prevailing party to the prevailing party.

6.6.2 Neither party shall hold the other responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of the other or the other's employees and agents.

6.6.3 In the event any provisions of this Agreement shall be held to be invalid and unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any provision, term, condition or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same by the other party.

6.6.4 The ENGINEER has not been retained or compensated to provide design and construction review services relating to the Contractor's safety precautions or to means, methods, techniques, sequences, or procedures required for the Contractor to perform his work but not relating to the final or completed structure; omitted services include but are not limited to shoring, scaffolding, underpinning, temporary retainment of excavations and any erection methods and temporary bracing.

6.6.5 The ENGINEER intends to render his services under this Agreement in accordance with generally accepted professional practices for the intended use of the Project and makes no warranty either express or implied.

6.6.6 Any Opinion of the Construction Cost prepared by the ENGINEER represents his judgment as a design professional and is supplied for the general guidance of the OWNER. Since the ENGINEER has no control over the cost of labor and material, or over competitive bidding or market conditions, the ENGINEER does not guarantee the accuracy of such Opinions as compared to Contractor bids or actual cost to the OWNER.

Article 7. SPECIAL PROVISIONS

7.1 Insurance and Indemnity

7.1.1 Engineer's Insurance—The ENGINEER shall acquire and maintain statutory workmen's compensation insurance coverage, employer's liability, comprehensive general liability insurance coverage and professional liability insurance coverage. The limits and deductible applicable to both comprehensive general liability and professional liability shall be established under a separate agreement between the parties.

7.1.2 Contractor's Insurance—Prior to the commencement of the work, the OWNER shall require the Contractor and any Subcontractors to submit evidence that he (they) have obtained for the period of the Construction Contract and the guarantee period comprehensive general liability insurance coverage (including completed operations coverage). This coverage shall provide for bodily injury and property damage arising directly or indirectly out of, or in connection with, the performance of the work under the Construction Contract, and have a limit of not less than \$ 250,000.00 for all damages arising out of bodily injury, sickness or death of one person and an aggregate of \$ 500,000.00 for damages arising out of bodily injury, sickness and death of two or more persons in any one occurrence. The property damage portion will provide for a limit of not less than \$ 250,000.00 for all damages arising out of injury to or destruction of property of others arising directly or indirectly out of or in connection with the performance of the work under the Construction Contract and in any one occurrence including explosion, collapse and underground exposures.

Included in such coverage will be contractual coverage sufficiently broad to insure the provision of paragraph 7.1.4 "Indemnity". The comprehensive general liability insurance will include as additional named insureds: the OWNER; the ENGINEER; and each of their officers, agents and employees.

7.1.3 Builders Risk "All Risk" Insurance—Before commencement of the work, the OWNER will require that the Contractor and any Subcontractors submit written evidence that he (they) have obtained for the period of the Construction Contract, Builders Risk "All Risk" Completed Value Insurance Coverage (including earthquake and flood) upon the entire Project which is the subject of the Construction Contract. Such insurance shall include as additional named insureds: the OWNER; the ENGINEER; and each of their officers, agents, employees and any other persons with an insurable interest as maybe designated by the OWNER.

Such insurance may have a deductible clause but not to exceed \$5,000, except that the earthquake deductible may be in accordance with generally accepted insurance practices in the locale where the coverage is issued.

7.1.4 Indemnity—The OWNER will require that any Contractor or Subcontractors performing work in connection with Drawings and Specifications produced under this Agreement to hold harmless, indemnify and defend, the OWNER and the ENGINEER, their consultants, and each of their officers, agents, and employees from any and all liability claims, losses or damage arising out of or alleged to arise from the Contractor's (or Subcontractor's) negligence in the performance of the work described in the Construction Contract Documents, but not including liability that may be due to the sole negligence of the OWNER, the ENGINEER, their consultants or their officers, agents and employees.

This Agreement executed the day and year written at the beginning of the Agreement.

OWNER:

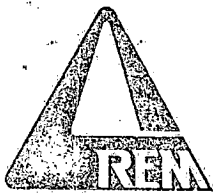
Elven Hall
MAYOR

ENGINEER:

Harold R. Murray

Executive Vice President

Robert E. Meyer Consultants, Inc.



Robert E. Meyer Consultants

915-33

Engineers • Planners • Surveyors

RECEIVED

OCT 2 1979

Beaverton & Redmond

14250 S.W. Allen Blvd.
Beaverton, Oregon 97005
(503) 643-7531

CITY OF NEWBERG, ORE.
OFFICE OF RECORDER

October 1, 1979

Mr. Ernst Heister, P.E.
City Engineer
414 East First Street
Newberg, Oregon 97132

Re: 8th Street, Hess Creek & Wynooski Pump Stations

Dear Ernst,

Enclosed is Amendment No. 2 to our agreement of June 18, 1979 for engineering services for the subject pump stations.

Per our meeting of September 25, 1979, the 8th Street Pump Station will be upgraded by replacing the pump rather than constructing a new pump station as originally anticipated. The amendment reflects this change in scope and modifies the fee to a time and materials basis with a limit not to exceed \$8,400.

With respect to the Hess Creek and Wynooski Pump Station modifications, we will include this work with the 8th Street Pump Station work per your letter of September 21, 1979. The amendment reflects this arrangement and we propose to be reimbursed on a time and materials basis not to exceed \$6,000.

Per your verbal instructions, we are proceeding with work on both of the above items. Please review this amendment at your earliest convenience and if you have any questions, please call.

Sincerely,

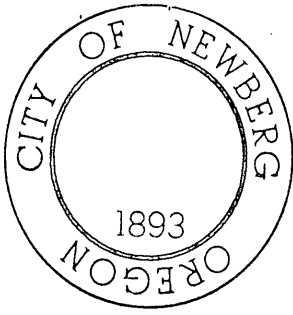
Philip H. Smith, P.E.
Senior Engineer

enclosures:

cc: Mr. Myrland C. Gilbert
City Administrator

PHS/lp

8445
9600- PLS



CITY OF

NEWBERG

414 E. First Street

Newberg, OR 97132

September 21, 1979

Attention: Philip H. Smith
Robert E. Meyer Consultants
14250 S. W. Allen Blvd.
Beaverton, OR 97005

Subject: Hess Creek and Wyooski Pump Stations Modifications

Dear Phil:

In reference to the subject modifications, (your letter of August 31, 1979), I would offer the following proposals based on the listed information:

A. I called September 20th. You were away, and in your absence, I spoke to Frank Galida regarding the sewer project schedule.

