

RESOLUTION NO. 1628

RESOLUTION OF THE CITY OF WILSONVILLE CITY COUNCIL ACTING IN ITS CAPACITY AS ITS LOCAL CONTRACT REVIEW BOARD, DECLARING THAT AN EMERGENCY EXISTS, AND APPROVING AND AUTHORIZING THE MAYOR TO SIGN A DESIGN-BUILD CONTRACT FOR THE WATER TREATMENT PLANT WITH MONTGOMERY WATSON, INC., MONTGOMERY WATSON AMERICAS, INC. AND MONTGOMERY WATSON CONSTRUCTORS INC., AUTHORIZING THE CITY ENGINEER TO ISSUE ADDITIONAL TASK ORDERS TO MONTGOMERY WATSON, AMERICAS, INC., TO COMPLETE PROJECT DESIGN AT NOT TO EXCEED AN ADDITIONAL \$2,275,000; AND AUTHORIZING THE CITY ENGINEER TO ISSUE ADDITIONAL TASKS ORDERS TO CH2M HILL TO PROVIDE OWNER REPRESENTATION SERVICES THROUGH REVIEW AND APPROVAL OF PROJECT AND AT NOT TO EXCEED AN ADDITIONAL \$262,000.

WHEREAS, on November 1, 1999, the City Council acting as the local Contract Review Board adopted Resolution No. 1602, determining an emergency existed and exempting the water treatment intake and plant facility from the competitive requirements of ORS 279.005 and directed the City Manager and such persons as she may direct to immediately solicit requests for qualifications from qualified design build contractors for the water treatment plant; and

WHEREAS, on November 1, 1999, the City Council acting as the local Contract Review Board by Resolution No. 1602, also directed the City Manager and such persons as she may directing to negotiate a design-build contract with a firm selected by the City Council and to present the final contract to the City Council for approval no later than February 1, 2000; and

WHEREAS, in accordance with Resolution No. 1602 the City Manager caused Statements of Qualifications for the Willamette River treatment plant to be solicited from qualified design-build contractors; and

WHEREAS, the teams of Black & Veatch/J.S. Alberici and Montgomery Watson Inc. by and through Montgomery Watson Americas, Inc., its engineering subsidiary, and Montgomery Watson Constructors, Inc., who is Montgomery Watson Americas, Inc. affiliated subsidiary for construction, responded to the Request for Qualifications; and

WHEREAS, on December 22, 1999, the City Council acting as the City's Contract Review Board adopted Resolution No. 1608 selecting the Montgomery Watson, Inc. team as the design-build

contractor for the Willamette River water treatment plant and authorized the City Engineer to sign a letter agreement for immediate design development work for the Willamette River water treatment plant in an amount not to exceed \$250,000; and

WHEREAS, on January 28, 2000, the City Council acting as the City's Contract Review Board adopted Resolution No. 1615, which authorized the City Engineer to sign a modification to the letter agreement for immediate design development work to the Willamette River water treatment plant to increase the not to exceed amount from \$250,000 to \$350,000 and approved an extension of the time for presentation of the final contract to the City Council acting as the Contract Review Board for approval no later than March 6, 2000, and

WHEREAS, on March 6, 2000, Council acting as the City's Contract Review Board extended the date for presentation of the Design-Build Contract with Montgomery Watson, Inc., for City Council approval to no later than March 20, 2000, time being of the essence and the continuing emergency nature of this matter still being in effect; and

WHEREAS, the City Manager and her staff negotiating team are recommending to the City Council for its approval, a Design-Build Contract with the Montgomery Watson Inc. team, as set forth below. A copy of the contract is marked Exhibit A, attached hereto and incorporated herein as if fully set forth; and

WHEREAS, the schedule of values for the Design-Build Contract includes a total of \$2,525,000 for management services, engineering and construction design, certain pre-construction activities, and amounts previously authorized as recited above, all of which shall be included in the Guaranteed Maximum Price (GMP); and

WHEREAS, the contract further provides for a time certain to reach 30% design documents, which 30% documents shall be the basis of a negotiated GMP and the contract will be amended at the time of the agreed upon GMP; and

WHEREAS, the Montgomery Watson, Inc. team will have design and management accomplished by Montgomery Watson Americas, Inc. its design subsidiary and Montgomery Watson, Inc. will have the construction accomplished by Montgomery Watson Constructors, Inc., the construction subsidiary and affiliate of Montgomery Watson Americas, Inc.; and

WHEREAS, Montgomery Watson, Inc. will be a responsible financial party for the performance of the contract; and

WHEREAS, Montgomery Watson, Inc., Montgomery Watson America, Inc, and Montgomery Watson Constructors, Inc. will each execute the contract with the City as responsible parties; and

WHEREAS, the Design Build Contract also provides for the future event(s) that the City may have other partners in the participation of this project; and

WHEREAS, in adopting Resolution No. 1602, Council approved a master agreement between the City of Wilsonville and CH2M Hill for professional services to provide design-build support services for the design and construction of the Willamette River water treatment plant and authorized the City Engineer to issue task orders for completion of the initial phases of the master agreement not to exceed \$140,000; and

WHEREAS, CH2M Hill has submitted a proposed task order for owner's representatives services through approval of project design; and

WHEREAS, the total cost for the remainder for Task No. 1 and Task No. 2 is currently estimated at \$262,000; and

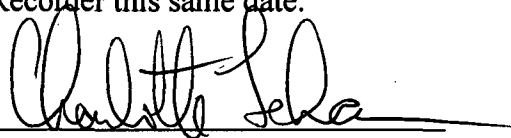
NOW, THEREFORE THE CITY OF WILSONVILLE RESOLVES AS FOLLOWS:

1. Based on findings and authority recited in Resolutions No. 1602, 1608, 1615 and findings recited above and incorporated as if fully set forth herein, the City Council acting as the City's Contract Review Board hereby approves and authorizes the Mayor to execute on behalf of the City of Wilsonville the Design-Build Contract, a copy of which is attached as Exhibit A and by this reference included herein as if fully set forth, for the design and construction of the Willamette River water treatment plant with Montgomery Watson, Inc., Montgomery Watson Americas, Inc., and Montgomery Watson Constructors, Inc., subject to approval as to form (includes minor changes) by the City Attorney. Time is still of the essence, the continuing emergency nature of this matter still being in effect. In authorizing the Mayor to execute this contract on behalf of the City, the City Council understands and intends that the work be performed by Montgomery Watson Americas, Inc. and by Montgomery Watson Constructors, Inc. as recited and set forth in Exhibit A, with

Montgomery Watson, Inc. being financially responsible to the City, that each of the above Montgomery Watson corporations is deemed a responsible contracting party and that each shall execute the contract.

2. The City Council acting as the City's Contract Review Board hereby authorizes the City Engineer to issue task orders for completion of initial management services, engineering and construction design certain pre-construction activities with the total additional cost for the task orders, including work previously authorized as recited above, not to exceed \$2,275,000, all of which shall be included in the Guaranteed Maximum Price. Payment of the \$2,275,000 shall be from account number 530-49130-5000-322.
3. The City Council acting as the City's Contract Review Board authorizes the City Engineer to issue Task Order No. 2 to the master agreement between the City of Wilsonville and CH2M Hill for design-build support services during design and permitting with the total additional cost including the remainder of Task No. 1, not to exceed \$262,000 with payment from account number 530-49130-5000-322.

ADOPTED by the Wilsonville City Council at a special Council meeting thereof this 16th day of March, 2000, and filed with the Wilsonville City Recorder this same date.


CHARLOTTE LEHAN, MAYOR

ATTEST:


SANDRA C. KING, CMC, City Recorder

SUMMARY OF VOTES:

Mayor Lehan	Yes
Councilor Helser	Yes
Councilor Barton	Yes
Councilor Kirk	Yes
Councilor Holt	Yes

DRAFT
3/10/00
2:06PM

Resolution No. 1628
Exhibit "A"

DESIGN/BUILD AGREEMENT

FOR

CITY OF WILSONVILLE WATER TREATMENT PLANT

BETWEEN

MONTGOMERY WATSON, INC.

AND

CITY OF WILSONVILLE

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DESIGN/BUILD AGREEMENT

This Design/Build Agreement (“Agreement”) is entered into and is effective as of this 22nd day of December, 1999, by and between City of Wilsonville (“City” or “Owner”) and Montgomery Watson, Inc. (“MW”), Montgomery Watson Americas, Inc. (“MWA”) and Montgomery Watson Constructors, Inc. (“MWC”) collectively known as (“Design/Builder”).

RECITALS

WHEREAS, the City has an emergency need to design and construct a Water Treatment Plant (“Project”), and

WHEREAS, the Project has been exempted from the competitive bid requirements of ORS Chapter 279 pursuant to Resolution No. 1602, and

WHEREAS, the City conducted a Request for Qualification (“RFQ”) process to determine a design-build contractor for the Project, and

WHEREAS, Design/Builder has been selected as the design-build contractor, and

WHEREAS, Owner and Design/Builder, through MW, have executed a Preliminary Engineering Services Letter Agreement dated January 19, 2000, and effective as of December 22, 1999, for the provision of certain preliminary engineering services for the water treatment plant (“Preliminary Engineering Contract”), and

WHEREAS, Design/Builder is completing the preliminary engineering services, Owner has approved the Contract Documents (as hereinafter defined) and Owner and Design/Builder will negotiate a Guaranteed Maximum Price (“GMP”) for the design, engineering, procurement and construction of the Project, and

WHEREAS, MW is the parent holding company of MWA, which is the design engineering arm of the Montgomery Watson conglomerate; and MWC is MWA’s affiliated subsidiary for general contracting. For the purposes of design engineering and project coordination, MWA shall perform those duties and responsibilities under this Agreement. For the purposes of general contracting and related coordination, MWC shall perform those duties and responsibilities under this Agreement. For the purposes of providing financial security to the Owner for this project, MW, MWA and MWC shall be deemed responsible contracting parties with the Owner and shall each execute this Agreement.

WHEREAS, Owner wishes to enter into this Agreement with Design/Builder to perform the design, engineering, procurement and construction services set forth in this Agreement and Design/Builder is ready, willing and able to perform such services, and

NOW, THEREFORE, in consideration of the promises, covenants and Recitals contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, do hereby agree as follows:

1. DEFINITIONS

- 1.1 “Affiliates” means all entities under common ownership with a Party.
- 1.2 “Agreement” means this Design/Build Agreement and all amendments and Change Orders hereto executed by the Parties.
- 1.3 “Anticipated-Hazardous Materials Work” has the meaning set forth in Exhibit F.
- 1.4 “Applicable Laws” means all laws, codes, ordinances, rules and regulations of federal, State or local governmental authorities having jurisdiction over the Site and/or the Work.
- 1.5 “Authorized Representatives” means those individuals appointed by Owner and Design/Builder from time to time in accordance with this Agreement and set forth in Exhibit C.
- 1.6 “Business Day(s)” means Days other than weekend, national or local holidays in which banks in the State are open for business.
- 1.7 “Change in Law” means the enactment, adoption, promulgation, modification or repeal of any Applicable Law after the date of agreement on the GMP as specified in Paragraph 6.1 but shall not include a change if Design/Builder, at the time of agreeing to such GMP, did know of the change and should not, in the exercise of reasonable care, have known of it.
- 1.8 “Change Order” means a written order signed by Design/Builder and Owner authorizing a change in the Work and/or an adjustment in the GMP, Milestone Date(s) or Scheduled Substantial Completion Date.
- 1.9 “Construction Work” means that portion of the Work consisting of the provision of labor, materials, equipment and services performed or required to be provided by Design/Builder in connection with the construction of the Project pursuant to the Contract Documents and as may be modified from time to time by Change Order.

1.10 “Contract Documents” means this Agreement, including the Exhibits, and any and all amendments and Change Orders thereto, which together with the Final Design Documents, once approved in writing by the Owner, shall form the entire integrated agreement between Owner and Design/Builder.

1.11 “Day(s)” means calendar days unless specified otherwise. Time periods measured in days shall be computed by excluding the day upon which the period begins to run and including the last day of the period unless the last day is Saturday, Sunday or a legal holiday as defined in ORS 187.010 or ORS 187.020. If the last day of the period is a Saturday, Sunday or legal holiday, the period shall run until, and shall include, the next day that is not a Saturday, Sunday or legal holiday.

1.12 “Design/Builder” is Montgomery Watson, Inc., the party ultimately responsible for furnishing through Montgomery Watson Constructors, Inc. all design, engineering, procurement, construction and all other services required under the Contract Documents.

1.13 “Design to GMP Documents” refers to the set of design documents to be prepared by the design/builder pursuant to Exhibit A as part of the preliminary engineering effort and for development of the GMP.

1.14 “Design Materials” means any and all documents, shop drawings, electronic information, data, plans, drawings, sketches, illustrations, specifications, descriptions, models, surveys, and other information (i) developed, prepared, furnished, delivered or required to be delivered by Design/Builder to Owner under the Contract Documents or (ii) developed or prepared by Design/Builder specifically to discharge its duties under the Contract Documents.

1.15 “Design Work” means that portion of the Work consisting of the services and materials required to be performed or provided by Design/Builder in connection with the design of the Project pursuant to the Contract Documents and as may be modified from time to time by Change Order.

1.16 “Final Completion” means the point at which the Work has been completed in accordance with the Contract Documents, including Punch List items.

1.17 “Force Majeure” means fire, drought, flood, landslide, lightning, storm, earthquake, other acts of God, unreasonable acts or failures to act by a governmental agency not within the control of Design-Builder, unusually severe weather differing materially from what should in the exercise of reasonable care be expected based on historical weather records, civil disturbance, industry-wide labor disputes, war, freight embargo, riot, sabotage or epidemic.

1.18 “Guaranteed Maximum Price” means, once established, the maximum amount to be paid by Owner under this Agreement.

1.19 **“Hazardous Materials”** means any substance:

- (i) the presence of which requires investigation or remediation under any federal, state or local law, statute, regulation, ordinance, order, action, policy or common law; or
- (ii) that is or becomes defined as a “hazardous waste” or “hazardous substance,” pollutant or contaminant under any federal, State or local law, statute, regulation, rule or ordinance or amendments thereto, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, *et seq.*, as amended (“CERCLA”), the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, *et seq.*, as amended (“RCRA”), the Toxic Substance Control Act, 15 U.S.C. § 2601, *et seq.*, as amended (“TSCA”); or
- (iii) that is petroleum, including crude oil not otherwise designated as a “hazardous substance” under CERCLA, including, without limitation, gasoline, diesel fuel or other petroleum hydrocarbons; or
- (iv) that is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous and is or becomes regulated by any governmental authority or instrumentality of the United States, the State or any political subdivision thereof; or
- (v) that is ground water contaminated by any of the substances set forth hereinabove; or
- (vi) that constitutes an “Underground Storage Tank” as that term is defined by RCRA.

1.20 **“Labor and Materials Bond and Performance Bond”** means the labor and materials bond and the performance bond issued by a surety, in the forms set forth in Exhibit G, covering the faithful performance and completion of the Design and Construction Work and payment for materials and labor furnished or supplied in connection with the Design and Construction Work.

1.21 **“Notice to Proceed”** means the written notice given by Owner to Design/Builder authorizing Design/Builder to commence performing the Work under this Agreement.

1.22 **“Punch List”** means those minor items of Work to be completed after Substantial Completion and before Final Completion that do not prevent the Project from being used for its stated purpose and that will not prevent authorization permitting its usage.

- 1.23 “Retention” means the amount withheld by Owner from progress payments to Design/Builder from time to time.
- 1.24 “Schedule” means the schedule attached hereto as Exhibit B as modified from time to time in accordance with this Agreement.
- 1.25 “Scheduled Substantial Completion Date” means the date mutually agreed to by the Parties by which the Design/Builder has agreed to achieve Substantial Completion of the Project, as such date may be adjusted from time to time in accordance with this Agreement.
- 1.26 “Separate Contractors” means those individuals or entities who have entered into arrangements with Owner for the provision of labor, materials or other services in connection with the Project.
- 1.27 “Site” is the real property on which the Project will be located and includes staging and laydown areas and that is more fully depicted in Exhibit A.
- 1.28 “Subcontract” means an agreement between Design/Builder and another person, entity or Affiliate engaged to perform a portion of the Work.
- 1.29 “Subcontractor” means an individual or entity who has entered into a Subcontract to perform design, construction or any other portion of the Work. Unless the context indicates otherwise, the term Subcontractor(s) shall include sub-subcontractors of any tier.
- 1.30 “Substantial Completion” of the Work means the stage in the progress of the Work when the Work has met all the performance requirements on Exhibit A, is sufficiently complete, in accordance with the Contract Documents, so that it may be used by Owner for its stated purpose without interference from Punch List items and as evidenced by all required authorizations permitting its usage and each component of the Work has been field tested and satisfies 100% of the design capacity of the Project. Except for a package plant or other alternative as specified in Paragraph 5.11, should Owner take beneficial occupancy of all or part of the Work for the purpose intended, such part shall be substantially complete.
- “Substantial Completion of the 3MGD Capacity Available to Distribution System” means the stage in the progress of its completion when it meets the requirements as defined in Paragraph 1.31.
- 1.31 “3MGD Capacity Available to Distribution System” shall mean the completion of the work that produces the delivery of 3MGD to the Owner’s Distribution.

1.32 “Work” or “Scope of Work” means the Design Work and Construction Work and work or services required to be performed or provided by Design/Builder pursuant to the Contract Documents and as may be modified from time to time by Change Order.

2. INTERPRETATION AND INTENT

2.1 Intent of Contract Documents

The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by Design/Builder. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all. They shall include all work stated and reasonably inferable from the Contract Documents as being necessary to produce the indicated and intended results.

2.2 Order of Precedence

In the event of conflict or inconsistency among the Contract Documents, the following order of precedence shall govern the interpretation of the Contract Documents:

2.2.1 Amendments and Change Orders;

2.2.2 Agreement;

2.2.3 Exhibits;

2.2.4 Final Design Documents; and

2.2.5 Design to GMP Documents.

If Owner has approved in writing a modification of the Program Requirements in its approval of the Final Design Documents, with respect thereto, the Final Design Documents shall have precedence over the Program Requirements. Specifications shall have precedence over drawings.

