

**CITY OF NEWBERG
AGREEMENT WITH J.N. HARTSOCK PROJECT MANAGEMENT
TO PROVIDE CONSULTING SERVICES
TO THE CITY OF NEWBERG**

THIS CONTRACT is entered into this ^{3rd} ~~April~~ ^{MAY}, 1999 by and between the City of Newberg, a municipal corporation of the State of Oregon, hereinafter called **City**, and J.N. Hartsock Project management, hereinafter called **Consultant**.

RECITAL

I **City** has need for the services of a consultant with particular training, ability, knowledge, expertise and experience possessed by **Consultant**.

NOW, THEREFORE, in consideration of mutual promises, covenants and agreements of the parties, it is agreed as follows.

1. **Scope of Work:** The **Consultant** agrees to provide the services outlined in the Scope of Work, which is Exhibit "A" and attached hereto and incorporated by this reference. The **Consultant** represents and warrants to the **City** that the **Consultant** can perform the work outlined in the Scope of Work for the fee proposal amount.
2. **Compensation:** The **Consultant** agrees to perform the work for a not-to-exceed fee as indicated in their professional fee proposal obtained in the Scope of Work. The not-to-exceed figure as follows: Seven thousand dollars (\$7,000.00)

The **Consultant** shall not exceed the fee for any task included in the fee proposal amount. If the **Consultant** sees that the fee is going to exceed the not-to-exceed figure because the task has changed or is outside the scope, the **Consultant** shall notify the **City** in writing of the circumstances with an estimated amount that the fee is to be exceeded. The **Consultant** shall obtain written permission from the **City** before exceeding the maximum fee amount. If the **Consultant** does work that exceeds the maximum fee amount prior to obtaining the written permission, the **Consultant** waives any right to collect that fee amount.

3. **Additional Work Not Shown Within The Scope of Work:** If **City** requests or requires work to be done not within the Scope of Work of this project, the **Consultant** shall notify the **City** of such work, give an estimated fee amount, and obtain written instructions to proceed with work in the form of a contract amendment prior to proceeding with work and incurring any costs on behalf of the **City**. If **Consultant** proceeds with work prior to obtaining permission and/or contract amendment, the **Consultant** waives any right to collect fees for work performed.
4. **Status:** Consultant is not currently employed by the **City**. The parties to this contract intend that the relationship between them created by this contract is that of an employer-independent contractor. No agent, employee, or servant of **Consultant** shall be or shall be deemed to be the employee, agent or servant of **City**. **City** is interested only in the results obtained under this contract; the manner and means of conducting the work are under the sole control of **Consultant**, however, the work contemplated herein must meet the approval of the **City** and shall be subject

to **City's** general right of inspection and supervision to secure the satisfactory performance thereof.

5. **Work Performed:** The work to be performed by **Consultant** includes services generally performed by **Consultant** in his or her usual line of business.
6. **Taxes:** Consultant will be responsible for any federal or state taxes applicable to payments received under this contract. **City** will report the total of all payments to **Consultant**, including any expenses, in accordance with the Federal Internal Revenue Service and the State of Oregon Department of Revenue regulations.
7. **Benefits:** Consultant will not be eligible for any federal social security, state workers compensation, unemployment insurance, or public employees' retirement system benefits from the contract payment except as a self-employed individual.
8. **Federal Employment Status:** In the event any payment made pursuant to this contract is to be charged against federal funds, **Consultant** certifies that he or she is not currently employed by the federal government and the amount charged does not exceed his or her normal charge for the type of services provided.
9. **Hold Harmless:** Consultant shall defend, indemnify and hold harmless **City** from and against all liability or loss and against all claims or actions based upon or arising out of damage or injury to persons or property caused by or sustained in connection with the negligent acts, errors, and omissions of the **Consultant**.
10. **Insurance:**
 - a) **Consultant**, its sub-consultants, if any, 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; or by signing this contract, **Consultant** represents that he or she is a sole proprietor and is exempt from the laws requiring workers' compensation coverage.
 - b) **Consultant** will at all times carry a Comprehensive General Liability insurance policy for at least \$1,000,000 combined single limits per occurrence for Bodily Injury, Property Damage, and Personal Injury. If the policy is written on the new occurrence form then the aggregate limit shall be \$2,000,000.
 - c) **Consultant** shall furnish the **City** with Certificates of Insurance upon execution of contract and **City** acknowledges receipt of such Certificates of Insurance.
11. **Indemnification:** The City of Newberg, its agents, employees and officials all while acting within their official capacity as such, shall be named as an additional insured on the insurance specified in paragraph 10(b) above. A certificate of insurance evidencing any policies required by this contract shall be delivered to the **City** prior to the commencement of any work. A 30-day notice of cancellation clause shall be included in said certificate. The **City** has the right to reject any certificate for unacceptable coverage and/or companies.
12. **Employees' Taxes:** Consultant shall also defend, indemnify and hold harmless **City** against all liability and loss in connection with and shall assume full responsibility for, payment of all federal, state and local taxes or contributions imposed or required under unemployment

insurance, social security and income tax laws, with respect to **Consultant's** employees engaged in the performance of this contract.

