

AGREEMENT AND AUTHORIZATION FOR CONSULTING SERVICES

This agreement is made and entered into by and between the City of Newberg, a political subdivision of the State of Oregon, hereinafter referred to as **CITY**, and Crow/Clay & Associates, with offices at 1901 NW Northrup Street, Portland, OR 97209, hereinafter referred to as **ARCHITECT**.

In consideration of the mutual covenants set forth in this Agreement, **CITY** authorizes and **ARCHITECT** agrees to carry out and complete services as described below.

1. **PROJECT:** The services described below are to be provided by **ARCHITECT** in connection with a project identified as follows:

Upgrade of Newberg Public Library Restrooms (one Men's and one Women's restroom) to compliance with the Americans with Disabilities Act (ADA).

2. **SCOPE OF SERVICES:** **ARCHITECT** shall provide the professional architectural services described at Exhibit A. The project's Request for Proposal and the Consultant's Proposal are by this reference incorporated herein.

3. **TIME OF COMPLETION:** All services to be provided by the **ARCHITECT** under this Agreement shall be completed and submitted to the City of Newberg not later than 120 days following the date of this agreement.

4. **SOURCE OF FUNDS:** Work under this contract will be funded in part with federal grant funds from the Oregon Community Development Block Grant Program.

5. **FORCE MAJEURE:** Neither party to this Agreement shall be liable to the other party for delays in performing the Services or for the direct or indirect cost resulting from such delays that may result from strikes, riots, war, acts of governmental authorities, extraordinary weather conditions or other natural catastrophe, or any other cause beyond the reasonable control or contemplation of either party.

6. **FEE FOR SERVICES:** The **ARCHITECT'S** fees for services shall be:

For all services described in Exhibit A, including labor, materials, equipment, printing, overhead, and all other expenses, the sum not to exceed \$5,000.00 payable as described in paragraph 7, below. **ARCHITECT'S** hourly rates are described in Exhibit B.

7. **PAYMENTS FOR SERVICES:**

For services described in paragraph 6, above, **ARCHITECT** shall submit monthly invoices computed on work completed, based on the hourly rates for each team member. **ARCHITECT** will invoice for services rendered and expenses incurred in execution of the

work on the first of each successive month for work done in the prior month. The **CITY** agrees to pay within thirty (30) days of receipt of invoice. If questions arise regarding invoice amount or documentation, the **CITY** will request clarification of **ARCHITECT** within fifteen (15) days of receipt of invoice. The final payment of \$470.00 shall not be made until construction of the ADA bathroom project has been completed and approved by the **CITY**.

8. **EXTRA SERVICES:** **ARCHITECT** shall perform extra services (services not included in paragraph 6, above) provided **ARCHITECT** and **CITY** have agreed in writing as to the scope and fees for such extra services.

9. **OPINIONS OF COST:** Any cost estimates provided by **ARCHITECT** shall be made on the basis of the **ARCHITECT'S** experience and judgment. **ARCHITECT** does not guarantee that proposals, bids or actual project construction costs will not vary from cost estimates prepared by **ARCHITECT**.

10. **CITY-PROVIDED INFORMATION:** **ARCHITECT** shall be entitled to rely, without undue inquiry or investigation, on all information furnished to **ARCHITECT** by **CITY**.

11. **TIME LIMIT FOR CLAIMS:** Any claim brought by **CITY** against **ARCHITECT** must be brought no later than two years after the date of substantial completion of the services hereunder or the expiration of the appropriate statute of limitations, whichever is later.

12. **THIRD-PARTY BENEFICIARIES:** The services provided under this Agreement are for the benefit of the **CITY** and no other party. There are no third-party beneficiaries to this Agreement.

13. **SEPARATE AGREEMENTS:** The terms and conditions of this Agreement contain a series of separate agreements. If in any proceeding a court or arbitrator shall refuse to enforce any of the separate agreements, any unenforceable agreement shall be deemed reduced or eliminated from the terms and conditions for the purpose of such proceeding, but only to the extent necessary to permit the remaining agreements to be enforced in such proceeding.

