

EXHIBIT B

CITY OF SCAPPOOSE, OREGON ENGINEERING SERVICES AGREEMENT

THIS AGREEMENT, made and entered into this (DAY) of (MONTH), (YEAR), by and between the City of Scappoose, a municipal corporation, hereinafter referred to as the "City," and, whose authorized representative is, and having a principal being a registered engineer of the State of Oregon, hereinafter referred to as the "Engineer."

RECITALS

WHEREAS, the City's Fiscal Year (YEAR OF BUDGET) budget provides for engineering services for the (PROJECT TITLE) project; and

WHEREAS, the accomplishment of the work and services described in this Agreement is necessary and essential to the program of the City; and

WHEREAS, the City desires to engage the Engineer to render professional engineering services for the project described in this Agreement, and the Engineer is willing and qualified to perform such services;

THEREFORE, in consideration of the promises and covenants contained herein, the parties hereby agree as follows:

1. Engineer's Scope of Services

The Engineer shall perform professional engineering services relevant to the Project in accordance with the terms and conditions set forth herein, and as provided in Exhibit 1, which is attached hereto and by this reference made a part of this Agreement.

2. Effective Date and Duration

This agreement shall become effective upon the date of execution and shall expire, unless otherwise terminated or extended, upon completion of the work or June 30, (YEAR), whichever comes first. All work under this Agreement shall be completed prior to the expiration of this Agreement.

3. Engineer's Fee

A. Basic Fee

1) As compensation for Basic Services as described in Exhibit 1 of this Agreement, and for services required in the fulfillment of Paragraph 1, the Engineer shall be paid on an hourly rate based upon the "Schedule of Rates" in Exhibit 1 of this agreement, which shall constitute full and complete payment for said services and all expenditures which may be made and expenses incurred, except as otherwise expressly provided in this Agreement. The Basic Fee shall not exceed the amount of _____ and _____/100 Dollars (\$) without prior written authorization.

2) The parties hereto do expressly agree that the Basic Fee is based upon the Scope of Services to be provided by the Engineer and is not necessarily related to the estimated construction cost of the Project. In the event that the actual construction cost differs from the estimated construction cost, the Engineer's compensation will not be adjusted unless the Scope of Services to be provided by the Engineer changes and is authorized and accepted by the City.

B. Payment Schedule for Basic Fee

Payments shall be made upon receipt of billings based on the work completed. Billings shall be submitted by the Engineer periodically, but not more frequently than monthly. Payment by the City shall release the City from any further obligation for payment to the engineer for service or services performed or expenses incurred as of the date of the statement of services. Payment shall be made only for work actually completed as of the date of invoice. Payment shall not be considered acceptance or approval of any work or waiver of any defects therein.

C. Payment for Special Services

Only when directed in writing by the City, the Engineer shall furnish or acquire for the City the professional and technical services based on the hourly rate schedule as described in Exhibit 1 of this contract for minor project additions and/or alterations.

D. Certified Cost Records

The Engineer shall furnish certified cost records for all billings pertaining to other than lump sum fees to substantiate all charges. For such purposes, the books of account of the Engineer shall be subject to audit by the City. The Engineer shall complete work and cost records for all billings on such forms and in such manner as will be satisfactory to the City.

E. Contract Identification

The Engineer shall furnish to the City its employer identification number, as designated by the Internal Revenue Service, or social security number, as the City deems applicable.

F. Payment – General

1) Engineer shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

2) Engineer shall pay employees at least time and a half pay for all overtime worked in excess of 40 hours in any one week except for individuals under the contract who are excluded under ORS 653.010 to 653.261 or under 29 USC sections 201 to 209 from receiving overtime.

3) Engineer shall promptly, as due, make payment to any person, co-partnership, association or corporation, furnishing medical, surgical and hospital care or other

needed care and attention incident to sickness or injury to the employees of Engineer or all sums which Engineer agrees to pay for such services and all moneys and sums which Engineer 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.

4) The City certifies that sufficient funds are available and authorized for expenditure to finance costs of this contract.

5) Engineer shall make payments promptly, as due, to all persons supplying services or materials for work covered under this contract. Engineer shall not permit any lien or claim to be filed or prosecuted against the City on any account of any service or materials furnished.

