

**RESOLUTION NO. 1083**

**A RESOLUTION AUTHORIZING AN INCREASE IN THE BUDGET FOR PRELIMINARY ENGINEERING FOR WASTEWATER TREATMENT PLANT EXPANSION, EXEMPTING THE CITY FROM COMPETITIVE BIDDING REQUIREMENTS, AUTHORIZING THE CITY MANAGER TO SIGN AN ENGINEERING SERVICES AGREEMENT WITH CH2M HILL FOR ENGINEERING SERVICES FOR WASTEWATER TREATMENT PLANT EXPANSION AND AUTHORIZING THE CITY ENGINEER TO APPROVE TASK ORDER NO. 1 FOR PREPARATION OF A PRELIMINARY DESIGN REPORT.**

WHEREAS, United States Federal Government in a concerted effort to provide for a clean and safe environment for ourselves and our children passed legislation commonly known as the Clean Water Act (Act); and,

WHEREAS, the City of Wilsonville in conformance with the provisions of the Act in 1972-1973 constructed a wastewater treatment plant (WWTP) to provide for the safe and environmentally responsible treatment of the City's wastewater; and

WHEREAS, with the systematic commercial and residential development of the City and with the continued improvement of wastewater treatment techniques, the City in the 1980-1981 re-constructed the plant with funds from the Federal Government under the new and innovative treatment program to test and evaluate new treatment techniques; and

WHEREAS, the treatment technique selected for the City of Wilsonville in the up-grade of 1980-1981 was commonly known as rotating biological contactors (RBC); and

WHEREAS, two (2) primary components which are often used to represent a wastewater treatment plant's ability to treat the waste stream are expressed as biologic (strength) and hydraulic (quantity); and

WHEREAS, the initial plant construction in 1972-1973 and the selection of the RBC treatment system during the 1980-81 reconstruction were made due to the relative low biologic demands of the City of Wilsonville's waste stream and the belief that the RBC system, although a new concept and lacking actual long term test results, would

provide the City with long-term and energy efficient plant operation; and

WHEREAS, similar RBC systems have been installed worldwide and documentation has been gathered on actual field operation of the RBC system; and

WHEREAS, comparisons to the initial design parameters are now possible with the field operational data and rated capacities have been reduced; and

WHEREAS, the biologic character of the City of Wilsonville's waste stream has changed since the installation of the RBC system due to an increase in the industrial make-up of the waste stream and the original design parameters of the RBC system are no longer accurate; and

WHEREAS, documented evidence now exists which indicates the RBC system is not as biologically efficient in the treatment of wastewater as originally hoped; and

WHEREAS, the change in the character of the City of Wilsonville's waste stream and the reduction in the biologic efficiency of the RBC treatment system has reduced the ability of the wastewater treatment plant to provide for continued development of the City beyond the estimated year of 1996; and

WHEREAS, the actual operational records of the wastewater treatment plant reflects the occasional inability of the wastewater treatment plant to operate within discharge limits as established by the Oregon Department of Environmental Quality (DEQ); and

WHEREAS, the City of Wilsonville staff retained the services of CH2M Hill to analyze, test and confirm the existing operation documentation exhibited by the wastewater treatment plant and to recommend interim changes to the operational methods of the wastewater treatment plant to add service life to the existing facility, meet the DEQ discharge permit values and provide for continued development within the City until the wastewater treatment plant up-grade is made, which services are now complete; and

WHEREAS, the approved City Budget Capital Projects Fund for fiscal year 1993-94 includes \$100,000 to cover the cost of the required wastewater treatment plant facilities report includes \$12,000 for in-house expenses; and

WHEREAS, additional effort is required to prepare the facilities report because of inability to meet permit requirements in 1993 and lack of data concerning plant influent; and

WHEREAS, the cost for preparation of the facilities report as negotiated with CH2M Hill is \$150,000.

WHEREAS, Community Development is updating the Wastewater Collections System Master Plan (Project No. 2013) and will spend \$15,000 less than budgeted; and

WHEREAS, Public Works has installed the recirculation pumps for temporary improvements to the plant and will spend \$88,000 less than budgeted; and

WHEREAS, funds are available to cover the additional costs; and

WHEREAS, in order to properly analyze the many issues that proceed construction of wastewater treatment plant up-grade, a report addressing these issues should be prepared; and

WHEREAS, this report commonly referred to as a facility plan, will address common issues of existing and potential growth of commercial, industrial and residential wastewater streams and their character within the City, summarize previous reports undertaken to study the character of the City of Wilsonville's waste stream, long term management and treatment of the waste stream, and make recommendations on treatment processes; and

WHEREAS, the City wishes to proceed with the facility plan and the Community Development Director of the City published in the Daily Journal of Commerce a request for proposals for consulting services for plant expansion by a private consulting engineering firm; and

WHEREAS, after reviewing the submitted materials, seven (7) consulting engineering firms were found to meet the general guidelines through demonstrating experience on the expansion of wastewater treatment plants; and

WHEREAS, the seven (7) consulting engineering firms were invited to demonstrate in person and in greater detail their experience on similar projects and answer questions presented by City staff; and

WHEREAS, after reviewing the combination of experience and answers presented by the seven (7) consulting engineering firms, CH2M Hill was determined to be the firm best suited to provide engineering services for the project; and

WHEREAS, ORS 279.011(5) and Section 2.310(1)(a) of the Wilsonville Code define public contracts as being other than agreements for personal service. The contract to be awarded for engineering services is for personal service; and

