

CITY OF NEWBERG
414 East First Street
NEWBERG, OREGON 97132

Newberg (503) 538-9421

To *Tabbi*
Engineering

FOLLOW-UP DATE

Date

10-12-94

Subject

*Crane & Marsh
Agreement*

Tabbi -

*We have retained one of the duplicate originals -
for the sage. Forward this signal to Crane & Marsh.*

[Signature]

x duf

☐ Please reply

☒ No reply necessary

SIGNED

170015

Crane & Merseth Engineering/Surveying

12042 S.E. Sunnyside Road, Suite 604 • Clackamas, OR 97015 • Phone: 698-4851 • Fax: 698-4851 (auto switching)

September 22, 1994

Larry Anderson, PE
Engineering Manager
City of Newberg
414 E. First Street
Newberg, OR 97132



RE: Engineering Agreement

Dear Larry,

Thanks for reviewing the contract and sending the comments back. I have made the changes indicated and am enclosing 3 copies for your City Manager to sign.

I will be attending the National APWA Congress in Chicago beginning on September 25 and then taking a week off to visit relatives in the midwest after that. I will be back in Oregon the week of October 10 but away again at the Oregon APWA conference in Bend from the 12th through the 14th.

In my absence, we can begin the work that Ted will be doing on the sewer system model and, with your approval, he and Chuck can meet as needed to begin that portion of the project. When I return, I will contact you and we can set up a meeting to begin the master plan work.

I trust my being away doesn't inconvenience you or cause problems with the project.

Sincerely,

Gordon Merseth, PE

Attachment

**AN AGREEMENT
TO PROVIDE PROFESSIONAL SERVICES**

This Agreement for Services (Agreement) is formed between the City of Newberg, Oregon, ("City") and Crane & Merseeth, Engineering/Surveying ("Consultant").

The City is engaged in preparation of an Eastside Wastewater Master Plan and intends to contract for professional services for said Master Plan and associated work updating the hydraulic model used by the City. To further this project, the Consultant has been selected to perform work needed to investigate the alternatives for providing sanitary sewers on the east side of the City, prepare improvements to the sewer model and provide findings and recommendations to the City.

As a result of this, the two parties hereby agree as follows:

AGREEMENT:

1. SCOPE OF CONSULTANT SERVICES:

The Consultant shall provide services specifically to the City of Newberg with those services as set out in Attachment A according to the schedule provided as Attachment B.

2. SCOPE OF CITY SERVICES

To assist the Consultant in carrying out its obligations hereunder, the City shall perform the services set out below:

- (a) Give thorough consideration to all reports, technical memoranda, estimates, proposals, and other documents presented by the Consultant and shall inform the Consultant in writing of all decisions pertaining to these documents.
- (b) The City shall schedule and moderate any project meetings.
- (c) The City shall monitor progress of work and advise the Consultant if additional effort is necessary to meet time constraints pertaining to the work.

The City shall also perform these services in accordance with the schedule set out in Attachment B.

3. COMPENSATION

The City shall pay the Consultant for work performed under this Agreement. The payment shall be full compensation for work performed, for services rendered and for all labor, material, supplies, equipment, and incidentals necessary to perform the work. Total compensation under this agreement shall be the lump sum of seventeen thousand dollars (\$17,000). Work outside the tasks described in Attachment A will not be performed without written authorization or approval to extend the total contract compensation.

4. BILLING AND PAYMENT PROCEDURE

The Consultant's billing and City's payment procedures shall be as set out below:

On or before the 1st day of the month, the Consultant may submit an invoice to the City for work performed by the Consultant during the preceding month. The invoice shall be prorated to reflect the approximate amount of the work accomplished.

Payment to the Consultant is due upon receipt of the invoice by the City. If payment is not made within 60 days, interest on the unpaid balance will accrue beginning with the 31st day at the rate of 1.5 percent per month or the maximum interest rate permitted by law, whichever is less. Such interest will become due and payable at the time said overdue payment is made. City agrees to assess and pay the late charge without further invoicing from Contractor.

In the event the City questions an invoice, that fact shall be made known to the Consultant immediately. Consultant will help effect resolution and transmit a revised invoice as necessary. Amounts not questioned by City shall be promptly paid to Consultant in accordance with the above payment procedures.

5. EARLY TERMINATION OF AGREEMENT

The City and the Consultant, by mutual written agreement, may terminate this Agreement at any time.

The City, on thirty (30) days written notice to the Consultant, may terminate this Agreement for any reason deemed appropriate in its sole discretion.

Either the City or the Consultant may terminate this Agreement in the event of a breach of the Agreement by the other.