6) If Engineer fails, neglects or refuses to make prompt payment of any claim for labor, materials, or services furnished to Engineer, sub-consultant or subcontractor by any person as such claim becomes due, City may pay such claim and charge the amount of the payment against funds due or to become due to the Engineer. The payment of the claim in this manner shall not relieve Engineer or their surety from obligation with respect to any unpaid claims.

4. Ownership of Plans and Documents: Records

A. The field notes, design notes, and original drawings of the construction plans, as instruments of service, are and shall remain, the property of the Engineer; however, the City shall be furnished, at no additional cost, one set of previously approved reproducible drawings, on 3 mil minimum thickness mylar as well as diskette in "DWG" or "DXF" format, of the original drawings of the work. The City shall have unlimited authority to use the materials received from the Engineer in any way the City deems necessary.

B. The City shall make copies, for the use of and without cost to the Engineer, of all of its maps, records, laboratory tests, or other data pertinent to the work to be performed by the Engineer pursuant to this Agreement, and also make available any other maps, records, or other materials available to the City from any other public agency or body.

C. The Engineer shall furnish to the City, copies of all maps, records, field notes, and soil tests which were developed in the course of work for the City and for which compensation has been received by the Engineer at no additional expense to the City except as provided elsewhere in this Agreement.

5. Assignment/Delegation

Neither party shall assign, sublet or transfer any interest in or duty under this Agreement without the written consent of the other and no assignment shall be of any force or effect whatsoever unless and until the other party has so consented. If City agrees to assignment of tasks to a subcontract, Engineer shall be fully responsible for the acts or

omissions of any subcontractors and of all persons employed by them, and neither the approval by City of any subcontractor nor anything contained herein shall be deemed to create any contractual relation between the subcontractor and City.

6. Engineer is Independent Contractor

A. The City's project director, or designee, shall be responsible for determining whether Engineer's work product is satisfactory and consistent with this agreement, but Engineer is not subject to the direction and control of the City. Engineer shall be an independent contractor for all purposes and shall be entitled to no compensation other than the compensation provided for under Section 3 of this Agreement.

B. Engineer is an independent contractor and not an employee of City. Engineer acknowledges Engineer's status as an independent contractor and acknowledges that Engineer is not an employee of the City for purposes of workers compensation law, public employee benefits law, or any other law. All persons retained by Engineer to provide services under this contract are employees of Engineer and not of City. Engineer acknowledges that it is not entitled to benefits of any kind to which a City employee is entitled and that it shall be solely responsible for workers compensation coverage for its employees and all other payments and taxes required by law. Furthermore, in the event that Engineer is found by a court of law or an administrative agency to be an employee of the City for any purpose, City shall be entitled to offset compensation due, or to demand repayment of any amounts paid to Engineer under the terms of the agreement, to the full extent of any benefits or other remuneration Engineer receives (from City or third party) as a result of said finding and to the full extent of any payments that City is required to make (to Engineer or to a third party) as a result of said finding.

C. The undersigned Engineer hereby represents that no employee of the City or any partnership or corporation in which a City employee has an interest, has or will receive any remuneration of any description from the Engineer, either directly or indirectly, in connection with the letting or performance of this Agreement, except as specifically declared in writing.

D. If this payment is to be charged against Federal funds, Engineer certifies that he/she is not currently employed by the Federal Government and the amount charged does not exceed his/her normal charge for the type of service provided.

E. Engineer and its employees, if any, are not active members of the Oregon Public Employees Retirement System and are not employed for a total of 600 hours or more in the calendar year by any public employer participating in the Retirement System.

F. Engineer shall obtain, prior to the execution of any performance under this Agreement, a City of Scappoose Business License. The Scappoose Business License is based on a calendar year with a December 31st expiration date. New businesses operating in Scappoose after June 30th of the current year will pay a pro-rated fee through the end of the calendar year.

G. Engineer is not an officer, employee, or agent of the City as those terms are used in ORS 30.265.

7. Indemnity

A. The City has relied upon the professional ability and training of the Engineer as a material inducement to enter into this Agreement. Engineer represents to the City that the work under this contract will be performed in accordance with the professional standards of skill and care ordinarily exercised by members of the engineering profession under similar conditions and circumstances as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of an Engineer's work by the City shall not operate as a waiver or release. Acceptance of documents by City does not relieve Engineer of any responsibility for design deficiencies, errors or omissions.

