



AUTHORIZATION FOR AGREEMENTS, MOUs, OR OTHER DOCUMENTS OBLIGATING THE CITY

All contracts, agreements, grant agreements, memoranda of understanding, or any document obligating the city (with the exception of purchase orders), requires the completion of this form. The City Manager will sign these documents after all other required information and signatures are obtained.

Document: Amendment 7 Date: 6/6/23

Statement of Purpose: Engineering Services Agreement

Department Head Signature: [Signature]

Remarks, if any: _____

City Attorney Review and Signature: _____ Date: _____

Other Signatures as Requested by the City Attorney: _____

Signature _____ Name/Position _____ Date: _____

Budget Confirmed: Yes No N/A

Certificate of Insurance Attached: Yes No N/A

City Council Approval Needed: Yes No Date: _____

After all the above requested information is complete and signatures obtained, return this form, along with the original document to the City Manager for signature. No documents should be executed prior to the City Manager's approval as evidenced by signature of this document.

City Manager Signature: _____ Date: _____

Once all signatures and certificates of insurance have been obtained, return this document, along with the original, fully-executed agreement, MOU, or other document to the City Recorder. A copy of grant agreement and all project funding documents, must be forwarded to the Finance Department for tracking and audit purposes.

City Recorder Signature: _____ Date: _____

Date posted on website: _____

AMENDMENT NO. 7 TO ENGINEERING SERVICES AGREEMENT

DAM CONSULTANT OF RECORD

THIS AMENDMENT NO. 7 TO ENGINEERING SERVICES AGREEMENT (this "Amendment"), is entered into as of this 9 day of June, 2023, by and between the City of Newport, Oregon ("City") and HDR Engineering, Inc. ("Engineer"). City and Engineer are sometimes referred to herein collectively as the "parties" or individually herein as a "party."

WHEREAS, the parties entered into that certain Engineering Services Agreement dated on or about September 5, 2013, as it may have previously been amended or extended (together with all amendments, schedules, exhibits, appendices or attachments thereto, the "Agreement," herein); and

WHEREAS, the parties now desire to amend certain provisions of the Agreement as provided in this Amendment.

NOW, WHEREFORE, in consideration of the foregoing premises and the respective promises, undertakings and covenants of the parties set forth and exchanged herein, and in the Agreement, the parties hereby agree as follows, effective as of the date of this Amendment:

1. The first paragraph of Section 3.A. of the Agreement is hereby amended, replaced, restated and superseded in its entirety to provide as follows:

Fees for services under this Agreement shall be based on time and materials and pursuant to rates using a 3.2 multiplier on current Engineer staff rates with no rate cap. Engineer will waive the \$3.70 Hourly Tech Charge. Engineer will notify the City in writing when Engineer implements its normal annual rate increases. Engineer will bill for progress payments on a monthly basis with payments made as set out in Section 3.B. of the Agreement. In order to determine the maximum monetary limit for each Task Order, Engineer will submit a schedule and a labor hour estimate based on a 3.2 multiplier of current Engineer staff rates, including anticipated reimbursable expenses (as determined under the current City and/or State guidelines). Once a maximum monetary limit (not to exceed amount) is determined, and accepted by the City, Engineer will invoice monthly progress payments based on actual time worked on the project. The maximum monetary limit will not be exceeded without prior written approval by the City. Projects partially completed may be paid for in proportion to the degree of completion.

2. The words "or indirectly" are hereby deleted from Section 7.D. of the Agreement.

3. The following sentence is hereby added to the end of Section 7.A. of the Agreement:

Neither party to this Agreement shall be liable to the other party for any special, incidental, indirect, or consequential damages of any kind or nature (including but not limited to loss of profits or revenue; loss of use or opportunity; loss of good will; cost of substitute facilities, goods, or

services; and/or cost of capital) arising out of, resulting from, or in any way related to the project, the work or this Agreement from any cause or causes, including but not limited to any such damages caused by negligence, errors or omissions, strict liability or breach of contract.

4. The words "an error, omission or any negligent acts" in Section 8.B. of the Agreement are hereby amended and replaced with the following words: "any negligent act, error, or omission."