WHEREAS, Section 2.312 of the City Code states that "The Council is hereby designated as a Local Contract Review Board and relative to contract concerns for the City, shall have all the powers granted to the State Contract Review Board"; and

WHEREAS, Section 2.314(1) states that "All contracts shall be based upon competitive bid with certain exceptions", which the City interprets to mean public contracts, but in the event it is construed to apply to any contract, the City recites and finds as set forth below; and

WHEREAS, additionally, Section 2.314(2) states that "The Board may, by Resolution, exempt other contracts from competitive bidding if it finds (a) the lack of bids will not result in favoritism or substantially diminish competition in awarding the contract; and (b) the exemption will result in substantial cost savings. In making such a finding, the Board may consider the type, cost amount of the contract, number of persons available to bid and such other factors as the Board may deem appropriate."; and

WHEREAS, Oregon Revised Statutes 279.015 Competitive Bidding Exemptions also allows exemptions as stated in the City Code; and

WHEREAS, the facility plan is required for the expeditious completion of the wastewater treatment plant up-grade by 1996; and

WHEREAS, completion of the wastewater treatment plant up-grade is urgently needed in order to alleviate future inability of the wastewater treatment plant to operate within discharge limits established by DEQ; and,

WHEREAS, the CH2M Hill proposal provides that its fees for the facility plan will not exceed \$150,000; and

WHEREAS, at the completion and adoption of the facility plan, the City will need to proceed with the preparation of construction plans and specifications; and

WHEREAS, an accurate estimate of the fees to prepare the construction plans, specifications, surveying and project management services (professional services) can not be determined until the facility plan is completed, however, CH2M Hill has offered to accomplish the professional services based on an estimated cost of construction of the wastewater treatment plant up-grade; and

WHEREAS, the City Council, as the Local Contract Review Board, finds that under the criteria as outlined above awarding the preparation of the facility plan and professional services to CH2M Hill will not result in favoritism or substantially diminish competition in awarding the contract and will result in substantial cost savings; and

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Wilsonville resolve as follows:

1. That the City Council, serving in its role as Local Contract Review Board, does hereby exempt the award of contract for engineer services for the preparation of a facility plan and professional services recited above for the wastewater treatment plant up-grade from competitive bidding requirements.
2. The City Council, serving as a Local Contract Review Board, does hereby approve and authorize the City Manager to sign an

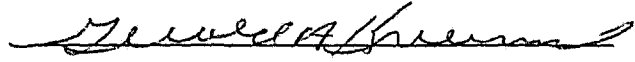
Engineering Services Agreement between the City of Wilsonville and CH2M Hill to provide professional services recited above for the wastewater treatment plant up-grade.

3. The appropriation authorization for project funding within the adopted 1993-94 sanitary sewer capital projects fund is modified to reflect the following:

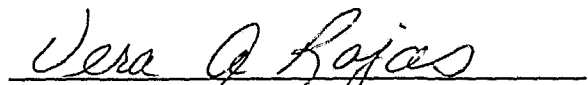
<u>Line Item</u>	<u>Description</u>	<u>Budgeted Appropriation</u>	<u>Revised Appropriation</u>
7702001	Plant Expansion	\$100,000	\$162,000
7702014	WW Coll. Master Plan	\$ 40,000	\$ 25,000
7702013	Re-Circulation Pumps	\$100,000	\$ 12,000

CONSIDERED by the City Council of the City of Wilsonville at a special meeting thereof this 24th day of January, 1994, and continued to a regular meeting on the 7th day of February, 1994.

ADOPTED by the Wilsonville City Council at a regular meeting thereof the 7th day of February, 1994, and filed with the Wilsonville City Recorder this date.

  
GERALD A. KRUMMEL, Mayor

ATTEST:

  
VERA A. ROJAS, CMC/AAE, City Recorder

SUMMARY of Votes:

Mayor Krummel       AYE    
Councilor Van Eck     ABSENT    
Councilor Hawkins     AYE    
Councilor Benson      AYE    
Councilor Lehan       AYE

EXHIBIT "A"

2/3/94

## CH2M HILL MASTER AGREEMENT FOR PROFESSIONAL SERVICES (1/18/94)

This Master AGREEMENT is between CH2M HILL, INC., (the CONSULTANT), and City of Wilsonville, Oregon (the CITY), for project to be determined and specified on a Task Order basis.

### Article 1. Scope of Services

CONSULTANT shall be an independent contractor performing the services hereunder. The CONSULTANT agrees to provide required engineering, planning, design, construction management, and related services for the CITY. It is anticipated that the services furnished by the CONSULTANT to the CITY will be performed under a series of Task Orders defining the services to be performed (detailed scope), time of performance, and cost for each phase of the services. These Task Orders are anticipated to include, but not be limited to, the following services:

- (A) Facility Planning and Compliance Investigation
- (B) Compliance Alternative Development and Implementation
- (C) Expansion Predesign/Design
- (D) Expansion Bid/Procurement
- (E) Expansion Construction Management
- (F) Expansion Startup/Operations Support
- (G) Expansion Operations Training
- (H) NPDES Permit Negotiation Assistance
- (I) Other Services as Requested

The specific services to be provided by the CONSULTANT and the compensation for such services will be as mutually agreed to in separate Task Orders, which shall become a supplement to and part of this AGREEMENT. Unless otherwise indicated in a Task Order, execution of a Task Order by the CITY shall constitute authorization for the CONSULTANT to proceed with the services enumerated in the Task Order. The Task Orders may be mutually amended as changes in scope or required levels of work effort are identified. Initial Task Order is attached hereto.

