

CITY OF NEWBERG
PROFESSIONAL SERVICES AGREEMENT AMENDMENT NO. 1
August 26, 2003

Project: Composter Odor Control Improvement Project (Bid and Construction Phase Services)

Consultant: Brown & Caldwell

Summary of Proposed Changes:

1. Work Involved:

Engineering services for the Wastewater Treatment Plant Composter Odor Control Improvement Project: The **Consultant** was required to evaluate the impact of increased blower airflow. The airflow was changed between design and bidding as a process improvement. The **Consultant** was requested to develop modular biofilter specification to assist City in selecting an alternate modular biofilter system, which has greater flexibility for future expansion. The **Consultant** indicated, with assistance from the Subconsultant, that it took nineteen (19) hours for the additional level of effort (refer to the attached cost estimate).

2. Cost Summary:

Original contract amount:	\$ 34,820.00
Net change by previous amendments:	\$ 0.00
Previous total:	\$ 34,820.00
This amendment:	\$ 3,447.00
Amended contract amount:	\$ 38,267.00

3. Contract Time:

There will be no change to the original contract time. Work shall continue as scheduled.

All other provisions of the professional services agreement remain in force.

ACCEPTANCE SIGNATURES:

Brown & Caldwell (Consultant)



Name: Bryan K. Payton Date 9-3-03
Title: Vice President

City of Newberg



Mike Soderquist PE, PLS, DEE Date
Community Development Director



James Bennett Date
City Manager

9/8/03

9/15/03

Brown and Caldwell's Cost Estimate

Composter Odor Control Estimated Level of Effort and Cost

August 26, 2003

Task Number and Description	Breakdown of Professional Hours							Labor Hours			Total Labor		Direct Costs	Subconsultants			Total Cost
	Project Manager Lebo	Managing Engineer Meloy, Wolstenholme	Project Engineer Tam, Westbrook	Operations Specialist Price	Operations Assistant Reeves	Supervising Drafter Jenkins	Administrative	Professional	Technical	Administrative	Hours	Dollars		JHI Inc.	Subconsultant	Markup	
Task 1. Evaluate PD Blower Flow Increase																	
1.1 Evaluate airflows, duct, filter due to increase in output of existing blowers.			2					2			2	232		986		49	1,267
Subtotal	0	0	2	0	0	0	0	2	0	0	2	232	0	986	0	49	1,267
Task 2. Develop Modular Biofilter Alternate Bid Scope																	
2.1 Develop, review specification		4	10				3	14		3	17	2,080	100			0	2,180
Subtotal	0	4	10	0	0	0	3	14	0	3	17	2,080	100	0	0	0	2,180
Total	0	4	12	0	0	0	3	16	0	3	19	2,312	100	986	0	49	3,447

CITY OF NEWBERG
AGREEMENT WITH BROWN AND CALDWELL
TO PROVIDE CONSULTING SERVICES
TO THE CITY OF NEWBERG

THIS AGREEMENT is entered into this 28th day of February, 2003 by and between the City of Newberg, a municipal corporation of the State of Oregon, hereinafter called **City**, and
Brown and Caldwell
9620 SW Barbur Blvd. Suite 200
Portland, OR. 97219-6041 503-244-7005 503-244-9095

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** by requesting a proposal from Brown and Caldwell who was the subconsultant to JHI Engineering during the design process. Brown and Caldwell has responded proposing to use JHI Engineering as a subconsultant to provide assistance during the bid, construction and start up phases of the Composter Process Improvement: Odor Control Project. A selection committee has reviewed the proposal and recommended acceptance of the proposal subject to negotiation of an acceptable contract.

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 January 15, 2004, whichever date occurs first. This fact notwithstanding, the services of **Consultant** shall be authorized and paid on a phase-by-phase (or any part of) basis, as described in Exhibit "A".

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 at the end of a project phase as defined in Exhibit "A" 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 which is 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:

\$34,820.00

The **Consultant** shall not exceed the fee for any task included in the fee proposal amount. If the **Consultant** foresees 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** 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 duly 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 to the extent resulting from, arising out of, or

relating to the negligent performance of services by 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 Commercial 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 of final work product, including digital files of text and drawings shall be provided to **City** at the conclusion or termination of this Contract. **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

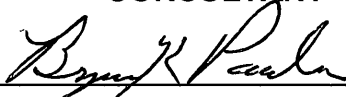
fees arising out of the City's use of any instruments of professional service for purposes outside the scope of this Contract.

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.

17. **Notification:** All correspondence and notices related to this Agreement shall be directed to the project manager for the party to whom the correspondence or notice is intended. If directed to the **City**: City of Newberg, P.O. Box 970, Newberg, Oregon 97132, Attn: Robert A. Bielman. If directed to the **Consultant**: Attn: Tom Lebo at the address listed above. Each party shall be responsible for notifying the other of any changes in project manager designation.