B. Specifically, he mentioned you might suggest an alternate to replacing the Eighth St. Pump Station by upgrading the existing station which would handle a peak flow through 2000. This would be made into a contract bid package after a meeting with and the approval of the City Administrator and City Engineer.

C. This suggested alternative would in all probability require similar services outlined for the subject pump stations.

Therefore, it is recommended that the modifications outlined in your study and delineated in your letter noted in paragraph 1 be included with the contract for the Eighth Street Pump Station.

If there are any questions regarding this matter, please contact me.

Very truly yours,

E. A. Heister
Director of Public Works/
City Engineer

EAH:nm

xc: M. C. Gilbert ✓

PROFESSIONAL SERVICES
AGREEMENT
AMENDMENT NO. 2

The following shall become an amendment to the Agreement for Professional Services dated June 18, 1979, between the CITY OF NEWBERG, Oregon, the OWNER, and ROBERT E. MEYER CONSULTANTS, the ENGINEER.

WHEREAS, the OWNER desires to modify the 8th Steet Pump Station in lieu of replacement of the station and to proceed with improvements and modifications to the Hess Creek and Wynooski Pump Stations.

NOW, THEREFORE, the parties agree as follows;

1. Replace the first sentence in Item (d), Part I, page 2, with the following:

"8th Street Pump Station consisting of replacement of the two (2) existing 400 gallon per minute pumps with two (2) larger pumps to provide an estimated station capacity of 600 gallons per minute".

2. Add the following at the end of Item (e), Part I, page 3:

"Improvements to the Hess Creek and Wynooski Pump Stations shall be as outlined in the Preliminary Engineering Study, Hess Creek and Wynooski Sewage Pump Stations, August, 1979".

3. Replace the first sentence in Item A.3, Part II, page 4, with the following:

"For Part I, Item (d), 8th Street Pump Station, compensation for basic services shall be on the basis of employees' time at a multiple of 2.30 times the employees' direct personnel expense plus other expenses at cost not to exceed \$8,400".

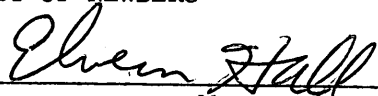
4. Add the following to Item A.3, Part II, page 4:

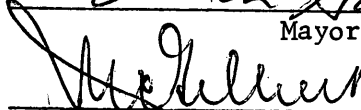
"For the Construction Documents Phase through the Construction Phase, compensation for basic services shall be on the basis of employees' time at a multiple of 2.30 times the employees' direct personnel expense plus other expenses at cost not to exceed \$6,000. Additional services shall be on the basis of employees' time at a multiple of 2.30 times the employees' direct personnel expense and the cost of additional services of other professional consultants at cost. Reimbursable expenses shall be at cost".

OWNER

ENGINEER

CITY OF NEWBERG



Mayor


City Administrator



Philip H. Smith, P.E.
Senior Engineer

PROFESSIONAL SERVICES
AGREEMENT
AMENDMENT NO. 1

The following shall become an amendment to the Agreement for Professional Services dated June 18, 1979, between the CITY OF NEWBERG, Oregon, the Owner, and ROBERT E. MEYER CONSULTANTS, the Engineer.

WHEREAS, the scope of work necessary to rehabilitate the sewage collection system to remove portions of infiltration and inflow has been determined and the OWNER desires to proceed with the rehabilitation work,

NOW, THEREFORE, the parties agree as follows:

1. Replace Item (f), Part I, Page 3, with the following: "Sanitary sewer system rehabilitation consisting of corrective measures to reduce and/or remove infiltration and inflow. The scope of said rehabilitation work shall be as specifically outlined below, and all references to tables shall be from the Sewer System Evaluation Survey, City of Newberg, Oregon, July, 1978, hereinafter referred to as the "SSES". The scope of the rehabilitation work is the engineering design and contract documents for the following:

1. Manhole lid and frame replacement: This work consists of replacement of manhole lids and frames where necessary on approximately 94 manholes which are subject to surface flooding. These manholes are listed in Table III-3, pages III-8 and III-9, of the "SSES".

2. Private inflow sources: This work consists of elimination of three (3) private inflow sources as noted in Table IV-2, page IV-5, of the "SSES" and more specifically described as follows:
 - a. MH 6.20-1, George Fox College: Remove storm/sanitary cross connection.
 - b. Chehalem Pool: Provide preliminary plan only to remove roof drains from sanitary sewer.
 - c. Allen Fruit Company Parking Lot: Disconnect catch basin from sanitary sewer.
3. Line rehabilitation to remove storm water flow from sanitary sewer system: This work involves rehabilitation of existing sanitary sewers in the vicinity of storm sewer catch basins which emitted smoke and installation of additional manholes to allow access to portions of the system for television inspection. Joint sealing is not included in this work. The 40 sewer line sections to be rehabilitated and/or upgraded are listed in Table-IV-3, page IV-7, of the "SSES".
4. Line rehabilitation to remove infiltration: This work involves rehabilitation of existing sanitary sewers determined to be contributing excessive infiltration. Joint sealing is not included in this work. The sewer line sections to be rehabilitated are listed in Table IV-6, page IV-13, of the "SSES" and constitute 24 line sections.

5. Manhole rehabilitation: This work involves internal chemical grout sealing of 65 manholes and a wet-well stubout at the Hess Creek Pump Station. The manholes are listed in Table IV-5, page IV-12, of the "SSES".
6. Sewer joint testing and sealing: This work involves the testing and grout sealing of joints in the 64 sewer line segments rehabilitated under items 3 and 4 above.
7. Direct storm/sanitary sewer connections: This work involves plugging of six (6) direct piped connections between the storm and sanitary sewer systems as listed in Table III-2, page III-5, of the "SSES".

It is anticipated that the work will be accomplished under two (2) construction contracts. Contract I will include the work described under Items 1 through 5 above. Contract II will include Items 6 and 7 above.

Services under this item (f) shall begin with the Construction Contract Documents Phase and shall proceed through the Construction Phase.

In addition to responsibilities of the Owner, as noted elsewhere in this agreement, the OWNER shall provide the following to the ENGINEER in the accomplishment of the above work:

1. All internal television inspection of sewers as required.

2. Equipment and personnel to supply necessary water supply for dye and/or flood testing as required.
3. Equipment and personnel to conduct smoke testing as required. ✓
4. Loan of television tape recorder and monitor as required.