5. Section 16 (Errors) of the Agreement is hereby amended, restated, superseded and replaced in its entirety to provide as follows:

Engineer shall perform such additional work as may be necessary to correct errors in the work required under this Agreement without undue delays and without additional cost if the errors do not meet the standard of care set forth in Section 7.A. of the Agreement.

6. The words "save and hold harmless" in Section 7.C. of the Agreement are hereby amended and replaced with the following words: "defend, hold harmless and indemnify."

7. The first sentence in Section 8.A. of the Agreement is hereby deleted in its entirety and replaced with the following: "Comprehensive General Liability Insurance covering Bodily Injury and Property Damage on an 'occurrence' form with policy limits of \$2,000,000 per occurrence and \$2,000,000 in the aggregate."

8. The words "not less than \$100,000 each accident" in Section 8.D. of the Agreement are hereby amended and replaced with the following words: "not less than \$500,000 each accident."

9. The words "Commercial General Liability Insurance Policy" in Section 8.E. of the Agreement are hereby amended and replaced with the following words: "Commercial General Liability and Commercial Automobile Liability Insurance Policies."

10. The following sentence is hereby deleted in its entirety from the end of Section 8.F. of the Agreement: "Coverage will be endorsed to provide a per project aggregate." And the three references to "24 months" in Section 8.F. are hereby amended and replaced with "60 months."

11. Section 18 (Governing Law) of the Agreement is hereby amended, replaced, restated and superseded in its entirety to provide as follows:

This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon, without regard to conflict of law principles. Any action or suits involving any question arising under this Agreement must be brought in the appropriate court of the State of Oregon, and the parties hereby consent to venue in Lincoln County Circuit Court, Oregon, unless exclusive jurisdiction is in federal court, in which case venue shall be in federal district court for the District of Oregon.

12. The words "Lane County Circuit Court" in the first paragraph of Section 25 (Arbitration) of the Agreement are hereby amended and replaced with the following words: "Lincoln County Circuit Court."

13. The following provisions 15-17 are added to the end of Exhibit B of the Agreement:

(15) If the contract price exceeds \$50,000 and this contract is not otherwise exempt, workers shall be paid not less than the specified minimum hourly rate of wage in accordance with ORS 279C.838 and 279C.840. The applicable prevailing rate of wage may be accessed online at: <https://www.oregon.gov/boli/employers/Pages/prevailing-wage-rates.aspx>. ORS 279C.830

(16) If the project is subject to both the Davis-Bacon Act and state prevailing rate of wage, Contractor and every subcontractor shall pay workers not less than the higher of the applicable state or federal prevailing rate of wage. ORS 279C.830

(17) Contractor and every subcontractor must have a public works bond filed with the Oregon Construction Contractors Board before starting work on the project, unless exempt under ORS 279C.836 (4), (7), (8) or (9). ORS 279C.830

14. The Agreement is hereby amended to add the following provisions (new paragraphs 29-35) to the end of the Agreement, but such provisions will only apply to Engineer's work under the task orders for Final Dam Design Phase Services or any subsequent task orders involving or relating to dam design services:

29. Allocation of Risk

City and Engineer have evaluated the risks and rewards associated with this project and this Agreement, including Engineer's fees relative to the risks assumed, and agree to allocate certain of the risks, so, to the fullest extent permitted by law, the total aggregate liability of Engineer (and its related corporations, subconsultants and employees) to City or third parties granted reliance, is limited to fees paid or payable to the Engineer with a \$14,000,000 maximum, and also to the extent of any fees paid or payable to the Engineer in excess of \$14,000,000, for any and all injuries, damages, claims, losses, or expenses (including attorney and expert fees) of any kind or nature related to or arising out of Engineer's services under this Agreement regardless of cause(s) or the theory of liability asserted, including, without limitation, negligence or other tort, strict liability, indemnity, breach of contract, or other recovery. The employees of Engineer and of its subconsultants shall be intended third party beneficiaries of this provision, and no other third parties are intended to be benefited by this Agreement for any other purpose.

30. Maintenance of Structures and Systems

City agrees that structures and systems studied, reviewed, analyzed, or designed by the Engineer are dependent upon City's continued operation and maintenance of the project structures and systems in accordance with all permits, laws and regulations that permit the construction and operation of the structures and systems, including any Engineer prepared operations and maintenance plans. Should City fail to operate or maintain the structures to be in full compliance with permits, approvals, and operations and maintenance plans, Engineer shall have no liability to City and City shall indemnify, release and hold Engineer, its subconsultants and their respective employees harmless from any liability resulting from any direct damages resulting from such non-compliance, including but not limited to claims made by third parties against Engineer.

