

AGREEMENT

This Agreement, made and entered into on this _____ day of _____, 1981, by and between the Planning Bureau of the City of Portland, hereinafter referred to as "City," whose address is 621 SW Alder Street, Portland, Oregon 97205, and Bierly and Associates, hereinafter referred to as "Consultant."

RECITALS

WHEREAS, City has identified the need to clarify Willamette River Greenway policies and regulations relating to in and on water development; and

WHEREAS, the City budget contains funds to carry out the purpose of this Agreement; and

WHEREAS, a Scope of Work has been developed between the City and Contractor to define the activities to be undertaken pursuant to this Agreement;

NOW, THEREFORE, the premises being in general as stated in the foregoing recitals, it is agreed by and between the parties hereto as follows:

I. AGREEMENT

A. City

City will direct and supervise performance of all aspects of the study. City will make all decisions and authorizations in connection with the study.

For the purposes of this Agreement, Joe Walsh will be designated as Project Manager.

B. Consultant

The overall role of Consultant is set out in Exhibit B, attached hereto and by this reference made a part of this Agreement.

II. CONTRACT FRAME

A. Consultant agrees to begin performance under this Agreement following written authorization from the City.

Established completion time shall not be extended because of any unwarranted delays attributable to Consultant, but may be extended by the City in the event of a delay attributable to the City or because of unavoidable delays caused by an act of God or governmental actions or other conditions beyond the control of Consultant.

Delays attributable to or caused by one of the parties hereto amounting to forty-five (45) days or more affecting the completion of the work may be considered a cause of renegotiation or termination of this Agreement by the other party.

B. Completion of Project Work

The total cost to the City for the performance of this Agreement is \$15,000. If, at any time, the Consultant has reason to believe that the costs which he/she expects to incur in the performance of this Agreement in the next succeeding thirty (30) days, when added to all costs previously incurred, will exceed seventy (70) percent of the estimated cost, or if at any time the Consultant has reason to believe that the total cost to the City for the performance of this Agreement, exclusive of any fee, will be greater or substantially less than the then estimated cost hereof, the Consultant shall notify the City Project Manager in writing to that effect, given the revised estimate of such total cost for the performance of this Agreement.

When all work has been completed to the satisfaction of the City and all required products have been delivered and accepted by the City, the Consultant will be provided written notification of such satisfactory completion of the work.

III. COMPENSATION AND BILLINGS

Consultant shall be paid for completed work and for services rendered under this Agreement as provided hereinafter. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment and incidentals necessary to complete the work.

A. Payment for work accomplished under the terms of this Agreement shall be on the basis of Consultant's actual cost plus a net fee. The actual cost includes direct salary cost, overhead, and direct nonsalary cost.

B. On or after the 30th day of each month, Consultant may invoice the City for that portion of the Agreement sum which reflects the number of hours of actual labor, reimbursable expenses during the previous month, and the fee specified. Each invoice shall be supported by a general description of such labor, reimbursable expenses, and fee or such other evidence of Consultant's right to payment as City may direct. Each invoice must be approved in writing by the City prior to payment.

C. City shall pay Consultant the amount of all approved invoices within thirty (30) days after receipt of same, except that City may retain five (5) percent of all invoices except the final invoice.

D. Consultant shall notify the City in writing when all services are completed and all terms of this Agreement are satisfied by the Consultant. If the City agrees, it shall acknowledge in writing within five (5) working days that the services are accepted. If the City disagrees, it shall so notify Consultant in writing within five (5) working days and advise of

deficiencies. Thereupon, Consultant shall take or cause a subcontractor to take corrective measures, upon the conclusion of which the City shall then issue its acceptance of the services.

E. Upon receipt of City's acceptance of services, Consultant may submit its final invoice for all retainage and for any other amounts which may then be due and payable.

F. Payment for extra work performed under this Agreement shall be paid as agreed to by the parties hereto in writing at the time extra work is authorized.

G. A short narrative progress report shall be submitted monthly. The report shall include discussion of any problems and potential causes for delay, and vouchers shall reference progress reports.

H. Progress billings shall be itemized to reflect work performed relating to Task as identified in the Scope of Services, Exhibit B.

IV. EMPLOYMENT

Any and all employees of Consultant while engaged in the performance of any work or services required by Consultant under this Agreement shall be considered employees of Consultant only and not of the City, and any and all claims that may arise under the Worker's Compensation Act on behalf of said employees while so engaged and any and all claims made by third party as a consequence of any negligent act or omission on the part of Consultant's employees while so engaged on any of the work or services provided to be rendered herein shall be the sole obligation and responsibility of Consultant.