Due to the complex nature of the work and the need for close field/office coordination during the Construction Phase, Resident Project Representative services (inspection) shall be provided by the ENGINEER. This service shall be limited to 1200 man-hours.

Replace Item A-5, Part II, page 5, with the following:

"For Part I, Item (f), Sanitary Sewer System Rehabilitation, compensation for basic services shall be on the basis of reimbursement for all costs plus a fixed dollar profit. The maximum costs incurred by the ENGINEER shall not exceed \$55,600.00 without a written amendment to this agreement. This is only an estimate of cost which is based upon limited information regarding the actual conditions of the system and the degree of effort required in accomplishing the work. The amount of work necessary to complete the project may exceed this cost limit. The fixed dollar profit shall be \$8,400.00 and may not be increased except in the case of a contract amendment which increases the scope of the services outlined in Part I, Item (f).

The costs for which the ENGINEER shall be reimbursed shall be:

1. Direct personnel expense as outlined in Article 3, page 8, of this agreement.
2. Office Overhead defined as those costs normally termed general and administrative said costs being allocated on the basis of direct labor cost.
3. Reimbursable expenses as defined in Article 4, page 8, of this agreement.

Direct personnel expense shall be billed at a multiple of 1.36 times direct labor cost. Office overhead shall be billed at a multiple of 1.29 times direct labor cost. Reimbursable expenses shall be billed at cost. The above multiples shall be subject to negotiations one-year after the date of this Agreement.

Reimbursement for additional services shall be on the basis of employees' time at a multiple of 2.30 times the employee's direct personnel expense and the cost of additional services of other professional consultants at cost. Reimbursable expenses shall be at cost. Engineering charges for Resident Project Representative Services shall not exceed \$39,000.00 without prior authorization of the OWNER".

OWNER:

Elmer Hall Mayor
McGinnis
City Administrator

ENGINEER:

Philip H. Smith
Philip H. Smith, P.E.
Senior Engineer

RESOLUTION NO. 79-777

WHEREAS, the Council of the City of Newberg has approved funding of improvements to the City's Sanitary Sewage Facilities; and

WHEREAS, Robert E. Meyers, Consultants, Inc. of Beaverton, Oregon, have been retained by the City of Newberg on Sewer System Evaluation Survey and report for the City of Newberg; and

WHEREAS, the City Council finds there is need to continue retention of Robert E. Meyer Consultants on design and construction of the City's sanitary sewer improvements.

NOW, THEREFORE, BE IT RESOLVED by the Council as follows, to-wit:

1. That the Mayor and City Administrator be authorized to execute the agreement with Robert E. Meyers Consultant, Inc. for engineering services for design and construction phases of the City of Newberg Sanitary Sewer Facilities.
2. This agreement is for personal services, therefore the agreement is not subject to the Public Contracting and Purchasing Laws.
3. That said agreement shall not exceed the sum of \$77,100 and shall provide for complete design and construction services of the Hess Creek and Morton Street interceptors and the Eighth Street and Hess Creek Pump Stations.

ADOPTED by the Council this 4th day of June 1979.



M. C. Gilbert - Recorder

MEMORANDUM

TO: City Administrator

September 18, 1979

FROM: E. A. Heister, City Engineer

SUBJECT: Hess Creek and Wynooski Pump Stations Modifications

1. An Engineer study for the subject pump stations was performed by Robert E. Meyer, paid for by the City.
2. It recommended the following:
 - a. Repair of all existing pumps to bring them up to design capacity. (to be done by City and/or pump manufacturer)
 - b. Design and installation of a new flow regulation system at the Hess Creek Pump Station.
 - c. Design and installation of a dry-pit access tube extension and exterior access ladder at the Hess Creek Pump Station to provide flood protection.
 - d. Control modifications at the Wynooski Pump Station to provide standby operation only of lag pump.
3. The estimated construction cost was \$14,750.
4. They (Robert E. Meyer) have since submitted an agreement for an additional fee of \$6,000 to engineer and supervise this work with City forces.
5. This fee appears excessive and inasmuch as the study shows that we are locked-in with Cornell Pumps and pump station, I would recommend that we contact the Cornell Pump Company direct, utilizing Meyer's study as a Specification/Purchase Order and have them accomplish these modifications.

E. A. Heister

EAH:nm

ANALYSIS OF

Robert E. Meyer

Architectural Engineering Services
plus
Inspection and Management

PROPOSAL

Total Cost for Listed Items.....\$77,100

Construction cost for items to be designed:

Hess Creek Interceptor	\$258,000.
Morton Street Interceptor	163,000.
Eighth St. Pump Station	137,000.
*Hess Creek Pump Station.....	<u>236,000.</u>
	\$794,000.

\$77,100	Total
<u>-27,900</u>	Inspection, reports, permits, approvals, etc. not directly involved in design
\$49,200	Design and Contract Preparation

7% of construction cost recommended by Architectural Engineer's
Negotiating Manual.....\$55,580.

NOTE: Contacted City of Salem engineering department. They normally negotiate
at 7%.

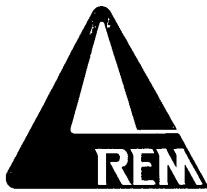
*Preliminary Design

\$ 77,100 .
19,900 inspection

57,200
5,000

52,200

E. A. Heister
6/1/79



Robert E. Meyer Consultants

915-30-40

Engineers • Planners • Surveyors

Beaverton & Redmond

P.O. Box 610
1655-2 S.W. Highland Ave.
Redmond, Oregon 97756
(503) 548-5091

Mr. Myrland C. Gilbert
City Administrator
414 E. First Street
Newberg, Oregon 97132

Re: Sewer System Improvements

Dear Mr. Gilbert:

Thank you for calling us to assist you with the design and construction of the City's sewer system improvements. This is an important project for the City and we look forward to being involved in it.

Enclosed is an agreement for engineering services for the design and construction phases of the project. Per our discussions, we see our role in this project not only that of engineering, but also managing the project and its multiple construction contracts to ensure that the available funds are spent in the most effective, expeditious manner possible and keeping project costs within the budgeted funds. To accomplish this goal, our agreement includes an item to provide a monthly written progress and financial status report on the project. This report would serve to keep you, your staff, and the Council, informed about the project. We propose to undertake this effort on an hourly rate basis not to exceed \$5,000.00 without your prior authorization.