### Article 2. Compensation

Compensation by the CITY to the CONSULTANT for the services enumerated in ARTICLE 1, will be on the basis to be established in each Task Order. Said compensation for each service will be negotiated by the parties at the time each Task Order is authorized. The types of compensation that may be used for each Task Order are limited to the following:

1. Cost Reimbursables—Multiplier

CONSULTANT'S compensation will be based on the Salary Cost multiplied by a factor of 2.1 plus Direct Expenses, plus a service charge of 10 percent of Direct Expenses, plus applicable sales, use, value added, business transfer, gross receipts, or other similar taxes. The Salary Costs are subject to annual calendar year adjustments; (not to exceed six percent annually) include all allowances for salary, overheads and fee; but do not include allowances for Direct Expenses.

Direct Expenses are defined as the costs incurred on or directly for the project, other than the labor costs (as defined previously). Such direct expenses shall be obtained from commercial sources and other items provided by the CONSULTANT. Direct Expenses shall include, but not be limited to, necessary transportation costs, including mileage at the CONSULTANT's standard cost per mile when the CONSULTANT's own automobiles are used, meals, computer services, word processing services, mail costs, telephone, printing, binding, reprographic, and other charges. Ten percent of the cost of technical or professional services furnished by subconsultants or other outside sources and materials and supplies from outside sources shall be added for the CONSULTANT's administrative and continuing project responsibilities.

The cost reimbursable compensation(s) included in Task Orders are estimates of the cost of required services based on the CONSULTANT's experience and judgment. The CONSULTANT will complete the specified work within the budget(s) established and will keep the CITY informed of progress toward that end so that budgets and/or the work effort may be adjusted, if appropriate. The CONSULTANT is not obligated to incur costs beyond established budgets, nor is the CITY obligated to pay CONSULTANT beyond these budgets.

2. Lump Sum

Engineer's compensation will be a lump sum amount, which includes full compensation for all the CONSULTANT'S Salary Cost, Direct Expenses, and profit, but not applicable sales, use, value added, business transfer, gross receipts, or other similar taxes. The lump sum amount will be developed using the labor and expense definitions described in Section "Cost Reimbursables - Multiplier."

3. Cost Reimbursables—Cost Plus Fixed Fee

CONSULTANT's compensation will be Salary Cost expended for the service, plus Direct Expenses, plus a Fixed Dollar Profit (Fee), plus applicable sales, use, value-added, business transfer, gross receipts, or other similar taxes.

The Cost Budget represented by Salary Cost, plus Direct Expense charges shall not be exceeded, excluding taxes, without a formal amendment to the Task Order. A change of work scope is not a prerequisite for said amendment.

The Fixed Dollar Profit established in the Task Order may not be increased except in the case of an amendment to the Task Order that reflects an increase in the scope of work.

4. Per Diem Rates

Per Diem Rates are those hourly or daily rates charged for work performed on the project by CONSULTANT's employees of the indicated classifications. These rates are subject to annual calendar year adjustments; include all allowances for salary, overheads, and fees; but do not include allowances for Direct Expenses. Direct expenses and a service charge of 10 percent of Direct Expenses, plus applicable sales, use, value added, business transfer, gross receipts, or other similar taxes will be charged.

5. Renegotiation of Task Order Scope and Compensation

The CITY reserves the right to modify the scope of services as needed to satisfy the needs of the projects as identified by task orders.

For all Task Orders that specify a maximum budget, not-to-exceed fee, or a lump sum amount as the basis of compensation, the CONSULTANT reserves the right to renegotiate this compensation if the scope of services as specified on the Task Order is modified or changed by the CITY, whereupon additional expenses will be incurred by the CONSULTANT. When any budget has been increased, the CONSULTANT's excess costs expended prior to such increase that were directly caused by the Task Order modification or change will be allowable to the same extent as if such costs had been incurred after the approved increase.

### Article 3. Terms of Payment

Payment to the CONSULTANT will be made as follows:

A. *Invoices and Time of Payment*

Monthly invoices will be issued by CONSULTANT for all work performed under this AGREEMENT. Invoices are due and payable on receipt. Upon mutually agreed upon completion of services enumerated in each Task Order, the final payment of any balance will be due upon receipt of the final invoice.

For Task Orders with lump sum compensation, monthly invoices will be based on work programs as a percent complete of the Task Order services. For Task Orders



with Per Diem, cost reimbursables, or cost-plus-fixed-fees compensation, invoices will be based on actual labor and expenses incurred during the period and will include a summary of all charges, current and past, along with a summary of previous payments made by the owner.

**B. *Interest***

Interest at the rate of 1 percent per month will be charged on all past due amounts beginning 45 days after the date of approval of the payment of the invoice by the CITY, unless not permitted by law, in which case interest will be charged at the highest amount permitted by law. Payments will first be credited to interest and then to principal.

**Article 4. Obligations of the CONSULTANT**

**A. *Standard of Care***

The standard of care applicable to CONSULTANT's services will be the degree of skill and diligence normally employed by professional engineers or consultants performing the same or similar services at the time such services are performed in the Portland metropolitan area. The CONSULTANT will redo any services not meeting this standard without additional compensation.

