

EXHIBIT A
AGREEMENT FOR PROFESSIONAL SERVICES
FOR
CITY OF PORTLAND
PORTLAND, OREGON

THIS AGREEMENT AND CONTRACT, made and entered into at Portland, Oregon, this _____ day of _____, 1986, by and between the **CITY OF PORTLAND** of Multnomah County, State of Oregon, hereinafter called the "City," and **MOFFATT, NICHOL AND BONNEY, INC.**, a firm of consulting engineers duly authorized to perform professional services in the State of Oregon, hereinafter called the "Engineers:"

W I T N E S S E T H T H A T :

WHEREAS, the City desires to retain a consulting engineer to provide professional services as follows:

(1) Design permanent repairs for the restoration of the North Willamette Blvd. Bridge. The bridge shall be restored to a condition equivalent to that existing prior to December 2, 1985. Areas requiring restoration include; easterly tower foundation, easterly earth embankment and deformed structural steel bridge members. Consultant shall prepare a full set of plan drawings and technical specifications to be included in the bid documents;

(2) Serve as Construction Manager for the contract repairs. Act as the Owner's representative interfacing with the Contractor, Burlington Northern Railroad, and all other parties during construction. Duties shall include, but are not restricted to:

- (a) Assure Contractor conformance to plans and specifications
- (b) Monitor Contractor progress with respect to schedule
- (c) Recommend changes to plans and specifications as required
- (d) Initiate and approve change orders
- (e) Recommend progress payments
- (f) Assure Contractor operating within right-of-way
- (g) Perform final inspection
- (h) Revise plan drawings and submit "As Builts" upon completion of construction

(3) Inspect bridge structure following completion of restoration work. Consultant shall note any condition likely caused by event of December 2, 1985 which limits the performance of the bridge structure.

NOW THEREFORE, it is agreed between the parties hereto as follows:

ARTICLE I - PRECEDENCE OF EXHIBITS

In all cases of conflict of terms and conditions of this contract and the work done hereunder, the following order of precedence shall apply.

1. Exhibit A

ARTICLE II - DEFINITIONS

Whenever the term "City" is used herein, it is understood to mean City of Portland of Multnomah County, Oregon, or its authorized officers, and the term "Engineer" means an authorized representative of Moffatt, Nichol and Bonney, Inc.

ARTICLE III - OBLIGATION OF THE ENGINEERS

The services to be performed by the Engineers under this Contract are the professional services required to design permanent repairs, manage the construction contract, inspect the bridge structure, and provide general and miscellaneous services, as described herein.

The following terms clarify the services required of the Engineer.

1. Compliance with Civil Rights Act

The Engineers and all other parties engaged by the Engineer to perform work covered under this contract shall comply with all applicable provisions of the regulations issued pursuant to the Civil Rights Act of 1964, in regard to nondiscrimination in employment because of sex, race, creed, color or national origin.

2. Workers' Compensation

(1) The Engineer shall provide workers' compensation coverage in accordance with ORS Chapter 656. The Engineer shall provide workers' compensation coverage for all subcontractors or other persons employed in performing the services under this Agreement in accordance with ORS 656.001 to 656.794, either as:

- a. A carrier-insured employer; or
- b. A self-insured employer as provided by ORS 656.407.

Evidence of such coverage shall be filed with the City and maintained for the duration of this agreement.

2 - AGREEMENT FOR PROFESSIONAL SERVICES

(2) The Engineer agrees to properly complete the City of Portland's Workers' Compensation Insurance Questionnaire prior to commencing work under this Agreement.

(3) In the event Engineer uses employees or subcontractors or other persons in the performance of this Agreement in violation of paragraphs 7. (1) and (2) below, Engineer agrees to hold harmless, defend and indemnify the City and its officers, agents, and employees against any liability that may be imposed on them or for any claims or demands which result from the Engineer's use of employees or subcontractors or other persons, including workers' compensation claims, and to pay any damages which the City may incur as a result of such liability claims or demands.

3. Time Schedule

The Engineer shall begin work within a mutually agreeable time after authorization to proceed is given and shall continue performance of services until all requirements of Agreement are fulfilled.

4. Independent Contractor Status

(1) The Engineer is engaged as an independent contractor and will be responsible for any federal, state, and local taxes and fees applicable to payments hereunder.

(2) The Engineer and its subcontractors and employees are not employees of the City and are not eligible for any benefits through the City, including without limitation federal social security, health benefits, workers' compensation, unemployment compensation, and retirement benefits.