We propose combining the Hess Creek Interceptor and the Morton Street Interceptor into one project for bidding purposes, and propose a lump sum fee of \$25,800.00 for the basic design and construction services. Additional services that we anticipate at this time for the interceptors and the estimated costs of these services, is as follows:

Easements	\$ 3,500.00
Permits and Approvals	1,300.00
Design Surveys	4,200.00
Construction Surveys	2,100.00
Record Drawings	1,300.00
Inspection	<u>14,900.00</u> <i>ant</i>
Total	\$27,300.00

For the Eighth Street Pump Station, we propose a lump sum fee of \$9,600.00 for basic design and construction services. Additional services that we anticipate at this time

for the pump station and the estimated costs of these services, is as follows:

Permits and Approvals	\$ 300.00	
Design Surveys	600.00	
Construction Surveys	300.00	
Record Drawings	400.00	
Inspection	5,000.00	ent
Total	\$6,600.00	

For the Hess Creek Pump Station, we propose to undertake preliminary studies to determine the need for improvements to the station, considering the capacity of the recently modified Wynooski Pump Station. A letter report on those studies will be submitted to you and additional work, if required, will be covered by an addendum to this agreement. We propose to undertake this preliminary study on an hourly rate basis not to exceed \$2,800.00 without your prior authorization.

Engineering charges for the sewer system rehabilitation work have been left undefined at the present time, pending additional review of the desired scope of rehabilitation to be undertaken and the projected costs of the other projects outlined above. The definition of scope and engineering charges for this work will be covered by an addendum to this agreement. Sewer system rehabilitation projects will be developed in phases, so that available funds will be expended without exceeding the project budget.

We anticipate the following schedule for the various projects:

Hess Creek & Morton Street Interceptors & Eighth Street Pump Station:

Design Complete:	August 15, 1979
Contract Award:	October 1, 1979
Construction Complete:	Spring 1980

Hess Creek Pump Station:

Preliminary Study Complete	August 1, 1979
Design and construction schedule depends on results of preliminary study.	

Sewer System Rehabilitation:

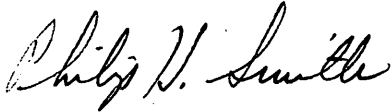
Develop initial list of projects and budgets and prepare agreement addendum not later than August 1, 1979.

In summary, this agreement provides initially for complete design and construction services for the Hess Creek and Morton Street Interceptors and the Eighth Street Pump Station. The total initial authorization under this agreement is \$77,100.00. The agreement will be modified by addendum later to include improvements to the Hess Creek Pump Station, if required, and sewer system rehabilitation when the scope of these items is more clearly defined.

Mr. Myrland C. Gilbert
May 31, 1979
Page 3

We hope you find this agreement satisfactory and if you have any questions, please do not hesitate to call me.

Sincerely,

A handwritten signature in cursive script, reading "Philip H. Smith".

Philip H. Smith, P.E.
Senior Engineer

cc: Mr. Ernst Heister, P.E.
City Engineer

enclosure:

PHS/lp

RESOLUTION NO. 79-777

WHEREAS, the Council of the City of Newberg has approved funding of improvements to the City's Sanitary Sewage Facilities; and

WHEREAS, Robert E. Meyers, Consultants, Inc. of Beaverton, Oregon, have been retained by the City of Newberg on Sewer System Evaluation Survey and report for the City of Newberg; and

WHEREAS, the City Council finds there is need to continue retention of Robert E. Meyer Consultants on design and construction of the City's sanitary sewer improvements.

NOW, THEREFORE, BE IT RESOLVED by the Council as follows, to-wit:

1. That the Mayor and City Administrator be authorized to execute the agreement with Robert E. Meyers Consultant, Inc. for engineering services for design and construction phases of the City of Newberg Sanitary Sewer Facilities.
2. This agreement is for personal services, therefore the agreement is not subject to the Public Contracting and Purchasing Laws.
3. That said agreement shall not exceed the sum of \$77,100 and shall provide for complete design and construction services of the Hess Creek and Morton Street interceptors and the Eighth Street and Hess Creek Pump Stations.

ADOPTED by the Council this 4th day of June 1979.



M. C. Gilbert - Recorder

AGREEMENT BETWEEN OWNER AND ENGINEER

FOR

PROFESSIONAL SERVICES

PART I PARTIES AND PROJECT

THIS AGREEMENT is made on the 18 day of June in the year 1979, between the CITY OF NEWBERG, Oregon, a municipal corporation, the OWNER and ROBERT E. MEYER CONSULTANTS, the ENGINEER, for the following Project:
Sewer system improvements consisting of the following:

~~(a) Project administration consisting of a monthly written progress and financial status report on the project.~~

MEYER
PHE 6/13/79
EAT

(b) Hess Creek Interceptor consisting of approximately 3,150 lineal feet of 15-inch diameter sewer between manholes 6-9 and 6-20 as identified in the City of Newberg Sewer System Evaluation Survey and including a State Highway bored crossing and restoration of Hoover Park. Services under this item shall begin with the Construction Contract Documents Phase.

(c) Morton Street Interceptor consisting of approximately 640 lineal feet of 15-inch sewer between manholes 2-11 and 2-12 and approximately 1210

lineal feet of 15-inch sewer between manholes 1-6 and 1-10 as identified in the City of Newberg Sewer System Evaluation Survey. Services under this item shall begin with the Construction Contract Documents Phase.

(d) 8th Street Pump Station consisting of replacement of the existing sewage pumping station with a new dry-pit type pump station with an estimated capacity of 1000 gallons per minute. Modifications to the existing 8-inch force main, downstream gravity sewers, and provisions for emergency power and telemetering are specifically excluded from this work. Services under this item shall begin with the Construction Contract Documents Phase.

(e) Hess Creek Pump Station consisting of replacement of the existing sewage pumping station with a new dry-pit type pump station with an estimated capacity of 2000 gallons per minute. Modifications to the existing 12-inch force main, downstream gravity sewers and provisions for emergency power and telemetering are specifically excluded from this work. Services under this item shall be limited to the Schematic Design Phase to ascertain the need for improvements to this

station considering the combined capacity of the Wynooski Station and the existing Hess Creek Station.

- (f) Sewer system rehabilitation consisting of infiltration and inflow correction as detailed in the City of Newberg Sewer System Evaluation Survey.
- (g) Any other services as required by the OWNER.

