

**AGREEMENT FOR CONSULTING ENGINEERING SERVICES  
(Yamhill County and McGee Engineering Inc.)**

THIS AGREEMENT ("Agreement") is made effective the last date set forth adjacent to the signatures of the parties below between **Yamhill County**, a political subdivision of the State of Oregon, acting through its Department of Public Works (referred to as County in this Agreement) and McGee Engineering Inc., an Oregon corporation (referred to as Contractor in this Agreement), for the consulting engineering services.

- A. County has budgeted funds to perform the BR11517 Pike Road over Turn Creek – Superstructure Replacement Project ("Project").
- B. County has elected to direct appoint Contractor to oversee this Project pursuant to ORS 279C.110(10) and OAR 137-048-0200(1)(b) because the estimated fee to be paid for the Project does not exceed \$100,000.
- C. This Agreement includes by reference the following Contract Documents that are part of the Project:
- (A) This Agreement
  - (B) Agreement Amendments (if any)
  - (C) Insurance Certificates
  - (D) Notice to Proceed
  - (E) Change Orders (if any)
  - (F) Exhibit A — Contractor's Proposal, dated February 1, 2023

**AGREEMENT:** In consideration of the mutual covenants contained below, County and Contractor hereby agree as follows:

1. **Scope of work.** The Contractor will commence and complete the Project in accordance with the Contract Documents with the degree of care and skill ordinarily exercised by members of Contractor's profession currently practicing under similar circumstances and in the same locality. The Contractor acknowledges its receipt or possession of each Contract Document.
2. **Agreement performed at Contractor's expense as Independent Contractor.** The Contractor will furnish all of the materials, supplies, tools, equipment, labor, and other services necessary for the construction and completion of the Project as described in the Contract Documents. The Contractor is an Independent Contractor under this Agreement.
3. **Commencement and completion date.** The Contractor will commence the work required by the Contract Documents within 7 calendar days after the County's approval of this Agreement and will complete the design and construction support of the bridge replacement by October 1<sup>st</sup>, 2024. Contract Period may be extended or otherwise modified by written notice or executed Change Order.

4. **Termination.** With the exception of completing requirements and obligations taken on behalf of Client, County may terminate this Agreement on 30 days' written notice to the Contractor if the Contractor fails to comply with a material term of this Agreement. If this Agreement is terminated, the County will pay for all work accepted by the Project Supervisor prior to termination and any work related to obligations taken on behalf of Client.

5. **Compensation.** The Contractor agrees to perform all of the Work described in the proposal and comply with the terms therein at the hourly rates set forth at the Contractor's billing rates included in the proposal; provided, however, that the maximum amount due Contractor for completion of the scope of work will not exceed **\$45,000.00**, including the contingency tasks. The contract Price may be modified by executed Change Order. Payment shall be made by County on a monthly progress basis for work accepted by the Project Supervisor.

6. **Incorporation of statutory provisions required for public contracts.** The Contractor certifies it shall comply with all applicable Public Contract Laws including, but not limited to, ORS 279B.200 through 279B.240 and ORS 279C.500 through 279C.530. ORS 279B.200 through 279B.240 and ORS 279C.500 through 279C.530 are incorporated into this Agreement by reference.

7. **Workers' compensation.** The Contractor, its subcontractors, if any, and all employers working under this Agreement or contract are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage for all their subject workers.

8. **Certification of compliance with tax laws.** The Contractor certifies, under penalty of perjury, that the Contractor's Company is not in violation of any Oregon tax laws and that Contractor has complied with the tax laws of the state of Oregon or a political subdivision of the state of Oregon, including ORS 305.620, 305.380(4) and ORS Chapters 316, 317 and 318.

9. **Certification of reading and understanding of documents.** The Contractor understands and acknowledges that in signing this Agreement the Contractor waives all rights to plead any misunderstandings regarding the project scope.