2.3 Whole Agreement

The Contract Documents shall constitute the entire agreement between the Parties and shall supersede all prior oral and written agreements. Any services or work performed under the Preliminary Engineering Contract or otherwise performed before issuance of the Notice to Proceed shall be deemed to have been performed under, and subject to the terms of, this Agreement.

2.4 Compensation for Previously Completed Work

Design/Builder has performed certain engineering and design services to date. Upon issuance of the Notice to Proceed, Design/Builder shall be entitled to submit an invoice for previously performed conceptual and preliminary engineering services and for transition and mobilization costs. Previously completed services are identified in Exhibit E. Design/Builder has already completed \$ _____ of such services, and Owner has already paid \$ _____ of such amount.

All amounts paid by Owner under the Preliminary Engineering Contract and this Agreement are included in the GMP for the Work.

2.5 Modifications

No amendments or Change Orders to this Agreement shall be valid unless in writing and signed by Owner and Design/Builder.

2.6 Interpretation

Unless otherwise stated in this Agreement, words that have well-known technical or industry meanings are used in accordance with such recognized meanings. Any and all headings in this Agreement are for convenience of reference only and do not modify, define or limit the provisions. Words of any gender shall be deemed and construed to include the other gender. Words importing the singular number shall include the plural number and vice versa, unless the context indicates otherwise. References to the Agreement or to any of the Contract Documents or any provision thereof shall refer to that document or provision as amended or supplemented.

2.7 Severability

If any provision of this Agreement is held to be inoperative or unenforceable, as applied in any particular case, because it conflicts with any other provision or any Applicable Law or for any other reason, such holding shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or of rendering any other provision inoperative or unenforceable. The invalidity of any one or more phrases, sentences, clauses or sections contained in this Agreement shall not affect the remaining portions of this Agreement, which shall otherwise remain in full force and effect.

3. DESIGN/BUILDER'S SCOPE OF WORK AND RESPONSIBILITIES

3.1 Scope of Work

Design/Builder shall perform or cause Subcontractors to perform the Work in accordance with the Scope of Work, the Contract Documents and Applicable Laws. Unless otherwise provided in the Contract Documents, Design/Builder shall provide and pay for all design, construction, labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation and all other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated in the Work and for insurance and Labor and Materials Bond and Performance Bond required hereunder and shall obtain and pay for all necessary permits required to perform the Work. Owner will, however, pay for Owner system development fees and the other permits specified on Exhibit A.

3.2 Design Services

3.2.1 **General**. Design/Builder shall perform Design Work based upon the Contract Documents and the Design to GMP Documents. The Final Design Documents shall be consistent with and develop in detail the intent of the Contract Documents.

3.2.2 **Design to GMP Documents**. Pursuant to the Preliminary Engineering Contract, Design/Builder will prepare Design to GMP Documents for approval by Owner and used by Design/Builder to develop the GMP.

3.2.3 **Final Design Documents**. Based upon the Design to GMP Documents, Design/Builder shall commence preparation of the Final Design Documents (as such term is defined below) for review and approval by Owner. Upon approval by Owner, the Final Design Documents shall be incorporated into the Contract Documents. The "Final Design Documents" shall consist of documents, drawings and specifications to be used to construct the Project and that refine the Design to GMP Documents and shall conform to the requirements of Exhibit A. The Final Design Documents shall set forth in detail all items necessary to complete the construction of the Project in accordance with the Contract Documents other than such details customarily developed in shop drawings.

3.2.4 **Review by Owner**. Any review or approval by Owner of the Design Materials shall not in any way relieve Design/Builder of its responsibilities under this Agreement.

3.2.5 **Design Revision**. Except by following the procedures set forth in Exhibit A, Design/Builder shall not modify any Owner-approved Design Materials in any way without the written approval of Owner.

3.3 Fast Track

Upon written authorization from Owner, Design/Builder shall commence certain preliminary Construction Work including, but not limited to, mobilization activities, placement of temporary facilities, access roads, earthwork and excavation activities, foundations and utility identification and relocation activities before approval of the Final Design Documents.

3.4 Construction

Design/Builder shall perform Construction Work in strict accordance with provisions of Exhibit A.

3.5 Subcontracts, Suppliers and Subconsultants

3.5.1 Management. Design/Builder shall be responsible for the management of the Subcontractors in the performance of their portion of the Work. Subcontractors, Suppliers and Subconsultants, will not be changed without consent of Owner. Design/Builder is responsible for the acts and omissions of all Subcontractors, Suppliers and Subconsultants of all tiers performing the Work.

3.5.2 Listing. Upon Owner's reasonable request, Design/Builder shall furnish to Owner, from time to time, correct lists of all Subcontractors employed in connection with the Work. Each such list shall show the name, address and telephone number of each Subcontractor; a general statement of the nature of the work to be done; the labor and materials to be supplied; and the approximate dollar value of such labor or work with respect to each. Owner shall have the right, for reasonable cause, to make direct contact with each Subcontractor to verify the facts disclosed by the list or for any other purpose.

3.5.3 Solicitation or Bidding of Subcontractors and Suppliers. Except as otherwise designated as Approved Subcontractors on Exhibit H, Design/Builder shall competitively bid or solicit as much of the Work under this Agreement as possible (but not less than 40%) of the work not covered by the subcontractors listed in Exhibit H. Prices will be solicited from a minimum of three independent bidders, unless agreed otherwise in advance by Owner in writing. The process will be subject to the reasonable approval of Owner. Owner may, subject to Design/Builder's reasonable objection, select at least one of the bidders for each category of Work which bidder shall be qualified and responsible. Design/Builder shall submit all bids for Owner's approval, which approval will not be unreasonably withheld. Design/Builder shall not enter into subcontracts with bidders, or allow work by Subcontractors or Suppliers to commence, unless Owner has approved such bids and has so notified Design/Builder in writing. Owner, in its reasonable discretion, shall have the authority to approve or

reject any and all bids, including bids for all or a portion of the Work. If all of the bids for all or a portion of the Work are rejected by Owner, then Design/Builder shall cause the Work to have been performed under such rejected bids to be rebid. If Design/Builder recommends, after bidding, award to a bidder and Owner requests that a responsive and responsible bidder with a higher bid be used, Design/Builder will use the bidder with the higher bid and the GMP will be increased by the difference in such bids. If Design/Builder desires to perform some or all of the Work itself, other than as provided in Exhibit H rather than have such Work performed by Subcontractors, Design/Builder shall, at Owner's request, prepare its own bid for performing such Work, as if it were a Subcontractor, and shall submit such bid to Owner along with additional bids for such Work from at least two other independent bidders. Design/Builder shall not itself commence any Work for which it has submitted its own bid unless Owner has approved such bid and has so informed Design/Builder in writing.

3.5.4 Work To Be Subcontracted. Design/Builder shall endeavor to maximize the use of Subcontractors with headquarters or significant operations in Multnomah, Washington and Clackamas counties.

3.5.5 Incorporation of Contract Documents. Each Subcontract shall incorporate any terms of this Agreement and the Contract Documents to the extent applicable to the Work to be performed by the Subcontractor and necessary to make all provisions of this Agreement fully effective. Each Subcontract will be subject to the reasonable approval of Owner. Among other provisions, Owner and its agents and employees will be additional insureds under all general liability policies and additional indemnities under all indemnity provisions. Design/Builder shall provide Subcontractors with all necessary plans, specifications and instructions to enable them to properly perform their work.

3.5.6 Assignment of Subcontracts. Each Subcontract shall expressly preserve and protect the rights of Owner under the Contract Documents with respect to the Work to be performed by the Subcontractor so that the subcontracting thereof will not prejudice such rights. Each Subcontract shall include provisions granting to Owner the right to succeed to the interest of, or otherwise accept an assignment of, such Subcontract, but only in the event of a termination of this Agreement by Owner due to a default by Design/Builder. Any such assignment shall be subject to the prior rights of the surety, obligated under the Labor and Materials Bond and Performance Bond.

3.5.7 Registration. All Subcontractors and Consultants will be properly registered and licensed.

3.6 Local Conditions

Design/Builder represents that it has taken steps necessary to ascertain the nature and location of the Work and that it has investigated and satisfied itself as to general and local conditions applicable to the Work including, without limitation, (i) the conditions bearing on transportation, disposal, handling and storage of materials; (ii) the availability of labor, water, power and roads; (iii) weather conditions; (iv) physical and geological conditions at the Site; (v) the character of equipment and facilities needed before and during the performance of the Work; and (vi) all information provided by Owner to Design/Builder. Design/Builder, as a result, assumes full responsibility for known or unknown subsurface, utilities and other local conditions except those affecting the bridge crossing of the creek at the North end of the project site, Hazardous Materials (other than the Hazardous Materials removed as part of the Anticipated Hazardous Materials Work in Exhibit F), archeological materials or burials and special environmental conditions such as the discovery of an endangered or threatened species.

As to those conditions for which Design-Builder does not assume responsibility, Design-Builder agrees to perform all required extra work at actual cost (with no Fee) if any such conditions are encountered.

3.7 Hazardous Materials

The Parties' agreement as to the handling of preexisting Hazardous Materials discovered at, in, on or under the Site is set forth in Exhibit F, and the only duties and responsibilities of Design/Builder in connection with such Hazardous Materials are specified therein.

Design/Builder and its Subcontractors shall comply with all Applicable Laws relating to the generation, handling, storage, treatment and disposal of any such Hazardous Materials brought to the site by them.

3.8 Legal Requirements

3.8.1 Laws. Design/Builder shall comply with Applicable Laws pertaining to the Work. This Agreement is subject to all provisions prescribed for third-party contracts by State law and included as Exhibit D. Except with respect to Owner Governmental Approvals (identified in Exhibit A), Design/Builder shall prepare and file all documents required to obtain the necessary approvals of governmental authorities having jurisdiction over the Work and/or the Project and shall secure and pay for permits and governmental fees, licenses, surveys and inspections necessary for the proper execution of the Work and completion of the Project. To the extent there is a change in the cost of any of such permits, fees, licenses or inspections occurring after execution of this Agreement, there shall be a Change Order equitably adjusting the GMP, Scheduled Substantial Completion Date and/or Milestone Date(s) on account of such change.

3.8.2 Registration and Licensing. MWC is registered with the Construction Contractor's Board as required by ORS 701.055. MWA is licensed as an engineer in the state of Oregon. All architectural services will be performed by an architect licensed in Oregon.

3.8.3 Bureau of Labor and Industries Fee. Design/Builder is required to pay a fee to the Bureau of Labor and Industries pursuant to the provisions of ORS 279.352(2) and ORS 279.375. The fee is one-tenth of 1 percent of the GMP but not less than \$100 or more than \$5,000, regardless of the GMP. The fee shall be paid on or before the first progress payment or sixty (60) Days from the issuance of the Notice to Proceed, whichever comes first. The fee is payable to the Bureau of Labor and Industries and shall be mailed or otherwise delivered to the Bureau at the following address: 800 NE Oregon Street #32, Portland, OR 97232.

3.8.4 Prevailing Wage. Every worker employed in the performance of Agreement, whether employed by Design/Builder or by a Subcontractor or by any other person doing or contracting to do the whole or any part of the Work contemplated by this Agreement, shall be paid not less than the minimum hourly rate of wage as determined by the Commissioner of the Oregon Bureau of Labor and Industries pursuant to ORS 279.352(1). The applicable wage rates for this Agreement are specified in Exhibit D-1.

3.9 Intellectual Property Rights

Design/Builder shall pay all applicable royalties and license fees on any and all matters arising out of or relating to the Work to the extent it has recommended or selected the design, process or equipment. Design/Builder shall defend and indemnify Owner and its officers, agents and employees for all claims for infringement of copyrights, patent rights or trademarks in connection with the Work.

Design Materials shall be owned by Owner, and Owner shall own the copyright to the extent required to vest ownership in Owner of the Design Materials. Design/Builder assigns its interest in the Design Materials to Owner. If Owner uses such Design Materials on another Project or modifies such Design Materials, Design/Builder shall not be responsible for the Design Materials.

Notwithstanding the foregoing, in regard to purchased, licensed or independently developed software, Design/Builder shall only be required to transfer, assign or license its interest in same to the extent permitted by the purchase/license agreements. However, such purchase/license agreements shall be purchased in the name of the Owner and, at a minimum, allow Owner to use them to own, operate and maintain the Project.

3.10 Supervision

Design/Builder shall be solely responsible to supervise and direct the Work. Design/Builder shall perform the Work and be solely responsible for its own means, methods, techniques, sequences and procedures in performing the Work subject to this Agreement.

3.11 Cooperation

Design/Builder shall assist Owner's staff and cooperate with Owner's Authorized Representatives and other designated individuals during the performance of the Work. Owner shall have reasonable access to the Work and any part thereof.

3.12 Reports

After the issuance of the Notice to Proceed and until Final Completion, Design/Builder shall submit to Owner on a monthly basis four (4) copies of a progress report on the Work in a format reasonably acceptable to Owner. As part of such report, Design/Builder shall provide an updated Schedule illustrating the progress that has been made and whether the Work is on or behind schedule and projected progress toward completion of the Project.

3.13 Taxes

Design/Builder shall pay all existing applicable federal, State and local taxes, whether direct or indirect, relating to, or incurred in connection with, the performance of the Work.

Design/Builder certifies, under penalty of perjury, that it is not in violation of any State tax law imposed by ORS chapters 118, 119, 314, 316, 317, 318, 320, 321 and 323 and Oregon Laws 1981, chapter 533, sections 10 to 20, as amended by Oregon Laws 1982, chapter 16 (first special session); the Homeowners and Renters Property Tax Relief Program under ORS 310.630 to 310.690; and local taxes administered by the Oregon Department of Revenue under ORS 305.620.

All taxes will be included in the GMP.

3.14 Emergencies

If an emergency affecting the safety of persons or property arises, Design/Builder shall act, at Design/Builder's reasonable discretion, to prevent threatened damage, injury or loss. Design/Builder shall be entitled to a Change Order equitably adjusting the GMP, Milestone Date(s) and/or Scheduled Substantial Completion Date for any costs or delays incurred by Design/Builder on account of an emergency to the extent not caused by Design/Builder's fault or neglect. Design/Builder will immediately notify Owner of any emergency.

3.15 Designation of Authorized Representative and Key Team Members

Design/Builder's Authorized Representative and key team members are designated in Exhibit C and shall reside in the Portland metropolitan area during performance of this Agreement. The key team members shall not be changed without the consent of Owner. The Authorized Representative is authorized to act on Design/Builder's behalf with respect to the Project, and the decisions of the Authorized Representative shall be binding on Design/Builder.

3.16 Records

3.16.1 Required Records. Design/Builder shall keep comprehensive records and documentation relating to this Project. The records shall include, but are not limited to, Contract Documents, Design to GMP Documents, Final Design Documents, documents relating to competitive bidding of the Work pursuant to Paragraph 3.5.3, addenda, shop drawings, Change Orders, field test records and as-built drawings and records.

3.16.2 Recording. Design/Builder shall label each document identified in Section 3.16.1 "PROJECT RECORD" in two-inch block letters and shall keep the Project records current by legibly marking drawings or otherwise making a record on the approved construction drawings with accompanying digital photographs showing the actual construction. The record of actual construction shall include, but not necessarily be limited to:

3.16.2.1 Locations and elevations of the various elements of the Work, referenced to the survey control baseline and Project datum;

3.16.2.2 Locations of underground items referenced by distances and directions to permanent surface structures and by elevation to the Project datum;

3.16.2.3 Field changes of dimension or detail;

3.16.2.4 Changes made by addendum, field order, clarification, modification or Change Order; and

3.16.2.5 Details, to the extent available, not on the original drawings.

Design/Builder also shall record the manufacturer, trade name, catalog number and supplier name and phone number for each product or item of equipment installed. These records shall be delivered to Owner's Authorized Representative during closeout of the Project. They shall be furnished on 3-mil mylar and in AutoCad Version 14.

3.16.3 Submittals. Design/Builder shall submit to Owner, upon completion of each phase or major category of the Work, an as-built print showing Work installed. Design/Builder shall accumulate three sets of record data in three-ring vinyl binders with suitable indexing. These data shall include, but are not limited to, guarantees and warranties; operation and maintenance manuals, inspection records, testing forms, lists of Subcontractors, with addresses, phone numbers and names of individuals to contact; and other data printed on 8½" x 11" or 8½" x 14" paper. All submittals shall be furnished in hard copy and in electronic form.

3.16.4 Cost and Pricing Data. Design/Builder shall keep and maintain reasonably complete and reliable detailed records of invoiced costs under this Agreement.

3.17 Timely Action

Where neither the Contract Documents nor the Schedule identifies a period for the furnishing of decisions, information or submittals, Design/Builder shall furnish decisions, information and submittals within fourteen (14) Days unless the Parties agree to the contrary.

3.18 Trade Names, Approved Equals and Substitutes

To establish a basis of quality, certain processes, types of machinery and equipment, or kinds of materials may be specified either by description or process, by designating a manufacturer by name and referring to specific brands of products, or by specifying a kind of material. It is not the intent of the specifications to exclude other processes, equipment or materials of equal value, utility or merit.

Whenever a process, manufacturer's name, brand, item, patented process or patented material is designated or described, it shall be implied that the words "or approved equal" follow such name, designation, or description. The determination of acceptable substitutes shall be the sole province of the engineer and substitutes shall not be ordered or furnished unless approved.

If the proposal includes a list of equipment, materials, or articles for which the Design/Builder must name the manufacturer at the time of submission of the bid, no substitutions will be permitted without the approval of the Owner.

3.19 Work Hours

Prosecution of the construction work will be limited to Monday-Friday, 7:00 a.m.-8:00 p.m., standard time and 7:00 a.m.-9:00 p.m., daylight time and Saturdays, 9:00 a.m.-6:00 p.m., standard time and 9:00 a.m.-7:00 p.m., daylight time. There will be no construction work on Sundays. Construction work outside of the designated times may only be done with the prior written approval of Owner.

3.20 Safety and Health

Design Builder will strictly comply with all applicable requirements of all federal, state and local jurisdictions governing safety and health. All persons performing work at the site shall comply with the Occupational Safety and Health Act, 29 U.S.C. § 651, *et seq.*, as amended (“OSHA”), ORS 654.001 *et seq.* and other applicable requirements regardless of whether they are covered by Workers Compensation. Design/Builder will prepare, maintain and implement a Safety Plan in accordance with all contract requirements.