**B. *Subsurface Investigations***

In soils, foundations, groundwater, and other subsurface investigations, the actual characteristics may vary significantly between successive test points and sample intervals and at locations other than where observations, explorations, and investigations have been made. Because of the inherent uncertainties in subsurface evaluations, changed or unanticipated underground conditions may occur that could affect total project cost and/or execution schedule. These conditions and cost/execution effects are not the responsibility of the CONSULTANT.

**C. *Subcontracting***

The CONSULTANT shall not subcontract its work under this Agreement, in whole or in part, without approval of the SUBCONTRACTOR by the CITY. The CONSULTANT shall require any approved subcontractor to agree, as to the portion subcontracted, to fulfill all obligations of the CONSULTANT as specified in this Agreement. Notwithstanding CITY approval of a subcontractor, the CONSULTANT shall remain obligated for full performance hereunder, and the CITY shall incur no obligation other than its obligations to the CONSULTANT hereunder.

If a specified or requested subcontractor and/or minority- and women-owned business is unable to comply with the insurance requirements of this Agreement, the CITY and CONSULTANT may mutually accept the subcontractor or business and limit the

CONSULTANT's liability arising from the work of said subcontractor or business to the proceeds available from their insurances.

**D. *CONSULTANT's Personnel at Construction Site***

The CONSULTANT may, at the CITY's request, provide personnel on the construction sites of projects. The specific duties of the CONSULTANT's on-site personnel will be defined in a subsequent Task Order. The presence of CONSULTANT's personnel at a construction site is for the general purpose of monitoring and reporting progress of the work and providing the CITY with a greater degree of confidence that the completed work generally conforms to the Contract Documents and that the integrity of the design concept as reflected in the Contract Documents has been implemented and preserved by the construction contractor(s). CONSULTANT neither guarantees the performance of the construction contractor(s) nor assumes responsibility for construction contractor's failure to perform their work in accordance with the Contract Documents. Construction sites include places of manufacture for materials incorporated into the construction work. Construction contractors include manufacturers of materials incorporated into the construction work.

The presence of the CONSULTANT's personnel at a construction site, whether as onsite representatives or otherwise, does not make the CONSULTANT or its personnel in any way responsible for those duties that belong to the CITY, construction contractors and/or other entities and does not relieve the construction contractors or any other entity of its obligations, duties, and responsibilities, for, but not limited to, all construction methods, means, techniques, sequences, and procedures necessary for coordinating and completing all portions of the construction work in accordance with the Contract Documents and any health or safety precautions required by Oregon Bureau of Labor and Industries or OSHA. The CONSULTANT and its personnel have no authority to supervise or control construction contractor(s) or other entity or their employees in connection with their health or safety precautions.

**E. *Opinions of Cost, Financial Considerations, and Schedules***

In providing opinions of cost, financial analyses, economic feasibility projections, and schedules for the project, the CONSULTANT has no control over cost or price of labor and materials; unknown or latent conditions of existing equipment or structures that may affect operation or maintenance costs; competitive bidding procedures and market conditions; time or quality of performance by its parties; quality, type, management, or direction of operating personnel; and other economic and operational factors that may materially affect the ultimate project cost or schedule. Therefore, the CONSULTANT makes no warranty that the CITY's actual project costs, financial aspects, economic feasibility, or schedules will not vary from the CONSULTANT's opinions, analyses, projections, or estimates. If the CITY requires the CONSULTANT to prepare quantity and material takeoffs and/or opinions of cost from plans and specifications that are less than 100 percent complete, the

CITY will hold the CONSULTANT harmless for any and all loss, liability, and claims resulting from the incompleteness.

*F. Construction Progress Payments*

The CONSULTANT's construction-related duties may, at the CITY's request, include recommendations to the CITY of payments to construction contractors. This may include recommendations for work completed but not accepted. Recommendations by the CONSULTANT to the CITY for periodic construction progress payments to the construction contractor will be based on the CONSULTANT's review and evaluation of contractor's application for payment and the CONSULTANT's own knowledge, information, and belief from selective sampling that the work has progressed to the point indicated. Such recommendations regarding contractor payment do not represent that continuous or detailed examinations have been made by the CONSULTANT to ascertain that the construction contractor has completed the work in exact accordance with the Contract Documents; that the final work will be acceptable in all respects; that the CONSULTANT has made an examination to ascertain how or for what purpose the construction contractor has used the monies paid; that title to any of the work, materials, or equipment has passed to CITY free and clear of liens, claims, security interests, or encumbrances; or that there are not other matters at issue between the CITY and the construction contractor that affect the amount that should be paid.

*G. Record Drawings*

Record drawings (as-builts) will be compiled by the CONSULTANT to document the completed construction work on the project. The record drawings will be prepared, in part, on the basis of information compiled and furnished by contractors, suppliers, and others. The completed record drawings may not always represent the exact location, types of various components, or exact manner in which the project was finally constructed. The CONSULTANT is not responsible for any errors or omissions in the information provided by others that is incorporated into the record drawings.

*H. Access to CONSULTANT's Accounting Records*

The CONSULTANT will maintain accounting records, in accordance with generally accepted accounting principles and practices, to substantiate all invoiced amounts. Said records will be available to CITY during CONSULTANT's normal business hours for a period of 3 years after CONSULTANT's final invoice for examination to the extent required to verify the direct costs (excluding established or standard allowances and rates) incurred hereunder. The CITY may audit all accounting records relating to costs billed to the CITY by the CONSULTANT under the terms of this agreement.