10. **Status of the Project Supervisor.** Greg Haffner, Engineering Manager, is the Project Supervisor (the "Supervisor"). The Supervisor or their designee shall have authority to stop the work whenever such stoppage is necessary to ensure that the County's interests are met. The Supervisor has authority to reject or accept the work, subject to the standard of care.

11. **Prohibition of Discrimination.** In hiring employees for performance of work under this contract, no contractor, subcontractor, or any person acting on their behalf shall by reason of race, religion, age, color, creed, physical handicap, sex or sexual orientation discriminate against a person who is qualified and available to perform work to which employment relates.

12. **Risk of Loss.** The risk of loss or damage to the subject matter of this contract arising from any cause whatsoever, including acts of God, shall be upon the Contractor until such time as the County has accepted the work as provided in this Agreement.

13. **Indemnification.**

13.1 **Claims for other than Professional Liability.** The Contractor shall indemnify and hold harmless County from and against any suits, actions, legal or administrative proceedings, demands, claims, liabilities, fines, penalties, losses, injuries, damages, expenses, or costs, including reasonable attorney fees, in any way connected with any injury to any person or damage to any property to the extent caused by Contractor's or Contractor's subcontractors' prosecution of work under this agreement.

13.2 **Claims for Professional Liability.** The Contractor shall indemnify and hold harmless County from and against any suits, actions, legal or administrative proceedings, demands, claims, liabilities, fines, penalties, losses, injuries, damages, expenses or costs, including reasonable attorney fees, in any way connected with any injury to any person or damage to any property to the extent caused by Contractor's or Contractor's subcontractors' negligent acts, errors or omissions in prosecution of work under this agreement.

14. **Nonwaiver.** No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this Agreement shall be taken and construed as cumulative, that is, in addition to every other remedy provided therein or by law. The failure of County or Contractor to enforce at any time any of the terms of this Agreement, or to exercise any option which is provided, or to require at any time performance by Contractor or County of any of the provisions, shall in no way be construed to be a waiver of such provisions, nor in any way to affect the validity of any part of this Agreement, or the right of County or Contractor to thereafter enforce each and every provision.

15. **Contractor's Representation.** Contractor, by entering into this Agreement, represents that its proposal for this project is made without connection with any person, firm or corporation making or refraining from making a proposal for the same or similar project and was in all respects fair and without collusion or fraud.

16. **Severability.** Should any clause or section of this Agreement be declared by court to be void or voidable, the remainder of this Agreement shall remain in full force and effect.

17. **Dispute resolution through mediation and arbitration.** Any dispute between the parties to this Agreement shall be resolved according to the following process:

(a) The parties first shall submit to mediation of the dispute to be conducted by a mutually acceptable mediator. If the parties cannot agree on a mediator, they shall request a mediator to be appointed by the U.S. Mediation and Arbitration service or a similar mediation and arbitration service located in Portland, Oregon. The mediator's charges and expenses shall be borne equally by the parties. All other expenses, including attorney fees and costs, shall be borne exclusively by the party requiring the service or for which payment is to be made.

(b) If the dispute is not resolved in mediation, the parties shall then submit the dispute to binding arbitration. Arbitration shall be conducted by and in accordance with the Construction Industry rules of the American Arbitration Association. The parties will work together to mutually agree on an arbitrator who is qualified and experienced with engineering services and projects and has at least 20 years of relevant experience. If the parties cannot agree on an

arbitrator, they shall request an arbitrator to be appointed by the U.S. Mediation and Arbitration service or a similar mediation and arbitration service located in Portland, Oregon. The decision of the arbitrator shall be final and binding on the parties. The party that does not substantially prevail, as determined by the arbitrator, shall pay the arbitrator's fees and expenses in arbitration. All other expenses, including attorney fees and costs, shall be borne exclusively by the party requiring the service or for which payment is to be made.