PART II ENGINEERING CHARGES

A. In accordance with the Terms and Conditions of this Agreement, the ENGINEER shall provide professional services for which the OWNER shall compensate the ENGINEER as follows:

~~A.1: For Part I, Item (a), Project Administration, compensation shall be on the basis of employees' time at 2.30 times the employees' direct personnel expense plus other expenses at cost. Engineering charges for this item anticipate project completion within 18 months and shall not exceed \$5,000.00 without prior authorization of the OWNER.~~ *per 6/13/79*
Ext *me*

A.2: For Part I, Items (b) and (c), Hess Creek and Morton Street Interceptors, compensation for basic services shall be on the basis of a lump

sum amount of \$25,800.00. Additional services shall be on the basis of employees' time at a multiple of 2.30 times the employees' direct personnel expense and the cost of additional services of other professional consultants at cost. Reimbursable expenses shall be at cost.

A.3: For Part I, Item (d), 8th Street Pump Station, compensation for basic services shall be on the basis of a lump sum amount of \$9,600.00. Additional services shall be on the basis of employees' time at a multiple of 2.30 times the employees direct personnel expense and the cost of additional services of other professional consultants at cost. Reimbursable expenses shall be at cost.

A.4: For Part I, Item (e), Hess Creek Pump Station, compensation for services through the schematic design phase shall be on the basis of employees' time at a multiple of 2.30 times the employees' direct personnel expense plus other expenses at cost. Engineering charges for this item shall not exceed \$2,800.00 without prior authorization of the OWNER.

A.5: For Part I, Item (f), Sewer System Rehabilitation, scope of the work and compensation for engineering charges shall be subject to later negotiation by the OWNER and the ENGINEER.

A.6: For Part I, Item (g), Other Services, scope of the work and compensation for engineering charges shall be subject to later negotiations by the OWNER and the ENGINEER.

Part III. TERMS AND CONDITIONS

Article 1. ENGINEER'S SERVICES

1.1 Basic Services

The ENGINEER agrees to perform professional services in connection with the Project, including normal civil, structural, mechanical and electrical services and normal architectural services related thereto, as set forth below and contained within this Agreement:

1.1.2 Schematic Design Phase

During the Schematic Design Phase the ENGINEER shall:

1.1.2.1 Consult with the OWNER to ascertain the OWNER's requirements for the Project.

1.1.2.2 Advise the OWNER as to the necessity of his obtaining additional services such as described within Article 1, paragraph 1.2 "Additional Services" and if authorized by the OWNER, shall provide, or assist him in procuring such additional services.

1.1.2.3 Prepare a preliminary engineering study and report, which will consist of schematic design documents and reports of studies as necessary for review and written approval by the OWNER.

1.1.2.4 Prepare a statement of the ENGINEER's Opinion of the Construction Cost based upon the preliminary designs developed under this Phase.

1.1.2.5 Furnish 5 copies of the Schematic Design Documents for the OWNER's review and approval.

1.1.3 Design Development Phase

Upon receipt of the OWNER's written authorization to proceed with the Design Development Phase, the ENGINEER shall:

1.1.3.1 Advise the OWNER as to the necessity of his obtaining further additional services and if authorized by the OWNER, shall provide, or assist him in procuring such services.

1.1.3.2 Prepare from the approved Schematic Design Studies, for approval by the OWNER, the Design Development Documents consisting of design criteria, drawings and outline specifications to develop and establish the scope of the Project.

1.1.3.3 Prepare a statement of the ENGINEER's Opinion of the Construction Cost for the Project based upon designs established to this point.

1.1.3.4 Furnish 5 copies of the Design Development Documents for the OWNER's review and approval.

1.1.4 Construction Contract Documents Phase

Upon receipt of the OWNER's written authorization to proceed with the Construction Contract Documents Phase, the ENGINEER shall:

1.1.4.1 Prepare the required Contract forms including proposal forms and notice to bidders, drawings, technical specifications and other documents as required to complete the Construction Contract Documents.

1.1.4.2 Furnish to the OWNER engineering data and documents so that the OWNER may secure approval from governmental authorities having jurisdiction over the Project.

1.1.4.3 Advise the OWNER of any adjustments to previous ENGINEER's Opinion of the Construction Cost when changes in requirements, general market conditions or other conditions so warrant.

1.1.4.4 At the OWNER's request, assist the OWNER's legal counsel in connection with his review of the Construction Contract Documents for their legally related aspects.

1.1.4.5 Furnish 30 copies of the Construction Contract Documents for the OWNER's review and approval.

1.1.5 Bidding or Negotiating Phase

Upon receipt of the OWNER's written approval of the Construction Contract Documents Phase and latest Opinion of the Construction Cost, and written authorization to proceed with the Bidding or Negotiating Phase, the ENGINEER shall:

1.1.5.1 Assist the OWNER in obtaining bids or negotiating bid proposals, in analyzing bids and proposals, and in awarding the Construction Contract.

1.1.6 Construction Phase

Upon award of any Construction Contract based upon the Construction Contract Documents compiled by the ENGINEER, the Construction Phase of this Agreement shall commence and the ENGINEER shall:

1.1.6.1 Act as the OWNER's representative with duties and responsibilities and limitations of authority as described in the General Conditions to the Construction Contract. The OWNER shall not modify the Construction Contract Documents without the written consent of the ENGINEER.

1.1.6.2 Advise and consult with the OWNER during the Construction Phase and the ENGINEER shall issue the OWNER's authorized instructions to the Contractor.

1.1.6.3 Make periodic visits to the site of the construction to observe the progress and quality of the construction work and to determine, in general, if the results of the construction work are in accordance with the Drawings and the Specifications. On the basis of his on-site observations as an ENGINEER, he shall endeavor to guard the OWNER against apparent defects and deficiencies in the permanent work constructed by the Contractor but does not guarantee the performance of the Contractor. The ENGINEER shall not be required to make exhaustive or continuous on-site observations to check the quality or quantity of the construction work. The ENGINEER is not responsible for construction means, methods, techniques, sequences or procedures, time of performance, programs, or for any safety precautions in connection with the construction work. The ENGINEER is not responsible for the Contractor's failure to execute the work in accordance with the Construction Contract.