4. OWNER’S RIGHTS, DUTIES AND RESPONSIBILITIES

4.1 Information and Services Required of Owner

4.1.1 Designation of Authorized Representative. Owner’s Authorized Representative is designated in Exhibit C. Owner may designate, from time to time, changes in its Authorized Representative. The Authorized Representative is authorized to act on Owner’s behalf within the terms of this Agreement.

4.1.2 Communication. During the term of this Agreement, Owner shall, except as otherwise provided under this Agreement, communicate with Subcontractors, suppliers and others performing any part of the Work only through Design/Builder’s Authorized Representative. Design/Builder shall communicate only through the authorized representative of Owner, unless otherwise notified in writing.

4.1.3 Cooperation. Whenever Owner’s cooperation is required by Design/Builder to carry out Design/Builder’s obligations hereunder, Owner agrees that it shall act in good faith in cooperating with Design/Builder.

4.1.4 Consent and Approval. Owner shall review for approval the Final Design Documents. Design/Builder shall incorporate all changes in the Final Design Documents requested by Owner as a result of such review.

Where neither the Contract Documents nor the Schedule identify a period for the furnishing of decisions, information or approvals, Owner shall furnish decisions, information and approvals in a timely manner in an effort to not delay the Work; provided, however, such decisions, information and approvals need not be provided any earlier than seven (7) Days after submission or request and shall be provided no later than fourteen (14) Days after submission or request unless the Parties agree to the contrary.

Whenever Owner’s consent, approval, satisfaction or determination shall be required or permitted under the Contract Documents, and this Agreement does not expressly state

that Owner may act in its sole discretion, such consent, approval, satisfaction or determination shall not be unreasonably withheld, qualified, conditioned or delayed.

Owner's review and/or approval shall not relieve Design/Builder from its responsibilities under this Agreement or be deemed to be an approval or waiver by Owner or any deviation from, or of Design/Builder's failure to comply with, any provision or requirement of the Contract Documents, unless such deviation or failure has been identified as such in writing in the document submitted for approval by Design/Builder and specifically approved in writing by Owner.

4.1.5 Review of Work. Owner has the right, but not the obligation, to review the Work of Design/Builder for compliance with this Agreement.

4.1.6 Other Governmental Approvals. Owner shall obtain the approvals identified in Exhibit A as Owner Governmental Approvals in accordance with the Schedule or as required for completion of the Project in accordance with the Schedule.

4.1.7 Information. Owner shall upon request provide to Design/Builder all information reasonably available to it concerning the site including information relevant to underground structures and utilities.

4.2 Activities on the Site by Owner or Separate Contractors

4.2.1 Owner's Right To Award Separate Contracts. Owner reserves the right to perform work or operations related to the Project with Owner's own forces and to award separate contracts to Separate Contractors in connection with other portions of the Project.

4.2.2 Schedule Coordination. Owner and Separate Contractors shall participate with Design/Builder in reviewing and coordinating the schedules of the Separate Contractors and Owner with the Schedule. If as a result of the operations of Owner or Separate Contractors (i) Milestone Date(s) and/or Scheduled Substantial Completion Date are changed; (ii) Design/Builder is required to perform a material amount of Work out of sequence or in a manner that is materially more inefficient than planned; or (iii) the Scope of Work is changed, there shall be a Change Order equitably adjusting the GMP, Milestone Date(s) and/or Scheduled Substantial Completion Date in accordance with Article 7.

4.3 Delivery of Site

Owner shall deliver or shall cause the delivery of and access to the Site to Design/Builder by dates set forth in the Schedule.

4.4 Uncovering of Construction Work

Owner shall have a full time on-site representative. Design/Builder shall not cover any Work prior to reasonable notice to Owner and any review by Owner. If Design/Builder covers a portion of the Work prior to such notice to Owner, Design/Builder must, if required in writing by Owner, uncover such Work, at no expense to Owner, for Owner's observation. If it is found to be defective, Design/Builder shall replace it without change in the Milestone Date(s), Scheduled Substantial Completion Date or GMP.

5. SCHEDULE AND COMPLETION

5.1 Schedule

Design/Builder shall design and construct the Project in accordance with the Schedule specified as Exhibit B. Time is of the essence. Design/Builder shall prosecute the Work so that portions of the Work shall be completed by the applicable Milestone Date(s).

5.2 Notice to Proceed

Within five (5) Days after execution of this Agreement, Owner shall issue a Notice to Proceed that shall authorize Design/Builder to commence Work subject to Owner's right to cancel the Project in accordance with this Agreement. If Owner fails to issue the Notice to Proceed within such five (5) Days, Design/Builder shall be entitled to an equitable adjustment in the Scheduled Substantial Completion and 3MGD Capacity Available to Distribution System, Milestone Date(s) and the GMP for the impacts and increased costs arising from such delay.

5.3 Construction Start

The Parties acknowledge that Design/Builder's ability to attain Substantial Completion by the Scheduled Substantial Completion Date is dependent on its ability to commence certain aspects of the Work by July 1, 2000 and to have the number of Days specified on Exhibit B thereafter to perform the Construction Work. In the event that Design/Builder, through no fault of its own, is unable to commence the Construction Work by July 1, 2000, or does not have the specified number of Days to perform the Work, Design/Builder shall be entitled to an equitable adjustment in the Scheduled Substantial Completion Date, Milestone Date(s) and GMP for the delays and cost impacts associated therewith.

5.4 Critical Path Activities

To the extent the Parties complete their respective activities on the critical path earlier than scheduled, the resulting savings in time shall belong to the Project.

5.5 Extensions of Time

The Milestone Date(s) and the Scheduled Substantial Completion Date shall not be modified except by a written Change Order signed by the Parties.

5.6 Substantial Completion

When Design/Builder believes in good faith that the Project, or a portion thereof that Owner agrees to accept separately, has reached Substantial Completion, Design/Builder shall prepare and submit to Owner a proposed certificate of Substantial Completion and a Punch List. Within seven (7) Days, Owner shall inspect the Work to determine whether Substantial Completion has occurred. The certificate of Substantial Completion shall state the date of Substantial Completion and shall be executed by Owner and Design/Builder. If Owner and Design/Builder cannot agree as to the appropriate date of Substantial Completion, such issue shall be submitted for dispute resolution in accordance with Article 12.

5.7 Partial Use

Owner may use any completed or partially completed portion of the Work before Substantial Completion, provided (i) such use is consented to by the carrier(s) of the insurance and surety required in Sections 10.1 and 10.4; (ii) such use is authorized by public authorities having jurisdiction over the Work; (iii) Owner and Design/Builder have agreed in writing with respect to the Parties' respective obligations for security, maintenance, utilities, damage to the Work, insurance and the warranty period for the portion being used before Substantial Completion; and (iv) such use does not materially delay or interfere with Design/Builder's ability to perform the Work in accordance with the Schedule.

5.8 Final Completion

After Substantial Completion and upon completion of all items on the Punch List, Design/Builder shall submit to Owner a proposed certificate of Final Completion. Within seven (7) Days, Owner shall commence the inspection of the Work to determine whether Final Completion has occurred. The certificate of Final Completion shall state the date of Final Completion and shall be executed by Owner and Design/Builder. If Owner and Design/Builder cannot agree as to the appropriate date of Final Completion, such issue shall be submitted for dispute resolution in accordance with Article 12.

5.9 Failure To Achieve 3MGD Capacity Available to Distribution System, Substantial Completion and other Dates

If Design/Builder fails to attain either or both of the contract dates for 3MGD Capacity Available for Distribution System and Substantial Completion, as extended by Change Order,

the amount of damages suffered by Owner will be substantial, difficult to quantify and may vary depending upon the length of the delay. Based upon the foregoing, Owner and Design/Builder agree that Design/Builder will pay Owner as liquidated damages, and not as penalty, the amounts specified in Paragraphs 5.10 and 5.11 for each Day of delay in achieving 3MGD Capacity Available for Distribution System and Substantial Completion of the Project. Design/Builder will pay Owner actual damages sustained for any failure to meet any Milestone Date(s), Final Completion or any other date on Exhibit B.

5.10 Amount of Liquidated Damages - 3 MGD Capacity Available to Distribution System

The amount of liquidated damaged to be paid by the Design/Builder to the Owner for each Day in failing to meet the date for completion of 3 MGD Capacity Available to Distribution System is \$12,500.00.

5.11 Alternative to Liquidated Damages.

As an alternative and in order to avoid liquidated damages for failing to achieve 3MGD Capacity available to Distribution System, Design-Builder may furnish a package plant or another alternative acceptable to Owner, which acceptance shall not be unreasonably withheld, that produces 500,000 gallons per day.

5.12 Amount of Liquidated Damages - Substantial Completion

The amount of liquidated damaged to be paid by the Design/Builder to the Owner for each Day in failing to meet the Substantial Completion Date is \$1,500.00.

5.13 Waiver of Consequential Damages

Except to the extent they are included in the liquidated damages, each of the parties agrees not to make any claim for consequential damages for any failure to perform by other party in connection with this Agreement.

6. PRICE AND PAYMENT

6.1 GMP

Owner shall pay to Design/Builder as full compensation for performing the Work and its obligations set forth in the Contract Documents a GMP to be calculated in accordance with Exhibit E. The GMP may be adjusted from time to time in accordance with Article 7. The GMP shall be negotiated when the Contract Documents are thirty (30%) percent complete. The GMP shall not be modified except by a Change Order.

The Costs to Be Reimbursed and the Costs Not to Be Reimbursed are listed on Exhibit E-1.

Design/Builder will be paid a Fee of seven percent (7%) of the Costs to be Reimbursed.

In the event the Costs to Be Reimbursed plus the Fee is less than the GMP, as adjusted for Change Orders, the difference shall be shared forty percent (40%) to Design/Builder and sixty percent (60%) to Owner provided, however, the maximum amount of savings to be paid to Design/Builder is Four Hundred and Fifty Thousand Dollars (\$450,000).

In the event the Costs to Be Reimbursed plus the Fee is greater than the GMP, as adjusted for Change Orders, the limit of the obligation of the Owner shall be the GMP.

Until such time as the GMP is established, Owner will pay Design/Builder Costs to Be Reimbursed plus the Fee (less retainage) but only to the extent the payments are consistent with Exhibit E and written authorizations from Owner.

6.2 Invoices

On or before the fifth (5th) Day of each month, Design/Builder shall send invoices for the Work performed during the prior month to Owner at 30000 SW Town Center Loop, Wilsonville, Oregon 97070, which invoices shall contain a reference to the Agreement number on the invoice for the Work. Owner shall pay, based on a percentage of completion basis, the amount properly due and inform Design/Builder in writing of the reason for withholding any amounts not paid. Prior to the first payment request, Design/Builder shall submit to Owner an estimated payment schedule coinciding with the completion schedule.

6.2.1 Meeting. Before the submission of each invoice, Design/Builder and Owner shall meet to review Design/Builder's estimate of the percentage of Work completed per the Schedule of Values and the draft invoice.

6.2.2 Supporting Documentation. With each invoice, Design/Builder shall submit a cover summary sheet in triplicate and at least two sets of detailed back-up information sheets, certified payroll and any other documentation reasonably required by Owner.

6.2.3 Representations. Design/Builder represents that upon submittal of an invoice, all Work for which previous invoices have been issued and payments received from Owner shall be free and clear of liens, claims or security interests. Design/Builder represents that title to all on-Site Construction Work and off-Site Work that is not in progress and covered by an invoice shall pass to Owner no later than the time of payment. The invoice must certify to the percentage of Work completed for which payment is requested. The invoice must further certify that the quality of the Work

completed meets the Contract Documents and all Applicable Laws. Finally, the invoice will also separate, in form agreeable to Owner, the Work by funding source.

6.2.4 Schedule of Values. The payments will be based on the Schedule of Values from Exhibit E that accurately apportions the GMP over the Work.

6.2.5 Discounts and Rebates. Owner is entitled to the benefit of all discounts and rebates obtained by Design-Builder.

6.2.6 Minor Capital Items. Minor capital items purchased for use on the Project by Design-Builder and its subcontractors and suppliers of any tier and not incorporated into the Work shall become the property of Owner.

6.3 Payment

Owner shall make payment to Design/Builder of all amounts due within thirty (30) Days after receipt of an invoice.

6.4 Payment for On-Site and Off-Site Stored Materials

Payment shall be made on account of materials and equipment delivered and suitably stored in a weather proof manner at the Site for subsequent incorporation in the Work and for off-Site Work in progress. Payment may similarly be made for materials and equipment suitably stored off-Site provided Design/Builder furnishes evidence to Owner that (i) title to the materials and equipment shall pass to Owner upon payment therefor and (ii) the materials and equipment are adequately stored in a bonded warehouse and insured (with Owner being the payee under such insurance) and materials and equipment have been identified to this Agreement.

6.5 Meaning of Owner's Payment

The issuance of payment shall constitute an approval by Owner, based on general observations at the Site, that the Work has progressed to the point indicated. Payment shall be deemed to indicate that, to the best of Owner's knowledge, information and belief, the quality of the Work is in accordance with this Agreement, subject to (i) any subsequent evaluations of the Work for conformance with the Contract Documents; (ii) the results of any subsequent tests required by, or performed under, the Agreement; (iii) minor deviations from the Contract Documents correctable before Final Completion; (iv) any specific qualifications stated in Owner's approval; and (v) any information subsequently obtained by Owner. However, by making a payment, Owner shall not be deemed to have made exhaustive or continuous on-Site inspections to check the quality of the Work; to have reviewed the construction means, methods, techniques, sequences or procedures; or to have made any examination to ascertain

how or for what purpose Design/Builder has used the moneys previously paid on account of the GMP.

6.6 Payments to Subcontractors

6.6.1 Design/Builder shall promptly pay each Subcontractor, upon receipt of payment from Owner, out of the amount paid to Design/Builder on account of the Subcontractor's work, the amount to which the Subcontractor is entitled, reflecting the percentage actually retained or withheld, if any, from payments to Design/Builder on account of the Subcontractor's work. Design/Builder shall, by an appropriate agreement in each Subcontract, require each Subcontractor to make payments to its sub-subcontractors in a similar manner.

Owner may, on request and if it has a reasonable belief Design/Builder is not making required payment, at its discretion, furnish to any Subcontractor, if practicable, information regarding the percentages of completion or the amounts applied for by Design/Builder and the action taken on the application by Owner on account of work done by the Subcontractor.

6.6.2 If Design/Builder or any first-tier subcontractor of Design/Builder fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with this Agreement within thirty (30) Days after receipt of payment from Owner or Design/Builder, Design/Builder or first-tier subcontractor shall owe the person the amount due plus interest charges commencing at the end of the ten-day (10-Day) period that payment is due and ending upon final payment, unless payment is subject to a good faith dispute. The rate of interest charged to Design/Builder or first-tier subcontractor on the amount due shall equal three times the discount rate on ninety-day (90-Day) commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district that includes Oregon on the date that is thirty (30) days after the date when payment was received from Owner or Design/Builder, but the rate of interest shall not exceed thirty percent (30%). The amount of interest may not be waived.

6.6.3 If Design/Builder or any subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the public contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute.

6.6.4 Design/Builder shall include in each subcontract for property or services entered into by Design/Builder and any first-tier subcontractor, including a material supplier, for the purpose of performing a construction contract:

6.6.4.1 A payment clause that obligates Design/Builder to pay first-tier subcontractor for satisfactory performance under its subcontract within ten (10) Days out of such amounts as are paid to Design/Builder by Owner under this Agreement; and

6.6.4.2 An interest penalty clause that obligates Design/Builder, if payment is not made within thirty (30) Days after receipt of payment from Owner, to pay to first-tier subcontractor an interest penalty on amounts due in the case of each payment not made in accordance with the payment clause included in the subcontract. Design/Builder or first-tier subcontractor shall not be obligated to pay an interest penalty if the only reason that Design/Builder or first-tier subcontractor did not make payment when payment was due is that Design/Builder or first-tier subcontractor did not receive payment from the Owner or Design/Builder when payment was due. The interest penalty shall be:

- a. For the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made; and
- b. Computed at the rate specified in Paragraph 6.6.2.

6.6.5 Design/Builder shall include in each of its subcontracts a provision requiring every first-tier subcontractor to include a payment clause and an interest penalty clause conforming to the standards in this paragraph in each of its subcontracts and to require each of its subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor or supplier.

6.7 Work Stoppage

If Owner does not pay Design/Builder any undisputed amounts within ten (10) Days after the due date for such payment, then Design/Builder may, upon ten (10) additional Days' written notice to Owner, stop the Work. Design/Builder shall be entitled to a Change Order equitably adjusting the Milestone Date(s), Scheduled Substantial Completion Date and GMP on account of such stoppage.

6.8 Retention

6.8.1 Work. Owner shall withhold five percent (5%) Retention from all payments to Design/Builder.

6.8.2 Release. Owner shall release Retention upon Substantial Completion of the Work except for two-hundred percent (200%) of the value of any Punch List items.

Within thirty (30) Days after Final Completion of the Work, Owner shall release the remaining Retention.

6.8.3 Escrow. The interest will be placed in an interest-bearing account as provided by Chapter 279. The interest will inure to Design/Builder.

6.9 Final Payment

6.9.1 Conditions Precedent. Neither Final Payment nor any final release of Retention shall become due until Design/Builder submits to Owner:

6.9.1.1 An affidavit that payrolls, bills for materials and equipment and other indebtedness connected with the Work have been paid or otherwise satisfied;

6.9.1.2 A certificate evidencing that insurance required by the Contract Documents to remain in force after Final Payment is currently in effect and shall not be canceled or allowed to expire until at least thirty (30) Days' prior written notice has been given to Owner;

6.9.1.3 Releases and waivers of liens, claims (except those previously made in writing and identified as unsettled), security interests or encumbrances arising out of this Agreement;

6.9.1.4 A set of as-built drawings on 3-mil mylar and AutoCad Version 14;

6.9.1.5 Warranties from manufacturers;

6.9.1.6 Three (3) copies bound in three-ring (3) binders of all operation and maintenance manuals and spare/replacement equipment parts;

6.9.1.7 Consent of surety to Final Payment;

6.9.1.8 A final labor summary submitted by Design/Builder and each Subcontractor summarizing all employment for the completed Project, the total hours worked and the total amount earned;

6.9.1.9 A final certificate submitted by Design/Builder pursuant to ORS 279.354 concerning wages and classifications for laborers and mechanics, including apprentices and trainees employed on the Project, in the following form:

The undersigned Design/Builder on _____

(Agreement No.)

hereby certifies that all laborers, mechanics, apprentices and trainees employed by it or by any Subcontractor performing Work under this Agreement on the Project have been paid wages at rates not less than those required by this Agreement and that the work performed by each laborer, mechanic, apprentice or trainee conformed to the classifications set forth in this Agreement or training program provisions applicable to the wage rate paid.

