

CITY OF NEWBERG
AGREEMENT WITH CDA CONSULTING GROUP
TO PROVIDE CONSULTING SERVICES
TO THE CITY OF NEWBERG

THIS AGREEMENT is entered into this 28th day of DECEMBER, 2000 by and between the City of Newberg, a municipal corporation of the State of Oregon, hereinafter called **City**, and CDA Consulting Group, 1714 NE 45th Avenue, P.O. Box 3311, Portland, OR 97208-3311, Phone 503-249-3938, Fax 503-281-4198.

hereinafter called **Consultant**.

RECITALS:

1. **City** has need for the services of a **Consultant** with particular training, ability, knowledge, expertise and experience possessed by **Consultant**.
2. **City** has chosen the **Consultant** using the Request for Proposal process.

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

1. **Effective Date and Duration:** This Agreement shall become effective on the date that this Agreement has been signed by every party hereto.

Unless, terminated or extended, this Agreement shall expire when the **City** accepts **Consultant's** completed performance or on August 31, 2001 whichever date occurs first. This fact notwithstanding, the services of **Consultant** shall be authorized and paid on a phase-by-phase basis as described in Exhibit "A."

Expiration shall not extinguish or prejudice **City's** right to enforce this Agreement with respect to any breach of a **Consultant** warranty or any fault or defect in **Consultant's** performance that has not been cured.

2. **Termination:** This Agreement may be terminated at any time by mutual, written consent of the parties. The **City** may, at its sole discretion terminate this Agreement in whole or part upon a 30-day written notice to **Consultant**. The **City** may terminate immediately upon notice to the **Consultant** that the **City** does not have funding, appropriations, or other necessary expenditure authority to pay for **Consultant's** work. The **City** may terminate Agreement at any time for material breach. This Agreement may be terminated by either party at the end of a project phase as defined in Exhibit "A" or at any time upon a 30-day written notice.

3. **Scope of Work:** The **Consultant** agrees to provide the services provided 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.

4. **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 is as follows:

\$50,000

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 not-to-exceed 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.

5. **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, provide an estimated fee amount, and obtain written instructions to proceed with work in the form of an Agreement 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 Agreement amendment, the **Consultant** waives any right to collect fees for work performed.

6. **Agreement Documents:** This Agreement consists of the following documents which are listed in descending order of preference:

This Agreement with attached Exhibit "A" Newberg Riverfront Master Plan Scope of Work, which includes the project budget, and Exhibit "B", the Request for Proposal. Work is 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.

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 Agreement payment except as a self-employed individual.

8. **Federal Employment Status:** In the event any payment made pursuant to this Agreement 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. **Consultant's Warranties:** The work to be performed by **Consultant** includes services generally performed by **Consultant** in his/her usual line of business. The work performed by the **Consultant** under this Agreement shall be performed in a good and businesses-like manner in accordance with the highest professional standards. The **Consultant** shall, at all times, during the term of this Agreement, be qualified, be professionally competent, and dully licensed to perform the work.

10. **Indemnity:** **Consultant** shall defend, indemnify and hold harmless **City** from and against all liability or loss and against all claims, suits, actions, losses, damages, liabilities, costs, and expenses of any nature whatsoever resulting from, arising out, or relating to the activities of the **Consultant**, or its officers, employees, subcontractors, or agents under this Agreement.

11. **Independent Contractor:** **Consultant** is not currently employed by the **City**. The parties to this Agreement intend that the **Consultant** perform all work as an 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 Agreement; 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.

12. **Taxes:** **Consultant** will be responsible for any federal or state taxes applicable to payments received under this Agreement. **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.

13. **Insurance:**

a) **Consultant**, its subconsultants, 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 Agreement, **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 \$1,000,000.00 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 \$2,000,000.00. The **City**, 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 this paragraph.

c) **Consultant** will, at all times, carry a Professional Liability/Errors and Omission type policy with limits of at least \$500,000.00. If this policy is a "claims made" type policy, the policy type and company shall be approved by the City Manager prior to commencement of any work under this Agreement.

d) **Consultant** shall furnish the **City** with Certificates of Insurance upon execution of Agreement. Such Certificates of Insurance evidencing any policies required by this Agreement 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.

14. **Assignment:** 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 Agreement as a whole without written consent of the other.

15. **Ownership of Work Product:** All original documents prepared by **Consultant** in performance of this Agreement, including but not limited to original maps,

plans, drawing and specifications are the property of City unless otherwise agreed in writing. Quality reproducible records copies shall be provided to City at City's expense, upon request. City shall indemnify and hold harmless Consultant and Consultant's independent professional associates or Subconsultants from all claims, damages, losses and expenses including attorney's fees arising out of any unauthorized use of any instruments of professional service.

16. **Entire Agreement:** 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.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first above mentioned.

CONSULTANT
By: Clay W Moorhead
Name: CLAY W MOORHEAD
Title: PRINCIPLE
Date: 12-28-00

CITY OF NEWBERG
By: Terrence D. Mahr
Name: Acting City Manager
Title: TERRENCE D. MAHR
Date: 12/23/00

Approved as to form:

Terrence D. Mahr
Terrence D. Mahr, City Attorney

Exhibit "A"
Newberg Riverfront Master Plan
Scope of Work

Product #1 Consultant Selection

This task is the responsibility of the City of Newberg in coordination with DLCD.