5. Liability Insurance

(1) The Engineer shall maintain public liability and property damage insurance that protects the Engineer and the City and its officers, agents, and employees from any and all claims, demands, actions, and suits for damage to property or personal injury, including death, arising from the negligent performance of the Engineer's work under this Agreement. The insurance shall provide coverage for not less than \$100,000 for personal injury to each person, \$300,000 for each occurrence, and \$300,000 for each occurrence involving property damages; or a single limit policy of not less than \$300,000 covering all claims per occurrence. The insurance shall be without prejudice to coverage otherwise existing and shall name as additional insureds the City and its officers, agents, and employees. The insurance shall provide that the insurance shall not terminate or be cancelled without 30 days written notice first being given to the City Auditor. Notwithstanding the naming of additional insureds, the insurance shall protect each insured in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured. The limits

of the insurance shall be subject to statutory changes as to maximum limits of liability imposed on municipalities of the State of Oregon during the term of the Agreement.

(2) Limitation of Professional Liability

This paragraph applies to professional liability and not to general liability. Should Moffatt, Nichol and Bonney, Inc. or any of its agents, employees, officers, or subcontractors be found to have been negligent in the performance of professional services from which the Client sustains damages, Client agrees to limit recoverable damages from such liability, plus any claims for cost of defense or other incurred costs, to an aggregate amount not to exceed \$50,000 or the contract fee, whichever is the greater. The Client shall release and hold Moffatt, Nichol and Bonney, Inc. harmless from all liability in excess of this amount.

(3) The Engineer shall maintain on file with the City Auditor a certificate of insurance certifying the coverage required under Subsection (1). The adequacy of the insurance shall be subject to the approval of the City Attorney.

6. Subcontracting and Assignment

(1) The Engineer shall not subcontract its work under this Agreement, in whole or in part, without the written approval of the City. The Engineer shall require any approved subcontractor to agree, as to the portion subcontracted, to fulfill all obligations of the Engineer as specified in this Agreement. Notwithstanding City approval of a subcontractor, the Engineer shall remain obligated for full performance hereunder, and the City shall incur no obligation other than its obligations to the Engineer hereunder. Engineer agrees that if subcontractors or other persons are employed in the performance of this Agreement, Engineer is subject to the requirements and sanctions of ORS Chapter 656, Workers' Compensation.

(2) The Engineer shall not assign this Agreement, in whole or in part, or any right or obligation hereunder, without the prior written approval of the City.

ARTICLE IV - OBLIGATION OF THE CITY

1. Authorization

The work required under this Contract shall not begin, nor shall the City assume any obligation for the work involved until the Engineers are given written authorization to proceed.

2. Furnishing Data

In order to facilitate the work outlined above, the City will furnish to the Engineer all information in the City's possession mutually agreed to be necessary for the conduct of the project.

3. Permits

The City will pay fees required for any permits and licenses that may be required by local, state, or federal authorities in connection with this project.

4. Remuneration

The City will pay the sums as outlined below in accordance with the services rendered.

- a. For the professional services as outlined in this Exhibit, the City shall pay the Engineer fees mutually agreed upon. Such sums will be in the form of lump sum fee.
- b. The estimated costs for the professional services, as detailed, including all expenses and miscellaneous charges is \$9,000.00.

Payments to the Engineer, and based on the Engineer's estimate of completed work, shall be on a monthly basis. Monthly statements for services performed during the previous month will be submitted by the Engineer to the City and will be due and payable within thirty (30) days thereof.

ARTICLE V - GENERAL

1. Termination

The City may terminate this agreement by giving the Engineers written notice of the abandonment or indefinite postponement of the project. If any portion of the authorized work covered by this agreement and begun by the Engineers shall be abandoned, unreasonably delayed or indefinitely postponed, the Engineers may terminate this agreement. Whether or not terminated, the City shall pay the Engineers for the services rendered in connection therewith prior to written notice of such abandonment, delay, postponement, payment to be based insofar as possible on the amounts specifically established in this agreement. In the event of termination, the Engineer will provide the City with copies of all data, designs, notes, computation, reproducible drawings, and other similar work products.

2. Legal

- a. This agreement is entered into and shall be governed under the laws of the State of Oregon.
- b. All statutory, charter, and ordinance provisions that are applicable to public contracts in general, in the City of Portland and the State of Oregon, are hereby incorporated by reference and shall be followed with respect to this contract.

- c. No official or employee of the City, who is authorized in any official capacity to negotiate, accept, approve or take part in such decisions on this contract and project, shall have any financial or personal interest in this contract or a subcontract thereof.