1.1.6.4 Review the Contractor's request for progressive payment, and based upon said on-site observation, advise the OWNER as to the ENGINEER's opinion of the extent of the work completed in accordance with the terms of the Construction Contract as of the date of the Contractor's payment request and issue, for processing by the OWNER, a Certificate for Payment in the amount owed the Contractor. The issuance of Certificates for Payment shall constitute a declaration by the ENGINEER to the OWNER, based upon said on-site observations, review and data accompanying the request for payment, that the Contractor's work has pro-

gressed to the point indicated; that to the best of the ENGINEER's knowledge, information and belief, the quality of the Contractor's work is in accordance with the Construction Contract Documents (subject to subsequent tests and review required by the Construction Contract Documents, to correction of minor deviations from the Construction Contract Documents and to qualifications stated in the Certificate for Payment); and that the Contractor is entitled to the amount stated. The issuing of the Certificate for Payment by the ENGINEER shall not represent that he has made any investigation to determine the uses made by the Contractor of sums paid to the Contractor.

1.1.6.5 Make recommendations to the OWNER on all claims relating to the execution and progress of the construction work. The ENGINEER's decisions in matters relating to the ENGINEER's design shall be final.

1.1.6.6 Notify the OWNER of permanent work which does not conform to the result required in the Construction Contract, prepare a written report describing any apparent non-conforming permanent work and make recommendations to the OWNER for its correction and, at the request of the OWNER, have recommendations implemented by the Contractor.

1.1.6.7 Review shop drawings, samples, and other submittals of the Contractor only for general conformance to the design concept of the Project and for general compliance with the Construction Contract.

1.1.6.8 Prepare Change Orders for the OWNER's approval.

1.1.6.9 Conduct a construction progress review related to the Contractor's date of completion; receive written guarantees and related data assembled by the Contractor; and issue to the OWNER a Certificate of Final Payment.

1.1.6.10 The ENGINEER shall not be responsible for the defects or omissions in the work result of the Contractors, or any Subcontractors, or any of the Contractor's or Subcontractor's employees, or that of any other persons or entities responsible for performing any of the work result as contained in the Construction Contract.

1.2 Additional Services

If authorized in writing by the OWNER, the ENGINEER agrees to furnish or obtain from others, additional professional services in connection with the Project, as set forth below and contained within this Agreement:

1.2.1 Preparation of applications and supporting documents for government grants, loans or advances.

1.2.2 Making drawings from field measurements of existing construction when required for planning additions or alterations thereto.

1.2.3 Services due to changes in the scope of the Project or its design, including but not limited to, changes in size, complexity, schedule or character of construction.

1.2.4 Revising studies, reports, design documents, drawings or specifications which have previously been approved by the OWNER, or when such revisions are due to causes beyond the control of the ENGINEER.

1.2.5 Preparation of design documents for alternate bids or for out-of-sequence work requested by the OWNER.

1.2.6 Preparation of detailed renderings, exhibits or scale models for the Project.

1.2.7 Providing special analysis of the OWNER's needs such as owning and operating analysis, OWNER's operating and maintenance manuals, OWNER's special operating drawings or charts, and any other similar analysis.

1.2.8 Providing planning surveys, site evaluations and comparative studies of prospective sites.

1.2.9 Providing any type of field surveys for design purposes, "stake out" of the location of the work, and any other special field surveys.

1.2.10 Furnishing additional copies of reports and additional prints of Drawings and Specifications in excess of those stipulated in the Agreement.

1.2.11 Investigations involving detailed consideration of operations, maintenance and overhead expenses; the preparation of rate schedules, earnings and expense statements, feasibility studies, appraisals and valuations; detailed quantity surveys of material and labor; and material audits or inventories required by the OWNER.

1.2.12 Additional services when the Project involves more than one Construction Contract, or separate equipment contracts.

1.2.13 Preparing special Change Orders when requested by the OWNER which are not within the scope of Article 1, "ENGINEER'S SERVICES," paragraph 1.1.6.8.

1.2.14 Making a review of the Project prior to expiration of the guarantee period and reporting observed discrepancies under guarantees provided by the Construction Contract.

1.2.15 Preparing a set of reproducible record drawings conforming to construction records provided to the ENGINEER, made by the Contractor during the construction process.

1.2.16 Additional or extended services during construction made necessary by (1) work damaged by fire or other cause during construction, (2) defective or incomplete work of the Contractor, (3) prolongation of the initial Construction Contract time beyond the contract time, (4) acceleration of the work schedule involving services beyond established office working hours, and (5) the Contractor's default under Construction Contract due to delinquency or insolvency.

1.2.17 Providing assistance in the initial start-up, testing, adjusting or balancing, or operation of equipment or systems, or training personnel for operation or maintenance of equipment or system.

1.2.18 Providing design services relating to future facilities, systems and equipment which are not intended to be constructed or operated as a part of the Project.

1.2.19 Providing services as an expert witness for the OWNER in connection with litigation or other proceedings involving the Project.

1.2.20 Providing other services not otherwise provided for in this Agreement, including services normally furnished by the OWNER as described in Article 2, "OWNER'S RESPONSIBILITIES."

1.2.21 Providing Resident Project Representative services to give the OWNER more extensive on-site representation during the Construction Phase.

Article 2. OWNER'S RESPONSIBILITIES

The OWNER shall:

2.1 Provide to the ENGINEER all criteria, design and construction standards and full information as to the OWNER's requirements for the Project.

2.2 Designate in writing a person authorized to act as the OWNER'S representative. The OWNER or his representative shall receive and examine documents submitted by the ENGINEER, interpret and define the OWNER's policies and render decisions and authorizations in writing promptly to prevent unreasonable delay in the progress of the ENGINEER's services.

2.3 Furnish to the ENGINEER a complete land survey of the Project site which shall include but not be limited to service and utilities locations with depths and invert grades, easements, rights-of-way, contours, grades, streets, alleys, pavements, adjoining property, encroachments, zoning and deed restrictions, existing buildings, improvements and tree locations.

2.4 Furnish soils data including but not limited to reports, test borings, test pits, probings, subsurface exploration, soil bearing values, percolation tests, ground corrosion and resistivity tests, all with appropriate professional interpretation.

2.5 Furnish laboratory tests, air and water pollution tests, reports and inspections of samples, materials or other items required by law or by governmental authorities having jurisdiction over this Project.

2.6 Provide legal, accounting, and insurance counseling services necessary for the Project, legal review of the Construction Contract Documents, and such auditing services as the OWNER may require to account for expenditures of sums paid to the Contractor.

2.7 Furnish permits and approvals from all governmental authorities having jurisdiction over this Project and from others as may be necessary for completion of the Project.

2.8 Furnish above services at the OWNER's expense and in such manner that the ENGINEER may rely upon them in the performance of his services under this Agreement.