18. **Attorney fees and costs.** In the event that either party to this Agreement shall take any action, judicial or otherwise, to enforce or interpret any of the terms of this contract, each party shall be wholly responsible for its own expenses which it may incur in taking such action, including costs and attorney fees, whether incurred in a suit or action or appeal from a judgment or decree therein or in connection with any nonjudicial action.

19. **Applicable laws.** This Agreement is executed in the State of Oregon and is subject to Oregon law and jurisdiction in Yamhill County.

20. **Subcontractors.** The Contractor may not engage any subcontractor(s) to perform work under this Agreement without the express written consent of the County. If the County does grant consent, the Contractor covenants and agrees to bind any and all Subcontractor(s) for performance of work under this Agreement. Any reference to Contractor shall include any and all Subcontractor(s) ad infinitum.

21. **Written changes required.** The rights and duties under this Contract shall not be modified, delegated, transferred, or assigned, except upon written signed consent of both parties.

22. **Successors bound.** This Agreement shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors, and assigns.

23. **Insurance requirements.** At a minimum, the resulting agreement with the Consultant will require the following insurance in connection with the Project:

| INSURANCE DESCRIPTION                | MINIMUM REQUIRED COVERAGE                        |
|--------------------------------------|--|
| Workers Compensation                 | Statutory  |
| General Liability                    | \$2,000,000 per occurrence/\$2,000,000 aggregate |
| Professional Liability/E&O           | \$2,000,000 per claim/\$2,000,000 aggregate      |
| Automobile Liability/Property Damage | \$1,000,000 Combined Limit                       |

**23.1.1 Evidence: Changes.** Evidence of such insurance shall be furnished to the County before commencing with work at the Project site. The County shall receive thirty (30) days prior written notice of any material change or reduction that does not meet the requirements of this Agreement. The Consultant shall procure substitute insurance (to the extent reasonably available) so as to assure the County that the minimum limits of coverage are maintained continuously throughout the period of the resulting agreement.

**23.1.2 County as Named-Insured.** The general liability/property damage and automobile/property damage insurance policy required shall name the County, and its officers, agents and employees as additional insured for the insurance and shall contain a waiver of subrogation against the County.

THIS AGREEMENT AND THE CONTRACT DOCUMENTS CONSTITUTE THE ENTIRE AGREEMENT BETWEEN THE PARTIES. NO WAIVER, CONSENT, MODIFICATION OR CHANGE IN TERMS OF THIS CONTRACT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH PARTIES. SUCH WAIVER, CONSENT, MODIFICATION OR CHANGE, IF MADE, SHALL BE EFFECTIVE ONLY FOR THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS OR REPRESENTATIONS, ORAL OR WRITTEN NOTICE SPECIFIED HEREIN REGARDING THIS CONTRACT. THE CONTRACTOR, BY SIGNATURE OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT HE/SHE HAS READ THIS CONTRACT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed on the date indicated by their duly authorized officials, this Agreement in duplicate, each of which shall be deemed an original on the date executed by all parties.

**McGEE ENGINEERING, Inc.**

By:   
(Signature)

Date: 2-14-2023

Alex Dunn

(Printed name)

Title: President

Fed. Tax I.D. No 20-5266678

**YAMHILL COUNTY, OREGON**

  
Lindsay Berschauer, Chair

Date: 2.23.23

  
KEN HUFFER  
County Administrator

Date: 2-24-23

APPROVED AS TO FORM

By:   
CHRISTIAN BOENISCH,  
Yamhill County Legal Counsel

Accepted by Yamhill County  
Board of Commissioners on  
2.23.23 by Board Order  
# B.O. 23-67

# Exhibit A

Contractor's Proposal, dated  
February 1, 2023

"Exhibit"  
A



**Alex Dunn, P.E. President**

Office: (541) 757-1270  
Fax: (541) 758-6585  
alexdundn@mcgee-engineering.com

**PROPOSAL**

804 D NW Buchanan Ave. Corvallis, OR 97330  
P.O. Box 1067 Corvallis, OR 97339  
www.mcgee-engineering.com

Proposal No. 22-008

February 1, 2023

Yamhill County Public Works  
2060 Lafayette Avenue  
McMinnville, OR 97128

**ATTN:** Greg Haffner

**PROJECT:** BR11517 Pike Road over Turner Creek: Superstructure Replacement

Greg,

Below is our proposal to provide engineering design services for your bridge superstructure replacement project on Pike Road near Yamhill, Oregon.

