

CITY OF NEWBERG
AGREEMENT WITH GROUNDWATER SOLUTIONS, INC.
TO PROVIDE CONSULTING SERVICES
TO THE CITY OF NEWBERG

THIS AGREEMENT is entered into this 11th day of January, 2002 by and between the City of Newberg, a municipal corporation of the State of Oregon, hereinafter called **City**, and Groundwater Solutions, Inc., 3758 SE Milwaukie Ave., Portland, Oregon 97202, P: 503-239-8799, F: 503-239-8940. hereinafter called **Consultant**.

RECITALS:

1. **City** has need for the services of a **Consultant** with particular training, ability, knowledge, expertise and experience possessed by **Consultant**.
2. **City** has chosen the **Consultant** using the Request for Proposals and City Staff Evaluation and Recommendation Process for **Water Management/Conservation Plan and Water Rights Consulting Services**.

NOW, THEREFORE, in consideration of mutual promises, covenants and agreements of the parties, it is agreed as follows.

1. **Effective Date and Duration:** This Agreement shall become effective on the date that this Agreement has been signed by every party hereto.

Unless, terminated or extended, this Agreement shall expire when the **City** accepts **Consultant's** completed performance or on June 30, 2002, whichever date occurs first. Expiration shall not extinguish or prejudice **City's** right to enforce this Agreement with respect to any breach of a **Consultant** warranty or any fault or defect in **Consultant's** performance that has not been cured.

2. **Termination:** This Agreement may be terminated at any time by mutual, written consent of the parties. The **City** may, at its sole discretion terminate this Agreement in whole or part upon a 30-day written notice to **Consultant**. The **City** may terminate immediately upon notice to the **Consultant** that the **City** does not have funding, appropriations, or other necessary expenditure authority to pay for **Consultant's** work. The **City** may terminate Agreement at any time for material breach. This Agreement may be terminated by either party or at any time upon a 30-day written notice.

3. **Scope of Work:** The **Consultant** agrees to provide the services provided in the Scope of Work, Exhibit "A" and 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.

4. **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:

\$38,000

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 not-to-exceed 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.

5. **Additional Work Not Shown within the Scope of Work:** If **City** requests or requires work to be done not within the Scope of Work of this project, the **Consultant** shall notify the **City** of such work, provide an estimated fee amount, and obtain written instructions to proceed with work in the form of an Agreement 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 Agreement amendment, the **Consultant** waives any right to collect fees for work

performed.

6. **Agreement Documents:** This Agreement consists of the following documents which are listed in descending order of preference:

This Agreement with attached Exhibits, the proposal of the **Consultant** (if one was submitted), and the Request for Proposal (if one was used). Work is 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.

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 Agreement payment except as a self-employed individual.

8. **Federal Employment Status:** In the event any payment made pursuant to this Agreement 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. **Consultant's Warranties:** The work to be performed by **Consultant** includes services generally performed by **Consultant** in his/her usual line of business. The work performed by the **Consultant** under this Agreement shall be performed in a good and businesses-like manner in accordance with the highest professional standards. The **Consultant** shall, at all times, during the term of this Agreement, be qualified, be professionally competent, and dully licensed to perform the work.

10. **Indemnity:** **Consultant** shall defend, indemnify and hold harmless **City** from and against all liability or loss and against all claims, suits, actions, losses, damages, liabilities, costs, and expenses of any nature whatsoever resulting from, arising out, or relating to the activities of the **Consultant**, or its officers, employees, subcontractors, or agents under this Agreement.

11. **Independent Contractor:** **Consultant** is not currently employed by the **City**. The parties to this Agreement intend that the **Consultant** perform all work as an 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 Agreement; 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.

12. **Taxes:** **Consultant** will be responsible for any federal or state taxes applicable to payments received under this Agreement. **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.

13. **Insurance:**

a) **Consultant**, its subconsultants, 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 Agreement, **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 \$1,000,000.00 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 \$2,000,000.00. The **City**, 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 this paragraph.

c) **Consultant** will, at all times, carry a Professional Liability/Errors and Omission type policy with limits of at least \$500,000.00. 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 Agreement.

d) **Consultant** shall furnish the **City** with Certificates of Insurance upon execution of Agreement. Such Certificates of Insurance evidencing any policies required by this Agreement 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.

