

CITY OF NEWBERG
CITY RECORDER INDEX NO. 1083

FILE COPY

Design Water Wells
7/16/79

Robert E. Meyer Consultants

Engineers • Planners • Surveyors

915-34

Beaverton & Redmond

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

April 24, 1980

Mr. John Raineri
Acting City Engineer
City Hall
City of Newberg
414 E. First Street
Newberg, OR 97132

Re: Wells 5 and 6 Property Survey

Dear John:

Our Survey Crew has been attempting to locate property boundary pins in the area of the existing wells to allow us to complete a property boundary survey around the new wells as soon as they are drilled.

We have now established a base from which we can tie in the new property corners. We have, however, encountered considerable problems doing so as the existing property corners are missing, (presumably plowed up) and must be re-established.

To complete the boundary survey we anticipate exceeding the \$2,000 discussed in our agreement Amendment No. 1 dated July 16, 1979.

We estimate that an additional \$1,000 will be needed. This amount may be offset in part as we do not, at this time, foresee using the entire \$1,500 budgeted for engineering services to raise the electrical meters on well houses 3 and 4.

The total charges for the property survey, municipal water wells 5 and 6, would be on a time and materials basis, including work already completed, to a maximum of \$3,000. The work would be completed in accordance with our existing agreement.

Mr. John Raineri
April 24, 1980
Page 2

If this letter meets with your approval please sign and return one copy.

Sincerely,

ROBERT E. MEYER CONSULTANTS, INC.

Robert E. Roughton

Robert E. Roughton

Approved: _____

[Signature]

Date: _____

4-28-80

enc.

RER/mb

PROFESSIONAL SERVICES AGREEMENT
AMENDMENT NO. 2

The following shall become an Amendment to the Agreement for Professional Services dated July 16, 1979, between the CITY OF NEWBERG, Oregon, the OWNER, and ROBERT E. MEYER CONSULTANTS, INC., the ENGINEER.

WHEREAS, the OWNER desires the ENGINEER to provide Resident Project Representation Services to give the OWNER more extensive on-site representation during the Construction Phase,

NOW, THEREFORE, the parties agree as follows:

1. Add the following to Part I, page 2 of 10:

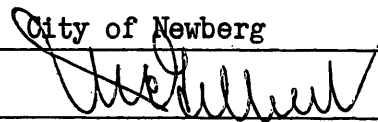
"(d) Resident Project Representation Services: The ENGINEER shall provide Resident Project Representation services for Schedules A and B. These services shall consist of not more than 192 man-hours of effort plus reimbursable expenses. These services shall be provided only during the total contract time of both schedules (165 calendar days)."

2. Add the following to Part II, page 2 of 10:

"A.6 For Part I, Item (d), Resident Project Representation Services, compensation for this additional service shall be on a time and materials basis plus reimbursement for expenses at cost, the total not to exceed \$7,100.00 without the OWNER'S prior authorization."

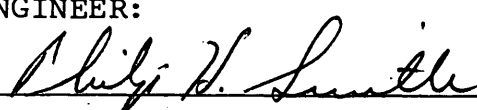
OWNER:

City of Newberg


City Administrator

DATE: April 17, 1980

ENGINEER:



Philip H. Smith, P.E.

Manager, Engineering Dept.

PROFESSIONAL SERVICES

AGREEMENT

AMENDMANT NO. 1

The following shall become an Amendment to the Agreement for Professional Services dated July 16, 1979, between the CITY OF NEWBERG, Oregon, the OWNER, and ROBERT E. MEYER CONSULTANTS, the ENGINEER.

WHEREAS, the Owner desires to proceed with the design of Well No. 6.

NOW, THEREFORE, the parties agree as follows:

1. Add the following to Part I, page 2 of 10:

"(c) Well No. 6: The new Well No. 6 will be located in the vicinity of existing Well Nos. 1, 2, 3, and 5. The new well will be approximately 100-feet deep and approximately 16-inches in diameter and will be connected to the existing 12-inch transmission line. The pump house will be elevated above the 100-year flood level. The existing telemetry system from the plant is at capacity and will be abandoned and replaced upon demolition of the Willamette River Bridge. Therefore, interim control of Well Nos. 5 and 6 will be via a manual selector switch at the well field site which will provide remote control of either

Well No. 5 or Well No. 6 from the plant. Services under this item will commence with the Construction Documents Phase. In addition, this item shall include revisions to the completed drawings and specifications for Well No. 5 as required to incorporate both wells into a single document for bidding and construction purposes."

2. Add the following to Part II, page 2 of 10:

"A.3 For Part I, Item (c), Well No. 6, compensation for basic services shall be on a basis of a lump sum amount of \$10,300.00.

A.4 For Part I, Item (c), additional services anticipated at this time and the estimated cost of these services for each item are as follows:

Item (c), Well No. 6

Design Surveys	\$ 575.00
Property Survey & Description	2,000.00
Construction Surveys	450.00
Record Drawings	<u>400.00</u>
Total	\$3,425.00

A.5. Reimbursable expenses shall be at the following rates:

Telephone	At Cost
Mileage	\$0.20 per mile
Printing	Xerox \$0.10 per sheet
	Drawings \$0.50 per sheet
Other Reimbursable Expenses	At Cost

These rates for reimbursable expenses are subject to adjustment semi-annually beginning April 1, 1980."

OWNER:

Edmund Hall
MAYOR
[Signature]
City Administrator

ENGINEER:

Philip H. Smith
Philip H. Smith, P.E.
Manager, Engineering Department

DATE:

12/17-79

AGREEMENT BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES

PART I PARTIES AND PROJECT

THIS AGREEMENT is made on the 16 day of July 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:

Water system improvements initially consisting of the following:

- (a) Well No. 5: The new Well No. 5 will be located in the vicinity of existing Well Nos. 1 through 4 and will replace Well No. 3 which is to be abandoned. The new well will be approximately 100 feet deep and approximately 18 inches in diameter with an approximate capacity of 1250 gallons per minute and will be connected to the existing transmission line. The pump-house will be elevated above the 100-year flood level. The existing pump, motor, mechanical and electrical equipment in Well No. 3 will be evaluated to determine its suitability for relocation and reuse in the new Well No. 5, if possible. Existing telemetering equipment for Well No. 3 located in Well No. 3 pumphouse will be relocated to the new Well

No. 5 pumphouse. Services under this item will commence with the Construction Contract Documents Phase and shall include as part of the basic services the preparation of record drawings and surveys (design and construction) only as required for engineering and construction purposes. Property surveys are specifically excluded from this work.

- (b) Additional system improvements for which the scope of work and compensation for engineering charges shall be subject to later negotiation by the OWNER and the ENGINEER.

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), Well No. 5, compensation for basic services shall be on the basis of a lump sum amount of \$12,375.00. 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.2 For Part I, Item (b), scope of 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 --- 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 --- 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 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.

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:

Loran K. Anderson

6/25/79

Loran K. Anderson, P.E.

Chief Engineer

Elwyn Hall

MAYOR

McGillivray

City Administrator

7/16-79