If, during the time period of this Agreement, Consultant finds it necessary to increase its professional, technical, or clerical staff as a result of this work, it will actively solicit minorities through its advertisement and interview process.

V. CHANGES IN WORK

Consultant shall make such revisions in the work included in this Agreement which has been completed, as necessary to correct his/her efforts or omissions appearing therein, when required to do so by the City, without additional compensation therefor.

The Consultant shall make changes, amendments, revisions, or modifications in the execution of the work program as required by the City and agreed upon by the Consultant. If the City finds it convenient to change the scope of work or delete tasks from the work scope, the City shall notify Consultant in a timely manner to allow Consultant to adjust its staff commitment to the work being done, and such changes shall not exceed twenty (20) percent of the total dollar amount of the work set out in Exhibit A.

VI. TERMINATION

A. Termination for Convenience: The City may terminate this Agreement, in whole or in part, at any time by two (2) weeks written notice to the Consultant. All work on the Agreement shall cease upon receipt of the notice. The Consultant shall be paid all costs, including Agreement close-out costs, and profit on work performed up to the time of termination. The Consultant shall promptly submit its termination claim to be paid the Consultant. If the Consultant has any property in its possession belonging to the City, the Consultant will account for the same and dispose of it in the manner City directs.

B. Termination for Default: If the Consultant fails to perform in the manner called for in the Agreement, or if the Consultant fails to comply with any other provisions of the Agreement, the City may terminate this Agreement for default. Termination shall be effected by serving a notice of termination on the Consultant setting forth the manner in which the Consultant is in default. The Consultant will only be paid the Agreement price for services performed in accordance with the manner of performance set forth in the Agreement.

If it is later determined by the City that the Consultant had an excusable reason for not performing, such as a strike, fire or flood, events which are not the fault of or are beyond the control of the Consultant, the City, after setting up a new performance schedule, may allow the Consultant to continue work or may treat the termination as a termination for convenience.

C. This Agreement may be terminated at any time upon two (2) weeks' written notice by mutual consent of both parties.

VII. DISPUTES

Any disputes shall be submitted to the City Project Manager. If satisfactory resolution is not obtained, the dispute shall be submitted to the City Auditor and his decision shall be final and conclusive to the parties to this Agreement.

VIII. FURTHER AGREEMENTS

Consultant and City further mutually agree as follows:

A. Consultant hereby agrees to hold the City harmless from, and shall process and defend at its own expense, all claims, demands, or suits of law or equity, of whatever nature, brought against those parties arising from Consultant's performance of the provision of this Agreement.

B. Performance of this Agreement shall not be subcontracted in whole or in part except with the written consent of the City. Consultant shall not assign this Agreement in whole or in part, or any right, privilege, duty or obligation hereunder, without the prior written consent or obligation hereunder, without the prior written consent of the City. No provision of this section and no approval by the City of any subcontract shall be deemed in any event or in any manner to provide for the incurrence of any obligation by the City in addition to the Agreement price.

B. During the term of this Contract, the Consultant shall carry and have certificates thereof on file with the auditor, the following insurance:

1. A certificate establishing that he has qualified (a) as a direct responsibility employer as provided pursuant to ORS 656.407 (Workers Compensation), or (b) as a contributing employer as provided by ORS 656.411, or (c) if the contract is to be performed without the assistance of others, he will sign a joint declaration with the City that the services are rendered as those of an independent contractor.

2. Public liability and property damage insurance (including automotive) in an amount not less than \$100,000 for injuries, including wrongful death, to any one person, and not less than \$300,000 for each occurrence, with "broad form" property damage coverage in an amount not less than \$300,000; and the City of Portland, its officers and employees shall be named as additional insured.

C. Consultant shall be free to copyright material developed under this Agreement. The City reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use the work for government purposes.

D. The Consultant shall perform this Agreement as an independent consultant and not as an employee of the City.

E. During the performance of this Agreement, Consultant for itself, and its assignees and successors in interest, agree as follows:

1. Nondiscrimination: During the performance of this Agreement, the Consultant agrees as follows:

a. The Consultant will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The Consultant will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, color, sex, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

2. Solicitation for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, either by competition bidding or negotiation made by the Consultant for work to be performed under a subcontract, including procurements of materials or equipment, each potential subcontractor or supplier shall be notified by the Consultant of the Consultant's obligations under this Agreement and the Regulations relative to nondiscrimination on the ground of race, color, national origin or handicap.