Signature and Title

6.9.1.10 All other contract closeout documents and the completion of all other responsibilities of Design/Builder under the Agreement.

6.9.2 Waiver of Claims. Acceptance of Final Payment by Design/Builder shall constitute a waiver of affirmative claims by Design/Builder except those previously made in writing and identified as unsettled at the time of Final Payment.

6.10 Withholding of Payment

Owner may withhold payment of a portion of an invoice equivalent to an amount reasonably necessary to protect Owner from loss due to (i) Work that is not in compliance with the Contract Documents and that is not remedied; (ii) defective Work not remedied; (iii) third-party claims filed or evidence reasonably indicating that a third-party claim will be filed against Owner for which Owner is entitled to indemnification; (iv) failure of Design/Builder to make undisputed payments to Subcontractors which failure is not cured by Design/Builder; (v) damage to Owner not covered by the insurance; or (vi) any other failure of performance by Design/Builder. When the reasons for withholding payment are removed, Owner shall promptly pay Design/Builder for amounts previously withheld. Before any withholding, Owner shall meet with Design/Builder to discuss potential withholding and attempt in good faith to resolve such issue without the need for withholding.

6.11 Claim and Lien Waivers

As a condition to each progress and final payment, Design/Builder shall provide to Owner, in forms satisfactory to Owner, partial and final construction claim and lien waivers and releases from Design/Builder and its Subcontractors. The waivers and releases will apply to all Work performed through the date for which payment has previously been made and may, for the current payment, be conditioned upon receipt of the amount due in the invoice. If a claim or lien is made on this Project, Design/Builder shall satisfy, discharge or bond such claim or lien within 10 Days after written notice from Owner of the existence of such claim or lien. If Design/Builder fails to satisfy, discharge or bond such claim or lien within such ten-Day

(10-Day) period, Owner may satisfy discharge or bond them and charge the cost thereof to Design/Builder.

6.12 Unpaid Subcontractor or Supplier

In the event Owner, after providing Design-Builder notice and, if appropriate, an opportunity to make payment, has a reasonable belief Design/Builder has not made a required payment to a Subcontractor or Supplier, Owner may make such payment directly. Upon Owner's written request, Design/Builder shall furnish to Owner information required to facilitate such payments with each invoice including a complete listing of outstanding amounts owed.

7. CHANGE ORDERS

7.1 Entitlement to Change Orders

Design/Builder shall be entitled to receive Change Orders equitably adjusting the Milestone Date(s), Scheduled Substantial Completion Date and/or GMP in accordance with this Article 7. Design/Builder shall give Owner written notice within five (5) Business Days after it has actual knowledge or, in the exercise of reasonable care, should have knowledge, of an event giving rise to a Change Order. If Design/Builder fails to give such notice, it will waive any right of Design/Builder to collect any and all costs incurred before the date of delivery of the written notice and shall be deemed to have waived the right to such an extension of time that accrued before the date of delivery of the written notice. Owner shall have seven (7) Business Days after receipt of Design/Builder's notice to either confirm or refute the basis for the Change Order. If the Parties are unable to reach agreement on the requested Change Order, the dispute shall be resolved in accordance with Article 12.

7.2 Basis for Change Orders to GMP

Design/Builder shall be entitled to a Change Order equitably adjusting the GMP, for the following:

7.2.1 Change in Work. The GMP will only be adjusted for a change in writing by Owner to the program requirements on Exhibit A. Design/Builder will not be entitled to a Change Order for any Work required by the completion of the design after the GMP is established or any Work contemplated by or inferred from the Contract Documents or any other Work necessary to complete the Project for the purpose intended. The GMP will, however, be equitably adjusted for any change (as defined herein) that increases or decreases the costs of Design/Builder in performing the Work.

7.2.2 Change in Law. For a Change in Law only to the extent it materially increases or decreases Design/Builder's costs in performing the Work.

7.2.3 Site Delivery or Access Delays. For costs associated with the failure or inability of Owner to make available any or all of the Site or access required hereunder in accordance with the requirements of the Schedule ("Site Delivery Access Delays").

7.2.4 Owner Delays. For costs associated with delays occurring due to the acts or omissions of Owner and of other parties under Owner's control ("Owner Delays").

7.2.5 Owner Governmental Approvals. For costs associated with delays occurring due to the failure or inability of Owner to obtain the Owner Governmental Approvals in accordance with the Schedule but only if Design/Builder timely provides to Owner all necessary information relating to such approval.

7.3 Basis for Change Orders for Extensions of Time for Excusable Delays

7.3.1 To the extent any of the following events results in an actual delay in the critical path of the Work, such event shall constitute an "Excusable Delay" and Design/Builder will be entitled to a Change Order equitably adjusting the Milestone Date(s) and/or Scheduled Substantial Completion Date:

7.3.1.1 For delays associated with a Change in the Work as specified in Paragraph 7.2.1;

7.3.1.2 For a Change in Law as specified in Paragraph 7.2.2;

7.3.1.3 For Site Delivery or Access Delays as specified in Paragraph 7.2.3;

7.3.1.4 For Owner Delays as specified in Paragraph 7.2.4;

7.3.1.5 For failure or inability of Owner to obtain the Owner Governmental Approvals in accordance with the Schedule but only if Design/Builder timely provides Owner with all necessary information relating to such approvals; or

7.3.1.6 For delays resulting from Force Majeure.

7.3.2 Extension of Time Due to Excusable Delay. Within thirty (30) Days after cessation of an event giving rise to an Excusable Delay, the Parties shall attempt to agree on the extent to which the Work has been delayed. Upon the Parties' agreement, the Parties shall execute a Change Order extending the Milestone Date(s) and/or

Scheduled Substantial Completion Date. If the Parties fail to reach agreement, the Parties shall resolve the dispute in accordance with Article 12.

7.4 Change Order Pricing

The increase or decrease in the GMP resulting from a change in the Work shall be determined in one or more of the following ways and in the following order of preference. The amount of decrease in the GMP to be allowed for any deletion or change that results in a net decrease in Work will be the estimated reduction in the cost of the Work occasioned by the Change. When both additions and reductions are involved in any one change, the adjustment in the GMP shall be determined on the basis of net increase or decrease.

7.4.1 By mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;

7.4.2 If there is no such agreement, by unit prices stated in the Agreement or subsequently agreed upon for applicable Work;

7.4.3 If there is no Work governed by unit prices, by cost to be agreed upon and an agreed fee; or

7.4.4 By force account as provided in Section 7.5 but only if the Owner and Design-Builder agree in writing it applies.

7.4.5 If Paragraphs 7.4.1 - 7.4.4 do not apply, Owner shall issue a unilateral change order, Design/Builder will promptly proceed with the change, and there will be an equitable adjustment to the GMP.

7.5 Force Account

Design/Builder, provided it receives a written Change Order signed by Owner and specifying Force Account rates apply, shall promptly proceed with the Work involved. The amount of the Change Order shall then be determined on the basis of the cost reimbursable expenditures and savings for the Work attributed to the change. Costs for expenditures and savings shall be calculated in accordance with the provisions of this Section 7.5. In such case, Design/Builder shall keep and present, in such form as Owner may prescribe, an itemized accounting together with appropriate supporting data. Force account Work shall be invoiced and paid for based upon the rates specified in Exhibit E-1 and Fee listed in Paragraph 6.1.

7.6 Right To Order Change Order

Owner, without invalidating this Agreement, may order material changes in the overall scope of the Work. All such changes in the Project shall be authorized by Change Order.

8. WARRANTY AND CORRECTION OF WORK

8.1 Design Work

8.1.1 Standard of Care. Design/Builder shall perform the Design Work in strict accordance with the provisions of Exhibit A and all Applicable Laws. The engineering design will be in accordance with the prevailing standard of care imposed on engineers performing services on projects of similar scope, complexity and quality. The architectural design will be in accordance with the standard of care imposed on architects performing services of similar scope, complexity and quality.

8.1.2 Design Reperformance. For a period of one (1) year after Substantial Completion of the Work, Design/Builder shall reperform, at its own cost, any Design Work that fails to meet the standard set forth in Section 8.1.1 and perform or cause to be performed, at its own cost, remedial Construction Work to effect such reperfomed Design Work. Owner shall give written notice to Design/Builder promptly after Owner discovers Design Work that it reasonably believes fails to meet the standard set forth in this Agreement.

8.2 Construction Work

8.2.1 Warranty. Design/Builder warrants to Owner that any and all materials, equipment and furnishings incorporated in the Work will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Construction Work will be free from defects not inherent in the quality required or permitted and that the Construction Work will conform with the requirements of the Contract Documents. The foregoing warranty excludes improper or insufficient maintenance, improper operation or normal wear and tear under normal usage.

8.2.2 Construction Correction. For a period of one (1) year or the length of the applicable manufacturer warranty, whichever is longer, after Substantial Completion of the Work, Design/Builder shall correct, at its own cost, Construction Work that fails to comply with the warranty set forth in this Agreement. Owner shall give written notice to Design/Builder promptly after Owner discovers a failure to comply with the construction warranty. Upon expiration of the one-year (1-year) period, Design/Builder shall assign all manufacturer and vendor warranties to Owner. Such

assignment shall not relieve Design/Builder of continued responsibility under the Agreement.

8.3 Failure To Correct Nonconforming or Deficient Work

If Design/Builder fails to commence reperforming deficient Design Work or correcting nonconforming Construction Work within thirty (30) Days after written notice thereof, Owner may after written notice to Design/Builder correct it in accordance with the terms of this Agreement, and Design/Builder shall be responsible for such costs.

9. INDEMNIFICATION

9.1 Claims

Design/Builder shall defend and indemnify Owner and Tualatin Valley Water District and their officers, agents and employees (collectively "Indemnitees") from third-party claims of any kind including, without limitation, claims due to bodily injury, death or property damage arising out of or relating to the performance of this Agreement to the extent caused by the negligent acts or omissions or breach of this Agreement or intentional misconduct of Design/Builder or its Subcontractors in proportion to its or their respective degree of negligence or fault.

Design/Builder shall defend an Indemnitee from claims covered under this Section 9.1 at Design/Builder's sole cost and expense until such time (i) as an arbitration panel or a court of competent jurisdiction determines that an Indemnitee is liable in whole or in part for Losses caused by the Indemnitee's negligent acts or omissions or breach of this Agreement or intentional misconduct or (ii) Design/Builder and an Indemnitee mutually agree to allocate liability for Losses or responsibility for defense costs.

Notwithstanding the foregoing, Design/Builder shall indemnify, defend and save harmless the Indemnitees from Losses arising out of or related to the discharge, spill or release during Construction Work of any Hazardous Materials brought on to the Site by Design/Builder or its Subcontractors in connection with the Work under this Agreement.

10. INSURANCE AND BONDS

10.1 Insurance

Design/Builder shall at all times during the period in which this Agreement is in force and effect provide and maintain insurance as set forth below.

10.1.1 Automobile Liability Insurance, covering all owned, nonowned and hired automobiles, trucks and trailers. Such insurance shall provide coverage not less than \$2,000,000 for any one accident or loss for bodily injury and property damage combined.

10.1.2 Commercial General Liability Insurance with policy limits of \$22,000,000 each occurrence for bodily injury and \$2,000,000 each occurrence for property damage liability. Design/Builder shall require Subcontractors to provide and maintain Comprehensive Commercial General Liability Insurance with policy limits of \$2,000,000 each occurrence for bodily injury and \$2,000,000 each occurrence for property damage liability.

10.1.3 Workers' Compensation Insurance, as required by laws in the state of jurisdiction, and Employer's Liability Insurance with limits of \$2,000,000 each accident, each employee and policy limit disease. Design/Builder shall require Subcontractors to provide and maintain Workers' Compensation Insurance as required by the laws of the State.

10.1.4 Errors & Omissions insurance covering Design/Builder's liability arising out of negligent acts, errors or omissions in its performance of the Design Work. Such policy will have a limit of \$5,000,000 per claim and \$10,000,000 in the aggregate for the term of the Project with a deductible of \$3,000,000 per claim. Such policy will be on a claims made basis and will have an extended claims reporting period of ten years after Final Completion. Design/Builder shall require all Subcontractors performing Design Work to maintain Errors & Omissions insurance with a limit of \$2,000,000 per claim and in the aggregate. The limits required above may be met with a combination of underlying and umbrella coverage. Owner and the Tualatin Valley Water District and their agents shall be included as additional insureds in coverages required in 10.1.1. and 10.1.2 above and a waiver of subrogation against them shall be obtained.

10.1.5 Contractors Installation/Builders Risk including Land Transit, insuring the interest of Owner, Design/Builder and Design/Builder's designated Subcontractors (except designated Subcontractors will be insured only for loss at the Site), including coverage on an "All Risks" basis, including, but not limited to, coverage against fire, lightning, wind damage, hail, explosion, riot or civil commotion, aircraft, vehicles, collapse, flood, water damage, earthquake or resultant physical damage from faulty design, materials or workmanship in an amount equal to the replacement cost of the Project. Coverage will include all materials, supplies and equipment intended for specific installation in the Project while such materials, supplies and equipment are located at the Site in transit on land, and while temporarily located away from the Site, for the purpose of repair, adjustment or storage and at the risk of an insured party (when not insured for the land transit part of a marine shipment covered by marine

cargo insurance). This coverage for transit and storage away from the Site, and coverage for demolition, debris removal are each subject to a sublimit of ten percent (10%) of the estimated total completed value of the Project but not less than \$1,000,000. Design/Builder is responsible for any losses not covered by deductibles or exclusions.

This insurance will not include coverage for loss of any tools or clothing of workers or any tools, equipment, protective fencing, scaffolding, temporary structures, forms and equipment owned, rented or used by any insured in the performance of the Work.

A deductible of two percent (2%) of the total value of the Project at time of loss or \$100,000, whichever is greater, shall apply to loss or damage from the peril of earthquake. A \$100,000 deductible shall apply to the peril of flood, and a deductible of \$25,000 shall apply to loss or damage from all other perils covered under the policy. All deductibles apply on a per occurrence basis. Design/Builder shall be responsible for all deductibles.

This insurance shall include Delayed Opening Insurance with a limit equal to the twelve-month (12-month) ongoing expenses of the finished Project to cover loss caused by physical damage to the Project from "All Risks" perils specified in this Paragraph 10.1.4. The deductible shall be thirty (30) Days of ongoing expenses. Design/Builder and Owner shall be the insureds for this Delayed Opening Insurance.

10.2 Notices and Costs

Before the date on which Design/Builder commences Construction Work at the Site, Design/Builder shall furnish Owner with a certificate of insurance as evidence insurance required of Design/Builder herein is in effect.

Insurance required of Design/Builder herein shall include a requirement that the insurance company shall provide written notice to Owner and Design/Builder at least thirty (30) Days before the effective date of any cancellation or adverse material change of such policies ten (10) Days for nonpayment of premium).

10.3 Owner Insurance

On the date of Substantial Completion of the Work, Owner shall procure and maintain at its cost and expense the following insurance:

10.3.1 All Risk Property Insurance (including boiler and machinery and business interruption insurance) insuring the replacement cost of the Project.

10.3.2 Commercial General Liability Insurance.

10.3.3 Owner shall furnish Design/Builder with evidence of this Owner insurance.

10.4 Bonds

Design/Builder shall furnish and deliver to Owner a Labor and Materials Bond and a Performance Bond before commencing the Design and Construction Work on the Site that shall cover such Design and Construction Work. The Labor and Materials Bond and the Performance Bond shall each name Owner as obligee and shall each be in the penal sum equal to the GMP. The Labor and Materials Bond and Performance Bond shall be in the forms set forth as Exhibit F. All premiums for the Labor and Materials Bond and Performance Bond shall be included in the GMP. The Labor and Materials Bond and Performance Bond shall be issued by a surety who is (i) on the U.S. Department of Treasury list for the amount of its responsibility and (ii) licensed to do business in the State. Until the GMP is established, the penal amount of the bonds will be the estimated cost of design and other services to establish the GMP. When the GMP is established, the penal amount of the bonds will be increased to the amount of the GMP.

11. LIABILITIES OF THE PARTIES

11.1 Risk of Loss to Project

Except as otherwise provided herein, Design/Builder shall bear the exclusive risk of physical loss of or damage to the Project for any reason.

11.2 Application

The waivers, disclaimers, releases, limitations and apportionments of liability, exclusive remedy provisions and indemnity and hold harmless obligations expressed in this Agreement shall apply even in the event of the fault, negligence (in whole or in part), tort, strict liability, breach of contract or otherwise of the Party whose liability is waived, disclaimed, released, limited or apportioned by any such provision, or fixed by such exclusive remedy provisions, or who is indemnified or held harmless, and shall extend to such Party's Affiliates and its and their directors, officers, employees and agents.

12. DISPUTES

12.1 Disputes Between Owner and Design/Builder

If a dispute arises between Owner and Design/Builder regarding any part of the Agreement or the Contract Documents, or the Parties' obligations or performance thereunder, either Party may institute the dispute resolution procedures set herein. The Parties shall continue performance of their respective obligations notwithstanding the existence of a dispute.

12.2 Dispute Resolution Process

12.2.1 Authorized Representatives. If a controversy or claim should arise, Design/Builder's and Owner's Authorized Representatives will meet at least once to attempt to resolve the matter. Either Authorized Representative may request the other to meet within fourteen (14) Days, at a mutually agreed time and place.

12.2.2 Senior Executives. If the matter has not been resolved within twenty (20) Days of their first meeting, the Authorized Representatives shall refer the matter to senior executives, who shall have authority to settle the dispute. Thereupon, the Authorized Representatives shall promptly prepare and exchange memoranda stating the issues in dispute and their positions, summarizing the negotiations that have taken place and attaching relevant documents. The senior executives will meet for negotiations within fourteen (14) Days of the end of the twenty-Day (20-Day) period referred to above, at a mutually agreed time and place.