**DESCRIPTION OF PROJECT**

The existing steel bridge superstructure has been load restricted after recent analysis by ODOT. Yamhill County owns the bridge and wants to replace the superstructure to remove the load restriction. The existing concrete abutments appear to be suitable for re-use.

**SCOPE OF SERVICES**

*Basic Services.* Design services are expected to include:

- Receive existing conditions map from surveyor
  - Integrate structure dimensions from our field notes
  - Site visit
- Produce preliminary plans for owner and permitting review comments
  - Pre-manufactured steel bridge is expected
  - Proposed superstructure weight to be similar to existing weight; analysis of existing abutments is not expected
- Provide stamped construction plans and specifications
  - Superstructure geometry
  - Abutment modifications
  - Approach guardrails
  - Roadway/alignment details
  - Traffic control plan
  - Project Specifications including Roadway (paving, guardrail, striping, etc.) and Structural (bridge, containment, demolition, etc.)
- Load Rating Report for submission to ODOT
- Project meetings
  - By Phone as needed
  - (2) In-person
  - (2) On-site

- Construction support
  - Bidding assistance
  - Attend pre-construction meeting
  - Submittal review
  - Periodic construction observations

*Contingency Tasks.* These items may be added to the scope of work according to the cost estimate provided.

- Analysis of existing substructure elements for current code compliance

*Additional Services.* Based on similar projects, the following services may foreseeably be needed. They may be added to our scope of work upon negotiation:

- Services resulting from substantial change in the scope, extent, or character of the project
- Continuous construction observations
- As-constructed plans
- Load rating

*Excluded Services.* Services do not include:

- Surveying and Wetland Delineation (provided by AKS under separate contract with County)
- Geotechnical investigation
- Bidding and front-end (procurement) specifications
- Permitting of any kind
- Hazardous substances
- Hydraulic analysis
- Utility coordination
- Right-of-Way and Easement coordination
- Stormwater analysis or facility design

**SCHEDULE**

We understand the project schedule to include the following milestones:

- Notice to Proceed    early February 2023
- Preliminary Plans    April 2023
- Design Submittal    June 2023
- Construction            2024

**ESTIMATED COST OF SERVICES**

We plan to bill our effort at hourly rates according to the attached rate schedule. We estimate our costs as described below, and plan to keep you informed of any situations which may cause the cost to increase before proceeding with the work.

|                                |                 |
|--------------------------------|-----------------|
| Design                         | \$25,000        |
| Bidding & Construction Support | \$10,000        |
| <b>TOTAL FEES</b>              | <b>\$30,000</b> |
| Contingency Tasks              | \$15,000        |

**TERMS OF ACCEPTANCE OF PROPOSAL**

This proposal is an estimation of the work items included in this project. If in the event different items arise that are outside the scope of this contract, including meetings or revisions, they will be billed on a time and materials basis. Reimbursable expenses may include costs associated with (but not limited to) the following: printing, copies, postage, and mileage.

Signing this proposal constitutes an acceptance of its terms including all prices and costs. It must be returned to McGee Engineering, Inc. prior to start of work.