2.9 Obtain bids or proposals from contractors for work relating to this Project and bear all costs relating thereto.

2.10 Protect and preserve all survey stakes and markers placed at the Project site prior to the assumption of this responsibility by the Contractor and bear all costs of replacing stakes or markers damaged or removed during said time interval.

2.11 Guarantee full and free access for the ENGINEER to enter upon all property required for the performance of the ENGINEER's services under this Agreement.

2.12 Give prompt written notice to the ENGINEER whenever the OWNER observes or otherwise becomes aware of any defect in the Project or other event which may substantially affect the ENGINEER's performance of services under this Agreement.

2.13 Compensate the ENGINEER for services rendered under this Agreement.

Article 3 DIRECT PERSONNEL EXPENSE

Direct Personnel Expenses shall be defined as the direct labor costs incurred by the ENGINEER directly attributable to the Project by the payment of actual salary and wages to the ENGINEER's employees for work performed on the OWNER'S Project, plus a stipulated percentage of such salaries to cover all payroll-related taxes, payments, premiums and benefits.

Article 4 REIMBURSABLE EXPENSES

4.1 Reimbursable Expenses are in addition to compensation to the ENGINEER for Basic and Additional Services and include expenditures made by the ENGINEER, his employees or his consultants in the interest of the Project. Reimbursable Expenses include but are not limited to:

4.1.1 Expense of transportation, subsistence and lodging when traveling in connection with the Project.

4.1.2 Expense of long distance or toll telephone calls, telegrams, messenger service, field office expenses, and fees paid for securing approval of authorities having jurisdiction over the Project.

4.1.3 Expense of all reproduction, postage and handling of Drawings, Specifications, reports or other Project-related work product of the ENGINEER.

4.1.4 Expense of computer time including charges for proprietary programs.

4.1.5 When authorized in advance by the OWNER, expense of overtime work requiring higher than normal rates, and expense of preparing perspectives, renderings or models.

Article 5 PAYMENTS TO THE ENGINEER

5.1 Progress payments shall be made in proportion to services rendered and as indicated within this Agreement and shall be due and owing within thirty days of the ENGINEER's submittal of his monthly statement. Past due amounts owed shall include a charge at the maximum legal rate of interest from the thirtieth day.

5.2 If the OWNER fails to make monthly payments due the ENGINEER, the ENGINEER may, after giving seven days written notice to OWNER, suspend services under this Agreement.

5.3 No deductions shall be made from the ENGINEER's compensation on account of penalty, liquidated damages or other sums withheld from payments to Contractors.

5.4 If the Project is delayed or if the ENGINEER's services for the Project are delayed or suspended for more than three months for reasons beyond the ENGINEER's control, the ENGINEER may, after giving seven days written notice to the OWNER, terminate this Agreement and the OWNER shall compensate the ENGINEER in accordance with the termination provision contained hereafter in this Agreement.

Article 6 GENERAL PROVISIONS

6.1 Ownership of Documents

All Drawings, Specifications and other work product of the ENGINEER for this Project are instruments of service for this Project only and shall remain the property of the ENGINEER whether the Project is completed or not. Reuse of any of the instruments of service of the ENGINEER by the OWNER on extensions of this Project or on any other project without the written permission of the ENGINEER shall be at the OWNER's risk and the OWNER agrees to defend, indemnify and hold harmless the ENGINEER from all claims, damages, and expenses including attorneys' fees arising out of such unauthorized reuse of the ENGINEER's instruments of service by the OWNER OR BY OTHERS ACTING THROUGH THE OWNER. Any reuse or adaptation of the ENGINEER's instruments of service occurring after the written agreement of the ENGINEER shall entitle the ENGINEER to further compensation in amounts to be agreed upon by the OWNER and the ENGINEER.

6.2 Delegation of Duties

Neither the OWNER nor the ENGINEER shall delegate his duties under this Agreement without the written consent of the other.

6.3 Termination

This Agreement may be terminated by either party by seven days written notice in the event of substantial failure to perform in accordance with the terms of this Agreement by the other party through no fault of the terminating party. If this Agreement is terminated, the ENGINEER shall be paid for services performed to the termination notice date including Reimbursable Expenses due plus Termination Expenses. Termination Expenses are defined as Reimbursable Expenses directly attributable to termination, plus 15% of the total compensation earned to the time of termination to account for ENGINEER's rescheduling adjustments, reassignment of personnel and related costs incurred due to termination.

6.4 Extent of Agreement

This Agreement represents the entire and integrated agreement between the OWNER and the ENGINEER and supercedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only

by written instrument signed by both the OWNER and the ENGINEER.

6.5 Governing Law

Unless otherwise specified within this Agreement, this Agreement shall be governed by the law of the principal place of business of the ENGINEER.

6.6 General

6.6.1 Should litigation or arbitration occur between the two parties relating to the provisions of this Agreement, all litigation or arbitration expenses, collection expenses, witness fees, court costs and attorneys fees incurred by the prevailing party shall be paid by the non-prevailing party to the prevailing party.

6.6.2 Neither party shall hold the other responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of the other or the other's employees and agents.

6.6.3 In the event any provisions of this Agreement shall be held to be invalid and unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any provision, term, condition or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same by the other party.

6.6.4 The ENGINEER has not been retained or compensated to provide design and construction review services relating to the Contractor's safety precautions or to means, methods, techniques, sequences, or procedures required for the Contractor to perform his work but not relating to the final or completed structure; omitted services include but are not limited to shoring, scaffolding, underpinning, temporary retainment of excavations and any erection methods and temporary bracing.

6.6.5 The ENGINEER intends to render his services under this Agreement in accordance with generally accepted professional practices for the intended use of the Project and makes no warranty either express or implied.

6.6.6 Any Opinion of the Construction Cost prepared by the ENGINEER represents his judgment as a design professional and is supplied for the general guidance of the OWNER. Since the ENGINEER has no control over the cost of labor and material, or over competitive bidding or market conditions, the ENGINEER does not guarantee the accuracy of such Opinions as compared to Contractor bids or actual cost to the OWNER.

Article 7. SPECIAL PROVISIONS

7.1 Insurance and Indemnity

7.1.1 Engineer's Insurance—The ENGINEER shall acquire and maintain statutory workmen's compensation insurance coverage, employer's liability, comprehensive general liability insurance coverage and professional liability insurance coverage. The limits and deductible applicable to both comprehensive general liability and professional liability shall be established under a separate agreement between the parties.