12.2.3 Mediation. If the matter has not been resolved within thirty (30) Days of the meeting of the senior executives, the Parties will attempt in good faith to resolve the controversy or claim by mediation.

12.2.4 Arbitration. If the matter has not been resolved pursuant to the aforesaid mediation procedure within sixty (60) Days of the commencement of such procedure or if either Party will not participate in mediation and if the matter involves an amount less than \$1,000,000, the Parties agree that such dispute shall be arbitrated in accordance with the Large, Complex Construction Cases procedures set forth in the Construction Industry Panel Arbitration Rules of the American Arbitration Association. The arbitration panel shall consist of three arbitrators each of whom shall be on the American Arbitration Association's panel of arbitrators for Large, Complex Construction Cases. Each Party shall appoint one arbitrator; the two arbitrators shall choose the third arbitrator as the presiding arbitrator. Each Party shall appoint its respective arbitrator within thirty (30) calendar Days of the delivery of the notice of arbitration. The two arbitrators thus appointed shall choose the third arbitrator within thirty (30) calendar Days after they have both been appointed. Should the Parties fail

to appoint their respective arbitrators or should the two arbitrators fail to appoint the third arbitrator within the time periods specified above, the President of the American Arbitration Association shall make such appointment.

The decision of the arbitration panel shall be final, binding and conclusive upon the Parties and subject to appeal only on those grounds for which arbitrations in Oregon are subject to appeal and may be confirmed or embodied in an order or judgment of any court having jurisdiction. The arbitrators appointed pursuant to this Agreement shall not have the power to award punitive damages or rescind this Agreement.

12.2.5 Litigation. If the matter has not been resolved pursuant to the aforesaid mediation procedure within sixty (60) Days of the commencement of such procedure, or if either Party will not participate in mediation and if the matter involves an amount of \$1,000,000 or more, either Party may initiate litigation.

12.2.6 Deadlines. All deadlines specified in this Article 12 may be extended by mutual agreement.

12.2.7 Required Process. The procedures specified in this Article shall be the sole and exclusive procedures for the resolution of disputes between the Parties arising out of or relating to this Agreement; provided, however, that a Party may seek a preliminary injunction or other preliminary judicial relief if in its judgment such action is necessary to avoid irreparable damage. Despite such action, the Parties will continue to participate in good faith in the procedures specified in this Article 12.

12.2.8 Continued Performance. Design/Builder shall continue work during any dispute and shall not have the right to suspend performance or terminate this Agreement so long as Owner is operating in good faith.

12.2.9 Exclusive Forum. Any arbitration or litigation between the parties arising out of or relating to this Agreement shall be brought exclusively in Clackamas County, Oregon.

13. SUSPENSION; TERMINATION; EVENTS OF DEFAULT

13.1 Suspension

Owner may, without cause, order Design/Builder in writing to suspend the Work in whole or in part for such period of time as Owner may determine. In the event of suspension not caused by the failure of Design/Builder to perform, the Design/Builder shall be entitled to a Change Order equitably adjusting the Milestone Date(s), Scheduled Substantial Completion

Date and/or GMP for delays and increases in the cost of performance of the Work arising from such suspension.

13.2 Termination for Convenience

Owner may terminate for convenience all or a portion of the Work under this Agreement at any time by written notice to Design/Builder if Owner determines that termination is in the public interest. If this Agreement is terminated under this Section 13.2, Design/Builder shall be entitled to payment for all Work timely performed by Design/Builder before termination, and to all reasonable costs of closing out the Agreement including, but not limited to, demobilization and amounts payable to Subcontractors, suppliers and vendors provided that Design/Builder provides a final itemized invoice for those amounts within sixty (60) Days after receiving the termination notice. The amount to be paid to Design/Builder shall not exceed the amount of the GMP earned by Design/Builder based on the percentage of the Work completed. Design/Builder will not be paid any lost profit on uncompleted Work.

After receipt of a notice of termination pursuant to this Section 13.2, and except as directed by Owner, Design/Builder shall immediately proceed with the following obligations regardless of any delay in determining or adjusting any amounts due under this clause:

13.2.1 Stop work as specified in the notice;

13.2.2 Place no further Subcontracts or orders (referred to as Subcontracts in this clause) for materials, services or facilities, except as necessary to finally complete the continued portion of this Agreement;

13.2.3 Terminate all Subcontracts to the extent they relate to the Work terminated;

13.2.4 Assign to Owner, as directed by Owner, all right, title and interest of Design/Builder under the Subcontracts terminated, in which case Owner shall have the right to settle or to pay any termination settlement proposals arising out of those terminations;

13.2.5 With approval or ratification to the extent required by Owner, settle all outstanding liabilities and termination settlement proposals arising from the termination of the Subcontracts (the approval or ratification will be final for purposes of this clause);

13.2.6 As directed by Owner, transfer title and deliver to Owner (i) the fabricated or unfabricated parts, and/or materials, Work in process, completed Work, supplies and other material produced or acquired for the Work terminated and (ii) the completed or

partially completed Design Materials that, if the Agreement had been finally completed, would be required to be furnished to Owner;

13.2.7 Complete performance of the Work not terminated; and

13.2.8 Take any action that may be necessary, or that Owner may direct, for the protection and preservation of the property related to this Agreement that is in possession of Design/Builder and in which Owner has or may acquire an interest.

13.3 Design/Builder Event(s) of Default

The following shall constitute "Design/Builder Event(s) of Default":

13.3.1 Failure To Carry Out Work. Design/Builder fails or neglects to carry out the Work or perform any other material obligation in accordance with the provisions of the Contract Documents and fails, after seven (7) Days' written notice from Owner, to commence and continue to pursue correction of such failure or neglect and diligently pursue such cure to completion.

13.3.2 Breach. Design/Builder materially breaches this Agreement and fails, after seven (7) Days' written notice from Owner, to commence correction, continue to pursue correction of such breach or diligently pursue such cure to completion.

13.3.3 Bankruptcy. A custodian, trustee or receiver is appointed for Design/Builder, or Design/Builder becomes insolvent or makes an assignment for the benefit of creditors, or Design/Builder causes or suffers an order for relief to be entered with respect to it under applicable federal bankruptcy law or applies for or consents to the appointment of a custodian, trustee or receiver for Design/Builder, or bankruptcy, reorganization, arrangement or insolvency proceedings, or other proceedings for relief under any bankruptcy or similar law or laws for the relief of debtors, are instituted by or against Design/Builder, and in any of the foregoing cases such action is not discharged or terminated within sixty (60) Days of its institution.

13.4 Remedies of Owner upon a Design/Builder Event of Default

13.4.1 Termination of Agreement. Upon the occurrence of a Design/Builder Event of Default, Owner shall have the right to terminate all or part of the Work under this Agreement. Without prejudice to any other rights or remedies of Owner, Owner, subject to any prior rights of the surety, may:

13.4.1.1 Take possession of the Site and of all materials, equipment, tools and construction equipment thereon owned by Design/Builder;

13.4.1.2 Accept assignment of the Subcontracts; and

13.4.1.3 Finish the Work by whatever reasonable method Owner may deem expedient.

When Owner terminates the Work under Section 13.3, Design/Builder shall not be entitled to receive further payment until the Work is finished. If the unpaid balance of the GMP exceeds costs and damages incurred by Owner in finishing the Work, Owner shall pay such excess to Design/Builder up to the amount due Design/Builder to date. If such costs and damages exceed the unpaid balance of the GMP, Design/Builder shall pay the difference to Owner.

13.4.2 Recourse to Payment and Performance Bonds. Upon the occurrence of a Design/Builder Event of Default and termination of the Work by Owner, Owner shall require the surety to perform its/their obligations under the Labor and Materials and Performance Bonds, if applicable.

13.5 Owner Event(s) of Default

The following shall constitute "Owner Event(s) of Default":

13.5.1 Nonpayment. If through no act or fault of Design/Builder, Owner has failed to make payment of undisputed amounts set forth in an invoice within sixty (60) Days after the time stated in this Agreement.

13.5.2 Bankruptcy. A custodian, trustee or receiver is appointed for Owner, or Owner becomes insolvent or bankrupt, makes an assignment for the benefit of creditors, or causes or suffers an order for relief to be entered with respect to it under applicable federal bankruptcy law or applies for or consents to the appointment of a custodian, trustee or receiver for Owner, or bankruptcy, reorganization, arrangement or insolvency proceedings, or other proceedings for relief under any bankruptcy or similar law or laws for the relief of debtors, are instituted by or against Owner, and in any of the foregoing cases such action is not discharged or terminated within sixty (60) Days of its institution.

14. MISCELLANEOUS PROVISIONS

14.1 Independent Contractor

Design/Builder represents that it is experienced, properly qualified, registered and licensed to perform the Work. Design/Builder shall act as an independent contractor and not as agent of Owner in performing this Agreement and maintaining control over its employees and all of its Subcontractors. Design/Builder is an independent contractor for all purposes and is not entitled to compensation from Owner other than that provided by this Agreement. Nothing contained in this Agreement shall create any contractual relationship between any Subcontractor and Owner.

Design/Builder's (MWC) federal Internal Revenue Service Employer Identification Number is 841242056. Design/Builder is responsible to Owner for all acts or omissions of all of Design/Builder's Subcontractors.

14.2 Standards and Codes

Wherever reference is made in this Agreement to standards or codes in accordance with which the Work under this Agreement is to be performed, the edition or revision of the standards or codes current on the date of this Agreement shall apply; provided, however, that the edition or revision of a code issued after the date of this Agreement shall apply if the proposed change in the code was published or under formal consideration before such date. In case of conflict between any referenced standards and codes and any Contract Documents, the Contract Documents shall govern.

14.3 Governing Law

This Agreement shall be governed by the laws of the State of Oregon.

14.4 Waiver

Neither Party's waiver of any breach or failure to enforce any of the terms of the Contract Documents at any time shall in any way limit or waive that Party's right thereafter to enforce compliance with every term of the Contract Documents.

14.5 Successors and Assigns

Owner and Design/Builder respectively bind themselves and their partners, shareholders, successors, assigns and legal representatives to the other Party hereto and to shareholders, successors, assigns and legal representatives of such other Party with respect to covenants, agreements and obligations contained in the Contract Documents. Neither Party shall assign

the Agreement as a whole without the written consent of the other Party. If either Party attempts to make such an assignment without such consent, that Party shall nevertheless remain legally responsible for all of its obligations under the Agreement and the Contract Documents. All references to any person or entity shall be deemed to include any person or entity succeeding to the rights, duties and obligations of such person or entity in accordance with the terms of this Agreement.

14.6 Notices

Written notice shall be deemed to have been duly served on the date of delivery if delivered in person, on the Day after deposit if delivered by overnight courier, or two Days after deposit if delivered by placing in the U.S. mail, first-class and certified, return receipt requested with postage prepaid. All notices shall be addressed as follows:

If to Owner: Michael A. Stone, City Engineer
City of Wilsonville
30000 SW Town Center Loop E
Wilsonville, Oregon 97070
Tel: (503) 682-1011

with a copy to: Robert Fuller
CH₂M Hill, Inc.
825 NE Multnomah Street
Suite 1300
Portland, Oregon 97232
Tel: (503) 235-5000

If to Design/Builder: Joe Glicker
Montgomery Watson, Inc.
111 SW Fifth Avenue
Suite 1770
Portland, Oregon 97204-3604
Tel: (503) 226-7377

with a copy to: Steve Cabrol
Montgomery Watson Constructors, Inc.
111 SW Fifth Avenue
Portland, Oregon 97204-3604
Tel: (503) 226-7377

14.7 No Discrimination

In performance of this Agreement, Design/Builder shall not discriminate against (i) any employee or applicant for employment or (ii) subcontractor interested in providing services or performing work on this Project or vendor interested in providing materials, because of race, color, age, religion, sex, sexual preference, national origin or status as an emerging small business. Design/Builder shall take affirmative action to ensure that (i) applicants are employed and that employees are treated equally during employment and (ii) interested potential subcontractors and vendors are considered without regard to their race, color, age, religion, sex, sexual preference or national origin.

14.8 Accounting Records

Design/Builder shall maintain a complete set of records relating to this Agreement in accordance with generally accepted accounting procedures. During normal business hours, Design/Builder shall permit the authorized representatives of Owner to inspect and audit all work, materials, payrolls, books, accounts and other data and records of Design/Builder relating to its performance under this Agreement until the expiration of three years after Final Payment under this Agreement.

Design/Builder further agrees to include in all of its Subcontracts a provision to the effect that the Subcontractor agrees that Owner shall, until the expiration of six (6) years after final payment under the Subcontract, have access to and the right to examine any directly pertinent books, documents, papers and other records of the Subcontractor. The term "Subcontract" as used in this Section excludes (i) purchase orders not exceeding \$10,000 and (ii) Subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

The periods of access and examination described in this Section 14.8 for records that relate to disputes between Owner and Design/Builder, or litigation or settlement of claims arising out of the performance of this Agreement, shall continue until all disputes, claims, litigation, appeals and exceptions have been resolved.

14.9 Prohibited Interests

No board member, officer, employee or agent of Owner shall have any direct or indirect interest in this Agreement or its proceeds during, or within one year after, that person's tenure with Owner. Except for unsolicited gifts of nominal value given for advertising purposes, no board member, officer, employee or agent of Owner shall solicit or accept, and Design/Builder shall not offer or give to any board member, officer, employee or agent of Owner, any gratuities, favors or anything of monetary value in connection with this Agreement.

14.10 Representations

Design/Builder represents and warrants to Owner, in addition to the other representations and warranties contained in this Agreement and as an inducement to Owner to execute this Agreement, which representations and warranties shall survive the execution and delivery of this Agreement and the Final Completion of the Work, as follows:

14.10.1 That Design/Builder is financially solvent, able to pay its debts as they mature and possessed of sufficient working capital to complete the Work and perform its obligations under this Agreement;

14.10.2 That Design/Builder is able to furnish the plant, tools, materials, supplies, equipment and labor required to complete the Work and its performance obligations under this Agreement and has sufficient experience and competence to do so;

14.10.3 That Design/Builder is authorized to do business in the state where the Work is located and is properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over Design/Builder, the Work and the site of the Work; and

14.10.4 That Design/Builder's execution and performance of this Agreement is within its duly authorized powers.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

CITY OF WILSONVILLE

MONTGOMERY WATSON, INC.

Charlotte Lehan

By _____
Its: Mayor

By _____
Its: _____

APPROVED AS TO FORM:

MONTGOMERY WATSON AMERICA,
INC.

This ____ day of _____, 2000.

Michael E. Kohlhoff, City Attorney

By _____
Its: _____

City of Wilsonville, Oregon

MONTGOMERY WATSON
CONSTRUCTORS, INC.

By _____
Its: _____

EXHIBIT A
PROGRAM REQUIREMENTS

INTRODUCTION

Montgomery Watson (“Design/Builder”) will design and build a new water treatment plant (WTP) project for Willamette River water. The project will be located at a site known as the Youngs property south of Wilsonville Road just off of Industrial Way in Wilsonville. The site consists of two major north and south parcels connected by a narrow strip of land and a twenty-foot strip along the western edge, north to Wilsonville Road.

The project consists of three major components:

- Raw Water Intake (including screening, pipeline, wetwell and pump station)
- Water Treatment Plant (including the finished water pump station and clearwell reservoir)
- Finished Water Pipeline (including access roadway to property boundary as shown in Figure A-1)

The project will be developed with these three components as the initial basis of work packages for cost evaluation and construction. Major project schedule milestones are shown in Exhibit B of the Design/Build Contract.

The City of Wilsonville (“Owner”) is the primary project participant and lead agency developing the project. However, the cities of Sherwood and Tualatin and the Tualatin Valley Water District (TVWD) may also participate in the project. The capacity of project elements may be affected by the degree of participation of these other communities.

As part of the project, a portion of the site will be developed as a passive park. Concepts for site improvements for the park will be developed through interaction with the Owner and the community and will be included in the water treatment plant construction.

The Owner also desires to relocate a portion of Industrial Way south of Wilsonville Road to the plant property. This design/build project will provide the realignment of the roadway if property and easement can be obtained prior to April 2001. The treated water pipeline may also follow this roadway realignment. If the property and easement cannot be obtained in the allowable time frame, then the existing Industrial Way will be improved as part of this project and the finished water pipeline located in this existing corridor, or the Industrial Way alignment will be abandoned temporarily and a temporary 18-inch connection to Wilsonville Road via the westerly 20-foot access will be undertaken.

General Basis of Facility Design

Project Capacity

The four potential project participants have defined their desired initial and ultimate capacity requirements for the project. These capacities are shown in Table 1. Only the City of Wilsonville may take water from the plant initially, while long-term expansion may also be developed by Sherwood, Tualatin and TVWD. Based on the capacity requirements of the potential participants, the nominal initial water treatment plant capacity will be 15-mgd and the site will be planned for an ultimate water treatment capacity of 70-mgd and for an ultimate 120-mgd intake capacity. The City may also elect to modify the ultimate plant capacity should the necessary permits for the ultimate capacity be conditioned or denied.

Table 1
Project Participant Nominal Capacity Needs

Community	Initial Need (mgd)	Ultimate Need (mgd)
Wilsonville	10	20
Sherwood	0	10
Tualatin	0	5
TVWD	5	85
TOTAL	15	120

The screening at the intake facility will be designed and constructed for a capacity of 70-mgd. The connecting piping from the screen to the pump station wetwell and the wetwell, will be designed and constructed for a capacity of 120-mgd. The pump station will have an initial installed capacity of 15- mgd with expansion capabilities to 120-mgd. Raw water piping to the WTP will be sized for 70 mgd. It is desired to construct intake capacity, if allowed by permit, to meet these long-term demands at this time since permitting and construction costs to expand the facility at a later date may be prohibitive.

The ultimate capacity of 120-mgd is to be accommodated in the future using additional land at the north end of the property or possibly another site. Pipe corridors from the intake will be identified and maintained for expansion to the 120-mgd capacity. Finished water pumping will be sized for the initial 15-mgd capacity, with expansion capability to 70- mgd. The finished water pipeline to the intersection of Wilsonville Road and Kinsman Road will also be sized for a capacity of 70-mgd. If ultimate demands require 120-mgd, the additional 50-mgd increment would be delivered from another treatment and high service pumping component.