3. Information and Records: The Consultant will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, and other sources of information, and its facilities as may be determined by the City.

F. The Consultant will provide all camera-ready art work necessary for the printing of the final report, to be delivered to the City by April 13, 1981, at which time the art work will become the property of the City which will be solely responsible for the printing and binding of the document(s). At the time of delivery the Consultant may recommend paper stocks, ink colors and processes to be employed in the printing and binding of the document. However, it is understood that the City reserves the right to produce the document(s) in any manner which it determines to be expedient and proper.

The format for documents prepared for the City shall be in accordance with the following guidelines:

1. The size of the document shall be limited to 8.5" x 11".
2. All art work shall be camera ready "line" art prepared for or adaptable to one-color printing.
3. All art work shall be prepared to facilitate two-staple binding.
4. Screen tints shall have a maximum of 85 lines per inch.
5. Any nonconformance with the above format, including the addition of continuous-tone originals, foldouts, or additional ink colors which might be necessary aid in communication, shall be negotiated separately with the City in advance of producing the art work.
6. Information on the cover and title page of the document(s) will include the title and the phrase "Prepared for the City of Portland Bureau of Planning by," followed by the name of the Consultant and the date on which the document is projected to be released. The title page will additionally include the seal of the City of Portland, Oregon.

The parties to this agreement agree that Bierly and Associates is providing professional services to the City of Portland as an independent contractor and is not an employee of the City, and is therefore, not entitled to the benefits provided by the City to its employees, including, but not limited to, group health insurance, pension plans, or use of City-owned vehicles. The Consultant may practice his profession for others during those periods when not performing work under this agreement.

151041

CONSULTANT:

By: _____

By: _____

Date: _____

APPROVED AS TO FORM:

CITY OF PORTLAND:

By: _____
Commissioner in Charge

By: _____
City Auditor

Date: _____

BUC #51449002, Project 3701

SCOPE OF WORK

The scope of work involves five work tasks required to accomplish the Greenway Update. The timing of these tasks is illustrated in the attached Schedule.

1. Review Background Information:

A listing of river related planning, policy objectives and regulations (City, State and Federal programs) will be made. The Lower Willamette Plan (DSL), State and City Greenway Plans, Fish Management Plans (ODF&W), Recreational Boating Plans (Port), Marine Terminal Plans (Port), and other plans will be reviewed to identify river and shoreline areas of particular significance for biological, recreational, commercial or other values.

2. Clarify Key Planning Issues:

Project files will be reviewed to identify issues and conflicts associated with specific projects. Interviews will be conducted with agency personnel to identify both river wide and site specific concerns. Overlaps and areas of conflict relating to developments/conservation will be summarized from interviews and file reviews. A summary memorandum that identifies and describes the planning issues resolvable by updating the City Greenway Plan will be prepared along with a rough draft or outline of findings.

3. Develop Planning Alternatives:

Based on the findings of the Background Data Review and Issue Clarification, comparisons of State and Federal agency policies relating to river use will be made with the City Greenway Plan provisions for in and on-water development. River-wide policies will be reviewed to see if additions to the Intent and Purposes of the Willamette Greenway Plan would make it more comprehensive and parallel with other agency programs. The overlay zones will be reanalyzed to determine if new zones should be created or definitions changed. The Intent and Process and Guidelines designated for each of the overlay zones will be reviewed to determine if more specific procedures can be added.

Additional alternatives to be analyzed include: 1) designation of mitigation areas and procedures, 2) identification of locational criteria for fills and structures, 3) identification of design criteria for structures, 4) development of building limit line concepts, 5) development of bulk regulations for waterfront lots, 6) identification of control measures for recreational uses of water surface areas.

The planning alternatives that can be incorporated into the existing Greenway Plan structure will be identified. Those alternatives that would require a substantial change in the administration of the Greenway Plan will also be listed. Particular emphasis will be placed in this phase on the role of the City in a regulatory process affecting waterway permits in the Lower Willamette area. Coordination with the Division of State Lands' update of the Lower Willamette Plan will be maintained to reciprocate in clarifying the procedures.

The results of this work step will be summarized in a working document to be reviewed by the Waterways Advisory Committee (WAC) and all the agencies. The summary document will include an identification of the planning alternatives available with a specific description of the nature of the alternative and the relationship of that alternative to existing procedure. A rough draft or outline of the report will be prepared prior to WAC review.