Prior to such termination, however, the party seeking the termination shall give to the other party written notice of the breach and of the party's intent to terminate. If the party has not entirely cured the breach within fifteen (15) days of the notice, then the party giving the notice may terminate the Agreement at any time thereafter by giving a written notice of termination.

6. PAYMENT ON EARLY TERMINATION

In the event of mutual termination under Section 5, EARLY TERMINATION OF AGREEMENT, the City shall pay the Consultant for work performed in accordance with the Agreement prior to the termination date plus any reasonable termination expenses incurred.

In the event of termination under Section 5, EARLY TERMINATION OF AGREEMENT, by the City due to a breach by the Consultant, then the City shall pay the Consultant as provided in this section, subject to set off of excess costs, as provided for in Section 7, REMEDIES.

7. REMEDIES

In the event of termination under Section 5, EARLY TERMINATION OF AGREEMENT, by the City due to a breach by the Consultant, then the City may complete the work either itself, by agreement with another consultant or by a combination thereof. In the event the reasonable cost of completing the work exceeds the amount actually paid to the Consultant hereunder Section 3, COMPENSATION, the Consultant shall forfeit to the City the remaining amount of the fee.

The remedies provided to both the City and the Consultant under Section 5, EARLY TERMINATION OF AGREEMENT and Section 7, REMEDIES, for a breach by the City or the Consultant shall not be exclusive. The City and the Consultant shall be entitled to any other equitable and legal remedies that are available.

8. CITY PROJECT MANAGER

The City's Project Manager shall be Larry Anderson, PE, or such other person as shall be designated in writing by the Community Development Director.

The Project Manager is authorized to approve work products and billings hereunder, to give notices referred to herein, to terminate this Agreement as provided herein and to carry out any other City action referred to herein.

9. COMPLIANCE WITH LAWS

In connection with these activities under this Agreement, the City and the Consultant shall comply with all applicable federal, state and local laws and regulations.

10. OREGON LAW AND FORUM

This Agreement shall be construed according to the laws of the State of Oregon.

Any litigation between the City and the Consultant arising under this agreement or out of work performed under this Agreement shall occur, in the state courts, in the Yamhill County Court having jurisdiction thereof, or in the federal courts, in the United State District Court for the District of Oregon.

11. INDEMNIFICATION FOR PUBLIC LIABILITY AND PROPERTY DAMAGE

The Consultant shall hold harmless, defend, and indemnify the City and the City's officers, agents, and employees against all claims, demands, actions, and suits (including all reasonable attorney fees and costs) brought against any of them arising from the Consultant's negligent or intentional misconduct arising from the work under the Agreement.

12. WORKERS' COMPENSATION INSURANCE

The Consultant, its subconsultant's, and all employers working under this Agreement are subject employers under the Oregon workers' compensation law and shall comply with ORS 656.017 which requires them to provide workers' compensation coverage for all their subject workers. A certificate of insurance, or copy thereof, shall be attached to this Agreement as Attachment C, if applicable, and shall be incorporated herein. The Consultant further agrees to maintain workers' compensation insurance coverage for the duration of this Agreement.

In the event the Consultant's workers' compensation insurance coverage is due to expire during the term of this Agreement, the Consultant agrees to timely renew its insurance, either as a carrier-insured employer or a self-insured employer, as provided by Chapter 656 of the Oregon Revised Statutes, before its expiration and the Consultant agrees to provide the City such further certification of workers' compensation insurance as renewals of said insurance occur.

13. ASSIGNMENT

The Consultant shall not assign this Agreement, in whole or in part, or any right or obligations hereunder, without the prior written approval of the City.

14. INDEPENDENT CONTRACTOR STATUS

The Consultant agrees that:

- (a) The Consultant is engaged as an independent contractor and will be responsible for any federal, state and local taxes and fees applicable to payments hereunder.
- (b) The Consultant, its subconsultants, and their 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.

15. NOTICE

Any notice provided for under this Agreement shall be sufficient if in writing and delivered personally to the following addressee or deposited in the United State Mail, postage prepaid, certified mail, return receipt requested, addressed as follows, or to such other address as the receiving party hereafter shall specify in writing:

If to the City:

Greg Soles
Community Development Director
City of Newberg
414 E. First Street
Newberg, OR 97132

If to the Consultant:

Gordon Merseth, PE
Crane & Merseth Engineering
12042 SE Sunnyside Road
Suite 604
Clackamas, OR 97015

16. SEVERABILITY

If any provision of this Agreement is found to be illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the provision shall be stricken.

17. INTEGRATION

This Agreement contains the entire agreement between the City and the Consultant and supersedes all prior written or oral discussions or agreements.

18. FUNDS

The City certifies that sufficient funds are available and authorized for expenditure to finance the cost of this Agreement.