14. **INDEPENDENT CONTRACTOR:** **ARCHITECT** is engaged as an independent contractor of **CITY** and is not entitled to and waives all claims for any Workers' Compensation coverage afforded by **CITY** to its employees. **ARCHITECT** acknowledges and agrees to comply with and meet in all respects the criteria in ORS 656.017 which require subject employers to provide workers compensation coverage for all their subject workers and in ORS 670.600 and 701.035 and the statutes, rules and regulations of the US Treasury Department, Internal Revenue Service, and the State of Oregon, Department of Revenue, to maintain **ARCHITECT's** independent contractor status. If **ARCHITECT** breaches or fails to comply with the foregoing criteria, statutes, rules and regulations, then **ARCHITECT** shall hold **CITY** harmless for any and all liability, damages, and losses of any type, including attorneys' fees and costs, resulting therefrom.

15. RESPONSIBILITIES OF THE ARCHITECT:

a. The **ARCHITECT** shall be responsible for the professional quality, technical accuracy, timely completion and the coordination of all services furnished by the **ARCHITECT** under this agreement. The **ARCHITECT** shall keep the **CITY** informed of the performance of the **ARCHITECT's** duties under this agreement. The **ARCHITECT** shall promptly and without additional compensation correct or revise any errors, omissions, or other deficiencies in reports, plans or other services provided by **ARCHITECT** under this agreement.

b. The **CITY's** review or approval of plans, reports, and other services furnished hereunder shall not in any way relieve the **ARCHITECT** of responsibility for the technical adequacy of the work. Neither the **CITY's** review, approval or acceptance of, nor payment for any of the services shall be construed as a waiver of any rights under this agreement or of any cause of action arising out of the performance of this agreement.

c. The **ARCHITECT** shall be and shall remain liable, in accordance with applicable law, for all damages to the **CITY** caused by **ARCHITECT's** negligent performance of any of the services furnished under the agreement, except for errors, omissions or other deficiencies to the extent attributable to the **CITY** or **CITY-furnished** data.

d. The **ARCHITECT's** obligations under this clause are in addition to the **ARCHITECT's** other express or implied assurances under this agreement or State law and in no way diminish any other rights that the **CITY** may have against the **ARCHITECT** for faulty materials, equipment or work.

16. RESPONSIBILITIES OF THE CITY:

The **CITY** shall provide to the **ARCHITECT** full and free access to enter upon all property required for the performance of the **ARCHITECT's** services under this agreement.

17. AMENDMENTS: All amendments which are mutually agreed upon by and between the parties to this Agreement shall be reduced to writing and executed with the same formalities as this Agreement.

18. ACCESS TO RECORDS AND RETENTION OF RECORDS: The **CITY**, the State of Oregon, the U.S. Department of Housing and Urban Development, the Comptroller General of the United States, or any of their duly authorized representatives shall have access to any books, documents, papers, and records of the **ARCHITECT** which are directly pertinent to this specific Agreement, for the purpose of making audit, examination, excerpts, and translations. All required records must be maintained by the **ARCHITECT** for three (3) years after **CITY** makes final payment and all other pending matters are closed.