13. **Termination:** This contract may be terminated by either party at the end of a project phase as defined in Exhibit "A" or at any time upon 30 days written notice.
14. **Contract Duration:** Except as provided for under paragraph 3, the duration of this contract shall be in accordance with Exhibit "A" or until project completion, whichever comes first. This fact notwithstanding, the services of **Consultant** shall be authorized and paid on a phase-by-phase basis as described in Exhibit "A".
15. The parties hereto each bind themselves, their partners, successors, assigns and legal representatives of such other party in respect to all terms of this Agreement. Neither party shall assign the contract as a whole without written consent of the other.
16. This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, written and oral, courses of dealing, or other understanding between the parties. No modification of this Agreement shall be binding unless in writing and signed by both parties.
17. **Performance:** Consultant shall perform all of its professional services in a workmanlike and professional manner. **City** shall indemnify and hold harmless **Consultant**, its agents, sub-contractors and employees from and against all claims, damages, losses, and expenses arising out of the development of this project not caused by the failure of **Consultant**, its agents, subcontractors and employees, to perform their services in a professional and workmanlike manner.
18. **Documents:** All original documents prepared by **Consultant** in performance of this Professional Services Agreement, including but not limited to original maps, plans, drawing and specifications are the property of **City** unless otherwise agreed in writing. Quality reproducible record copies shall be provided to **City** at **City's** expense, upon request. Any reuse, change or alteration to original documents prepared by **Consultant** is not permitted without written verification or adoption by **Consultant**. **City** shall indemnify and hold harmless **Consultant** and **Consultant** independent professional associates or consultants from all claims, damages, losses and expenses including attorney's fees arising out of any unauthorized use of any instruments of professional service.
19. **Invoices:** All invoices are payable upon receipt and payments are due within 30 days of receipt unless otherwise agreed in writing. Failure to pay an invoice when due outside the cause of **Consultant**, shall constitute default, and interest at 10% per annum shall be payable on all such invoices. In the event of a default, **Consultant** may elect to suspend all professional services under this Agreement until such invoice is paid in full, and may elect to terminate this Agreement as of the 30th day of default.
20. **Failure to Make Payment:** **City** agrees to pay the costs and reasonable attorney's fees and disbursements incurred by **Consultant** in connection with the failure by **City** to make any payment in accordance with the provisions of this Agreement. The parties agree that in the event action or suit is commenced, to enforce any provision of this Agreement or in the event of any breach of this Agreement, the prevailing party shall have and recover reasonable attorney fees, both at trial and on appeal together with all other costs and disbursements allowed by law.

21. **Release of Liability:** Consultant shall be free from any liability for delay or failure of providing the services contemplated by this Agreement which arises from strikes, lockouts, or labor troubles of any kind, accidents, fire, earthquake, civil commotion, war or consequences of war, government acts, restrictions, or requisitions, failure of manufacturers, or suppliers suspension of shipping facilities, any act or default of a carrier or any other contingency of whatsoever nature beyond **Consultant's** control, including disturbances existing at the time this Agreement was made. In such a situation, if the services contemplated by this Agreement are not provided during the period contracted for, **City** shall accept the services and pay for the same when provided, however, provided that the services are provided within a reasonable time after cessation of the aforementioned impediments or causes.

IN WITNESS WHEREOF, THE PARTIES HAVE AFFIXED THEIR SIGNATURES BELOW.

CONSULTANT

By:

Name: John Hartsock

Title: Principal

Date:

5/3/99

CITY OF NEWBERG

By:

Name:

Duane R. Cole

Title:

City Manager

Date:

May 3, 1999

Approved as to form:

 5/3/99

City Attorney

EXHIBIT "A"
TO AGREEMENT WITH J. N. HARTSOCK PROJECT MANAGEMENT
TO PROVIDE CONSULTING SERVICES
TO THE CITY OF NEWBERG

This is Exhibit "A" to the Agreement between City of Newberg , (hereinafter "the CITY") and J. N. Hartsock Project Management (hereinafter "Consultant"), attached hereto and made a part hereof, dated April 19,1999.

Note: The City of Newberg, and NORCOM (North Marion County Communications, hereinafter referred to as NORCOM, an ORS 190 organization, Woodburn, Oregon) have entered into and Intergovernmental Agreement on April 9, 1999 to jointly participate in the Computer Aided Dispatch (CAD) system outlined herein. The Consultants services shall be provided to both entities and where the term "CITY" is used it shall mean "CITY and/or NORCOM". Though this Agreement is with the CITY the Consultant understands that both entities shall be sharing the cost thereof.