Project and Treatment Components

The overall project designed and constructed to the capacities, regulations and water quality goals described herein includes generally the following facilities. Facilities will be designed with redundant equipment as identified in the 10% Preliminary Engineering Design deliverable to provide the firm project capacity with the largest component of each process out of service.

- Intake Screens - submerged type Johnson screens with air flush.
- Intake Pipeline – submerged connecting screens to intake wetwell.
- Intake Wetwell - circular reinforced concrete caisson type construction.
- Intake Pump Station- four vertical turbine type pumps with below ground discharge. Pump station will also house screen cleaning compressors (2 units) and air receiver, and electrical motor control equipment. Overall pump station layout will accommodate ultimate 120 mgd of pump equipment.
- Raw Water Meter - metering provided on raw water pump discharge for monitoring and control.
- Chemical Addition and Mixing - chemical addition and mixing provided for raw water including coagulant, coagulant aid, disinfection, carbon dioxide solution, aqueous ammonia solution, and caustic soda addition.
- Ballasted Coagulation (Actiflo) - the Actiflo process will be used for coagulation and solids removal. Two parallel trains will be provided which can each treat the maximum initial phase of treatment flow. The Actiflo process is complete with all equipment and hydraulic structures.
- Ozone Disinfection - ozone will be provided for disinfection and will be located immediately downstream of the Actiflo process. The process will initially include two counter-cocurrent contact basins, two medium frequency ozone generators, liquid oxygen, and off-gas ozone destruction equipment.
- Filtration - four gravity dual media filters will be provided, each with 72 inches of granular activated carbon media over 12-inches of sand media. Backwash will be provided from pumps located at the clearwell and air scour provided from blowers housed in the filter gallery. Filter to waste will also be provided with two pumps capable of delivering water to the filter influent channel or the raw water piping.
- Clearwell - A 2.5 million-gallon clearwell will be provided of rectangular construction. It will also provide a location for the high service and backwash pumps.

- **High Service Pump Station** - A high service pump station will be provided to deliver treated water for transmission and distribution. The pump station will accommodate four high service pumps and backwash pump, piping and valving equipment.
- **Finished Water Meter**- A finished water meter will be provided to monitor and control treated water uses.
- **Treated Water Pipeline**- A treated water pipeline will be provided from the high service pump station, along the plant access roadway and extend to Kinsman Road and Wilsonville Road. Turnouts to the distribution system will be provided at Brockway Road and Wilsonville Road.
- **Site Electrical Service** - Primary power will be routed to the plant site from Wilsonville Road along the western edge of the City property. The power will be metered and a transformer will reduce the voltage on-site for process requirements. A diesel fuel standby power supply will be provided for a maximum of 4-5 mgd of total capacity including raw water, complete treatment and high service pumping.
- **Instrumentation and Control** - An instrumentation and control system will be provided allowing remote monitoring and control of all on-site processes. Monitoring of offsite turnouts and other offsite SCADA monitoring will also be provided.
- **Washwater Equalization** - A washwater equalization basin will be provided to store a maximum of two repetitive backwashes. The facility will also include a pump station to return the waste backwash water to the raw water pipe.
- **Sludge Thickening** - A sludge thickener will be provided to provide initial dewatering of solids removed from the Actiflo process. The thickened sludge will be pumped to dewatering equipment with pumps located in an adjacent pump station.
- **Sludge Dewatering** - Thickened sludge will be dewatered in centrifuges. The dewatered sludge will be hauled to landfill for final disposal. The centrifuges will be located in a stand-alone building of two-story configuration.
- **Administration Building**- An administration building will be provided for plant operations including control room, laboratory, office space, conference room, restrooms, dressing/shower facilities lunchroom, and instrument repair room.
- **Chemical Building** - A chemical building will be provided to store chemicals in bulk or portable storage containers and also provide metering equipment, piping and valuing. Chemicals included in this facility will be: aqueous ammonia, calcium thiosulfate, carbon dioxide, caustic soda, ferric chloride, liquid alum, polyelectrolyte, anionic polyelectrolyte, filter aid polyelectrolyte, polyphosphate, sodium hypochlorite and space for a spare chemical. The chemical building will be prepared to house ultimate chemical needs.

- Site Development - The treatment facility will be located on the southerly portion of the site and the initial phase facilities will be aligned north to south. The facilities will be placed such that future expansion of all process will extend eastward from the initial phase of construction. In the area west of the treatment facilities, a waterworks park will be developed for community interaction with the remaining open space and the treatment facility. The park will be landscaped and incorporate public access and a water feature emphasizing the treatment taking place in the main processes. A 24-foot width access roadway and a 14-foot pedestrian/bicycle access path will be provided from Industrial Way to the treatment plant for public and plant operations access. An internal roadway will be provided for operations and fire access. Space will be provided on the site layout for a potential future ultraviolet disinfection facility and for a second 2.5 MG clearwell.

These project and treatment components are described in more detail in the 10% Preliminary Engineering Design Deliverable described herein and dated February 16, 2000. Such deliverable is subject to approval of Owner and incorporated herein.

Refined project definition will be determined at the time of establishing the guaranteed maximum price (GMP) and will be documented in the GMP Design deliverable described below.

SCOPE OF SERVICES

ELEMENT 1. MANAGEMENT SERVICES

Task 1 - Project Management

Design/Builder will conduct all project management activities required for the project. Design/Builder will prepare biweekly updates of the project schedule and submit to the Owner. Weekly project meetings will be held during design and construction. Meeting summaries will be prepared during design and meeting minutes will be prepared during construction. Required project staffing commitments for the project will be verified and completed. Project roles, assignments and requirements will be communicated with all project team members. Project file system, list of contacts, project administrative procedures, project Intranet system and other administrative elements for the project will be established. Control and management of all subcontractors and project personnel will be accomplished.

Task 2 - Project Workplanning

The Design/Builder shall prepare a project workplan for the Project and submit it to Owner for review. The project workplan will include an overall project schedule, project staffing assignments, a listing of major deliverables and meetings and their respective dates, project safety plan, project budget breakdown (for each task), project billing instructions, schedule of anticipated disbursements and Owner and Design/Builder points of contact (telephone numbers, emergency numbers, etc.). The Design/Builder shall also include Quality Control procedures in the project workplan, as well as procedures for scope, cost and schedule/progress control. All submittals are subject to review and acceptance by Owner. The Design/Builder shall modify submittals to comply with Owner's requests.

Task 3 - Permitting

Ongoing coordination with regulatory agencies concerning the Army Corps 404 permit application will be conducted. Materials required to supplement any permit application as requested by the Owner shall be prepared. Delineation of the wetlands near the bridge crossing of the creek will be conducted. The draft Biological Assessment for the intake will be prepared, provided to the Owner and revised based upon Owner comments. The draft Biological Assessment will be provided to the National Marine Fisheries Service (NMFS) and comments obtained and incorporated into a revised document. A draft of the Army Corps permit will be prepared and provided to the Owner for review. Upon receipt of Owner comments, the completed permit application will be provided to the Owner for submittal to Army Corps.

The potential conditions and requirements of the Land Use and Design Review Board processes will be reviewed with the Owner's Planning Department. A pre-application meeting will be

attended, including project architect and landscape architect. All applicable existing planning documents will be reviewed to determine constraints and conditions that may apply to the project. All requirements of the permitting processes will be communicated to the design-build team and discussions held to ensure that project designs will meet permit requirements. Coordination with the Owner's Planning Department will be required. The draft land use application will be provided to the Owner for review prior to submittal and revised based upon Owner comments. Traffic Impact Analysis will be conducted by DKS Associates (Owner's Consultant). Final land use application will be provided to the Owner for submittal. Attendance by Design/Builder at land use hearings and other meetings during the land use approval process will occur.

It is assumed that both Army Corps and land use permits will be obtained without requiring Design/Builder to attend appeals hearings past the Wilsonville City Council.

Task 4 - Community Involvement

A stakeholder mailing list, project fact sheets, media information, project web site and other materials for public use will be prepared and maintained. Individual meetings will be held with key stakeholders to identify their issues and concerns, including a neighbor committee that has been established by the Owner. Schedule and notices for broader community meetings to be held in February will be prepared.

Meetings will be held with the Owner's staff to develop the park concepts for the site. Potential site requirements will be identified, design concepts will be discussed, and initial site design ideas will be communicated via sketches and other means.

Neighborhood meetings will be held and a public open house design workshop will be held. A presentation will be made to the Park's Advisory Board. Notice of the meetings will be mailed to interested parties and an advertisement for the public meeting will be placed in the *Wilsonville Spokesman* prior to the meeting. The project web page containing public information will be prepared and maintained. It is assumed that a total of six neighborhood and community meetings will be held.

Task 5 - Regional Coordination

As requested by the Owner, the Design/Builder will assist the Owner in providing information required to finance the Project and in resolving issues associated with the other potential partners on the project. This includes identifying how the project can proceed while revenue bond votes are held in Sherwood and Tualatin. Comments will be provided on the draft operations contract Request for Proposals (RFP) and assistance will be provided to the Owner during the operations RFP process.

ELEMENT 2 - 10% PRELIMINARY ENGINEERING (DESIGN DEFINITION)

Task 6 - Performance Criteria

In conjunction with the Owner, the Design/Builder has established performance criteria for the Project. These criteria include Treated Water Quality Goals that serve as the basis for design documents described in this contract and that shall be demonstrated during Performance Testing and Startup of the water treatment plant facility. Performance criteria shall be also be established regarding the administration building, site/civil and landscape facilities. These criteria have been included in the 10% Preliminary Engineering Design Definition submittal described herein and incorporated into this Exhibit.

Task 7 - Geotechnical Investigation

Design/Builder will conduct a geotechnical investigation of the site to determine design and construction parameters for each process facility, roadway, and pipeline. The investigation will include physical borings and test pits at the project site and will be summarized in a report format with design recommendations. Additional site evaluation will also be provided to geophysically map the barge buried on the site. The mapping will provide a location of the buried structure and allow a plan to be prepared for removal, if required.

Task 8 - Site Survey

Design/Builder will develop a site map to locate horizontal and vertical survey control. The map will include identification of contours, major site vegetation and trees, individual trees will be mapped in the greenway and at the north ravine crossing, bathymetric survey results in the Willamette River, and property corners. Survey will also be prepared for Industrial Way roadway revisions and the 20 foot western property strip including property locations, easement description and contours for site mapping. The site maps will be utilized as the basis for all project design development. Design-Builder will prepare easements and right-of-way descriptions for the finished water pipeline and road alignment to Kinsman Road upon direction from Owner as to selected alignment.

Task 9 - Pilot Testing

Design/Builder will perform a pilot test for the Actiflo process. The test location will be at the south end of Boones Ferry Road and east of the railroad. The purpose of the pilot test program will be to have documentation of the process performance in effectively settling water treatment solids. Due to the relative newness of this process, the documentation will be used if needed to answer questions that might raised by citizens on its effectiveness. The pilot test work will include securing the pilot unit from Kruger (Actiflo manufacturer), preparing an experimental plan, providing temporary electrical utilities, providing temporary pumping and piping from the river to the pilot plant, providing temporary piping and pumping (if required) for conveying all treated flows and sludges from the pilot unit to the existing sanitary sewer located north of the

pilot plant site. A pilot filter column complete with media identical to the proposed main process filter design will be provided by Owner and plumbed to receive settled water from the Actiflo process. Staff will be provided to coordinate with the Kruger personnel, operate the filter column, and collect data during the maximum 3-week test period. Demobilization of all temporary facilities will also be provided. Design-Builder shall test sludge from the pilot plant and either certify to the owner that said material can be disposed of in a landfill or develop an alternative plan of action for disposal of sludge from the Project. Site shall be restored to original conditions. Permits for siting the pilot plant and withdrawing water from the river for this test will be by Owner.

Task 10 - 10% Preliminary Engineering Design Definition

Design/Builder will develop the design for the project to define the facilities and processes that will be utilized in the project. Definition of project quality in terms of materials of construction, equipment preferences, levels of redundancy, and other factors will be determined. Workshops on Process, Operations, and Quality will be held with the Owner to refine these concepts. Each workshop will be preceded by draft materials for review and discussion regarding the workshop subject. The workshops will review materials and come to agreement on specifics related to the workshop subject for continued design development. Meetings will be held with building department officials to determine the requirements for building permit approval and to determine the implications of building code interpretations on the project design.

A 24-foot-width roadway with a 14-foot bicycle/pedestrian path will be provided to access the plant and extend into the plant for operations. The roadway will be designed per recommendations of the geotechnical investigation and per City roadway design standards. Options for extending the road from the property to Wilsonville Road will be examined. A Technical Memorandum will be provided to the Owner for review and decision as to whether to include road extension work into the Scope of Work for final design and construction. Site storm drainage will be designed regarding quality and routing per City design requirements. Fire protection will be provided consistent with Building Department and fire jurisdiction requirements.

The site will be planned to accommodate provisions for future process expansion to a maximum flow of 70 mgd. In addition to process expansion, space will be provided to accommodate future ultraviolet radiation disinfection, future 2.5 million-gallon clearwell, and a future raw water pipe for 50 mgd flow.

Task 11 – 10% Preliminary Engineering Design Definition Deliverable

A project 10 percent completion Preliminary Engineering Design Submittal will be provided. This submittal will include:

- Design criteria
- Process flow sheets

- Hydraulic grade line
- P&IDs
- Site plan
- Building floor plans/layouts
- Major equipment list
- Plan layout of process structures and equipment
- Electrical 1-line diagram
- Instrumentation block diagram
- Updated Cost Estimate

This 10% Preliminary Engineering Design Deliverable is dated February 16, 2000. Such deliverable is subject to approval of Owner and incorporated herein.

ELEMENT 3 – GMP DESIGN AND GMP PRICE

Task 12 - Guaranteed Maximum Price (GMP) Design

Based on tasks above; City, County and APWA Standards; compliance with code requirements including chemical handling and storage and Americans with Disabilities Act (ADA); and other work and investigations performed as part of the Preliminary Engineering design; the Design/Builder will prepare Design to GMP Documents for development and incorporation into the GMP, as defined in Article 6 Price and Payment.

The GMP Design Documents shall consist of drawings and other documents to fix and describe the size and character of the Project as to architectural, civil, structural, mechanical and electrical systems; landscaping; materials and finishes; and such other elements as may be appropriate and necessary for Owner to determine nature and extent of improvements included in the price. The percent completion of these documents will be at least 30%. These GMP Design documents shall be the basis for the Guaranteed Maximum Price.

Design/Builder will hold regular review meetings with the Owner and their representative during GMP design development to refine project concepts presented in the 10% Preliminary Design. Design/Builder will attend a value-engineering workshop held by the Owner to review project drawings and concepts presented in the GMP Design documents.

Task 13 – GMP Design Submittal

Design/Builder will submit 10 copies of the GMP Design Submittal to the Owner no later than the date established in the approved Owner/Design/Builder schedule.

The Design to GMP Documents shall include, but are not limited to, the following drawings and specifications. This list is intended to help describe the minimum requirements of the GMP Documents and is not intended to be all-inclusive. All drawings developed for the design will be prepared in AutoCAD format, latest version.

- Final Geotechnical Report
- Index to Drawings
- Legends/Abbreviations
- Hydraulic Profiles
- Site and Grading Plans
- Erosion Control Plan
- Tree Preservation Plan
- Landscape Plan and Related Site Improvements
- Trail Alignments and Performance Criteria
- Yard Piping Plan
- Electrical Site Plan
- Storm Water Control Concepts and Performance Criteria
- FW Transmission Plan and Interconnection Details
- FW Transmission System Block Diagram (SCADA) and other telemetry requirements
- P&IDs with Instruments and Tag Numbers
- Process Instrumentation & Control Unit Process Control Narratives
- Process Mechanical Plans and Major Sections
- Bridge Plan and Elevations
- Building Floor Plans and Major Equipment Layout
- Building and Wall Architectural Elevations
- Building Finish Schedule
- Building and Fire Code Requirements
- Structural Design Concepts and Performance Criteria
- Plant Utilities/Site Utilities
- HVAC/Plumbing Design Concepts and Performance Criteria
- Material Selection
- Electrical, Security, Communications and Emergency Power Design Concepts and Performance Criteria
- Electrical Power Distribution & MCC One-Lines
- Updated Equipment Listing (manufacturers, firmed drive types and electrical loads)
- Mechanical Schedules (Valves, Gates, Actuators, Plant Piping)
- Draft Specifications and Data Sheets
- Updated Engineering/Construction Cost Estimate
- Updated Project Schedule
- Updated Treated Water Quality Goals
- Web page illustrations

The GMP Design Submittal documents, as approved by the Owner, shall be incorporated into this Exhibit.

Task 14 – GMP Price Submittal

Based upon the GMP design submittal, the Design/Builder will prepare and submit a GMP in the form of a Schedule of Values. A copy of the anticipated Schedule of Values is shown in Exhibit E.

In addition to the GMP Design submittal, the GMP Price Submittal shall identify assumptions, which include but are not limited to, spare parts, consumables, anticipated list of drawings for the Construction Design submittal, project CPM schedule, community support services, permit support services, coordination with Owner's Contract Operator and construction organization and procedures and Owner provided deliverables.

ELEMENT 4 – CONSTRUCTION DESIGN AND PRECONSTRUCTION ACTIVITIES

Task 15 – Construction Design Documents

The Design/Builder will complete the design of the Project and prepare Construction Design Documents. These documents will include all information required to construct the project and obtain building permits.

The Construction Design Documents shall include complete and comprehensive construction plans and specifications for the Project including, but not limited to, the following. This list is intended to help describe the minimum requirements of the Final Design Documents and is not intended to be all-inclusive.