19. COMPLIANCE WITH THE HOUSING AND COMMUNITY DEVELOPMENT ACT: The work to be performed under this Agreement is on a project assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended 12 USC 1701u. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given lower income persons residing in the City of Newberg, and contracts for work in connection with the project be awarded to eligible business concerns which are located in, or owned in substantial part by persons residing in the City of Newberg.
20. ADMINISTRATIVE, CONTRACTUAL OR LEGAL REMEDIES: Each party to this Agreement shall be entitled to all remedies available at law and in equity to enforce rights under the terms of this Agreement.
21. DATA, PATENT AND COPY RIGHTS: The State of Oregon, the United States Department of Housing and Urban Development and the **CITY** shall have unrestricted authority to reproduce, distribute, publish and otherwise use any submitted report, data, materials, or any other kind of written material wholly or in part, and for any purpose. **ARCHITECT** will not be held liable for reuse of documents or of modifications thereof, including documents on electronic media, by **CITY** or its representatives for any purpose other than the original intent of this Agreement, without the prior written authorization of and appropriate compensation to **ARCHITECT**.
22. ENERGY EFFICIENCY: The **ARCHITECT** shall follow mandatory standards and policies relating to energy efficiency which are contained in the State of Oregon's energy conservation plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163).
23. ENTIRE AGREEMENT: This Agreement constitutes the entire agreement between **CITY** and **ARCHITECT** and supersedes all prior or contemporaneous oral or written representations or agreements.
24. SUBCONTRACTING: The **ARCHITECT** shall not subcontract its work under this Agreement, in whole or in part, without the written approval of the **CITY**. The **ARCHITECT** shall require any approved subcontractor to agree, as to the portion subcontracted, to fulfill all obligations of the **ARCHITECT** as specified in this Agreement. Notwithstanding **CITY** approval of a subcontractor, the **ARCHITECT** shall remain obligated for full performance hereunder, and the **CITY** shall incur no obligation other than its obligations to the **ARCHITECT** hereunder. The **ARCHITECT** agrees that if subcontractors are employed in the performance of this Agreement, the **ARCHITECT** and its subcontractors are subject to the requirements and sanctions of ORS Chapter 656, Workers' Compensation.
25. TERMINATION: Either party may terminate this Agreement upon thirty (30) days written notice to the other. Either may terminate this Agreement immediately in the event

of a material breach by the other party to perform in accordance with the terms hereof but only if said breach is through no fault of the terminating party and said breach is not corrected before the date of termination. If this Agreement terminates for Force Majeure, **CITY** shall pay **ARCHITECT** for all Services and extra services previously authorized and performed before the termination date including, if applicable, a prorated lump sum fee.

26. CONFLICT OF INTEREST OF MEMBERS, OFFICERS OR EMPLOYEES OF THE GRANT RECEIPT, MEMBERS OF LOCAL GOVERNING BODY, OR OTHER PUBLIC OFFICIALS: No member, officer, or employee of the city or county recipient of the Community Development Block Grant, or its designees or agents, no member of the governing body of the locality in which the grant project is situated, and no public official of such locality or localities who exercises any functions or responsibilities with respect to the project during his or her tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the project assisted under the grant contract.

27. CERTIFICATION REGARDING LOBBYING

ARCHITECT certifies, to the best of his or her knowledge and belief, that:

No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements,) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement this
19 day of August, 1999.

CITY OF NEWBERG



Date

CROW/CLAY & ASSOCIATES

By 

Title Associate
Date 8/19/99

EXHIBIT A
SCOPE OF WORK

Typical Project Approach

Program Development - Phase 1

Crow/Clay & Associates Inc. believes in team development. This approach allows the client to provide ideas and to be a fundamental part of the planning and design process. This will facilitate the development of ideas and clearly identify the values and needs of the Library. Every project has unique opportunities, program requirements and budget considerations. Our firm, will promote effective communication, a smooth process, consistent attention and personal dedication.

Our primary responsibilities during programming are not only that of architect and professional resource, but as a leader who facilitates the program development team in fulfilling the needs and desires of our client.

We begin with the creation of a program development team consisting of appointed members of the Library, our architects. This team will meet for discussion and information gathering. We will define and discuss the scope, time line, existing concepts and budget parameters of the project. The team will assemble information with meeting notes and plans. Communication between our firm and a Library representative will be maintained throughout the project at scheduled site meetings, by teleconferencing and by e-mail as needed for the success of the project. Communication is the key to efficient and effective project development.

Research and comprehension of existing concepts and ideas for the project are important as well.

To conclude Phase 1, the architect staff will develop the solutions graphically and present them to the Program Development Team with a written outline and diagrams. The scheme and written program selected by the Library committee will be the guide in the next phase - Schematic Design.

Schematic Design - Phase 2

Schematic design establishes the scale and relationships of the various components of the project. The structural, mechanical, electrical and energy conservation systems are studied.

Communication is maintained by scheduled meetings, by teleconferencing and by e-mail as needed for the success of the project. Again, communication is the key to efficient and effective project development.

The schematic plans will consist of, but not necessarily be limited to, the following elements:

1. Written program element to verify space and uses required.
2. Preliminary building design - Floor plan, Elevations, Sections (if needed).
3. Preliminary cost estimate.