7.1.2 Contractor's Insurance—Prior to the commencement of the work, the OWNER shall require the Contractor and any Subcontractors to submit evidence that he (they) have obtained for the period of the Construction Contract and the guarantee period comprehensive general liability insurance coverage (including completed operations coverage). This coverage shall provide for bodily injury and property damage arising directly or indirectly out of, or in connection with, the performance of the work under the Construction Contract, and have a limit of not less than \$ 250,000.00 for all damages arising out of bodily injury, sickness or death of one person and an aggregate of \$ 500,000.00 for damages arising out of bodily injury, sickness and death of two or more persons in any one occurrence. The property damage portion will provide for a limit of not less than \$ 250,000.00 for all damages arising out of injury to or destruction of property of others arising directly or indirectly out of or in connection with the performance of the work under the Construction Contract and in any one occurrence including explosion, collapse and underground exposures.

Included in such coverage will be contractual coverage sufficiently broad to insure the provision of paragraph 7.1.4 "Indemnity". The comprehensive general liability insurance will include as additional named insureds: the OWNER; the ENGINEER; and each of their officers, agents and employees.

7.1.3 Builders Risk "All Risk" Insurance—Before commencement of the work, the OWNER will require that the Contractor and any Subcontractors submit written evidence that he (they) have obtained for the period of the Construction Contract, Builders Risk "All Risk" Completed Value Insurance Coverage (including earthquake and flood) upon the entire Project which is the subject of the Construction Contract. Such insurance shall include as additional named insureds: the OWNER; the ENGINEER; and each of their officers, agents, employees and any other persons with an insurable interest as maybe designated by the OWNER.

Such insurance may have a deductible clause but not to exceed \$5,000, except that the earthquake deductible may be in accordance with generally accepted insurance practices in the locale where the coverage is issued.

7.1.4 Indemnity—The OWNER will require that any Contractor or Subcontractors performing work in connection with Drawings and Specifications produced under this Agreement to hold harmless, indemnify and defend, the OWNER and the ENGINEER, their consultants, and each of their officers, agents, and employees from any and all liability claims, losses or damage arising out of or alleged to arise from the Contractor's (or Subcontractor's) negligence in the performance of the work described in the Construction Contract Documents, but not including liability that may be due to the sole negligence of the OWNER, the ENGINEER, their consultants or their officers, agents and employees.

7.2 Construction Cost

7.2.1 Construction Cost, when used as the basis for determining the ENGINEER's compensation, shall be defined as the total cost to the OWNER or the ENGINEER's Opinion of the Construction Cost for all construction designed or specified by the ENGINEER including the costs of labor, materials, equipment and specified furnishings, and cost of management of construction, but not including the ENGINEER's or other consultant's compensation and expenses, the cost of land, rights-of-way or easements, nor the OWNER's cost of legal, accounting, auditing or insurance counseling services, or interest and financing charges for the Project, nor other costs listed in Article 2 "OWNER'S RESPONSIBILITY." The Construction Cost shall be determined as follows with precedence in the order listed—

7.2.1.1 For completed construction the costs to the OWNER of all construction work performed.

7.2.1.2 For construction work not constructed, the lowest bona fide bid received from a qualified bidder.

7.2.1.3 For work for which bids are not received, ENGINEER's latest Opinion of the Construction Cost.

7.2.2 Labor furnished by the OWNER for the Project construction shall be included in the Construction Cost at current market rates including a reasonable allowance for overhead and profit. Material and equipment furnished by the OWNER for the Project shall be included in the Construction Cost at current market prices, F.O.B. Project site, except that used material and equipment shall be included as if purchased new for the Project.

7.2.3 When a fixed limit of Construction Cost is established as a condition of this Agreement, it shall be in writing signed by both OWNER and ENGINEER and shall include a ten percent bidding contingency, unless another amount is agreed upon in writing. When such fixed limit is established the ENGINEER shall be permitted to determine what materials, equipment, component systems, types of construction and alternative bid items are to be included in the Construction Contract Documents, and to make reasonable adjustments in the scope of the Project to bring it within the fixed limit. Acceptance by the OWNER of a revised Opinion of Construction Cost in excess of the fixed limit shall constitute a corresponding increase in the fixed limit of Construction Cost.

7.2.4 After completion of the Construction Contract Documents Phase, if the Bidding or Negotiating Phase does not commence within six months, any fixed limit of the Construction Cost shall be adjusted to reflect general construction industry price level increases occurring between the date of ENGINEER's submittal to the OWNER of the final Construction Contract Document and the date on which bids or proposals are sought.

7.2.5 If the lowest bona fide bid or the ENGINEER's Opinion of the Construction Cost exceeds such fixed limit of Construction Cost (including the bidding contingency) established as a condition of this Agreement, the OWNER shall (1) give written approval for an increase in such fixed limit, (2) authorize re-bidding within a reasonable time, or (3) cooperate in revising the Project scope and quality as required to reduce the Construction Cost. In the case of (3) the ENGINEER, without additional charge, shall modify the Construction Contract Documents, as the ENGINEER deems necessary, to bring the Construction Cost within the fixed limit. The providing of this service once shall be the limit of the ENGINEER's responsibility in this regard, and having so performed this service the ENGINEER shall be entitled to his compensation in accordance with this Agreement.

7.3 Resident Construction Review Services

7.3.1 If requested by the OWNER or recommended by the ENGINEER and approved in writing by the OWNER, the ENGINEER shall provide one or more full time Resident Project Representatives to assist the ENGINEER in order to render more extensive representation at the Project site during the Construction Phase. Such Resident Construction Review Services shall be paid for by the OWNER as Additional Services as defined within this Agreement. The limits of the authority, duties and responsibilities of a Resident Project Representative shall be described before such services begin by written instruments labeled Exhibit A, attached to, and made a part of this Agreement.

7.3.2 By means of the more extensive on-site observations of the work in progress, the ENGINEER will endeavor to provide further protection for the OWNER against defects and deficiencies in the Contractor's work, but the furnishing of such services shall not include construction review of the Contractor's construction means, methods, techniques, sequences or procedures, or of any safety precautions and programs in connection with the work, and the ENGINEER shall not be responsible for the Contractor's failure to carry out the work in accordance with the Construction Contract.

This Agreement executed the day and year written at the beginning of the Agreement.

OWNER:

ENGINEER:

McGillivray

Loran K. Anderson
6/11/79

Loran K. Anderson, P.E.
Chief Engineer

6/18/79