B. Claims for other than Professional Liability. Engineer agrees and shall indemnify, defend, save and hold harmless the City of Scappoose, its officers, employees, agents, and representatives from all claims, suits, or actions and all expenses incidental to the investigation and defense thereof, of whatsoever nature, including intentional acts resulting from or arising out of the activities of Engineer or its subcontractors, sub-consultants, agents or employees in performance of this contract at both trial and appeal level, whether or not a trial or appeal ever takes place including any hearing before federal or state administrative agencies.. If any aspect of this indemnity shall be found to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this indemnification.

C. Claims for Professional Liability. Engineer agrees and shall indemnify, defend, save and hold harmless the City of Scappoose, its officers, employees, agents, and representatives from all claims, suits, or actions and all expenses incidental to the investigation and defense thereof, arising out of the professional negligent acts, errors or omissions of Engineer or its subcontractors, sub RFP consultants, agents or employees in performance of professional services under this agreement. Any work by Engineer that results in a design of a facility that is not readily accessible to and usable by individuals with disabilities shall be considered a professionally negligent act, error or omission.

D. As used in subsections B and C of this section, a claim for professional responsibility is a claim made against the City in which the City's alleged liability results directly or indirectly, in whole or in part, from the quality of the professional services provided by Engineer, regardless of the type of claim made

against the City in performance of this contract. A claim for other than professional responsibility is a claim made against the City in which the City's alleged liability results from an act or omission by Engineer unrelated to the quality of professional services provided by Engineer in performance of this contract.

8. Insurance

Engineer and its subcontractors shall maintain insurance acceptable to City in full force and effect throughout the term of this contract. Such insurance shall cover risks arising directly or indirectly out of Engineer's activities or work hereunder, including the operations of its subcontractors of any tier. Such insurance shall include provisions that such insurance is primary insurance with respect to the interests of City and that any other insurance maintained by City is excess and not contributory insurance with the insurance required hereunder. The policy or policies of insurance maintained by the Engineer and its subcontractors shall provide at least the following limits and coverages:

A. Commercial General Liability Insurance

Engineer shall obtain, at Engineer's expense, and keep in effect during the term of this contract, Comprehensive General Liability Insurance covering Bodily Injury and Property Damage on an "occurrence" form (CG 2010 1185 or equivalent). This coverage shall include Contractual Liability insurance for the indemnity provided under this contract. The following insurance will be carried:

Coverage	Limit
General Aggregate	\$3,000,000
Products-Completed Operations Aggregate	\$2,000,000
Personal & Advertising Injury	\$1,000,000
Each Occurrence	\$2,000,000
Fire Damage (Any one fire)	\$50,000

B. Professional Liability

Engineer shall obtain, at Engineer's expense, and keep in effect during the term of this contract, Professional Liability Insurance covering any damages caused by an error, omission or any negligent acts. Combined single limit per claim shall not be less than \$2,000,000, or the equivalent. Annual aggregate limit shall not be less than \$3,000,000 and filed on a "claims-made" form.

C. Commercial Automobile Insurance

Engineer shall also obtain, at Engineer's expense, and keep in effect during the term of the contract (Symbol 1 or Symbols 8 and 9 as applicable) Commercial Automobile Liability coverage on an "occurrence" form including coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than \$2,000,000. If Contractor operates a personally-owned vehicle for business use under this contract, the Contractor shall obtain, at Contractor's expense, and keep in effect during the term of the

contract, business automobile liability coverage for all owned vehicles on an “occurrence” form. The Combined Single Limit per occurrence shall not be less than \$2,000,000.

D. Workers’ Compensation Insurance

The Engineer, its subcontractors, if any, and all employers providing work, labor or materials under this 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 that satisfies Oregon law for all their subject workers. Out-of-state employers must provide Oregon workers’ compensation coverage for their workers who work at a single location within Oregon for more than 30 days in a calendar year. Engineers who perform work without the assistance or labor of any employee need not obtain such coverage. This shall include Employer’s Liability Insurance with coverage limits of not less than \$1,000,000 each accident.

E. Additional Insured Provision

All policies aforementioned, other than Workers’ Compensation and Professional Liability, shall include the City its officers, employees, agents and representatives as additional insureds with respect to this contract. Coverage will be endorsed to provide a “per project” aggregate.