- Architectural and structural design, including plans, sections, elevations, schedules and details.
- Civil design, including stormwater management, erosion control, grading, paving, retaining walls, and all site and transmission utilities.
- Landscape architectural design, including planting and irrigation, site amenities, trail alignments and surfacing.
- Mechanical design, including all building and process equipment, layout, piping, and chemical storage tanks and delivery.
- Electrical design, including layout, one-line diagram, components and lighting.
- Instrumentation and control, including loop and component specifications, and panel layouts.
- Arborist-approved program for tree protection during construction.
- Detailed construction staging plan and program, including provision for continuous access by Wilsonville Concrete and Orepac and connections to the existing Owner water supply system.
- Construction traffic control plan.
- Performance criteria

During the development of the Construction Design documents, the Design/Builder shall perform constructability reviews and quality control reviews.

Design/Builder will submit 10 copies to Owner of the Construction Design no later than the date established in the Major Project Milestone Schedule (Exhibit B). All drawings developed for the design will be prepared in AutoCAD format, latest version.

Task 16 - Contract Operator Interface

Following selection of the Contract Operator by Owner, Design/Builder shall schedule review meeting to discuss project design. Design/Builder shall provide Contract Operator with current design documents and review schedule. Design/Builder shall review comments from Contract Operator with Owner and incorporate comments as appropriate.

Task 17 – Preconstruction Preparation

As required to meet project schedule, the Design/Builder will prepare letters of intent and request shop drawing preparation from vendors and suppliers. Shop drawings will be prepared and provided to the Owner for review and approval. No fabrication of equipment or facilities will be undertaken without prior authorization of the Owner.

ELEMENT 5 – CONSTRUCTION SERVICES

Task 18 – Engineering Services During Construction

Design/Builder will perform resident engineering services associated with the Project; consult with and advise Owner. The Design/Builder shall provide full time resident engineering staff at the Project site during all construction activities to oversee all self-performed work, the procurement of materials, equipment, and supplies as well as the procurement and work of subcontractors and vendors. Owner will provide a resident project representative, separate from the Design/Builder staff, to observe construction progress. The Design/Builder shall make available a set of the most current construction documents (specifications/drawings) to the Owner on-site representatives. The Design/Builder shall provide all necessary services to make this a complete and operable project, as well as the following specific services:

- a. ***Submittal Review.*** Design/Builder will review shop drawings, technical submittals, and other data which the subcontractor or vendors are required to submit. These shall be reviewed for general conformance with the design concept of the project and general compliance with the information given in the Contract Documents. The Design/Builder shall provide Owner with an anticipated list of submittals prior to commencement of construction activities. From this list, Owner will determine the submittals which require Owner review/comment. The

Design/Builder shall be responsible for coordinating Design/Builder and Owner's submittal review comments for all submittals, and forwarding them to the appropriate subcontractors or vendors.

- b. **Site Visits.** Design/Builder shall make periodic visits to the site by design personnel, including visits by Design/Builder personnel and their subcontractors, at intervals appropriate to the various stages of construction as the Design/Builder deems necessary to observe the progress and quality of the work and to determine, in general, if the work is proceeding in accordance with the project intent. The Design/Builder shall keep Owner informed of the progress of the work.
- c. **Design Personnel Site Visits.** Design/Builder shall make visits to the site by design personnel to observe start-up and performance testing and to assist Owner and Operations Contractor, to be selected by Owner, in taking over operation of the project. Determine if the equipment and facilities are operating properly and familiarize Owner and Operations Contractor staff with the operation and functions of the project.
- d. **Record Drawings.** The Design/Builder shall revise original construction drawings and submit to Owner, within 90 working days of the date of final completion of the work. The Design/Builder shall provide 10 sets of half size drawings (11x17) and 1 set of full size drawings (22x34) and one set of 3 mil mylar for each size. The Design/Builder shall provide drawings in electronic format and photographs in digital format on a CD, compatible with the Owner's CAD programs.
- e. **Permits.** The Design/Builder shall provide coordination with regulatory agencies in regard to construction, permit conditions, and certification for release for operations. Attend necessary meetings with the regulatory agencies during construction phase. Specific permits for which Design/Builder shall be responsible for obtaining are the building, plumbing, mechanical, electrical, Oregon Health Division, Public Works and DEQ construction grading permits.
- f. **Final Inspection.** The Design/Builder shall make final review of the construction to determine if the work has been completed in conformance with the intent of the Contract Documents.
- g. **Agency Approval to Place Project In-Service.** The Design/Builder shall submit bacteriological tests, as-built drawings, etc. as required by the Oregon Health Division for clearance in placing new facilities in operation.
- h. **Coordination with Existing Facility Operations.** The Design/Builder shall coordinate all Project tie-in activities with Owner staff. No shutdowns or tie-ins will be permitted immediately preceding any holiday period, or weekend. All plant shutdown and tie-in activities shall be planned at least 30 days in advance.

The Design/Builder shall submit a written plan of shutdown/tie-in activities prior to each occurrence for Owner review and approval. Design/Builder shall pothole and otherwise ensure that all materials and equipment required for tie-ins are available on-site prior to initiating any shutdown. In addition, prior to each shutdown/tie-in a coordination meeting will be held with the Design/Builder and Owner staff (at a minimum) in attendance. Owner reserves the right to delay, modify or otherwise change the proposed conditions of the tie-in.

- i. **Operation and Maintenance Manuals.** The Design/Builder shall, in coordination with the plant Contract Operator, develop a Project Operations Manual. The manual should provide complete information for operation of the Project as an operating system and systems. Equipment O&M Manuals should be provided for each piece of equipment supplied. These manuals should be collated and bound into 3-ring binders, organized by facility, separate from the Project Operations Manual prepared by the Design/Builder. Design/Builder shall also coordinate with the Contract Operator in the preparation of the O & M Manuals to obtain an operator - oriented perspective in the final documents.
- j. **Post-Commissioning Services.** The Design/Builder shall provide reasonable post-commissioning services to correct or fine tune any piece of equipment or system. These services are considered to be part of this Design/Build contract and non-warranty related.
- k. **Construction Management Plan.** The Design/Builder shall prepare a construction management plan which outlines the policies and procedures to be utilized by the Design/Builder in managing the work (e.g. shop drawing flowsheet, shop drawing approval form, computerized submittal tracking system, Request For Information (RFI) flowchart, etc.). Submit management plan to Owner for review and acceptance.
- l. **Materials Testing.** The Design/Builder shall perform all required materials testing for the Project in accordance with all applicable requirements and provide results to Owner as requested.
- m. **Public Involvement.** The Design/Builder shall continue to provide assistance to OWNER on an as-needed basis with public awareness meetings. Establish a website with current information on project status and scheduled activities.
- n. **Factory Test.** The Design/Builder and Owner shall attend, at the discretion of the Design/Builder and/or Owner, all factory tests to assure compliance with the requirements of the specifications of all equipment.

- o. ***Owner's Representative Trailer.*** The Design/Builder shall provide a construction trailer equipped with utilities for the use of the Owner's representative as an on-site office.

Task 19 - Construction Services

- a. ***Supervision of Work.*** Design/Builder shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Construction in accordance with the Contract Documents. Design/Builder shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction and to see that the completed Work complies accurately with the Contract Documents, and shall keep the Owner advised as to the quality and progress of the Work.
- b. ***Superintendence of Work.*** Communications to the project manager or field superintendent shall be as binding as if given to Design/Builder. Design/Builder's project manager and field superintendent shall be deemed to have full authority to act for and on behalf of Design/Builder on matters arising out of or resulting from the Contract Documents.
- c. ***Labor.*** Design/Builder shall provide competent, suitably qualified personnel to survey and lay out the Construction and perform Work required by the Contract Documents. Design/Builder shall maintain good discipline and order at the Site.
- d. ***Material and Equipment.*** Warranties and guarantees specifically called for by the Contract Documents shall expressly run to the benefit of Owner. Material and equipment to be incorporated into the Work shall be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise provided in the Contract Documents. Material and equipment to be incorporated into the Work shall be stored to ensure the preservation of their quality and fitness for the Work. Stored material and equipment to be incorporated in the Work shall be stored in locations acceptable to Owner.
- e. ***Project Records.*** Design/Builder shall maintain project records as outlined in Article 3. Project records shall include, but are not limited to, documents relating to competitive bidding of the Work, addenda, shop drawings, change orders, field test records, daily reports and photographs and record drawings. All records shall be submitted in three-ring binders in an orderly manner, complete with dividers.
- f. ***Progress Payments.*** The Schedule of Values, Exhibit E, will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to OWNER. Progress payments on account of Unit Price

Work will be based on the number of units completed. Progress payments on account of Lump Sum Work will be based on the percent complete.

- g. ***Progress Schedules.*** The Design/Builder shall prepare biweekly updates of the schedule and submit one with the Application for Progress Payment and one between progress payments.
- h. ***Substitutes and "Or-Equal" Items.*** Whenever an item of material or equipment is specified or described in the 30% GMP Design Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description establishes the type, function, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or-equal" item or no substitution is permitted, other items or material or equipment of other Suppliers may be accepted by Owner under the following circumstances:

"Or-Equal". If in Owner's sole discretion an item of material or equipment proposed by Design/Builder is equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by Owner as an "or-equal" item, in which case review and approval of the proposed item may, in Owner's sole discretion, be accomplished without compliance with the requirements for acceptance of proposed substitute items.

Substitute Items. If in Owner's sole discretion an item of material or equipment proposed by Design/Builder does not qualify as an "or-equal", it will be considered a proposed substitute item and the Design/Builder will submit a Design/Build Incentive Change Proposal (D/BICP). The D/BICP will provide sufficient information to allow Owner to determine that the item of material or equipment proposed is an acceptable substitute therefor. No request for review of proposed substitute items of material or equipment will be accepted by Owner from anyone other than Design/Builder. If Design/Builder wishes to furnish or use a substitute item of material or equipment, Design/Builder shall certify (and assume all risks of an erroneous certification) that the proposed substitute will perform adequately the functions and achieve the results called for by the Contract Documents, be similar in salient features to that specified, and be suited to the same use as that specified. The D/BICP application will state the extent, if any, to which the evaluation and acceptance of the proposed substitute will prejudice Design/Builder's achievement of Substantial Completion, whether or not acceptance of the substitute for use in the Work will require a change in the Contract Documents (or in the provisions of other contracts with Owner for Work on the Project) to adapt the design to the proposed substitute, and whether or not incorporation or use of the substitute in connection with the Work is subject to payment of any license fee or royalty. Variations of the proposed substitute from that specified will be identified in the D/BICP application and available maintenance, repair, and replacement service will be indicated. The D/BICP application will also contain an itemized estimate of costs or credits that will result directly or indirectly from acceptance of such substitute. Owner may require Design/Builder to furnish additional data about the proposed substitute.

- i. ***Substitute Construction Methods or Procedures.*** If a specific means, method, technique, sequence, or procedure of construction is shown or indicated in and expressly required by the 30% GMP Design Documents, Design/Builder may submit a Design/Builder's D/BICP to furnish or utilize a substitute means, method, technique, sequence, or procedure of construction acceptable to Owner. Design/Builder shall submit sufficient information to allow Owner to determine whether the substitute proposed may be authorized upon terms and considerations acceptable to Owner.

- j. ***Owner's Evaluation.*** Owner will be allowed the time within which to evaluate proposal or submittal as per the Contract requirements. Owner will be the sole judge of acceptability. No "or-equal" or substitute shall be ordered, installed, or utilized without Owner's prior written acceptance which will be evidenced by either a Change Order, Field Order, a reviewed Shop Drawing, or Written Amendment. Owner may require Design/Builder to furnish at Design/Builder's expense a special indemnity

performance guarantee or other security as a condition for approval of "or-equal" or substitute, and accept increased liability. Owner will record costs required by Owner and Owner's representative in evaluating substitutes proposed or submitted by Design/Builder and in making changes in the Contract Documents (or in the provisions of another contract with Owner for Work on the Project) occasioned thereby.

k. **Safety.** Design/Builder shall be responsible for compliance with Laws and Regulations for initiating, maintaining, and supervising safety precautions and programs in connection with the Construction. Design/Builder shall take necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

- persons on or off the Site who may be affected by the Construction;
- the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
- other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.

Design/Builder shall comply with applicable Laws and Regulations of public bodies having jurisdiction for safety of persons or property or to protect them from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Design/Builder shall notify Owners of adjacent property, Underground Facilities, and other utility Owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.

Damage, injury, or loss to, property negligently caused, directly or indirectly, in whole or in part, by Design/Builder, its Subcontractors, Suppliers or other persons or organizations directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, either jointly or separately, shall be remedied by Design/Builder.

Design/Builder's duties and responsibilities for safety and for protection of the Construction shall continue until such time as the Work is completed and accepted by Owner by the making of final payment.

Design/Builder shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety

precautions and programs. Design/Builder shall develop a Safety Plan for the site. All personnel and visitors on the site shall review and abide by this Safety Plan.

Design/Builder shall be responsible for coordinating exchange of materials safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers and Owner at the Site in accordance with Laws and Regulations.

Approval of substitution of material, article, or equipment by Owner shall not relieve Design/Builder from its obligation to furnish Work in conformance with the Contract Documents.

Task 20 - Testing and Startup Services

20.1 Equipment and System Testing

The Design/Builder shall test and startup all plant equipment and systems. Perform functional and performance tests on each piece of equipment and system to verify correct operation over the designed range of operation.

20.2 Facility Startup and Performance Test

The Design/Builder shall prepare Facility Startup and Performance Test Plan for Owner approval prior to start of activities. The Test Plan shall include duration of various test conditions, monitoring requirements, staff plans, and reporting format. The Design/Builder shall assist Owner staff, and Owner's Representative staff and Contract Operator by forming a startup team that will attend pertinent startup meetings, startup and test facilities, and troubleshoot any problems during startup.

20.3 Commissioning Period

The Design/Builder shall operate plant in operating conditions defined in the Facility Startup and Performance Test Plan during a complete Project performance test. Performance test shall be defined in the Facility Startup and Performance Test Plan prepared in Task 20.2 and shall last a minimum of 7 days with uninterrupted service, except as scheduled in the Test Plan.

OBLIGATIONS OF OWNER

- Owner shall provide adequate resources for submittal reviews and review and return all items delivered to the Owner for review within the time periods specified in the Agreement.
- Owner shall review any draft deliverables other than shop drawings within the timeframes required by the Agreement. The Design/Builder will consolidate comments and annotate any conflicts.
- Owner shall review CADD record drawings within 30 working days of delivery and provide Design/Builder with approval or any review comments which may need to be addressed.
- Owner shall provide at least one on-site full time resident observer at the Project during the construction phase. His duties and authority shall be clearly stated in writing to the Design/Builder before his assignment to the Project.
- Owner shall review shop drawings, “or equal” (substitute) items, and control strategies with the time periods specified in the Agreement.
- Owner shall participate in equipment and Project startup and testing.
- Owner shall initiate and coordinate public awareness sessions, as required.
- Owner shall provide access to the site in accordance with the project schedule.
- Owner shall apply for and provide all necessary notices, permits, rights, easements, rights-of-way and approvals required of an Owner to construct and/or test the Project including the Army Corps of Engineers 404 permit, land use permit (including Design Review Board review), water rights extensions, additional water rights point of diversion, DSL easements, and pilot plant land use and pilot plant water rights permits.
- Owner shall provide the services of the Plant Contract Operator to assist in preparation of the O&M Manuals.
- Owner shall expedite the review and approval of building permits.

**EXHIBIT B
MAJOR PROJECT MILESTONE SCHEDULE**

MILESTONE	DATE OR DURATION
INITIAL OWNER NOTICE TO PROCEED	DECEMBER 23, 1999
10 % PRELIMINARY ENGINEERING DESIGN DEVELOPMENT SUBMITTAL	FEBRUARY 16, 2000
OWNER'S APPROVAL OF 10% SUBMITTAL	MARCH 16, 2000
GMP DESIGN SUBMITTAL	APRIL 3, 2000
OWNER'S NOTICE TO PROCEED FOR TO PROCURE VENDORS AND SUBCONTRACTORS AND START MOBILIZATION ACTIVITIES, SHOP DRAWINGS AND SUBMITTALS	APRIL 3, 2000
OWNER' APPROVAL OF GMP DESIGN SUBMITTAL	MAY 3, 2000
SUBMIT DESIGN/CONSTRUCTION GMP PRICE	JUNE 1, 2000
SUBMIT CONSTRUCTION DESIGN DELIVERABLE	JULY 1, 2000
OWNER'S CONSTRUCTION NOTICE TO PROCEED FOR FIELD INSTALLATION	JULY 1, 2000
OWNER'S APPROVAL OF CONSTRUCTION DESIGN DELIVERABLE	JULY 1, 2000
3 MGD CAPACITY AVAILABLE TO DISTRIBUTION SYSTEM	639 DAYS AFTER CONSTRUCTION NOTICE TO PROCEED (APRIL 1, 2002 BASED ON JULY 1, 2000 CONSTRUCTION NOTICE TO PROCEED)
SUBSTANTIAL COMPLETION	761 DAYS AFTER CONSTRUCTION NOTICE TO PROCEED (AUGUST 1, 2002 BASED ON JULY 1, 2000 CONSTRUCTION NOTICE TO PROCEED)
FINAL COMPLETION	822 DAYS AFTER CONSTRUCTION NOTICE TO PROCEED (OCTOBER 1,

	2002 BASED ON JULY 1, 2000 CONSTRUCTION NOTICE TO PROCEED)
END OF PROJECT WARRANTY PERIOD	365 DAYS AFTER SUBSTANTIAL COMPLETION

Exhibit C

Designation of Authorized Representative and Key Team Members

Design/Builder:

Joe Glicker - Project Manager
Garry Wohlgemuth - Assistant Project Manager
Steve Cabrol - Design/Build Manager
Doug Gabriel - Superintendent

Exhibit D

State Laws

1. **Payment for Labor or Material.** Design/Builder shall make payment promptly, as due, to all persons supplying to Design/Builder labor or material for the prosecution of the Work provided for in this Agreement.
2. **Contributions to the Industrial Accident Fund.** Design/Builder shall pay all contributions or amounts due the Industrial Accident Fund from Design/Builder or Subcontractors to Design/Builder incurred in the performance of this Agreement.
3. **Liens Prohibited.** Design/Builder shall not permit any lien or claim to be filed or prosecuted against Owner on account of any labor or material furnished.
4. **Income Tax Withholding.** Design/Builder shall pay to the Oregon Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
5. **Payment of Claims by Owner.** If Design/Builder fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to Design/Builder by any person in connection with this Agreement as the claim becomes due, Owner may pay the claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due to Design/Builder pursuant to this Agreement. Owner's payment of a claim under this Paragraph shall not relieve Design/Builder or Design/Builder's surety from responsibility for such claims.
6. **Hours of Labor.** Pursuant to ORS 279.316 and 279.334, and unless an applicable collective bargaining agreement provides otherwise for a public improvement, no person employed in the performance of this Agreement shall be employed for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency or where the public policy absolutely requires it, and in such cases the person shall be paid at least time and a half pay for all overtime in excess of eight hours a day or 40 hours in any one week when the work week is five consecutive days (Monday through Friday) or for all overtime in excess of 10 hours a day or 40 hours in any one week when the work week is four consecutive days (Monday through Friday) and for work performed on New Year's Day on January 1, Memorial Day on the last Monday in May, Independence Day on July 4, Labor Day on the first Monday in September, Thanksgiving Day on the fourth Thursday in November or Christmas Day on December 25.
7. **Workers' Compensation.** Design/Builder warrants that all persons engaged in performing the Work and subject to the Oregon workers' compensation law are covered by a workers' compensation plan or insurance policy that fully complies with Oregon law.