4. Evaluate Alternatives and Develop Recommendations:

Based on feedback from the Waterways Advisory Committee and the reviewing agencies and discussions with the Planning Bureau the alternatives will be reviewed as to ability for the City to implement them and their relationships to other agency programs and costs of implementation. Specific review criteria will be applied to the planning alternatives identified earlier. Specific changes to the City of Portland Willamette Greenway Plan will be proposed at the conclusion of this work step and a brief summary memorandum will be prepared.

5. Prepare Implementation Program:

This step is the critical step for assuring that the Greenway Update becomes a useful effort. The development of the Greenway Plan must be consistent with LCDC administrative rule 660-20-065. If a memoranda of agreement is required between the Division of State Lands and the City of Portland, draft memoranda will be prepared for Council and Land Board planning consideration. Draft ordinances will be prepared for Council and Commission consideration. These ordinances will be reviewed to ensure their utility by zoning administrators and City Attorney. Input for submittal to the Division of State Lands consideration during the Lower Willamette Plan Update will be prepared as a technical memoranda that will provide specific recommendations from the City to the Division of State Lands for changes in the Lower Willamette Plan.

An informational product will be prepared by Bierly and Associates for the City's use in their day-to-day administration of the Willamette Greenway Plan. This product will be an information package for project applicants that describes procedures and jurisdictions involved in waterfront development within the Willamette Greenway area. Emphasis in this informational package will be on Greenway procedures and regulatory processes affecting in and on-water development. The informational package will be prepared in a manner that explains what information will be required for specific types of development, what agencies should be contacted, at what times, and the role of the various agencies in relationship to project development.

ORDINANCE No. 151041

An Ordinance authorizing an agreement between the City of Portland and Bierly and Associates in the amount of \$15,000 to provide professional consulting services in updating the Willamette River Greenway Plan; and declaring an emergency.

The City of Portland ordains:

Section 1. The Council finds:

1. By Ordinance 150413, adopted September 17, 1980, the Council directed the Bureau of Planning to develop an amendment to the Greenway Plan relating to development in and on the water and created a Waterways Advisory Committee to provide input to this and other river-related planning matters.
2. By Ordinance 150414, adopted September 17, 1980, Council transferred \$30,000 to the Bureau of Planning budget for this effort.
3. The firm Bierly and Associates has submitted an acceptable proposal to accomplish this work within the allotted time.

NOW, THEREFORE, the Council directs:

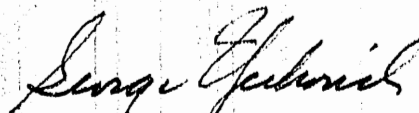
- a. That the Commissioner of Public Affairs and Auditor are authorized to execute, on behalf of the City, an agreement similar in form to the agreement attached to the original of this Ordinance as Exhibit A and by this reference made a part thereof.
- b. That the Mayor and City Auditor are authorized to draw and deliver warrants chargeable to the Bureau of Planning in the amount of \$15,000 to be payable to Bierly and Associates.

Section 2. The Council declares that an emergency exists because the delay of this project could adversely affect public and private riverfront development projects; therefore, this Ordinance shall be in force and effect from and after its passage by the Council.

Passed by the Council, **JAN 28 1981**

Commissioner Schwab
Walsh:db
21 January 1981
BUC 51449002 Proj. 3701

Attest:


Auditor of the City of Portland

THE COMMISSIONERS VOTED AS FOLLOWS:		
	Yeas	Nays
Jordan	1	
Lindberg	1	
Schwab	1	
Ivancie	1	

FOUR-FIFTHS CALENDAR	
Ivancie	
Jordan	
Lindberg	
Schwab	
McCready	

Calendar No. 250

ORDINANCE No. 151041

Title

An Ordinance authorizing an agreement between the City of Portland and Bierly and Associates in the amount of \$15,000 to provide professional consulting services in updating the Willamette River Greenway Plan; and declaring an emergency.

Filed JAN 22 1981

GEORGE YERKOVICH
Auditor of the CITY OF PORTLAND

By Gordon C. [Signature]
Deputy

INTRODUCED BY
Commissioner Schwab

NOTED BY THE COMMISSIONER
Affairs
Finance and Administration
Safety
Utilities
Works

BUREAU APPROVAL
Bureau:
Planning
Prepared By: Joe Walsh
Date: 1/21/81
Budget Impact Review:
<input checked="" type="checkbox"/> Completed <input type="checkbox"/> Not required
Bureau Head: Terry Sandblast

CALENDAR
Consent
Regular X

NOTED BY
City Attorney KSB
City Auditor
City Engineer