19. COMMENCEMENT OF WORK

The Consultant agrees that work being done pursuant to this Agreement will not commence until after:

- (a) Workers' compensation insurance is obtained, as outlined in section 12, WORKERS' COMPENSATION INSURANCE; and
- (b) This Agreement is fully executed by the parties and approved by the City Attorney's Office; and,
- (c) The City has issued a formal notice to proceed on the project.

20. LIABILITY INSURANCE

The Consultant shall maintain public liability and property damage insurance that protects the Consultant 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 Consultant's work under this Agreement. The insurance shall provide coverage for not less than \$200,000 for personal injury to each person, \$500,000 for each occurrence, and \$500,000 for each occurrence involving property damage; or a single limit policy of not less than \$500,000 covering all claims per occurrence. 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. The insurance shall be without prejudice to coverage otherwise existing and shall name as additional insureds the City and

its officers, agents and employees. 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 coverage must apply as to claims between insureds on the policy. The insurance shall provide that the insurance shall not terminate or be canceled without thirty (30) days written notice first being given to the City.

If the insurance is canceled or terminated prior to completion of the Agreement, the Consultant shall provide a new policy with the same terms. The Consultant agrees to maintain continuous, uninterrupted coverage for the duration of the Agreement. The insurance shall include coverage for any damages or injuries arising out of the use of automobiles or other motor vehicles by the Consultant.

The Consultant shall maintain on file with the City a certificate of insurance certifying the coverage required under subsection (a). The adequacy of the insurance shall be subject to the approval of the City Attorney. Failure to maintain liability insurance shall be cause for immediate termination of this Agreement by the City.

Consultant and City waive all rights of subrogation against each other and their directs, officers, partners, commissioners, officials, agents, subconsultants, and employees for damages or loss covered by property insurance during and after the completion of the Services, but only in so far as such party is compensated by such insurance for such loss or damage.

21. BREACH OF AGREEMENT

The City or the Consultant shall breach this Agreement if it fails to perform any substantial obligation under the Agreement, except that, neither the City nor the Consultant shall have breached this Agreement by reason of any failure to perform a substantial obligation under the Agreement if the failure arises out of causes beyond its control and without its fault or negligence. Such causes may include, without limitation, acts of God or the public enemy, acts of the federal, state or local governments, fires, floods, epidemics, volcanic eruptions, earthquakes, and quarantine restrictions. Should either the City or the Consultant fail to perform because of a cause described in this subsection, the City and the Consultant shall make a mutually acceptable revision in Section 1, SCOPE OF CONSULTANT SERVICES, Section 2, SCOPE OF CITY SERVICES, or Section 3, COMPENSATION.

22. ARBITRATION

Any dispute arising out of or in connection with this Agreement, which is not settled by mutual agreement of the Consultant and the City within sixty (60) days of notification in writing by either party, shall be submitted to an arbitrator mutually agreed upon by the parties. In the event the parties cannot agree on the arbitrator, then the arbitrator shall be appointed by the Presiding Judge (Civil) of the Circuit Court of the State of Oregon for the County of Yamhill. The arbitrator shall be selected with thirty (30) days from the expiration of the sixty (60) day period following notification of the dispute. The arbitration, and any litigation arising out of or in connection with this Agreement, shall be conducted in Newberg, Oregon, shall be governed by the laws of the State of Oregon, and shall proceed with reasonable speed. The applicable arbitration rules for the Yamhill County courts shall apply unless the parties agree in writing to other rules. The arbitrator shall render a decision within fortyfive (45) days of the first meeting with the Consultant and the City. Insofar as the Consultant and the City legally may do so, they agree to be bound by the decision of the arbitrator.

Notwithstanding any dispute under this Agreement, whether before or during arbitration, the Consultant shall continue to perform undisputed portions of the work pending resolution of the dispute, and the City shall make payments as required by the Agreement for undisputed portions of the work.

23. AMENDMENTS

The City and the Consultant may amend this Agreement at any time by written amendment only, executed by the City and the Consultant. Unless otherwise provided, any amendment that increases the amount of compensation payable to the Consultant must be approved by the City Council. The Project Manager may agree to and execute any other amendment on behalf of the City.

Any change in the Scope of Consultant Services shall be deemed an amendment subject to renegotiation of the compensation and schedule for the project.

24. PROGRESS REPORTS

The Consultant shall provide monthly progress reports to the Project Manager. Each progress report shall contain the following information: work completed, work anticipated for next reporting period, billing status, update in schedule, and any requests for information that are outstanding.

25. PAYMENTS TO VENDORS AND SUBCONSULTANTS

The Consultant shall pay all suppliers, lessors and contractors providing services, materials, or equipment for carrying out the Consultant's obligations under this Agreement in a timely manner. The Consultant shall not take or fail to take any action in a manner that causes the City or any materials that the Consultant provides hereunder to be subject to any claim or lien of any person without the City's prior written consent.