## ***I. CONSULTANT's Insurance***

The CONSULTANT will maintain throughout this AGREEMENT the following insurance:

- (a) Workers' compensation and employer's liability/stopgap insurance as required by the State of Oregon.
- (b) Comprehensive automobile and vehicle liability insurance covering claims for injuries to persons or damages to property of others arising from use of motor vehicles, including onsite and offsite operations, and owned, nonowned, or hired vehicles, with \$1,000,000 combined single limits.
- (c) Commercial general liability insurance covering claims for injuries to persons or damage to property of others arising out of any covered negligent act or omission of the CONSULTANT or any of its employees, agents, or subcontractors, with \$1,000,000 combined single limits.
- (d) Professional liability insurance of \$2,000,000 single occurrence and in the aggregate.
- (e) CITY will be named as an additional insured with respect to CONSULTANT's liabilities hereunder in insurance coverages identified in Items b and c, and CONSULTANT waives subrogation against CITY as to said policies.
- (f) CONSULTANT shall provide CITY with certificates of insurance showing compliance with these insurance requirements prior to commencing work. This requirement shall continue as policies are renewed or replaced. There shall be thirty (30) days' prior written notice of any policy cancellations and thirty (30) days' notice given of the renewal and/or replacement of existing policies.

## ***J. Project Personnel***

CONSULTANT project personnel shall not be changed or substituted without prior authorization from the CITY. Project personnel will be assigned on a Task Order basis.

## **Article 5. Obligations of the CITY**

### ***A. CITY-Furnished Data***

The CITY will provide the CONSULTANT copies of available technical and related data in the CITY's possession, including but not limited to, previous reports, maps, surveys, borings, and all other information relating to the CONSULTANT's services

on the projects. CONSULTANT will reasonably rely on the accuracy, timeliness, and completeness of the information provided by and as represented by the CITY.

**B. *Access to Facilities and Property***

The CITY will make its facilities accessible to CONSULTANT as required for CONSULTANT's performance of its services and will provide labor and safety equipment as required by CONSULTANT for such access. CITY will perform at no cost to CONSULTANT reasonable tests of equipment, machinery, pipelines, and other components of the CITY's existing facilities as may be required in connection with CONSULTANT's services, unless otherwise agreed to. CITY will be responsible for all acts of CITY's personnel.

**C. *Advertisements, Permits, and Access***

Unless otherwise agreed to in the Scope of Services, the CITY will obtain, arrange, and pay for, or reimburse the CONSULTANT, for all advertisements for bids, permits, and licenses required by local, state, province, or federal authorities, except that the CONSULTANT will obtain and pay for City or County required business licenses necessary for the CONSULTANT's services.

**D. *Timely Review***

The CITY will examine the CONSULTANT's studies, reports, sketches, drawings, specifications, proposals, and other documents; obtain advice of an attorney, insurance counselor, accountant, auditor, or other consultants as CITY deems appropriate; and render in writing decisions required of CITY in a timely manner.

**E. *Prompt Notice***

The CITY will give prompt written notice to CONSULTANT whenever CITY observes or becomes aware of any development that affects the scope or timing of CONSULTANT's services or any defect in the work of the CONSULTANT or construction contractors.

The CONSULTANT will give prompt written notice to the CITY whenever CONSULTANT observes or becomes aware of any development that affects the scope or timing of the project or any defect in the work of the CITY or construction contractors.

**F. *Asbestos or Hazardous Substances and Indemnification***

If asbestos or hazardous substances in any form are encountered or suspected, the CONSULTANT will, within 24 hours of first encountering or suspecting, notify the CITY and will stop its own work in the affected portions of the project to permit testing and evaluation.

If asbestos is suspected, the CONSULTANT will, if requested, manage the asbestos remediation activities using a qualified and CITY-approved subcontractor at an additional fee and contract terms to be negotiated.

If hazardous substances other than asbestos are suspected, the CONSULTANT will conduct tests to determine the extent of the problem and will perform the necessary studies and recommend the necessary remedial measures at an additional fee and contract terms to be negotiated.

To the maximum extent permitted by law, the CITY will indemnify CONSULTANT and its officers, employees, subcontractors, and affiliated corporations from all claims, damages, losses, and costs, including, but not limited to, attorney's fees and litigation expenses arising out of or relating to the presence, discharge, release, or escape of hazardous substances, contaminants, or asbestos on or from the project.

#### *G. Contractor Indemnification*

CONSULTANT shall have the right to review and approve all construction contracts associated with projects for purpose of determining:

- (1) That such contracts contain provisions substantially identical to those in ARTICLE 4i of the AGREEMENT.
- (2) That such contracts include provisions reading substantially as follows:
  - (a) The contractor agrees to indemnify and save harmless the CITY and CONSULTANT and their officials, agents, and employees from and against any and all suits, claims, actions, losses, costs, penalties, and damages of whatsoever kind or nature, including attorneys' fees, arising out of, in conjunction with, or incidental to the work of this contract, except those caused by the sole negligence of the CITY or CONSULTANT or their officials, agents, or employees. In the event the obligation to indemnify is caused by or results from the concurrent negligence of the CITY or CONSULTANT or their officials, agents, or employees and the contractor or its employees of agencies, the contractor shall be required to indemnify the CITY or CONSULTANT only to the extent of the negligence of the contractor or its employees or agents. In the event of litigation among the parties to enforce the rights under this paragraph, reasonable attorneys' fees shall be allowed to the prevailing party.
  - (b) This indemnity agreement shall include any claim made against the CITY or CONSULTANT or their officials, agents, or employees by an employee of the contractor or of a subcontractor even if such employer is thus or otherwise immune from liability pursuant to workers' compensation statutes.