Authorized Signature:  \_\_\_\_\_  
Alex Dunn, President

Date: 2-1-2023

Authorized Signature: \_\_\_\_\_

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

**ATTACHED:** 2023 Rate Sheet, Standard Terms and Conditions for Engineering Services



## SUMMARY OF BILLING RATES AND METHODS

Office: (541) 757-1270  
Fax: (541) 758-6585  
alexduinn@mcgee-engineering.com

804 D NW Buchanan Ave. Corvallis, OR 97330  
P.O. Box 1067 Corvallis, OR 97339  
www.mcgee-engineering.com

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### *Effective January 1, 2023*

McGee Engineering, Inc, an Oregon corporation, registered in all counties in the State of Oregon.

#### **Hourly Rates:**

Engineer Grade VIII ..... \$196 per hour  
Engineer Grade VI ..... \$163 per hour  
Engineer Grade V ..... \$149 per hour  
Engineer Grade IV ..... \$135 per hour  
Engineer Grade III ..... \$100 per hour  
Engineer Grade II ..... \$91 per hour  
Technician Grade C ..... \$105 per hour  
Technician Grade B ..... \$91 per hour  
Clerical ..... \$68 per hour  
No overtime fees added to professional fees

#### **Travel**

Automobile mileage is charged at the current federal rate. Mileage is charged from Corvallis. Plane fares and lodging are billed as project expenses.

**Project Direct Expenses** include, but are not limited to, the following invoiced costs:

Testing Fees, Freight, Plane Fares, Lodging Costs, and Parking Fees

**Overhead Expenses** are included in professional fees and are not charged separately. These overhead expenses include:

Professional and Commercial Insurance, Office Rent and Utilities, Telephone/fax expenses, Computer/software costs, Stationery supplies, Office related clerical, and copying costs

**Invoices and Payments:** Invoices will be submitted on a monthly basis and are due and payable within 30 days of receipt. Late payments will incur a late fee of 5% of the outstanding invoice. Additionally, interest on the outstanding balance shall accrue at the rate of 12% per annum beginning from the date payment was due. Billing rates will be increased annually, or more often if warranted by market conditions. Charges will be based on the latest rates unless otherwise agreed.