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

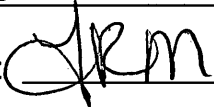
CONSULTANT

By: 

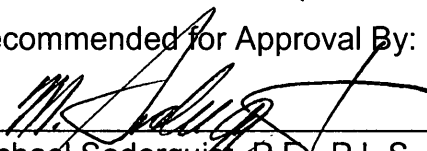
Name: Bryan K. Paulson

Title: Vice President

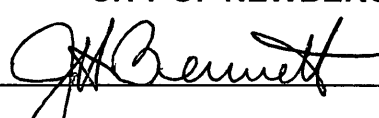
Date: 2-18-03

Division Approval: 

Recommended for Approval By:


Michael Soderquist, P.E., P.L.S., DEE
Community Development Director

CITY OF NEWBERG

By: 

Name: James H. Bennett

Title: City Manager

Date: 2/26/03

Approved as to form:


Terrence D. Mahr
City Attorney

EXHIBIT A

SCOPE OF WORK

The services to be provided by Consultant include the following:

Bidding Phase

- Respond to technical questions raised by potential bidders
- Provide input for addenda as may be required using the format specified by the City

Construction Phase

- Review submittals and shop drawings provided by the contractor for "Review and Comment" and provide written comments. Submittals provided for information only (product data) are not reviewed. Submittal reviews are anticipated for the following items:
 - Fill material samples
 - Asphalt concrete pavement material
 - Biofilter sprinkler system
 - Reinforcing steel shop drawings, product data, certified mill test reports, and welder certificates for the Cure Building/Blower Room foundation, the Sawdust Storage Canopy foundation, the biofilter foundation and walls, and the pipe support foundations
 - Concrete and grout mix designs, accessory data, and laboratory test reports
 - Structural steel shop drawings and welder certificates for the pipe supports
 - Zinc coating manufacturer's data and application methods
 - Structural special inspection reports
 - Coating materials lists, application methods, samples, and Material Safety Data Sheets
 - Pre-engineered metal building manufacturer's data, shop drawings, samples, design calculations, installer certificates, and welder certificates for the Cure Building, Blower Room, and Sawdust Storage Canopy
 - Packed tower odor scrubber
 - Piping, accessory, and valve product data and shop drawings
 - Blower and motor manufacturer's data and anchorage details and calculations for the Cure and Ventilation Blowers
 - Motor control center, transformer, light fixture and accessory, raceway, wire and electrical accessory manufacturer's data
 - Instrumentation and control panels

- Review the building foundation designs and finalize the calculations based on the pre-engineered metal building submittal provided by the contractor
- Respond to Requests for Information
- Assist the City in preparing change requests and change orders for the contractor

Close Out

- Assist the City in punch list inspection and preparation
- Prepare as-built drawings using Contractor's marked-up drawings. Provide two sets of as-built drawings suitable for reproduction. The as-built drawings will be to scale, B-size (11 x 17 inch) drawings. They will be plotted as both B- size and D-size.
- Provide electronic drawing files in AutoCAD format

Task Number and Description	Breakdown of Professional Hours							Labor Hours			Total Labor		Direct Costs	Subconsultants			Total Cost
	Project Manager Lebo	Managing Engineer Melo, Wolstenholme	Project Engineer Westbrook	Instrumentation Bos	Supervising Drafting	Senior Drafter	Administrative	Professional	Technical	Administrative	Hours	Dollars		JHI Engineering, Inc.	Subconsultant	Markup	
Labor Rate	147	147	116	116	100	84	72									5%	
Task 1. Services During Bid Phase																	
1.1 Respond to questions	0	4	2				2	6	0	2	8	964		1,552		78	2,594
1.2 Review advertisement to bid	0						0	0	0	0	0	0				0	0
1.3 Addenda input	3	2	4				0	9	0	0	9	1,199				0	1,199
1.4 Review bid tab, recommend award	0	0						0	0	0	0	0				0	0
1.5 Plot reproducible drawings					0			0	0	0	0	0				0	0
1.6 Management	8						2	8	0	2	10	1,320	750			0	2,070
Subtotal	11	6	6	0	0	0	4	23	0	4	27	3,483	750	1,552	0	78	5,863
Task 2. Services during construction																	
2.1 Review progress payment requests	0						0	0	0	0	0	0				0	0
2.2 Submittal review	0	8	8	6			4	22	0	4	26	3,088		6,016		301	9,405
2.3 Change order requests	4	4	4	4			4	16	0	4	20	2,392				0	2,392
2.4 Requests for information	0	6	6	6			4	18	0	4	22	2,562		2,986		149	5,697
2.5 Finalize foundation design							0	0	0	0	0	0		3,060		153	3,213
2.6 Site visits	0	8	8				2	16	0	2	18	2,248				0	2,248
2.7 Management	8						8	8	0	8	16	1,752				0	1,752
Subtotal	12	26	26	16	0	0	22	80	0	22	102	12,042	0	12,062	0	603	24,707
Task 3. Project Close-out																	
3.1 Punch list inspection	4	4		4			0	12	0	0	12	1,640				0	1,640
3.2 Draft record drawings, plot					0	0		0	0	0	0	0		2,486		124	2,610
Subtotal	4	4	0	4	0	0	0	12	0	0	12	1,640	0	2,486	0	124	4,250
Total	27	36	32	20	0	0	26	115	0	26	141	17,165	750	16,100	0	805	34,820

Estimate is based on 8 month construction peri