

**AGREEMENT
FOR
PROFESSIONAL ENGINEERING SERVICES
FOR
WELL 17 PRELIMINARY ENGINEERING
CITY OF CAMAS
CLARK COUNTY, WASHINGTON**

THIS AGREEMENT AND CONTRACT, made and entered into at Camas, Washington this _____ day of _____, _____ by and between the City of Camas, Clark County, State of Washington, and MURRAY, SMITH & ASSOCIATES, INC., a firm of engineers duly authorized to perform engineering services in the State of Washington:

WITNESSETH THAT:

WHEREAS, the City of Camas desires to retain an engineer to provide professional engineering services to/for Well 17 Preliminary Engineering and,

WHEREAS, the City of Camas has selected Murray, Smith & Associates, Inc. to provide such professional engineering services, and,

WHEREAS, Murray, Smith & Associates, Inc. does offer to provide said professional services, NOW, THEREFORE,

IT IS AGREED BETWEEN THE PARTIES HERETO AS FOLLOWS:

ARTICLE I – DEFINITIONS

Whenever the term “Client” is used herein, it is understood to mean the City of Camas, Clark County, State of Washington, or its authorized officer(s), and the term “Engineer” means Murray, Smith & Associates, Inc. or its authorized representative(s).

ARTICLE II – OBLIGATIONS OF THE ENGINEER

The professional engineering services to be performed by the Engineer under this agreement are described as follows:

1. Description of Services –
 - a. Basic Engineering Services - (The Engineer will provide engineering services for the Well 17 Preliminary Engineering project as described in “Exhibit A” - Scope of Work which is attached.)
 - b. Additional Services – It may be necessary to provide additional services that may include special engineering work or additional services beyond the services described

above. If requested by the Client, the Engineer agrees to perform the additional services that cannot be fully described at this time. Such services may include, but are not limited to, field investigations, special technical studies, financial consultations and rate studies, facilities planning, preliminary and final designs, project/construction management, and surveying.

2. Standard of Practice - In the performance of professional services, the Engineer will use that degree of care and skill ordinarily exercised under similar circumstances by reputable members of the engineering profession practicing in the same or similar locations and no warranties, expressed or implied, are made or intended in any of the Engineer's proposals, contracts, or reports.
3. Insurance - The Engineer shall maintain in its name insurance coverage, subject to limitations and exclusions, for claims against it under the Workers' Compensation Act and claims for bodily injury, death or property damage which might arise from the performance of its services under this Agreement. Certificates evidencing such insurance and the amounts thereof will be furnished upon request.
4. Special Services - There may be certain special services desired by the Client beyond those listed herein. The type and extent of all such special services cannot be determined at this time. However, the Engineer agrees to assist the Client and perform such special services as the Client may require, all in order that the Client can best accomplish its objectives.
5. Services During Construction - If so agreed, the Engineer will provide general observation of the contractor's work on behalf of the Client to the extent agreed by periodic visits to the site of the project to observe the progress and quality of the work and to determine, in general, if the work is proceeding in accordance with the intent of the contract documents. On the basis of these visits, the Engineer will keep the Client informed of the progress of the work, will endeavor to guard the Client against defects and deficiencies in the work of the contractor(s) and may advise the Client to reject work or materials that fail to conform to contract requirements. Visits to the construction site and observations made by the Engineer shall not relieve the contractor of its obligation to conduct comprehensive inspections of the work sufficient to insure conformance with the intent of the contract documents, and shall not relieve the construction contractor of its full responsibility for all construction means, methods, techniques, sequences and procedures necessary for coordinating and completing all portions of the work under the construction contract and for all safety precautions incidental thereto.
6. Construction Observation - If so agreed, the Engineer will furnish the services of an on-site construction representative(s) to provide observation of the work of the contractor during the period of construction. The construction representative will make out periodic reports of construction progress and will prepare monthly estimates as the basis for payments to contractor as construction proceeds. The construction representative will endeavor to guard the Client against defects and deficiencies in the work of the contractor and help determine if the provisions of the contract documents are being fulfilled. On-

site construction observation will not, however, cause the Engineer to be responsible for those duties and responsibilities which belong to the contractor and which include, but are not limited to, full responsibility for the techniques and sequences of construction and the safety precautions incidental thereto, and for performing the construction work in accordance with the contract documents. The Engineer will report to the Client observed deviations from the requirements of the contract documents. The Engineer will facilitate a final inspection of the constructed project and will make recommendation to the Client regarding substantial completion and final project acceptance.