## STANDARD TERMS AND CONDITIONS FOR ENGINEERING SERVICES

1. **SERVICES OF ENGINEER.** McGee Engineering, Inc. ("Engineer") agrees to provide Client (as identified in the attached proposal) with engineering services as described in the proposal (the "Project"). Engineer may perform additional services at additional cost upon written approval by Client.
2. **STANDARDS OF PERFORMANCE.** The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Engineer. Engineer shall not be responsible for any deficiencies in technical accuracy if such deficiency is attributable to deficiencies in Client-furnished information. Engineer may retain such Engineer's subcontractors and subconsultants as Engineer deems necessary to assist in the performance or furnishing of the services. Subject to the standard of care, Engineer may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards. Engineer is not responsible for any deficiency in technical accuracy if such deficiency is attributable to deficiencies provided by others listed herein. Engineer shall not be required to sign any document, no matter by whom requested, that would result in Engineer having to certify, guarantee, or warrant conditions whose existence Engineer cannot ascertain within the authorized scope of Engineer's services. Engineer and Client shall comply with all applicable laws and regulations.
3. **CLIENT'S RESPONSIBILITIES.** To the extent Client has not already provided the following, or has new, additional, or revised information from that previously provided, Client shall provide Engineer, and will continue to provide Engineer information and data needed for the Project, including Client's design objectives and constraints, performance requirements, design and construction standards; budgetary limitations; and any other available information pertinent to the Project, including reports and data relative to previous designs, construction, or investigation at or adjacent to the Project site. Client shall inform Engineer of the policies, procedures, and requirements of Client that are applicable to Engineer's performance of services under this Agreement. Client shall inform Engineer in writing of any safety or security programs that are applicable to the personnel of Engineer, its subconsultants, and Engineer's subcontractors, as they visit the Project site or otherwise perform services under this Agreement. Client shall arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under this Agreement. Client shall provide necessary direction and make decisions, including prompt review of Engineer's submittals, and carry out its other responsibilities in a timely manner so as not to delay Engineer's performance of its services. Client shall identify and advise Engineer of the scope of services of any independent consultants or contractors employed by Client to perform or furnish services in regard to the Project. If Client designates a construction manager, site representative, or any individual or entity other than, or in addition to, Engineer to represent Client, Client shall define and set forth in writing the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Engineer. Client shall attend and participate in job-related meetings and Project site visits as requested by Engineer. Client shall communicate with Engineer's subcontractors and subconsultants through the Engineer unless directed otherwise by the Engineer. Client shall refrain from directing the services of Engineer's subcontractors or subconsultants.
4. **SCHEDULE FOR RENDERING SERVICES.** Engineer is authorized to begin rendering services upon Client's approval of the proposal ("Effective Date"). Engineer will complete its obligations within a reasonable time. Specific periods of time for rendering services, or specific dates by which services are to be completed, are provided in the proposal. Engineer will notify Client promptly of any conditions which impair the Engineer's ability to complete its obligations on time.
5. **INVOICES AND PAYMENTS.** Engineer will prepare invoices in accordance with its standard invoicing practices. Engineer will submit invoices to Client on a monthly basis. Invoices are due and payable within 30 days of receipt. If Client fails to make any timely invoice payment, then a late fee of 5% of the outstanding invoice shall apply. Additionally, interest on the outstanding balance shall accrue at the rate of 12% per annum beginning from the date payment was due. Payment will be credited first to any late fee, then to interest, then to principal.
6. **OWNERSHIP AND USE OF DOCUMENTS.** "Documents" shall mean all documents produced as deliverables in this Agreement, whether in printed or electronic document form, required by this Agreement to be provided or furnished by Engineer to Client. Documents are instruments of service, and Engineer owns the Documents, including all associated copyrights and the right of reuse at the discretion of the Engineer. Engineer shall continue to own the Documents and all associated rights whether or not the Project is completed. Client may make and retain copies of Documents for information and reference in connection with the use of the Documents on the Project. Engineer grants Client a limited license to use the Documents on the Project only, subject to receipt by Engineer of full payment due and owing for all services relating to preparation of the Documents, and subject to the following limitations: (A) Client acknowledges that such Documents are not intended or represented to be suitable for use on the Project or Project site unless completed by Engineer, or for use or reuse by Client or others on extensions of the Project or Project site, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (B) Any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Client's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and subconsultants; (C) Client shall indemnify, defend with counsel selected by Engineer, and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and subconsultants, and subcontractors from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the Documents without written verification, completion, or adaptation by Engineer; and (D) Such limited license to Client shall not create any rights in third parties. If Engineer at Client's request verifies the suitability of the Documents, completes them, or adapts them for extensions of the Project or for any other purpose, then Client shall compensate Engineer at rates or in an amount to be agreed upon by Client and Engineer.
7. **OPINIONS OF PROBABLE CONSTRUCTION COST.** Generally, "Construction Costs" include all portions of the of Client's Project including construction labor, services, materials, equipment, insurance, and bonding costs, and allowances for contingencies. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to property; Client's costs for legal, accounting, insurance counseling, or auditing services; interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to Client. Any Engineer opinions of probable Construction Cost are merely estimates based on the Engineer's experience, qualifications, and general familiarity with the construction industry. However, the Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, or any unforeseen or unusual events. Actual Construction Cost will vary from Engineer's estimates. If Client requires greater assurance as to probable Construction Cost, then Client agrees to obtain an independent cost estimate.
8. **CONSTRUCTION METHODS AND MEANS.** Engineer will not at any time supervise, direct, control, or have authority over any contractor's work, including any contractor hired by Client or Client's agents. Engineer will have no authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at the site, nor for any failure of a contractor to comply with Laws and regulations applicable to that contractor furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any contractor. Engineer neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform the work in accordance with the construction contracts. Engineer shall not be responsible for any decision made regarding any construction contracts, or any application, interpretation, clarification, or modification of any construction contracts, other than those prepared by Engineer.
9. **DISPUTE RESOLUTION.** Client and Engineer shall resolve all disputes in the following manner. Client and Engineer agree to first negotiate any disputes between then in good faith for a period of 30 days. If a dispute arises out of or relates to this Agreement, or the breach thereof, including the applicability of the Agreement and if the dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Procedures before resorting other dispute resolution procedures. The place of mediation shall be Benton County, Oregon. Any dispute regarding this Agreement including the enforceability of this Agreement shall be governed by the laws of the State of Oregon with venue in Benton County Circuit Court of Oregon.