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

CITY OF PORTLAND

Date _____

By _____
Mayor

Date _____

By _____
Auditor

MOFFATT, NICHOL AND BONNEY, INC.

Date _____

By _____

An Ordinance authorizing an agreement with the firm of Moffatt, Nichol and Bonney, Inc. for professional services in an amount not to exceed \$9,000 for the repairs to the N. Willamette Blvd. Bridge, waiving Section 5.68 of the City of Portland Code, transferring \$9,000 within the Water Fund, and authorizing the drawing and delivery of warrants, and declaring an emergency.

The City of Portland ordains:

Section 1. The Council finds:

1. Because permanent repairs to the N. Willamette Blvd. Bridge are urgently needed to restore access for fire, police, and the general public along this major thoroughfare, Section 5-68 of the Code of the City of Portland applying to selection of consultants, must be waived.
2. That Moffatt, Nichol and Bonney, Inc. have given an estimate of \$9,000 to design permanent repairs, manage contract repairs, and inspect the bridge.
3. That Moffatt, Nichol and Bonney, Inc. have previously been retained to evaluate damage to the bridge and to monitor temporary repairs performed by Burlington Northern Railroad. This work done under E.O. No. 0181 for a total of \$5,000.00.
4. That funds for this unanticipated work will be needed to be transferred from the 1985-86 Budget, Bureau of Water Works, Contingency to the appropriate line item and project.
5. Although the City is providing the funding for the bridge repairs, reimbursement for those expenditures will be sought from Burlington Northern Railroad.

NOW, THEREFORE, The Council directs:

- a. Section of Chapter 5.68 of the City Code referring to the consultant selection process is hereby waived to meet the City's immediate need of restoring access to the bridge.
- b. The Auditor and Mayor are hereby authorized to enter into an agreement with Moffatt, Nichol and Bonney, Inc. to provide the above stated professional services substantially in accordance with the agreement attached to the original only of this Ordinance, marked Exhibit "A."
- c. This agreement will not be effective until written notice of acceptance of this Ordinance by Moffatt, Nichol and Bonney, Inc. is filed with the City Auditor.
- d. \$9,000.00 is transferred within the Water Fund from Contingency, BUC 17500155, Object Code 710 to M&S, BUC 18620928, Object Code 210, Project No. 0186.
- e. The Mayor and the Auditor hereby are authorized to draw and deliver warrants chargeable to the 1985-86 Budget, Water Fund, RU 186, Project No. 1425, BUC 18600374, Object Code 210, when demand is presented, approved by the proper authorities.

ORDINANCE No.

Section 2. The Council declares that an emergency exists because a delay in proceeding with procuring these services will delay repairs to the bridge and thereby delay access across the structure to fire, police, and the general public; therefore, this Ordinance shall be in force and effect from and after its passage by Council, subject to the acceptance as set forth in Item (c) herein above.

Passed by the Council, **MAR 19 1986**

Commissioner Bogle

HEH:ld1 MNO/8602E242
BUC NO.

Jewel Lansing
Auditor of the City of Portland

By



Deputy

Calendar No. **5-530**

ORDINANCE No. **158308**

Title

An Ordinance authorizing an agreement with the firm of Moffatt, Nichol and Bonney, Inc. for professional services in an amount not to exceed \$9,000 for the repairs to the N. Willamette Blvd. Bridge, waiving Section 5.68 of the City of Portland Code, transferring \$9,000 within the Water Fund, and authorizing the drawing and delivery of warrants, and declaring an emergency.

THE COMMISSIONERS VOTED AS FOLLOWS:

	Yeas	Nays
BOGLE	✓	
LINDBERG	✓	
SCHWAB	✓	
STRACHAN	✓	
CLARK	✓	

FOUR-FIFTHS CALENDAR

BOGLE	
LINDBERG	
SCHWAB	
STRACHAN	
CLARK	

INTRODUCED BY

COMMISSIONER BOGLE

NOTED BY THE COMMISSIONER

Affairs

Finance and
Administration

Safety

Utilities

Works

BUREAU APPROVAL

Bureau: **WATER WORKS**

Prepared By: **Hill Hampton** Date: **3/11/86**

Budget Impact Review:

☐ Completed ☐ Not required

Bureau Head: **Edward Tenny, Administrator**

CALENDAR

Consent

Regular

NOTED BY

City Attorney

City Auditor

City Engineer

MAR 11 1986

Filed

JEWEL LANSING

Auditor of the CITY OF PORTLAND

By

Dennis Nelson
Deputy