F. Extended Reporting Coverage

If any of the aforementioned liability insurance is arranged on a “claims-made” basis, Extended Reporting coverage will be required at the completion of this contract to a duration of 24 months or the maximum time period the Engineer’s insurer will provide such if less than 24 months. Engineer will be responsible for furnishing certification of Extended Reporting coverage as described or continuous “claims-made” liability coverage for 24 months following contract completion. Continuous “claims-made” coverage will be acceptable in lieu of Extended Reporting coverage, provided its retroactive date is on or before the effective date of this contract. Coverage will be endorsed to provide a “per project” aggregate.

G. Notice of Cancellation

There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 30 days written notice to the City. Any failure to comply with this provision will not affect the insurance coverage provided to the City. The 30 days notice of cancellation provision shall be physically endorsed on to the policy.

H. Insurance Carrier Rating

Coverage provided by the Engineer must be underwritten by an insurance company deemed acceptable by the City. All policies of insurance must be written by companies having an A.M. Best rating of "A-VII" or better, or

equivalent. The City reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.

I. Self-Insurance

The City understands that some Contractors may self-insure for business risks and the City will consider whether such self-insurance is acceptable if it meets the minimum insurance requirements for the type of coverage required. If the Contractor is self-insured for commercial general liability or automobile liability insurance the Contractor must provide evidence of such self-insurance. The Contractor must provide a Certificate of Insurance showing evidence of the coverage amounts on a form acceptable to the City. The City reserves the right in its sole discretion to determine whether self-insurance is adequate.

J. Certificates of Insurance

As evidence of the insurance coverage required by the contract, the Engineer shall furnish a Certificate of Insurance to the City. No contract shall be effective until the required Certificates of Insurance have been received and approved by the City. The certificate will specify and document all provisions within this contract and include a copy of Additional Insured Endorsement. A renewal certificate will be sent to the address below prior to coverage expiration.

K. Independent Contractor Status

The service or services to be rendered under this contract are those of an independent contractor. Contractor is not an officer, employee or agent of the City as those terms are used in ORS 30.265.

L. Primary Coverage Clarification

The parties agree that Engineer's coverage shall be primary to the extent permitted by law. The parties further agree that other insurance maintained by the City is excess and not contributory insurance with the insurance required in this section.

L. Cross-Liability Clause

A cross-liability clause or separation of insureds clause will be included in all general liability and commercial automobile policies required by this contract. A certificate in form satisfactory to the City certifying to the issuance of such insurance will be forwarded to:

City of Scappoose
Attn: City Manager
33568 E Columbia Ave
Scappoose, Oregon 97056

Such policies or certificates must be delivered prior to commencement of the work. The procuring of such required insurance shall not be construed to limit Engineer's liability hereunder. Notwithstanding said insurance, Engineer shall be

obligated for the total amount of any damage, injury, or loss caused by negligence or neglect connected with this contract.

9. Termination Without Cause

At any time and without cause, City shall have the right in its sole discretion, to terminate this Agreement by giving notice to Engineer. If City terminates the contract pursuant to this paragraph, it shall pay Engineer for services rendered to the date of termination.

10. Termination With Cause

A. City may terminate this Agreement effective upon delivery of written notice to Engineer, or at such later date as may be established by City, under any of the following conditions:

- 1)** If City funding from federal, state, local, or other sources is not obtained and continued at levels sufficient to allow for the purchase of the indicated quantity of services. This Agreement may be modified to accommodate a reduction in funds.
- 2)** If Federal or State regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Agreement.
- 3)** If any license or certificate required by law or regulation to be held by Engineer, its subcontractors, agents, and employees to provide the services required by this Agreement is for any reason denied, revoked, or not renewed.
- 4)** If Engineer becomes insolvent, if voluntary or involuntary petition in bankruptcy is filed by or against Engineer, if a receiver or trustee is appointed for Engineer, or if there is an assignment for the benefit of creditors of Engineer. Any such termination of this agreement under paragraph (A) shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

B. City, by written notice of default (including breach of contract) to Engineer, may terminate the whole or any part of this Agreement:

- 1)** If Engineer fails to provide services called for by this agreement within the time specified herein or any extension thereof, or
- 2)** If Engineer fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this agreement in accordance with its terms, and after receipt of written notice from City, fails to correct such failures within ten days or such other period as City may authorize.