**10. LIMITATION ON LIABILITY.** To the fullest extent permitted by laws and regulations, and notwithstanding any other provision in this Agreement, the total liability, in the aggregate, of Engineer, Engineer's officers, directors, subcontractors, subconsultants, members, partners, agents, employees, to the Client and anyone claiming by, through or under Client for all claims, losses, costs, or damages, whatsoever including but not limited to any direct, special, incident, punitive, exemplary or consequential damage) arising out of, resulting from or in any way related to the project or this Agreement from any cause or causes (including, but not limited to, the negligence, professional errors or omission, strict liability, breach of contract, indemnity obligations, or warranty expressed or implied) of Engineer or Engineer's officers, directors, members partners, agents, employees, subcontractors or subconsultants shall not exceed the greater of: the amount of insurance proceeds available under Engineer's policy if such a claim or loss is covered by Engineer's insurer; or the amount of Engineer's compensation received under this Agreement. Neither Client nor Engineer shall be liable to the other or shall make any claim for any incidental, indirect, or consequential damages arising out of or connected in any way to the Project or this Agreement. This mutual waiver includes but is not limited to, damages related to loss of use, loss of profits, loss of income, loss of reputation, unrealized savings or diminution of property value and shall apply to any cause of action including, but is not limited to, negligence, strict liability, breach of contract, and breach of warrant. To the fullest extent permitted by any laws or regulations, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, will not exceed the percentage share that the party's negligence bears to the total negligence of Client, Engineer, and all other negligent entities and individuals. Client acknowledges that this limitation on liability is valuable consideration negotiated with Engineer to induce Engineer to enter into this Agreement. Each party to this Agreement is a sophisticated business party negotiating in good faith and with the availability of legal counsel. By executing this Agreement, each party represents that it has had an opportunity of its respective legal counsel to review this agreement and advise the party.

**11. INDEMNIFICATION.** To the fullest extent permitted by any laws or regulations Client shall indemnify, defend (with counsel selected by Engineer), and hold harmless Engineer, its subconsultants, Engineer's subcontractors, and their officers, directors, members, partners, agents, employees, and subconsultants from all claims, costs, losses, damages, actions, and judgments (including reasonable consultants' and attorney's fees and expenses) caused by, arising out of, relating to, or resulting from any act or omission of Client or Client's officers, directors, members, partners, agents, employees or contractors including but not limited to from a Hazardous Substances at, on, adjacent or under the Project site.

**12. TERMINATION.** (A) Client may terminate the Agreement for cause upon 30 days' written notice in the event of substantial failure by the Engineer to perform in accordance with the terms of the Agreement, through no fault of the terminating party. Notwithstanding the foregoing, this Agreement will not terminate if Engineer begins, within 7 days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and Engineer has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein will extend up to, but in no case more than, 60 days after the date of receipt of the notice. If Client terminates the Agreement for cause, Client may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files. Engineer shall be entitled to compensation for such tasks. (B) Engineer may terminate this Agreement for any reason upon 7 days' written notice. The Engineer may immediately terminate if (i) Client demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; (ii) Client or Client's agents violate applicable law at the Project site; (iii) there is a presence at or adjacent to the Project site of undisclosed Hazardous Substances. (C) In the event of any termination Engineer will be entitled to invoice Client and to receive full payment for all services performed or furnished in accordance with this Agreement and all reimbursable expenses incurred through the effective date of termination and all payment for all costs incurred by Engineer to demobilize personnel and equipment from the site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files. Upon making such payment, Client will have the limited right to the use of Documents, at Client's sole risk, subject to the terms of this Agreement. (D) In addition to the payments identified above, Engineer is entitled to receive payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's subcontractors or subconsultants, and other related close-out costs.

