

**CITY OF NEWBERG
AGREEMENT WITH EES CONSULTING, INC.
TO PROVIDE CONSULTING SERVICES
TO THE CITY OF NEWBERG**

THIS CONTRACT is entered into this 1st day of March, 1999 by and between the City of Newberg, a municipal corporation of the State of Oregon, hereinafter called **City**, and EES Consulting, Inc., hereinafter called **Consultant**.

RECITAL

1. City has need for the services of a Consultant with particular training, ability, knowledge, expertise and experience possessed by Consultant.

**NOW, THEREFORE, IN CONSIDERATION OF MUTUAL FEES AND PROMISES,
THE PARTIES AGREE AS FOLLOWS:**

1. **Scope of Work:** The Consultant agrees to provide the services provided in the Scope of Work which is in Exhibit "A" and attached (attached hereto and incorporated by this reference). The Consultant represents and warrants to the City that the Consultant can perform the work outlined in the Scope of Work for the fee proposal amount.
2. **Compensation:** The Consultant agrees to perform the work for a not-to-exceed fee as indicated in their professional fee proposal obtained in the Scope of Work. The not-to-exceed figure is as follows:

Engineering services for development of a Risk Management System	\$16,895.00
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The Consultant shall not exceed the fee for any task included in the fee proposal amount. If the Consultant sees that the fee is going to exceed the not-to-exceed figure because the task has changed or is outside the scope, the Consultant shall notify the City in writing of the circumstances with an estimated amount that the fee is to be exceeded. The Consultant shall obtain written permission from the City before exceeding the maximum fee amount. If the Consultant does work that exceeds the maximum fee amount prior to obtaining the written permission, the consultant waives any right to collect that fee amount and forfeits any right.

3. **Additional Work Not Shown Within The Scope of Work:** If City requests or requires work to be done not within the Scope of Work in this project, the Consultant shall notify the City of such work, give an estimated fee amount, and obtain written instructions to proceed with work in the form of a contract amendment prior to proceeding with work and incurring any costs on behalf of the City. If Consultant proceeds with work prior to obtaining permission and/or contract amendment, the Consultant waives any right to collect fees for work performed.

4. **Status:** Consultant is not currently employed by the City. The parties to this contract intend that the relationship between them created by this contract is that of an employer-independent contractor. No agent, employee, or servant of Consultant shall be or shall be deemed to be the employee, agent or servant of City. City is interested only in the results obtained under this contract; the manner and means of conducting the work are under the sole control of Consultant, however, the work contemplated herein must meet the approval of the City and shall be subject to City's general right of inspection and supervision to secure the satisfactory performance thereof.
5. **Work Performed:** The work to be performed by Consultant includes services generally performed by Consultant in his or her usual line of business.
6. **Taxes:** Consultant will be responsible for any federal or state taxes applicable to payments received under this contract. City will report the total of all payments to Consultant, including any expenses, in accordance with the Federal Internal Revenue Service and the State of Oregon Department of Revenue regulations.
7. **Benefits:** Consultant will not be eligible for any federal social security, state workers compensation, unemployment insurance, or public employees' retirement system benefits from the contract payment except as a self-employed individual.
8. **Federal Employment Status:** In the event any payment made pursuant to this contract is to be charged against federal funds, Consultant certifies that he or she is not currently employed by the federal government and the amount charged does not exceed his or her normal charge for the type of services provided.
9. **Hold Harmless:** Consultant shall defend, indemnify and hold harmless City from and against all liability or loss and against all claims or actions based upon or arising out of damage or injury to persons or property caused by or sustained in connection with the negligent acts, errors, and omissions of the Consultant.
10. **Insurance:**
 - a) Consultant, its sub-consultants, if any, and all employers working under this agreement are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage for all their subject workers; or by signing this contract, Consultant represents that he or she is a sole proprietor and is exempt from the laws requiring workers' compensation coverage.
 - b) Consultant will at all times carry a Comprehensive General Liability insurance policy for at least \$1,000,000 combined single limits per occurrence for Bodily Injury, Property Damage, and Personal Injury. If the policy is written on the new occurrence form then the aggregate limit shall be \$2,000,000.
 - c) Consultant will at all times carry a Professional Liability/Errors and Omission type policy with limits of at least \$500,000. If this policy is a "claims made" type policy, the policy type and company shall be approved by the City Manager prior to commencement of

any work under this contract.

d) Consultant shall furnish the City with Certificates of Insurance upon execution of contract and City acknowledges receipt of such Certificates of Insurance.

11. **Indemnification:** The City of Newberg, its agents, employees and officials all while acting within their official capacity as such, shall be named as an additional insured on the insurance specified in paragraph 10(b) above. A certificate of insurance evidencing any policies required by this contract shall be delivered to the City prior to the commencement of any work. A 30-day notice of cancellation clause shall be included in said certificate. The City has the right to reject any certificate for unacceptable coverage and/or companies.
12. **Employees' Taxes:** Consultant shall also defend, indemnify and hold harmless City against all liability and loss in connection with and shall assume full responsibility for, payment of all federal, state and local taxes or contributions imposed or required under unemployment insurance, social security and income tax laws, with respect to Consultant's employees engaged in the performance of this contract.
13. **Termination:** This contract may be terminated by either party at the end of a project phase as defined in Exhibit "A" or at any time upon 30 days written notice.
14. **Contract Duration:** Except as provided for under paragraph 3, the duration of this contract shall be in accordance with Exhibit "A" or until project completion, whichever comes first. This fact notwithstanding, the services of Consultant shall be authorized and paid on a phase-by-phase basis as described in Exhibit "A".