26. STANDARD OF CARE

The standard of care applicable to Consultant's services will be the degree of skill and diligence normally employed by professional engineers performing the same or similar services.

27. OPINION OF COST, FINANCIAL CONSIDERATIONS, AND SCHEDULES

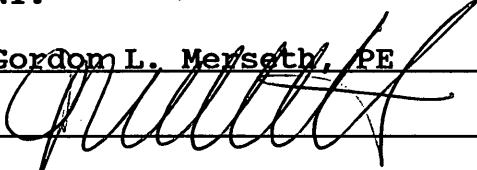
In providing opinions of cost, financial analyses, economic feasibility projections, and schedules for the project, the Consultant has no control over cost or price of labor and materials, unknown or latent conditions of existing equipment or structures that may affect operation or maintenance costs, competitive bidding procedures and market conditions, time or quality of performance by third parties, quality, type, management, or direction of operating personnel and other economic and operational factors that may materially affect the ultimate project cost or schedule. Therefore, the Consultant makes no warranty that the City's actual project costs, financial aspects, economic feasibility, or schedules will not vary from the Consultant's opinions, analyses, projects, or estimates.

28. THIRD PARTY RIGHTS

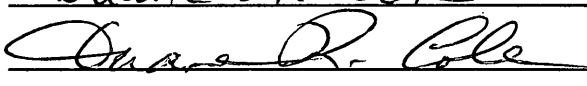
Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than City and Consultant.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate by their respectively authorized officers or representatives as of the day and year written below.

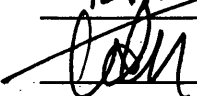
APPROVED FOR THE CONSULTANT:

Name: Gordon L. Merseth, PE
Signature: 
Title: Vice President
Date: Sept. 23, 1994
Tax ID No. 93 - 1143595

APPROVED FOR THE CITY OF NEWBERG:

Name: Duane R. Cole
Signature: 
Title: City Manager
Date: 10/12/1994

APPROVED AS TO FORM:

Name: TERENCE D. MAHR
Signature: 
Title: City Attorney
Date: 10/10/94

ATTACHMENT A

CITY OF NEWBERG SANITARY SEWER SYSTEM MODELING AND MASTER PLAN DEVELOPMENT

TASK A. SANITARY SEWER SYSTEM MODELING

The following items outline the activities to be provided by Crane & Merseeth to fulfill the sanitary sewer system modeling element of this contract.

1. Meet with city staff to discuss the overall approach to model development and identify key goals and expectations of the modeling effort.
2. Review existing data and other information gathered by the city staff.
3. Prepare for and attend a workshop with city staff to discuss the features of the existing SWMM model and determine the desired characteristics to be developed in the new model interface.
4. Prepare model user interface including input screens and report formats and review them with city staff. Include formats for downloading city sewer customer data from other data bases for use in the model.
5. Prepare final input screens and output report formats for use with the SWMM model. Review these screens and reports with city staff.
6. Assist city staff in organizing input data from the existing city model for use in the new model.
7. Prepare guides for the city staff to use in gathering flow data in the sewer system and assist city staff in data reduction.
8. With data loaded by city staff, run the model and compare output data with field data on instantaneous flows and diurnal flow patterns.
9. Assist the city staff in modifying the model parameters to match output with field data.

TASK B. EAST SIDE MASTER PLAN DEVELOPMENT

Prior to beginning Task B, the City staff will gather materials pertaining to the existing sewer system including maps showing line routes, line sizes and slopes, pump station locations, and force main sizes and routes. In addition, maps showing city limits, the UGB location, any general soils information, a location of the study area including all roads, principal drainageways, ownership and tax lot lines will also be made available to the Consultant.

1. Meet with city staff to review the preliminary materials and review the study goals and objectives. Discuss the adequacy of the existing materials and determine any needs for added basic information.
2. Develop several possible sewerage schemes, each of which provides service to all parcels of land within the study area.
3. Determine the sizes of all lines and the nominal sizes of the pump station(s) needed to convey the sewage to the existing city system.
4. Meet with city staff to review alternate sewerage plans. Prepare and present a method of selecting the most suitable scheme and incorporate city staff input about the plans.
5. Prepare detailed information about the recommended plan including size and slope information, key sewer junction locations, anticipated population densities, peak and average flows at pump station locations and supplement this information with explanatory text.
6. Load the basic geographic and hydraulic information about the recommended plan into the SWMM model.
7. Run the model to demonstrate the adequacy of the preliminary layout and sizes of the sanitary sewer system.
8. Prepare and present a report which documents the analysis, findings and recommendations to the city. Review the report with city staff and make any final modifications to the report prior to final submittal.