- (c) The provisions contained in this paragraph have been mutually negotiated by the parties and it is the intent of the parties that the contractor provide the broadest scope of indemnity permitted by Oregon law.
- (3) The construction contractor shall carry comprehensive general liability insurance naming the CITY and the CONSULTANT as additional insured and including a contractual liability clause or endorsement covering the construction contractor's indemnity of the CITY and CONSULTANT and shall provide the CITY and CONSULTANT with a certificate of insurance showing compliance with this paragraph prior to commencing work.
- (4) CITY will use reasonable efforts to include CONSULTANT as additional named insured and to seek indemnity for CONSULTANT consistent with the requirements of paragraphs 2 and 3 above. To the extent that CITY is unable to actually obtain such protection for the CONSULTANT, it will be deemed to have complied with paragraphs 2 and 3 above.

#### *H. CITY's Insurance*

CITY will require construction contractor(s) to provide a Builders Risk All Risk insurance policy for the full replacement value of the project(s) and all project work associated with the CONSULTANT's services. Such policy will provide a waiver of subrogation as to the CONSULTANT and the construction contractor(s) (or CITY), and their respective officers, employees, agents, affiliates, and subcontractors. CITY will provide CONSULTANT with a copy of such policy.

#### *I. Litigation Assistance*

If the CITY requests, the CONSULTANT will provide assistance to support, prepare, document, bring, defend, or assist in litigation undertaken or defended by the CITY on issues related to the project. All other such services required or requested of the CONSULTANT, except for suits or claims among the parties to this AGREEMENT, will be reimbursed as mutually agreed, and payment for such services shall be in accordance with ARTICLE 3. CONSULTANT shall bear all such costs incurred as a result of the CONSULTANT's fault or negligence in whole or in part.

#### *J. Changes*

The CITY may make or approve changes within the general scope of services of this AGREEMENT. If such changes affect the CONSULTANT's cost or time required for performance of the services, an equitable adjustment will be made through an amendment to this AGREEMENT.

Such changes shall be served in the following manner:

1. In-person delivery to and signed acknowledgement of receipt by an authorized officer, employee, agent, or other representative of the contracting parties.
2. Deposited in the U.S. mails posted to the address(es) given in this document.

#### ***K. CONSULTANT's Standards***

It is the general intent that services specified in this AGREEMENT shall be performed by the CONSULTANT, and will be delivered using the CONSULTANT's standard form and content of drawings, technical specifications, and Contract Documents. The CONSULTANT's standards will be in conformance with applicable local, state, and federal standards and requirements. The use of other standards, if requested or required, will be stipulated in Task Order "Scope and Services."

### **Article 6. General Legal Provisions**

#### ***A. Authorization to Proceed***

This agreement shall be effective after signing by both parties and upon issuance of written notice to proceed by the CITY. Authorization to proceed on work elements not defined in this AGREEMENT as to scope, cost, and/or time for completion shall be in the form of a Task Order as previously described.

#### ***B. Ownership of Documents***

The work products to be furnished by the CONSULTANT, as defined in each Task Order scope of services, shall become the property of the CITY and be used by the CITY without restriction. The CITY may not publish, provide to other consultants/companies, or use whole or part of the compiled information as deemed appropriate without approval from the CONSULTANT. CONSULTANT shall not publish, provide the document to other consultants/companies, advertise, or use whole or in part the compiled information as deemed appropriate, without written approval from the CITY.

#### ***C. Reuse of Project Documents***

All designs, drawings, specifications, documents, and other work products of the CONSULTANT, whether in hard copy or in electronic form, are instruments of service for these projects, whether the projects are completed or not. Reuse, change, or alteration by the CITY or by others acting through or on behalf of the CITY of any such instruments of service without written permission of the CONSULTANT will be at the CITY's sole risk. The CITY agrees to indemnify the CONSULTANT and its officers, employees, subcontractors, and affiliated corporations from all claims, damages, losses, and costs, including, but not limited to, litigation expenses



and attorney's fees, arising out of or related to such authorized reuse, change, or alteration.

**D. *Force Majeure***

The CONSULTANT is not responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of the CONSULTANT.

**E. *Termination***

This AGREEMENT may be terminated for cause with 30 days' written notice to the addresses specified in this document if either party fails substantially to perform through no fault of the other and does not commence correction of such nonperformance within 5 days of written notice to the addresses specified in this document and diligently complete the correction thereafter.

On termination, the CONSULTANT will be paid for all authorized work performed up to the termination date plus termination expenses such as, but not limited to, reassignment of personnel, subcontract termination costs, and related closeout costs.

**F. *Suspension, Delay, or Interruption of Work***

The CITY may suspend, delay, or interrupt the services of the CONSULTANT for the convenience of the CITY. In the event of force majeure or such suspension, delay, or interruption, an equitable adjustment in the project's schedule, commitment and/or cost of CONSULTANT's personnel and subcontractors and CONSULTANT's compensation will be made.

**G. *No Third-Party Beneficiaries***

This AGREEMENT gives no rights or benefits to anyone other than the CITY and CONSULTANT and has no third-party beneficiaries.