31. Subsurface Conditions

In soils, foundation, and other subsurface investigations, the actual characteristics may vary significantly between successive test points and sample intervals, and at locations other than where observations, explorations, and investigations have been made. In estimating subsurface conditions, the data, interpretation, and recommendations of the Engineer are based solely on the information obtained and based upon the standard of care set forth in Section 7.A. of the Agreement. The City acknowledges, however, that because of the inherent risks and uncertainties in subsurface evaluations, changed or unanticipated underground conditions may occur that could affect total project cost.

32. Visual Inspections

For visual inspections, City hereby releases, holds harmless, indemnifies and agrees to defend Engineer against any claims, damages, losses, liabilities, expenses or costs arising out of any failure to detect hidden, covered, inaccessible, or internal structural or material defects, corrosion, or damages in components, embedment, reinforcing, anchorages and parts of equipment, structures, or mechanisms being inspected, that are not readily discernible by external visual inspection through reasonable efforts.

33. Design Criteria Disclaimer

Prevailing science and understanding of natural forces including, but not limited to, flood, rain, temperature, earthquakes, and wind indicates a dynamic and non-stationary system of potential loads. The Engineer selected the earthquake and hydrological loads based upon the information available to the Engineer at the time the analysis was conducted and based upon the standard of care set forth in Section 7.A. of the Agreement. These loads were accepted by City for use in the design. Except to the extent of the standard of care set forth in Section 7.A. of the Agreement, the Engineer makes no warranties or guarantees on future predictions of seismic and hydrological conditions that may impact the design, safety, or performance of the dam.

34. Ability to Meet Payment Obligations

City represents and warrants that it has or will have sufficient financial resources to meet its payment obligations set forth herein when due and in accordance with the terms set forth herein, and that its ability to meet such obligations is not contingent upon receipt of funding from any third party.

35. Conflicting Provisions

To the extent the terms of this Agreement conflict with Grant Agreement #WPG-D-0006-21 between City and the State of Oregon, acting by and through its Water Resources Department, all requirements of the Grant Agreement applicable to this Agreement shall control in accordance with and including Section 5.01 of the Grant Agreement, and Engineer expressly acknowledges and agrees to all such applicable requirements of the Grant Agreement.

For clarification and avoidance of doubt, and without limitation, the City expressly acknowledges and agrees that nothing in the Grant Agreement shall impact the Term of, or termination rights under, this Agreement; the City's obligation to pay Engineer for its services performed under this Agreement; Engineer's method of requesting any such payment; or the timing of any such payment by the City, all of which shall be solely governed by the terms of this Agreement.

15. Section 2 of the Agreement is hereby amended, replaced, restated and superseded in its entirety to provide as follows:

This Agreement is effective on execution by both parties and shall expire on December 31, 2026, (the "Term") unless extended by mutual agreement of the parties or otherwise terminated in accordance with the terms of this Agreement.

16. Except as expressly set forth herein, all provisions of the Agreement shall continue and remain in full force and effect by and between the parties.

17. This Amendment may be executed in two counterpart copies, each of which will constitute an original instrument, but all of which together with this Amendment will constitute one and the same instrument that is binding upon the parties. Such counterparts may be signed and exchanged by the parties electronically. The legible image of a manual signature or an electronic signature on any such counterpart shall constitute an original and effective signature to this Amendment for all purposes.

[Signature Page(s) Follows]

IN WITNESS WHEREOF, the undersigned parties have executed this Amendment No. 7 to Engineering Services Agreement as of the date first written above, intending that the same be legally effective by and between the parties as provided herein.

CITY OF NEWPORT:

By: *A. R. M. W.*

Title: *City Manager*

Date of Signature: *06-06-* 2023

HDR ENGINEERING, INC.:

By: *Tracy Ellwein* Digitally signed by Tracy Ellwein
Date: 2023.06.09
11:39:52-07'00'

Title: *Vice President*

Date of Signature: *June 9* 2023