7. Shop Drawing Review - If so agreed, the Engineer will perform shop drawing and submittal review. The Client and the Engineer agree that effective review of shop drawings is important, and the Client encourages the Engineer to develop a procedure that is properly funded to promote effective implementation. The Client agrees that the Engineer shall review shop drawing submissions solely for their conformance with the Engineer's design intent and conformance with the requirements of the construction documents. The Engineer shall not be responsible for any aspects of a shop drawing submission that affect or are affected by the means, methods, techniques, sequences and operations of construction, safety precautions and programs incidental thereto, all of which are the contractor's responsibility. The Client warrants that the contractor shall be made aware of his or her responsibilities to review shop drawings in these respects before submitting them to the Engineer, and that the contractor will further be advised of the need to adhere to the shop drawing submission schedule furnished to it by the Engineer, the need to call any variations to the Engineer's attention, and such other requirements and responsibilities as may be identified in construction documents prepared by the Engineer.
8. Record Drawings - If so agreed and upon substantial completion of the work, the Engineer shall provide the Client a set of record drawings based on information provided by the contractor which illustrate the reported location of work and reported materials and equipment installed. In that record drawings are based on information provided by others, the Engineer cannot and does not warrant their accuracy.

ARTICLE III – OBLIGATIONS OF THE CLIENT

1. Authorization – Unless provided otherwise elsewhere in this Agreement, the execution of this Agreement will constitute authorization for the Engineer to proceed with the work.
2. Information Provided by Client - In order to facilitate the work to be performed by the Engineer, the Client shall furnish to the Engineer all information available to the Client having a bearing on the work. It may be necessary during the work of the Engineer to locate and expose underground utilities and/or structures. The Client shall cause such excavation and incidental work connected therewith to be done at no cost to the Engineer. The Client shall provide the Engineer all labor, equipment and materials to assist in accomplishing system operations if so required.

3. Client to Provide Legal Access - The Client shall provide to the Engineer or the Engineer's representatives legal access to the properties which are necessary in performance of the work. Client shall provide access for the Engineer to these properties for the making of measurements and obtaining details for work to be performed by the Engineer.
4. Miscellaneous Project Related Fees - The Client shall pay the costs of advertisements for construction bids, checking and inspection fees, assessment fees, soils engineering fees, materials testing fees, aerial topography fees, fees for permits, bond premiums, title company charges, blueprints and reproductions, and all other charges not specifically covered by the terms of this Agreement.
5. Payments to the Engineer - For services provided under Article II, Paragraph 1a, the Client shall pay the Engineer on a time and expenses basis under the provisions of the Engineer's current standard Schedule of Charges in effect at the time services are performed for a total fee not to exceed \$156,650. The Engineer's current standard Schedule of Charges is attached as Exhibit B. The Engineer shall provide services under Article II, Paragraph 1 on a mutually agreeable basis.
6. Invoices – Monthly invoices will be issued by the Engineer for all work performed under this Agreement. Invoices are due and payable on receipt. Interest at the rate of 1-1/2% per month will be charged on all past due amounts starting 30 days after date of invoice. Payments will first be credited to interest and then to principal.

ARTICLE IV - GENERAL

The Client and the Engineer agree that the following provisions shall be part of their agreement:

1. Assignment of Contract - Neither the Client nor the Engineer shall assign its interest in this Agreement without the written consent of the other.
2. Hazardous Materials - Hazardous materials may exist at a site where there is no reason to believe they could or should be present. The Client and the Engineer agree that the discovery of unanticipated hazardous materials constitutes a changed condition mandating a re-negotiation of the scope of work or termination of services. The Client agrees to compensate the Engineer for the additional cost of working to protect employees' and the public's health and safety as might be associated with such hazardous conditions. In addition, the Client waives any claim against the Engineer, and agrees to defend, indemnify and save the Engineer harmless from any claim or liability for injury or loss arising from the Engineer's discovery of unanticipated hazardous materials or suspected hazardous materials. The Client also agrees to compensate the Engineer for any time spent and expenses incurred by the Engineer in defense of any such claim.
3. Changes to Plans and Specifications by Others - In the event that any changes are made in plans and specifications by the Client or persons other than the Engineer which affects the Engineer's work, any and all liability arising out of such changes is waived as against

the Engineer, and the Client assumes full responsibility for such changes unless the Client has given the Engineer prior notice and has received from the Engineer written consent for such changes.