**13. SUCCESSORS, ASSIGNS, AND BENEFICIARIES.** Client and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Client and Engineer are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement. Neither Client nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, claims arising out of this Agreement or money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Unless expressly provided otherwise in this Agreement: (A) All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Client and Engineer and not for the benefit of any other party; (B) Nothing in this Agreement will be construed to create, impose, or give rise to any duty owed by Client or Engineer to any contractor, other third-party individual or entity, or to any surety for or employee of any of them; and (C) Client agrees that the substance of the provisions of this Paragraph will appear in the construction contract documents.

**14. HAZARDOUS SUBSTANCES REPRESENTATION.** Client hereby represents that Client is not aware of, not engaged in, not permitted any unlawful activities upon, or any use or occupancy of the Project site, or any adjacent property. This includes any awareness, knowledge, engagement, permission regarding the use or occupancy of the Project site of any unlawful handling, manufacture, treatment, storage, use, generation, release, discharge, refining, dumping, or disposal of any Hazardous Substances (defined below), whether illegal, accidental or intentional, on, under, in, or about the Project site, or unlawfully transported any Hazardous Substances to, from or across the Project site, nor are any Hazardous Substances presently unlawfully deposited, stored or otherwise located on, under, in or about the Project site, nor have any Hazardous Substances migrated from the Project site upon or beneath other properties. Client is unaware of any prior release of Hazardous Substances on the Project site or adjacent to the Project site and has not received or is aware of any notice or other communication concerning any alleged violation of any applicable relating to Hazardous Substances, or any notice or other communication concerning alleged liability for environmental damages in connection with the Project site. For purposes of this Agreement, the term "Hazardous Substances" means any material or substance which now or hereafter is defined as a "hazardous substance," "hazardous waste," "hazardous material," "extremely hazardous waste," "restricted hazardous waste," or "toxic substance" or words of similar import under any applicable laws, including, but not limited to, gasoline, diesel fuel, or other petroleum hydrocarbons or materials that contain lead-based paint or other lead contamination. In no way does Engineer's scope of services include any services related to Hazardous Substances. Client acknowledges that Engineer is performing professional services for Client and that Engineer is not and will not be required to become a "Client," "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Project site in connection with Engineer's activities under this Agreement. The provisions of this section shall survive termination of this agreement.

**15. FORCE MAJEURE.** In the event Engineer is prevented from continuing the Project because of an act of God or public enemy, strike, lockout, boycott, picketing, riot, insurrection, epidemic, pandemic or any governmental order, rule or regulation, or any other matter beyond the reasonable control of Engineer ("Force Majeure Event"), then, notwithstanding anything herein contained to the contrary, Engineer's obligations under this Agreement shall be suspended during the period of the Force Majeure Event and Engineer shall not be liable to Client for damages on account thereof.

**16. MISCELLANEOUS PROVISIONS.** This Agreement (which includes the exhibits attached hereto) constitutes the entire contractual agreement between Client and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a written instrument duly executed by both parties. The waiver or failure to enforce any provision of this Agreement shall not operate as a waiver of any future breach of any such provision or any other provision hereof. Any captions to, or headings of, the paragraphs or subparagraphs of this Agreement are solely for the convenience of the parties hereto, are not a part of this Agreement, and shall not be used for the interpretation or determination of the validity of this Agreement or any provision hereof.