Once the Schematic Design has been approved, Design Development begins.

Design Development - Phase 3

In the design development phase of the project, we develop the systems that comprise the different elements of the rooms: floors, walls, roof, mechanical, electrical, etc. We compare the ways these systems can be constructed and the costs associated with each way. It is also important to consider the impact each system

in a building will have on the systems adjacent to it. We will review and select various finish materials and compare their long term maintenance requirements and costs against first-cost budget constraints: value engineering is essential in this phase of the project. We will adjust our preliminary cost estimate to reflect any necessary changes or refinements.

Design development studies are more detailed versions of the drawings produced in schematic design. We complete a code analysis of the facility to ensure compliance with all local, county and state ordinances and regulations. We review all applicable codes, including the most recent version of the UBC with the Oregon Structural Specialty Code, Yamhill County codes, Section 504 and ADA accessibility and all other jurisdictional requirements pertinent to the project. Meetings with all jurisdictions will be arranged to assess any possible constraints on the project. Preliminary structural calculations are also completed as required in this phase to allow for major structural elements' selection and sizing. We also develop a description of the mechanical and electrical systems so you may see the inter-relationships. This stage allows you the opportunity to pass judgment on the design as a whole. If you are satisfied with the general design, layout and configuration, we will be ready to proceed with the more detailed drawings necessary for construction.

Contract Documents - Phase 4

Upon approval of the design development documents, final specifications will be completed and contract documents will be finished. In this phase of, we prepare drawings and specifications which set forth in detail the requirements for construction of the building. Although much of this work involves drafting, research and specification writing in our office, we maintain contact with you to discuss details on interior finishes, lighting fixtures, etc. We will present to you documents for review and approval at both 50% and 90% completion points.

Prior to completion of this phase, a professional cost estimate will be completed to confirm the budget. We will review and adjust our cost estimate as necessary. The end product of this phase is a set of construction documents and specifications sufficient to enable you to bid the project. We will prepare the necessary bidding information, bidding forms and documentation.

Bidding and Negotiations - Phase 5

The bid process will be handled and managed through our office. We will identify eligible contractors and encourage these approved contractors to bid the project. Drawings and specifications will be sent to contractors' exchanges across the region. We will field all contractor questions and issue written interpretations, conduct a pre-bid conference and attend the bid opening to assist you in evaluating bids. Once the apparent low bidder has been awarded the bid and before the contract is signed we suggest the Library have the contractor review the contract documents for any possible value engineering savings. The contract with the Contractor will be drawn up for review by your legal counsel and then, we are ready to start construction.

Contract Administration - Phase 6

Communication between the contractor, the architect, and the owner is very important for a smooth-running and on-time project. We plan to hold weekly meetings on-site with a representative from each group. Our consultants will be included when their discipline is under construction. Meeting notes will be taken identifying responsibilities and then distributed. Progress payments will be thoroughly reviewed on site and will only be approved if all amounts are correct and record drawings are up to date. To encourage quality control we require the contractor to provide their own punch lists prior the Architect's punch list. The contractor's list can be developed during our weekly site observations and any corrective work can be done promptly prior to the architect's punch list at substantial completion. Ensuring attention to corrective work and scheduling will make for a smoother close out process which follows.

Close Out - Phase 7

The post construction phase is the last phase of our work. The Contractor's guarantee is usually for one year from the Date of Substantial Completion. Before the end of that period, we will review the facility and develop a list of items which require the Contractor's attention. Contractor will also be required to provide operations and maintenance manuals and verified record drawings. Prior to completion, appointed library representatives will be instructed in the operation of any mechanical and electrical equipment. Finally a Completion certificate will be processed.

You will have a facility which will meet your needs for years to come.

EXHIBIT B
CONSULTANT HOURLY RATES

STAFF CLASSIFICATIONS	HOURLY RATE
Principal	\$80/hour
Associate	\$74/hour
Project Manager	\$66/hour
Architect II	\$60/hour
Architect I	\$54/hour
Draftsperson II	\$48/hour
Draftsperson I	\$42/hour
Clerical	\$34/hour
Reimbursable Expenses	1.15 X Cost + Time
Travel	\$0.40/mile