3) If Engineer fails to eliminate a conflict as described in Section 14 of this agreement. The rights and remedies of City provided in the above clause related to defaults (including breach of contract) by Engineer shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement. If City terminates this Agreement under paragraph (B), Engineer shall be entitled to receive as full payment for all services satisfactorily rendered and expenses incurred, an amount which bears the same ratio to the total fees specified in this Agreement as the services satisfactorily rendered by Engineer bear to the total services otherwise required to be performed for such total fee; provided, that there shall be deducted from such amount the amount of damages, if any, sustained by City due to breach of contract by Engineer. Damages for breach of contract shall be those allowed by Oregon law, reasonable and necessary attorney fees, and other costs of litigation at trial and upon appeal.

11. Non-Waiver

The failure of City to insist upon or enforce strict performance by Engineer of any of the terms of this Agreement or to exercise any rights hereunder, should not be construed as a waiver or relinquishment to any extent of its rights to assert or rely upon such terms or rights on any future occasion.

12. Method and Place of Giving Notice, Submitting Bills and Making Payments

All notices, bills and payments shall be made in writing and may be given by personal delivery, mail, or by fax. Payments may be made by personal delivery, mail, or electronic transfer. The following addresses shall be used to transmit notices, bills, payments, and other information:

CITY OF SCAPPOOSE

Attn: (insert staff's name)
Address: 33568 E Columbia Ave
Scappoose, Oregon 97056
Phone: (503) 543-7184
Fax: (503) 543-5679
Email:

CONTRACTOR'S FIRM NAME

Attn: (insert contract manager's name)
Address:

Phone: ()
Fax: ()
Email: (Contact person's email)

and when so addressed, shall be deemed given upon deposit in the United States mail, postage prepaid, or when so faxed, shall be deemed given upon successful fax. In all other instances, notices, bills and payments shall be deemed given at the time of actual delivery. Changes may be made in the names and addresses of the person to whom notices, bills and payments are to be given by giving written notice pursuant to this paragraph.

13. Merger

This writing is intended both as a final expression of the Agreement between the parties with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement. No modification of this Agreement shall be effective unless and until it is made in writing and signed by both parties.

14. Professional Services

The City requires that services provided pursuant to this agreement shall be provided to the City by an Engineer, which does not represent clients on matters contrary to City interests. Further, Engineer shall not engage services of an engineer and/or other professional who individually, or through members of his/her same firm, represents clients on matters contrary to City interests. Should the Engineer represent clients on matters contrary to City interests or engage the services of an engineer and/or other professional who individually, or through members of his/her same firm, represents clients on matters contrary to City interests, Engineer shall consult with the appropriate City representative regarding the conflict. After such consultation, the Engineer shall have seven (7) days to eliminate the conflict to the satisfaction of the City. If such conflict is not eliminated within the specified time period, the agreement may be terminated pursuant to Section 10 (B - 3) of this agreement.

15. Force Majeure

Neither City nor Engineer shall be considered in default because of any delays in completion and responsibilities hereunder due to causes beyond the control and without fault or negligence on the part of the parties so disenabled, including but not restricted to, an act of God or of a public enemy, civil unrest, volcano, earthquake, fire, flood, epidemic, quarantine restriction, area-wide strike, freight embargo, unusually severe weather or delay of subcontractor or supplies due to such cause; provided that the parties so disenabled shall within ten days from the beginning of such delay, notify the other party in writing of the cause of delay and its probable extent. Such notification shall not be the basis for a claim for additional compensation. Each party shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon cessation of the cause, diligently pursue performance of its obligation under the Agreement.

16. Non-Discrimination

Engineer agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statues, rules, and regulations. Engineer also shall comply with the Americans with Disabilities Act of 1990, ORS 659A.142, and all regulations and administrative rules established pursuant to those laws.

17. Errors

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.

18. Extra (Changes) Work

Only the City's Project Manager may authorize extra (and/or change) work. Failure of Engineer to secure authorization for extra work shall constitute a waiver of all right to adjustment in the contract price or contract time due to such unauthorized extra work and Engineer thereafter shall be entitled to no compensation whatsoever for the performance of such work.

19. Governing Law

The provisions of this Agreement shall be construed in accordance with the provisions of the laws of the State of Oregon. Any action or suits involving any question arising under this Agreement must be brought in the appropriate court of the State of Oregon.