14. **Assignment:** The parties hereto each bind themselves, their partners, successors, assigns and legal representatives of such other party in respect to all terms of this Agreement. Neither party shall assign the Agreement as a whole without written consent of the other.

15. **Ownership of Work Product:** All original documents prepared by **Consultant** in performance of this Agreement, including but not limited to original maps, plans, drawing and specifications are the property of **City** unless otherwise agreed in writing. Quality reproducible records copies shall be provided to **City** at **City's** expense, upon request. **City** shall indemnify and hold harmless **Consultant** and **Consultant's** independent professional associates or **Subconsultants** from all claims, damages, losses and expenses including attorney's fees arising out of any unauthorized use of any

instruments of professional service.

16. **Entire Agreement:** This Agreement constitutes the entire Agreement between the parties and supersedes all prior agreements, written and oral, courses of dealing, or other understanding between the parties. No modification of this Agreement shall be binding unless in writing and signed by both parties.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first above mentioned.

CONSULTANT
Groundwater Solutions Inc.

By: *Jeff Barry*

Name: JEFF BARRY

Title: PRESIDENT

Date: 12/11/01

Division Approval:

CRM

M. Spierquist 1/11/02
Michael Spierquist, CO Director

CITY OF NEWBERG
Terrence D. Mahr

Name: Terrence D Mahr

Title: City Manager, Pro Tem

Date: 1/11/02

Approved as to form:

[Signature]

Terrence D. Mahr, City Attorney

EXHIBIT A

Scope of Services Water Rights Services and Water Management and Conservation Plan for the City of Newberg Prepared by: Groundwater Solutions, Inc.

This section describes our proposed scope of work for both the water rights services and water management and conservation plan.

Task 1. Water Rights Services

A. Final Proof Survey

- 1) Assist in developing a strategy for perfecting the rights for wells 5, 6, 7.
- 2) Observe peak pumping at wells 5 and 6 and review peak production and use data provided by the City.
- 3) Prepare final proof survey application and associated maps. No budget for following up with OWRD or responding to requests is included.
- 4) Recommend strategy for protecting uncertificated permits, including the new Collector permit.

B. Attend a kickoff meeting.

C. Attend a Council meeting to present findings.

Deliverables:

The Task 1 deliverables include:

- ☐ Final proof survey for wells 5 and 6 with associated maps.
- ☐ Memorandum describing strategy and steps that should be taken protect the City's water rights.

Task 2. Water Management and Conservation Plan

Our scope of services includes the following activities:

- A. Attend kickoff meeting with City. Discuss preliminary plan outline and adjust based on comments from City.
- B. Finalize detailed plan outline and submit to City. Following receipt of comments from City on outline, meet with OWRD to solicit their comments and direction on development of plan for Newberg.
- C. Submit detailed data request to City. Summarize and analyze data for water use within the City and to determine probable future water supply needs. Estimate of future needs will require input on growth projections from the City.
- D. Assist City staff in identifying and describing potential conservation measures for Newberg and potential cost. City to prepare Conservation Plan.
- E. Estimate new source development costs on a dollar per gallon basis for use in comparing to conservation measures. We assume we will rely on the source options and cost estimates provided previously for the Well 7 project.

- F. Review the City's Water Curtailment Plan and make recommendations for any changes.
- G. Prepare a Groundwater Monitoring Plan for the well field that describes the monitoring methods and schedule.
- H. Prepare a 50 percent draft Water Management and Conservation Plan. Submit the Plan to the City for review (no meeting).
- I. Prepare a 90 percent draft Plan and meet with the City at the end of the review period to obtain the City's review comments.
- J. Prepare a final Water Management and Conservation Plan. Submit the final plan to OWRD by February 22, 2002. No budget for follow-up with OWRD or revising the plan is included.
- K. Present the plan (either at this time or following acceptance of the plan by OWRD) to the City Council.

Deliverables:

The project deliverables include:

- ☐ Preparation of a detailed outline summarizing each element of the plan,
- ☐ A 50 percent draft plan for City review and comment,
- ☐ A final plan, and
- ☐ Groundwater Monitoring Plan.