4. Delays - The Engineer shall not be responsible for damages or be in default or be deemed to be in default by reason of delays in performance by reason of strikes, lockouts, accidents, acts of God and other delays unavoidable or beyond the Engineer's reasonable control, or due to shortages or unavailability of labor at established area wage rate or delays caused by failure of the Client or Client's agents to furnish information or to approve or disapprove the Engineer's work promptly, or due to late, slow, or faulty performance by the Client, other contractors or governmental agencies, the performance of whose work is precedent to or concurrent with the performance of the Engineer's work. In the case of the happening of any such cause of delay, the time of completion shall be extended accordingly.
5. Unauthorized Reuse of Documents - All reports, plans, specifications, field data, field notes, laboratory test data, calculations, estimates and other documents prepared by the Engineer as instruments of service shall remain the property of the Engineer. Reuse of any drawings, specifications and other work product of the Engineer by the Client on extensions of this project or any other project without written permission of the Engineer shall be at the Client's risk and the Client agrees to defend, indemnify and hold harmless the Engineer from all claims, damages and expenses arising out of such unauthorized reuse by the Client or by other's acting through the Client.
6. Contractor's Responsibility for Project and Safety - The Client agrees that in accordance with generally accepted construction practices, the construction contractor will be required to assume sole and complete responsibility for projects, including safety of all persons and property and that this requirement shall be made to apply continuously and not be limited to normal working hours.
7. Insurance Provided by Construction Contractor - Construction specifications prepared by the Engineer may include standard provisions for insurance coverages to be provided to the Client by the construction contractor. Since the Engineer is not qualified to advise on insurance matters, the Client agrees to review those provisions prior to the bidding process with its insurance advisor and to notify the Engineer of changes to be made, if any, to these provisions.
8. Time Schedule - The Engineer shall begin work within a mutually agreeable time after execution of this Agreement and shall diligently prosecute the work to meet the time schedule agreed upon by the Client and the Engineer.
9. Quantity Estimates and Opinion of Construction Costs - The Engineer will prepare estimates of the materials to be furnished and work to be done. Any opinion of the construction cost prepared by the Engineer represents its judgment as a design professional and is supplied for the general guidance of the Client. Since the Engineer has no control over the cost of labor and materials, or over the competitive bidding or

market conditions, the Engineer does not guarantee the accuracy of such opinions as compared to contractor bids or actual costs to the Client.

10. Americans With Disabilities Act - The American Disabilities Act (ADA) provides that it is a violation of the ADA to design and construct a facility for first occupancy later than January 26, 1993, that does not meet the accessibility and usability requirements of the ADA except where an entity can demonstrate that it is structurally impractical to meet such requirements. The Client acknowledges that the requirements of the ADA may be subject to various and possibly contradictory interpretations. The Engineer, therefore, will use its reasonable professional efforts to interpret applicable ADA requirements and other federal, state and local laws, rules, codes, ordinances and regulations as they apply to the project. The Engineer, however, cannot and does not warrant or guarantee that the Client's project will comply with all potential interpretations of ADA requirements and/or requirements of other federal, state and local laws, rules codes, ordinances and regulations as they apply to the project.
11. Dispute Resolution - All claims, disputes or controversies arising out of, or in relation to the interpretation, application or enforcement of this Agreement shall be subject to mediation as adopted and described by the American Arbitration Association. The parties further agree that the Client will require, as a condition for participation in the project and their agreement to perform labor or services that all contractors, subcontractors, and material persons shall agree to this procedure.
12. Services Exclusively for Client - Services provided within this Agreement are for the exclusive use of the Client.
13. Severability - The Client and the Engineer have entered into this Agreement of their own free will to communicate to one another mutual understandings and responsibilities. Any element of this Agreement later held to violate a law or regulation shall be deemed void, and all remaining provisions shall continue in force. However, the Client and the Engineer will in good faith attempt to replace an invalid or unenforceable provision with one that is valid and enforceable, and which comes as close as possible to expressing or achieving the intent of the original provision. In the event that an invalidated provision would otherwise have required the Client to compensate the Engineer, as to honor an indemnification or for any other reason, the amount of money in question shall automatically be considered an additional fee due to the Engineer, irrespective of the invalidity of the provision in question.
14. Termination of Agreement - The Client may terminate this Agreement for reasons identified elsewhere in this Agreement, or for any other reasons which may arise. In the event such termination becomes necessary, the Client shall so notify the other party, and termination will become effective fourteen (14) calendar days after receipt of the termination notice. The Client shall within thirty (30) calendar days of termination pay the Engineer for services rendered prior to termination and costs incurred, as a result of termination itself, such as demobilizing, modifying schedules, and reassigning personnel. Such payment shall be based insofar as possible on the amounts specifically established in this Agreement, or, where the Agreement cannot be applied, on the basis of the

Engineer's current Standard Schedule of Charges. The Engineer may terminate this Agreement upon giving the Client fourteen (14) calendar days prior written notice due to breach by Client of any material term of this Agreement, including but not limited to the payment terms, or changes in the material conditions under which the Agreement was entered into coupled with a failure of the parties to negotiate an accord regarding the fees, changes, schedules relating to those changes.

15. Survival - All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating responsibility or liability between the Client and the Engineer shall survive the completion of the services hereunder and the termination of this Agreement.

16. Extent of Agreement - There are no understandings or agreements except as herein expressly stated.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate by their respectively authorized officers or representatives.

CITY OF CAMAS

Date _____

By: _____
Scott Higgins, Mayor

MURRAY, SMITH & ASSOCIATES, INC.

Date _____

By: _____
Kevin Thelin, Vice President