20. Compliance With Applicable Law

Engineer shall comply with all federal, state, and local laws and ordinances applicable to the work under this Agreement, including those set forth in ORS 279A, 279B, and 279C.

21. Conflict Between Terms

It is further expressly agreed by and between the parties hereto that should there be any conflict between the terms of this instrument in the proposal of the contract, this instrument shall control and nothing herein shall be considered as an acceptance of the said terms of said proposal conflicting herewith.

22. Access to Records

City shall have access to such books, documents, papers and records of Engineer as are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts and transcripts.

23. Audit

Engineer shall maintain records to assure conformance with the terms and conditions of this Agreement, and to assure adequate performance and accurate expenditures within the contract period. Engineer agrees to permit City, the State of Oregon, the federal government, or their duly authorized representatives to audit all records pertaining to this Agreement to assure the accurate expenditure of funds.

24. Severability

In the event any provision or portion of this Agreement is held to be unenforceable or invalid by any court of competent jurisdiction, the validity of the remaining terms and provisions shall not be affected to the extent that it did not materially affect the intent of the parties when they entered into the agreement.

25. Representations and Warranties

Engineer represents and warrants to the City that:

A. Engineer has the power and authority to enter into and perform this Agreement.

B. This Agreement, when executed and delivered, is a valid and binding obligation of Engineer, enforceable in accordance with its terms.

C. Engineer (to the best of Engineer's knowledge, after due inquiry), for a period of no fewer than six calendar years (or since the firm's inception if less than that) preceding the effective date of this Agreement, faithfully has complied with:

- 1)** All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318;
- 2)** Any tax provisions imposed by a political subdivision of this state that applied to Engineer, to Engineer's property, operations, receipts, or income, or to Engineer's performance of or compensation for any work performed by Engineer;
- 3)** Any tax provisions imposed by a political subdivision of this state that applied to Engineer, or to goods, services, or property, whether tangible or intangible, provided by Engineer; and
- 4)** Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

D. Any intellectual property rights or such delivered to the City under this Agreement, and Engineer's services rendered in the performance of Engineer's obligations under this Agreement, shall be provided to the City free and clear of any and all restrictions on or conditions of use, transfer, modification, or assignment, and shall be free and clear of any and all liens, claims, mortgages, security interests, liabilities, charges, and encumbrances of any kind.

26. Compliance with Tax Laws

A. Engineer must, throughout the duration of this Agreement and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of the State of Oregon. For the purposes of this Section, "tax laws" includes all the provisions described in subsection 25.C. 1) through 4) of this Agreement.

B. Any violation of subsection A of this section shall constitute a material breach of this Agreement. Further, any violation of Engineer's warranty, in subsection 25.C of this Agreement, that the Engineer has complied with the tax laws of the State of Oregon and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Agreement. Any violation shall entitle the City to terminate this Agreement, to pursue and recover any and all damages that arise from the breach and the termination of this Agreement, and to pursue any or all of the remedies available under this Agreement, at law, or in equity, including but not limited to:

- 1)** Termination of this Agreement, in whole or in part;

2) Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Engineer, in an amount equal to State's setoff right, without penalty; and

3) Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. The City shall be entitled to recover any and all damages suffered as the result of Engineer's breach of this Agreement, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing a replacement Engineer. These remedies are cumulative to the extent the remedies are not inconsistent, and the City may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

27. Complete Agreement

This Agreement, including the exhibits, is intended both as a final expression of the Agreement between the Parties and as a complete and exclusive statement of the terms. In the event of an inconsistency between a provision in the main body of the Agreement and a provision in the Exhibits, the provision in the main body of the Agreement shall control. In the event of an inconsistency between Exhibit A and Exhibit B, Exhibit A shall control. No waiver, consent, modification, or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change if made, shall be effective only in specific instances and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. Engineer, by the signature of its authorized representative, hereby acknowledges that he/she has read this Agreement, understands it and agrees to be bound by its terms and conditions.

IN WITNESS WHEREOF, City has caused this Agreement to be executed by its duly authorized undersigned officer and Engineer has executed this Agreement on the date hereinabove first written. Contract was awarded by Scappoose's Local Contract Review Board at their meeting on _____.

CITY OF SCAPPOOSE

CONTRACTOR

By: Michael Sykes, City Manager

By: Authorized Contractor Representative

Date

Date