**H. *Indemnification***

- (a) CONSULTANT agrees to indemnify and defend CITY from any loss, cost, or expense claimed by third parties for property damage and bodily injury, including death, caused solely by the negligence or willful misconduct of CONSULTANT, its employees, or agents in connection with the project.
- (b) CITY agrees to indemnify and defend CONSULTANT from any loss, cost, or expense claimed by third parties for property damage and bodily injury, including death, caused solely by the negligence or willful misconduct of CITY, its employees, or agents in connection with the projects.

- (c) If the negligence or willful misconduct of both the CONSULTANT and CITY (or a person identified above for whom each is liable) is a cause of such damage or injury, the loss, cost, or expense shall be shared between CONSULTANT and CITY in proportion to their relative degrees of negligence or willful misconduct and the right of indemnity shall apply for such proportion.
- (d) This indemnity agreement shall include any claim made against the CITY or CONSULTANT or their officials, agents, or employees by an employee of the other party even if such employer is thus or otherwise immune from liability pursuant to workers' compensation statutes.
- (e) The provisions contained in this paragraph have been mutually negotiated by the parties and it is the intent of the parties that the paragraph provide the broadest scope of indemnity permitted by Oregon law.

#### *I. Assignment*

Neither party will assign all or any part of this AGREEMENT without the prior written consent of the other party.

#### *J. Legal Action/Dispute Resolution*

All legal actions by either party against the other arising from this AGREEMENT or for the failure to perform in accordance with the applicable standard of care or any other cause of action will be barred 2 years from the date the claimant knew or should have known of its claim, but, in any event, no later than 10 years from the date of mutually agreed substantial completion of CONSULTANT's services.

#### *K. Interpretation*

Releases from, indemnities against, limitations on, and assumptions of liability and limitations on remedies expressed in this AGREEMENT shall apply even in the event of breach of contract or warranty, fault, tort, including negligence, strict liability, statutory, or any other cause of action (except for willful or reckless disregard of obligations) of the party released or indemnified, or whose liability is limited or assumed, or against whom remedies are limited. Party, as used herein, includes the named parties, their officers, employees, agents, subcontractors, and affiliates.

#### *L. Consequential Damages*

In no event shall CONSULTANT or CITY, their officers, employees, agents, or subcontractors be liable for consequential damages not directly related to a negligent act, error, or omission of the CONSULTANT or the CITY, respectively.

**M. *Jurisdiction***

The law of the State of Oregon shall govern the validity of this agreement, its interpretation and performance, and any other claims related to it. Venue will be in Clackamas County.

**N. *Severability and Survival***

If any of the provisions contained in this AGREEMENT are held for any reason to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provision, and this AGREEMENT shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

ARTICLES 4, 5, and 6 shall survive termination of this AGREEMENT for any cause.

**O. *Nondiscrimination***

No person shall be denied or subjected to discrimination in receipt of the benefits of any services or activities made possible by or resulting from this AGREEMENT on the grounds of sex, race, color, creed, marital status, age, or national origin. Any violation of this provision shall be considered a material violation of this AGREEMENT and shall be grounds for cancellation, termination, or suspension in whole or in part by the CITY.

**P. *Independent Agent***

The CONSULTANT shall be an "independent agent." All persons employed to furnish services hereunder are employees of the CONSULTANT and not of the CITY. Further, the CITY shall not be liable for any of CONSULTANT's acts for omissions performed under this or other agreements to which CONSULTANT is a party.

**Q. *Funding***

In the event the City Council of the City of Wilsonville or other governing authority reduces, changes, eliminates, or otherwise modifies the funding for any of the projects identified herein, the CONSULTANT agrees to abide by any such decision, including termination of service.

**Article 7. Attachments, Schedules, and Signatures**

This AGREEMENT, including its attachments and schedules, constitutes the entire AGREEMENT, supersedes all prior written or oral understandings, and may be changed only by a written amendment executed by both parties.

IN WITNESS WHEREOF, the parties execute below:

For the CITY:  
City of Wilsonville  
30000 S.W. Town Center Loop East  
Wilsonville, OR 97070

Approved:

By: \_\_\_\_\_

\_\_\_\_\_ Date

Title: \_\_\_\_\_

For the CONSULTANT:  
CH2M HILL, INC.  
825 N.E. Multnomah, Suite 1300  
Portland, OR 97232

Approved:

By: John Macisriello

FEB 2 1994  
Date

Title: Vice President

Approved as to form:

Michael E. Kolchoff  
City Attorney

**TASK ORDER NO. WWTP1**  
**City of Wilsonville**  
**Wastewater Treatment Plant**  
**Facility Planning and Compliance Investigation**  
**(1/19/94)**

**Subject:** ORIGINAL AGREEMENT to furnish engineering services to City of Wilsonville, Oregon, for implementation of the Wilsonville Wastewater Treatment Plant (WWTP) Expansion project dated January 18, 1994.

Upon execution of this Task Order by City of Wilsonville, Oregon (CITY), and CH2M HILL, INC. (ENGINEER) in the space provided below, this Task Order will serve as authorization for ENGINEER to carry out and complete the services as set forth below in accordance with the referenced AGREEMENT between CITY and ENGINEER.

1. Purpose

The purpose of this Task Order No. WWTP1 is to prepare a Wastewater Facility Plan Report using the March 1990 City of Wilsonville Wastewater Treatment Plant Facilities Plan and other recent technical memoranda. The goal of the overall project is to construct improvements necessary to increase the treatment capacity up to approximately 2.25 million gallons per day (mgd) by 1997 and comply with discharge requirements. The scope of this task order includes (1) assisting the CITY with modifying the current Stipulation and Final Order (SFO) to address current discharge compliance problems, and (2) preparation of a Facility Plan Report for submission to the Oregon Department of Environmental Quality (DEQ).