Design/Builder shall indemnify Owner for any liability incurred by Owner as a result of Design/Builder's breach of the warranty under this Paragraph.

8. Medical Care for Employees. Design/Builder shall promptly, as due, make payment to any person, copartnership, association or corporation furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to the employees of Design/Builder of all sums that Design/Builder agrees to pay for such services and all moneys and sums that Design/Builder collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service.

9. Environmental and National Resources. Environmental and National Resources Law, ORS 279.318, is hereby incorporated into this Agreement and is fully set forth herein.

10. Convict Labor. Except as permitted by ORS 421.410, Design/Builder shall not employ any individual in performance of this Agreement who is an inmate of a penal or correctional institution.

11. Design/Builder shall implement and maintain a mandatory drug testing program in accordance with ORS 279.312.

12. Other laws, statutes, regulations and other requirements that are required to be included in this Agreement are incorporated by reference.

Exhibit D-1

Prevailing Wage Rates

[To be inserted]

**EXHIBIT E
SCHEDULE OF VALUES**

**ENGINEERING, PERMITTING AND MANAGEMENT SERVICES THROUGH
JULY 1, 2000:**

MANAGEMENT SERVICES :	\$400,000
10% PRELIMINARY ENGINEERING:	\$400,000
GMP DESIGN AND GMP PRICE:	\$400,000
CONSTRUCTION DESIGN AND PRECONSTRUCTION ACTIVITIES:	\$1,325,000

CONSTRUCTION SERVICES AFTER JULY 1, 2000: *

***All values below for Construction Services will be inserted by Amendment to this Agreement at the time the GMP is agreed upon.**

CONSTRUCTION SERVICES:

**Raw water intake and
Pump station :**

Screening
Intake Pipe
Wetwell
Pump Station Building
Pumps
Electrical
Raw Water Pipeline

Water treatment plant:

Clarification
Ozone Contactor
Ozone Generators
Filters
Chemical Feed Systems
Backwash System
Sludge Handling
Clearwell
FW Pump Station Building
FW Pumps
Administration Building
Landscaping
Roads and Bridge

Storm drainage
Overflow and yard piping
Electrical Service
Backup Power
Telemetry

Finished water pipeline:
Meter/PRV to Wilsonville
WTP to Kinsman Rd.

**TOTAL GUARANTEED MAXIMUM PRICE (GMP): Value will be inserted by
Amendment to this Agreement at the time the GMP is agreed upon.**

EXHIBIT E-1

COST TO BE REIMBURSED AND COSTS NOT TO BE REIMBURSED

The basis for determining labor, subcontracting and other direct project costs shall be actual costs burdened with overhead rates and general and administrative costs as accepted in the 1999 federal Department of Defense Auditing Agency (DDAA) report. These audited costs are:

- **Design-Builder's Labor:**
 - Engineering (Montgomery Watson Americas, Inc):
 - (Direct Salary Cost plus 121.95 percent Salary Overhead plus 7.75 dollars per hour Associated Project Costs) plus 16.19 percent General and Administrative Costs
 - Construction (Montgomery Watson Constructors, Inc.):
 - (Direct Salary Cost plus 62.1 percent Salary Overhead) plus 5.08 percent General and Administrative Costs
- **Design-Builder' Subcontractors and all Other Direct Costs:**
 - Actual Cost (Invoice less any discounts taken) plus 5.08 percent General and Administrative Costs

Reimburable Costs:

Reimbursable Costs shall include the following:

- Wages of direct employees of Design-Builder performing the Work at the Site or, with Owner's agreement, at locations off the Site.
- Wages or salaries of Design-Builder's supervisory and administrative personnel engaged in the performance of the Work and who are located at the Site or working off-Site to assist in the production or transportation of material and equipment necessary for the Work.
- Wages or salaries of Design-Builder's personnel stationed at Design-Builder's principal or branch offices and performing the following functions directly related to the Project.
 - Design, Planning, Permitting and Other Professional Services
 - Project Accounting
 - Project Scheduling
 - Project Contracting and Purchasing
 - Senior Project Management Oversight for Personnel named in Design Builders Proposal
- The reasonable portion of the cost of travel, accommodations and meals for Design-Builder's personnel necessarily and directly incurred in connection with the performance of the Work.

- Payments properly made by Design-Builder to Subcontractors and Design Consultants for performance of portions of the Work, including any insurance and bond premiums incurred by Subcontractors and Design Consultants.
- Costs, including transportation, inspection, testing, storage and handling, of materials, equipment and supplies incorporated or reasonably used in completing the Work.
- Costs less salvage value of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by the workers that are not fully consumed in the performance of the Work and which remain the property of Design-Builder, including the costs of transporting, inspecting, testing, handling, installing, maintaining, dismantling and removing such items.
- Design-Builder's actual costs for telecommunications, photocopies, computers, shipping and postage and other office administrative costs incurred at the project site.
- Costs, including transportation, inspection, testing, storage and handling of materials, equipment and supplies incorporated or reasonably used in completing the Contract Work.
- Costs for materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by the workers that are not fully consumed in the performance of the Contract Work and which remain the property of the Design-Builder, including the costs of transporting, inspecting, testing, handling, installing, maintaining, dismantling and removing such items.
- Costs of removal of construction debris and waste from project sites.
- The reasonable costs and expenses incurred in establishing, operating and demobilizing offices at project sites, including but not limited to the cost of facsimile transmissions, long-distance telephone calls, postage and express delivery charges, telephone services, and photocopying.
- Rental charges and the costs of transportation, installation, minor repairs and replacements, dismantling and removal of temporary facilities, machinery, equipment and hand tools not customarily owned by the workers, which are provided by the Design-Builder at the project sites, whether rented from the Design-Builder or others, and incurred in the performance of the Contract Work. Any equipment owned by the Design-Builder with a value in excess of \$10,000 will be charged at 75% of prevailing rates.
- Premiums for insurance and bonds required by this Agreement or the performance of the Contract Work.
- All company vehicle leasing, insurance, operating and maintenance costs.
- All fuel and utility costs incurred in the performance of the Contract Work.
- Sales, use or similar taxes, tariffs or duties incurred in the performance of the Contract Work.
- Costs for permits, royalties, licenses, tests and inspections incurred by the Design-Builder as a requirement of this Agreement or any government requirement.

- The cost of defending suits or claims for infringement of patent rights arising from the use of a particular design, process, or product required by the Owner, paying legal judgments against the Design-Builder resulting from such suits or claims, and paying settlements made with Owner's consent.
- Deposits which are lost, except to the extent caused by the Design-Builder's negligence.
- Costs incurred in preventing damage, injury or loss in case of an emergency affecting the safety of persons and property.
- Costs incurred by Design-Builder (as opposed to subcontractors or suppliers that perform labor or supply equipment for construction) in repairing or correcting defective, damaged or nonconforming Work, provided that such defective, damaged or nonconforming Work was beyond the reasonable control of Design-Builder and not the negligence of Design-Builder or those working by or through Design-Builder. If the costs associated with such defective, damaged or nonconforming Work are recoverable from insurance, Subcontractors or Design Consultants, Design-Builder shall exercise best efforts to obtain recovery from the appropriate source and credit Owner if recovery is obtained.
- Other costs reasonably and properly incurred in the performance of the Contract Work and approved in advance by Owner.

Non-Reimbursable Costs:

The following shall be considered Non-Reimbursable Costs:

- Compensation for Design-Builder's personnel stationed at Design-Builder's principal or branch offices, except as provided for herein.
- Overhead and general expenses, except as provided for herein or which may be recoverable for changes to the Work.
- The cost of Design-Builder's capital used in the performance of the Work.
- Any costs in repairing or correcting defective, damaged or nonconforming work if caused by the negligence of Design-Builder or those working by or through Design-Builder.
- If the parties have agreed on a GMP, costs that would cause the GMP, as adjusted in accordance with the Contract Documents, to be exceeded.

Exhibit F

Hazardous Materials

1. **Anticipated Hazardous Materials Work.** Design/Builder's GMP and the Schedule are based upon certain assumptions with respect to the existence of Hazardous Materials at the Site. These assumptions are based upon the anticipated presence at the _____ site of soil and groundwater containing one or more of the following:

The provisions of Section 2 of this Exhibit F shall not apply to the Anticipated Hazardous Materials Work as long as the Hazardous Materials are consistent with the location and class of such Hazardous Materials.

2. **Other Hazardous Materials.** Except for the Anticipated Hazardous Materials Work, in the event Design/Builder encounters materials, conditions, waste, groundwater or substances at, in, on or under the Site that Design/Builder reasonably suspects are Hazardous Materials, Design/Builder shall stop the affected portion of the Work, secure the area and promptly notify Owner. Owner may retain or cause the retention of an environmental consultant or, pursuant to a Change Order, direct Design/Builder to retain the services of an environmental consultant to perform investigation, assessment, sampling and analysis of the suspect materials, conditions, waste, groundwater or substances and to recommend a remediation program if such materials, conditions, waste, groundwater or substances constitute Hazardous Materials. If the environmental consultant determines that the materials, conditions, waste, groundwater or substances do not constitute Hazardous Materials, Design/Builder shall recommence the suspended Work and there shall be no adjustments to the GMP, Scheduled Substantial Completion Date and/or Milestone Date(s). If the environmental consultant determines that the materials, conditions, waste, groundwater or substances constitute Hazardous Materials, the Owner may retain or cause the retention of an environmental remediation firm or, pursuant to a Change Order, direct Design/Builder to retain the services of an environmental remediation firm to remediate such Hazardous Materials in accordance with remediation plan. In the event Owner directs Design/Builder to retain the services of an environmental remediation firm, Design/Builder shall cause such remediation firm to develop scopes of work for any assessment or remediation work and shall allow Owner to review and approve all plans before initiating any work.

Except for the Anticipated Hazardous Materials Work and in the event Design/Builder encounters materials that it reasonably suspected constitute Hazardous Materials, Design/Builder shall be entitled to a Change Order adjusting the GMP, Scheduled Substantial Completion Date and/or Milestone Date(s), as appropriate, for the costs and delays associated with environmental assessments or remediations performed pursuant to the procedures set forth herein. The GMP does not include any costs and the Schedule does not include any time for environmental assessments or remediations for Hazardous Materials other than the Anticipated Hazardous Materials Work described in Paragraph 1 above.

Except for the Anticipated Hazardous Materials Work, Design/Builder shall not be responsible for the identification, permitting, treatment, storage, transport, remediation or disposal of such preexisting Hazardous Materials except as agreed to by Owner and Design/Builder pursuant to a Change Order.

3. Not a Generator. Except for the Anticipated Hazardous Materials Work, Owner agrees that it shall be the waste generator of all Hazardous Materials removed from the Project Site and that, unless otherwise specifically agreed to by Owner and Design/Builder pursuant to Change Order, Design/Builder, not Owner, shall be responsible for:

- a. Signing all hazardous waste manifests and waste shipment records;
- b. Selecting and/or approving of waste disposal sites for wastes removed from the Project Site; and
- c. Receiving and maintaining all waste disposal records in accordance with the Oregon Department of Environmental Quality regulations.

Owner agrees that Design/Builder has no responsibility as an "Owner" or "Operator" for any pre-existing Hazardous Materials at the Project Site (except for such Hazardous Materials brought onto the Project Site or generated by Design/Builder) and Owner agrees to indemnify, reimburse, defend and hold harmless Design/Builder against all claims, suits, fines, penalties, liabilities, cost or expenses arising out of or related to pre-existing Hazardous Materials at the Project Site (except for such Hazardous Materials brought onto the Project Site or created on the site by Design/Builder, or to the extent of Design/Builder's negligence or its breach of the terms of its agreement with Owner).

Exhibit G

Labor and Materials and Performance Bond Forms

PERFORMANCE BOND

Bond No.

KNOW ALL PERSONS BY THESE PRESENTS that _____, as Principal, and _____, as Surety, a corporation duly organized under the laws of the State of _____, having its principal place of business at _____, State of _____ and authorized as a surety in the State of Oregon, are held and firmly bound unto the CITY OF WILSONVILLE (City) in the SUM of _____ dollars (\$ _____) lawful money of the United States of America, plus the total amount of any extra orders issued by City to Principal pursuant to the terms of the Contract referred to in the next succeeding paragraph hereof, for the payment whereof Principal and Surety bind themselves and their heirs, executors, administrators, representatives and successors, jointly and severally, firmly by these presents.

WHEREAS, Principal has entered, or is about to enter, into a written Design/Build Contract with City for engineering, procurement and construction for the City of Wilsonville Water Treatment Plant Project, Contract No. _____, which Contract is hereby made a part of this bond as if fully set forth herein;

NOW, THEREFORE, the condition of this bond is such that:

1. If Principal shall completely and faithfully perform all of its obligations under the Contract, including any design, construction, warranties and all other obligations required thereunder, and all modifications, amendments, additions, and alterations thereto, including modifications that increase the GMP or time for completion, with or without notice to the surety; and
2. If Principal shall indemnify and hold City harmless from any and all losses, liability, damages, claims, judgments, liens, costs and fees of any type that City may be subject to because of the failure or default of Principal in the performance of any of the terms, conditions or obligations of the Contract, including all modifications, amendments, additions and alterations thereto, and any warranties required thereunder;

THEN THIS obligation shall be null and void; otherwise to remain in full force and effect. If City shall declare Principal to be in default of the Contract, and shall so notify Surety, Surety shall, within a reasonable time that shall not exceed 14 days, notify Obligee in writing of the manner in which Surety will satisfy its obligations under this Bond.

Nonpayment of the Bond premium will not invalidate this Bond nor shall City be obligated for the payment thereof. Surety hereby waives notice of any modification of the Contract or extension of time made by City.

Surety agrees to be bound in any arbitration to the same extent Principal is bound.

SIGNED AND SEALED this _____ day of _____, 2000.

Principal

By

Surety

By
Attorney in Fact
(Attach Power of Attorney)

Water Treatment Plant Design-Build Contract

Performance and Labor and Material Payment Bonds

Bond No. _____

KNOW ALL PERSONS BY THESE PRESENTS that _____
as Principal, and _____, as Surety, a corporation duly organized under
the laws of the State of _____, having its principal place of business at
_____, State of _____ and authorized as a surety
in the State of Oregon, are held and firmly bound unto the CITY OF WILSONVILLE (City),
for the use and benefit of claimants as hereinafter defined, in the sum of
_____ dollars (\$ _____) lawful money of the United States of
America, plus the total amount of any extra orders issued by City, for the payment whereof
Principal and Surety bind themselves and their heirs, executors, administrators,
representatives, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal has entered into a Design/Build Agreement with City for
engineering, procurement and construction for the City of Wilsonville Water Treatment Plant
Project, Contract No. _____, which contract is by this reference made a part
hereof;

WHEREAS, the contract is a public contract, subject to the provisions of ORS Chapter
279;

NOW, THEREFORE, the conditions of this obligation are such that, if Principal shall
promptly make payment to all claimants as hereinafter defined, for all labor and material used
or reasonable required for use in the performance of the contract, then this obligation shall be
void; otherwise, it shall remain in full force and effect, subject, however, to the following
conditions:

1. A claimant is defined as a person claiming to have supplied labor or materials
for the prosecution of the work provided for in the contract, including any
person having direct contractual relationship with the contractor furnishing the
bond or direct contractual relationship with any subcontractor, or an assignee of
such person, or a person claiming moneys due the State Accident Insurance
Fund Corporation, the State Department of Employment Trust Fund or the
Department of Revenue in connection with the performance of the contract.
2. Principal and Surety hereby jointly and severally agree with City that every
claimant as herein defined who has not been paid in full before the expiration of
a period of 90 days after the date on which the last of such claimant's work or

labor was done or performed, or materials were furnished by such claimant, has an action on this bond for such sum or sums as may be justly due claimant, and may have execution thereon. City shall not be liable for the payment of any costs or expenses of any such suit or action.

3. No suit or action shall be commenced hereunder by any claimant:
- (a) Unless the claimant has sent the written notice required under ORS 279.528 to Principal and to City's _____ by registered or certified mail, or by hand delivery, no later than 120 days after the claimant last provided labor or furnished materials, or within 150 days if the claim is for a required contribution to a fund of an employee benefit plan;
 - (b) Later than two years after the claimant last provided labor or materials;
 - (c) Other than in a state court of competent jurisdiction in and for the county or other political subdivision of the state in which the project, or any part thereof, is situated, or in the United States District Court for the district in which the project, or any part thereof, is situated, and not elsewhere.

Surety hereby waives notice of any modification of the contract or extension of time made by City.

SIGNED and SEALED this _____ day of _____, 2000.

Principal

By

Surety

By
Attorney in Fact
(Attach Power of Attorney)

EXHIBIT H

APPROVED SUBCONTRACTORS

Natt McDougall Company
Slayden Construction
Tigard Electric, Inc.
Professional Services Industries

Miller/Hull Partnership
Murase Associates
Jeanne Lawson Associates
Fishman Environmental Services
DeHaas & Associates
Squier Associates
Murray, Smith & Associates
Odgen Beeman & Associates
The Pacific Resource Group
Financial Consulting Solutions Group

Approved subcontractors may be required to competitively bid portions or all of the Work performed by them.