SCOPE OF SERVICES:

J. N. Hartsock Project Management shall provide overall coordination and management of the procurement, installation and implementation of a Computer Aided Dispatch (CAD) system for the City and NORCOM. In this role, Consultant shall be the liaison between the CITY and the CAD vendor, and other associated vendors as required. The Consultant shall manage the project through the system acceptance phase of the project. The goal is to represent the CITY's and NORCOM's interest throughout all phases of the project. Consultant will endeavor to develop and maintain a cooperative team approach with all parties involved throughout the procurement, and implementation of the proposed system.

John Hartsock shall be the designated Consultant representative assigned to the CITY/NORCOM project as Senior Project Manager.

The following are the proposed general duties of the Project Manager:

- A. To provide adequate staff as necessary to assure the completion of the Consultant's duties and responsibilities for the project.
- B. Provide a multi-discipline plan and integrated schedule of activities for the project.
- C. Prepare written summary project reports to be presented to the CITY/NORCOM management and the City Council of Newberg, and Board of Directors or NORCOM.
- D. Provide project cost accounting, and budget estimates based upon information obtained from other knowledgeable parties, and maintain detailed records of expenditures.
- E. Attend public meetings and make project presentations as requested.
- F. Provide management of the records, which are directly associated with the project, keeping such records in an orderly manner, including correspondence, request for proposals, contract documents,

purchase requests, budget information, change orders, and name and address file of all pertinent contacts relative to the project.

- G. Meet with CITY/NORCOM Staff, participating jurisdictions and the City Council of Newberg and the Board of Directors of NORCOM, as requested by the CITY/NORCOM to receive input and report on the project progress.
- H. Provide project administrative coordination and liaison functions between the CITY/NORCOM, and its consultants and vendors.
- I. Administer and manage all vendor contracts related to the project, as appropriate, or requested by the CITY/NORCOM.
- J. Observe the progress and quality of the work as is reasonably necessary to determine in general that work is proceeding in accordance with the contract documents. Notify the CITY/NORCOM immediately if it reasonably appears the work does not conform to the plans, design or product specifications, or otherwise requires special intervention in the Consultant's judgment.
- K. Monitor the project, including tracking progress, comparing actual and relevant data to predicted outcomes, analyzing impact and suggesting adjustments when required.
- L. Facilitate communication among those performing different functions and assist with analysis and recommendations.
- M. Reviews work orders and/or changes orders and provide comments and recommendations to the CITY/NORCOM.
- N. Keep a log and running summary of proposal requests, work orders and change orders on a monthly basis.
- O. Discover and assist in formulation of action plans for resolution of problems or conflicts.
- P. Negotiate with all functional disciplines to complete the necessary work packages within time, cost and performance/technology.
- Q. Represent the CITY/NORCOM in negotiations as requested related to the project.
- R. Review and comment on pay requests, including requests for release of retainage and forward for review and approval to the CITY/NORCOM for payment.
- S. Coordinate weekly meetings to include discussion of work in progress, conformance and quality of work, unresolved issues from previous meetings, project schedule, coordination of other associated vendors, any CITY/NORCOM concerns and other relevant issues. Coordinate preparation of meeting minutes, document and distribute.
- T. Review and coordinate submittal of all required close-out paperwork from the Vendor(s).
- U. Formulate and coordinate testing, inspection and commissioning of the system; including standards of acceptance, and testing procedures.

V. Coordination of the development, issuance, and negotiations of request for proposals and/or bids for contracts for other equipment vendors and contractors for all work associated with the project. Consultant shall provide appropriate and requested reports and submission to obtain approval for said contractors and agreements.

W. Other reasonable duties related to the Project as assigned.

X. The Consultant shall not:

- a. Authorize deviations from the project specifications.
- b. Approve substitute equipment or materials.
- c. Assume any of the responsibilities of any vendor's representative or other consultant.
- d. Expedite the work for any vendor or other consultant.
- e. Have monetary or contractual connections with consultants, vendors, or contractors associated with the project, nor shall the Consultant provide technical design services for the project.

SCHEDULE:

It is anticipated that this work can be completed within 150 days of notice to proceed, depending upon the Vendor performance and the CITY/NORCOM'S ability to complete their tasks related to the project.

FEE:

J. N. Hartsock Project Management will perform the services outlined above for a lump sum fee of \$7,000. This will cover all work for the CITY as well as NORCOM's for the management of this project. This fee shall be payable at the rate of \$1,400 per month.

Reimbursable Costs: The above lump sum fee includes the customary expenses (telephone, secretarial, copying, travel, etc.), but excludes expenses for out-of-state travel or special items requested and approved by the CITY/NORCOM in advance.