The scope of this Task Order does not include all facility plan tasks necessary to be eligible for a State Revolving Fund loan, such as an Environmental Assessment and Infiltration/Inflow Analysis. If the CITY requests the ENGINEER to provide an Environmental Assessment, we estimate the cost of this task to be an additional \$60,000 with a time extension of 6 months. We estimate an Infiltration/Inflow Analysis to cost \$50,000 with a time extension of 6 months.

2. Scope of ENGINEER Services

The ENGINEER will perform the following services:

A. *Project Management*

1. Meet with CITY staff. Develop project objectives and a common understanding of the project. Establish team goals, framework, and working relationships. Discuss logistics, such as information transfer and billings. Discuss draft Master Contract. Agree on WWTP No. 1.

2. Meet with DEQ to determine Facility Plan requirements and discuss interim compliance issues. Finalize Task Order WWTP No. 1.
3. Develop a written work plan. Prepare detailed project schedule. Oversee the activities of project team members, schedule their work, and monitor progress. Administer the Contract and prepare invoices. Document progress to date with each billing invoice.

*B. Interim Permit Compliance Issues*

1. Prepare a draft letter to DEQ that identifies interim permit compliance problems and proposes interim requirements to be amended to the existing SFO.
2. Respond to DEQ comments and assist CITY with negotiating modifications to the SFO.

*C. Facility Planning*

The ENGINEER will perform the following services as required to prepare a facility plan report for the City of Wilsonville. The study period will be 20 years.

*Purpose and Need for the Project*

1. Prepare a summary statement of the needs and goals of this project.

*Existing Conditions*

2. Define the study area physical and environmental characteristics.
3. Inventory the existing wastewater collection system and wastewater treatment facility.
4. Meet with CITY to gather information on existing domestic and industrial wastewater characteristics. Review data and determine existing wastewater flows and characteristics.
5. Determine if an Infiltration/Inflow Analysis is required. Submit a draft of this section to CITY and DEQ.
6. Assist CITY in obtaining industrial wastewater data, if necessary.

*Future Conditions*

7. Define the planning period and population and land use projections.

8. Develop domestic and industrial wastewater flow and load projections. Meet with CITY to verify projections. Submit a draft of this section to CITY and DEQ.

#### Water Quality and Regulatory Standards and Criteria

9. Summarize effluent discharge, reuse, and biosolids disposal regulatory requirements. Submit a draft of this section to CITY and DEQ.

#### Wastewater Treatment and Effluent Disposal Options

10. Conduct a workshop with CITY staff to develop wastewater treatment and disposal options and design criteria.
11. Screen out infeasible and impractical options. Develop remaining options and facility-plan-level cost opinions.
12. Meet with CITY to select final option. Submit a draft of this section to CITY and DEQ.

#### Sludge Stabilization and Disposal Options

13. Conduct a workshop with CITY staff to develop sludge stabilization and disposal options and design criteria.
14. Screen out infeasible and impractical options. Develop remaining options.
15. Meet with CITY to select final option. Submit a draft of this section to CITY and DEQ.

#### Wastewater Management Program Recommendation

16. Conduct a workshop with CITY staff to develop the wastewater management program recommendation.
17. Prepare the wastewater management program recommendation and develop an implementation schedule, cost opinions, and financing program. Coordinate this work with ongoing rate study.

#### Draft Facilities Plan

18. Prepare 10 copies of the draft facility plan for review by CITY and DEQ.

#### Final Facilities Plan

19. Respond to CITY and DEQ comments and revise the draft as necessary.

20. Prepare 30 copies of the Final Wastewater Facility Plan.

3. Project Personnel

ENGINEER project personnel listed below shall not be changed or substituted without prior authorization from the CITY.

Project Manager: Mike Bracken  
Project Engineer: Daria Wightman

4. Scope of City Services

The CITY will provide the following services to support this Task Order in addition to the general services defined in the original agreement.

- a. Provide current and proposed land use and sewer service areas currently approved by CITY or other agencies served by CITY.
- b. Provide current and projected service area population currently approved by CITY or other agencies served by CITY.
- c. Participate in options screening work sessions.
- d. Review the summary Draft Facility Plan Report.
- e. Give thorough consideration to all reports, schedules, budgets, and other documents presented by the ENGINEER and inform ENGINEER of all decisions.
- f. Advise ENGINEER of changes or additions to the scope of services required to satisfy the program objectives.
- g. Coordinate communications with other CITY departments and other involved parties.
- h. Conduct sampling and analysis.

5. Time of Performance

ENGINEER and OWNER have discussed the Task Order No. WWTP1 Scope of Services and agree on completion of the Draft Wastewater Facility Plan Report within 6 months of execution of Task Order. The Final Report shall be completed within 4 weeks of receiving CITY and DEQ review comments.



6. Compensation

The compensation for services as set forth in this Task Order No. WWTP1 shall be based on Cost Reimbursables Multiplier, as described in Article 2 of the Master Agreement. A budget of \$150,000.00 is hereby established for this task order, which will not be exceeded without prior approval by the CITY.

7. Other Conditions/Requirements

Reference original agreement.

City of Wilsonville, Oregon

CH2M HILL, INC.

By: \_\_\_\_\_

By: Jim Macivella

Title: \_\_\_\_\_

Title: Vice President

Date: \_\_\_\_\_

Date: Feb 2, 1994