IN WITNESS WHEREOF, THE PARTIES HAVE AFFIXED THEIR SIGNATURES BELOW.

By: CONSULTANT
Lee H. Odell
Name: Lee H. Odell
Title: Vice President
Date: 2-19-99

By: CITY OF NEWBERG
Duane R. Cole
Name: Duane R. Cole
Title: City Manager
Date: March 1, 1999

Approved as to form/content:

Terrence Mahr
Terrence Mahr, City Attorney

Exhibit A - Scope of Services

EES Consulting has divided the scope of services into the following discrete tasks:

1. Management System
2. Hazard Assessment
3. Accident Prevention Program
4. Emergency Response Program
5. Risk Management Plan and Submittals
6. Meetings

Each of these tasks are described below.

Management System

Objective: To develop a management system for the City to oversee the implementation of the Risk Management Programs elements.

Approach: EES Consulting will help define the City's existing management system and make recommendations to help comply with the RMP Rule. The management system is used to oversee implementation of the risk management program elements. A person needs to be designated with overall responsibility for RMP implementation and lines of authority will be documented on an organization chart for implementing individual requirements of the rule. The management system will include communication strategies for employees target audiences and emergency response personnel. Exhibit 2 shows possible assignments for implementation.

Hazard Assessment

Objective: To conduct a hazard assessment of release scenarios of chlorine from the water and wastewater facilities.

Approach: EES Consulting will conduct a hazard assessment detailing offsite impacts from a worst-case and alternative scenario chlorine leak from each facility. EES Consulting will use the RMP*Comp™ model developed by EPA and the National Oceanic and Atmospheric Administration (NOAA). The worst-case scenario for chlorine is prescribed by the Rule and assumes that a 2000 lb. cylinder leaks in 10 minutes, the tank is outside during loading, the wind speed is 1.5 m/s with F stability, the temperature is 25° C among other factors. Under these conditions, a "worst case" chlorine leak will extend 3.0 miles in a rural area and 0.6 miles in an urban area.

Alternative scenarios will also be modeled for the Newberg water and wastewater facilities. The alternative scenarios will include atmospheric conditions available from the municipal airport and more reasonable leak scenarios such as; an in-building scenario, which reduces the release rate significantly. An alternative release scenario for the water and wastewater plants could reduce the extent of a chlorine leak to less than 1 mile in rural areas and less than 0.2 miles in urban areas.

EES Consulting will document the public and environmental receptors identified in the modeling and will document the 5-year release and accident history for each facility. Based on an initial

review, neither facility has had a release that would be reportable under the RMP or PSM requirements. The reportable releases must have caused on-site or off-site deaths, injuries, or significant property damage or off-site environmental damage, evacuations or sheltering in-place.

Accident Prevention Program

Objective: To develop a prevention program that meets Program Level 3 Prevention Program requirements.

Approach: The Program 3 prevention program includes the OSHA process safety management (PSM) standards. EES Consulting will document existing practices and recommend new practices needed to comply with the rule under all 12 elements of the prevention program.

1. *Process safety information* will be documented for chemicals, for process technology and for equipment.
2. A *process hazard analysis* will be conducted at each facility using the what-if and checklist methods.
3. *Operating procedures* for chlorine loading, tank changes, start-up and operation, and emergencies will be reviewed and updated if necessary.
4. *Training* practices will be documented including those conducted for chlorine equipment inspections and tank changes.
5. The *mechanical integrity* program will be documented, including written procedures, training, inspection & testing, equipment deficiency corrections and quality assurance.
6. *Management of change* practices will be developed that include procedures to address the technical basis for change, impacts on safety & health, modifications to operating procedures, time periods for changes, and authorization.
7. *Pre-startup review* requirements will be developed and documented that include design specifications, safety procedures, hazard analysis, and training needs.
8. A procedure for conducting *compliance audits* will be developed for the City to implement at least once every three years.
9. Requirements for completing *incident investigations* will be reviewed with the City's safety committee and documented.
10. A written plan of action for *employee participation* will be developed.
11. A *hot work permit* procedure will be developed for work on or near chlorine equipment.
12. The City's and *Contractor's* responsibilities will be clearly identified prior to working on chlorine equipment.

Emergency Response Program

Objective: To develop an Emergency Response Program for the purpose of protecting public health and the environment.

Approach: Based on our initial understanding that the City does not want to be a responding facility for major chlorine leaks, EES Consulting will update and prepare the emergency action plan to ensure employee safety. The plan will include notification procedures to emergency responders (the City Fire Department). EES Consulting will also work with the Fire Department to make sure that they include the water and wastewater plants in their emergency response training and have plans that include all of the RMP elements.

Risk Management Plan and Submittals

Objective: To develop a Risk Management Plan (a single document for all covered processes) and submit the plan to EPA and make the plan available to the public no later than June 21, 1999.

Approach: EES Consulting, Inc. will prepare a risk management plan for each facility that includes an executive summary, registration of chemicals & processes, hazard assessment, five year accident history, prevention program, emergency response program, and certification. Four copies of the draft and final plans will be submitted to the City. After review of the draft plan EES Consulting will provide the final plan to the City and will submit the approved plan to EPA.

Meetings

EES Consulting will meet with City staff on at least a monthly basis, but will be available to meet on a weekly basis. EES Consulting will also provide assistance to the City in communicating with the Public, including: presenting findings at public meetings, preparing press releases, obtaining statements from State, Federal and Local Fire Authorities, and attending other public meetings as requested by the City.

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Name: Lee H. Odell

Title: Vice President

Date: 2-19-99

CITY OF NEWBERG

By: Duane R. Cole

Name: Duane R. Cole

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