Product #2 Project Contract

Purpose: The purpose of this task is to complete the grant award and contract process through input from the selected consultant.

Contractor Tasks

- Scope of work refinement.

Contractor Deliverables

- Revised scope of work

City Tasks:

- Complete contract process in coordination with DLCD.

Product #3 Existing Conditions Brief

Purpose: Collect and review existing data and information pertinent to the project necessary for completion of the master plan.

Contractor Tasks

- Collect and review existing plans for the project area. Material to be supplied by City.
- Collect and review current conditions information such as aerial photos, tax assessor data, etc. Materials to be supplied by City.
- Solicit input from federal and state agencies on ESA issues.
- Site visit and site reconnaissance.
- Attend and lead staff workshop. Workshop to be set up by City.
- Prepare Existing Conditions report.

Contractor Deliverables

- Site visit
- Attend and lead staff workshop
- Existing Conditions report

City Tasks

- Provide to Contractor existing plans for project area, including zoning and comprehensive maps, Newberg Development Code, Newberg Comprehensive Plan, the Transportation System Plan, digital data from the City's GIS database, ownership information, and any other relevant material.
- Set up in-house staff workshop, including arranging for room and inviting appropriate

Newberg staff, Chehalem Park & Rec District, Yamhill County, and other relevant agencies.

Product #4 Natural Resources Review

Purpose: Review natural resources within the project area.

Contractor Tasks

- Field observation of project area
- Observe and note habitat functions and values such as wildlife habitat, fish habitat, and water quality.
- Make recommendations on ESA compliance and for resource protection based upon evaluations.

Contractor Deliverables

- Natural resources report, including functions and values observations and protection recommendations.

City Tasks

- Provide to Contractor existing natural resource data for project area, including stream corridor maps, aerial photographs, topography, and any other available data

Product #5 Public Involvement Program Materials

Purpose: Prepare materials for use at public workshops and for general publicity of the project.

Contractor Tasks

- Prepare a brochure explaining the project and inviting attendance at the scheduled public meetings. Brochure is to be mailed to all property owners within the project area by City.
- Prepare newspaper announcement for upcoming workshops. City to place announcement in the *Graphic*.
- Prepare presentation materials and graphics for use in meetings. These may include: cross-sections of transportation infrastructure facilities (streets, sidewalks, pedestrian paths, bike paths, and parking facilities), alternative concepts for the riverfront district, character sketches of key areas.

Contractor Deliverables

- Informational brochure
- Newspaper announcement
- Presentation materials, graphics, and handouts for public meetings

City Tasks

- Prepare aerial photos of the project area for the public workshop.
- Copy brochure provided by contractor and mail to property owners in project area.
- Place newspaper announcement provided by contractor in the *Graphic*.

Product #6 Transportation Needs Assessment

Purpose: The purpose of this task is to provide an assessment of the transportation needs within the Riverfront District planning area.

Contractor Tasks

- Prepare transportation needs assessment to level of effort detailed in project budget. These materials are intended to assist the public in visualizing the alternatives for the riverfront, to make the plan more engaging, and potentially for inclusion within the codes and implementing ordinances.

Contractor Deliverables

- Prepare a report that identifies existing conditions and provides recommendations relative to the transportation needs within the Newberg Riverfront planning area. This task does not include a traffic study or traffic counting.

City Tasks

- Provide input to Contractor as needed.

Product #7 Public Workshops and Summary

Purpose: Hold two public workshops to introduce citizens to the project purpose and provide an opportunity for public input, including on selected alternatives.

Contractor Tasks

- Prepare for workshops, including presentation items.
- Attend and facilitate workshops. The purpose of the first workshop is intended to introduce the project and seek citizen input. The purpose of the second workshop is to seek citizen input on the preferred alternatives. Depending upon City and citizen input, the format and topic of these workshops may be changed as the project progresses.
- Provide visual materials, handouts, and other items for meeting.
- Summarize citizen input from public workshops.

Contractor Deliverables

- Attend and facilitate workshops
- Provide visual materials, handouts, and other meeting items.
- Citizen input summary report

City Tasks

- Prior to meetings, City will copy and mail the project brochure supplied by contractor.
- Prior to meetings, City place the newspaper announcements supplied by contractor in the local newspaper to advertise meetings.
- City is responsible for inviting local officials, including Yamhill County staff, to workshops.
- City will assist Contractor in facilitating the workshops and will provide refreshments if needed.

Product #8 Draft Riverfront District Master Plan

Purpose: Create a draft plan incorporating input from public workshops.

Contractor Tasks

- Create draft Riverfront Plan, including existing conditions report and public input report.
- Create maps and description of project area.
- Describe proposed riverfront master plan alternatives and land uses proposed for the project area, including residential, commercial and/or industrial uses, open spaces, parks, and trails.
- Create proposed concept transportation and utility plans for the area.
- Create visual materials to illustrate the plan.
- Develop proposed amendments to the Newberg Comprehensive Plan map to implement the plan. Contractor will develop a proposal for any Comprehensive Plan map amendments necessary to implement the Riverfront Plan. Contractor will provide recommendations in code language format as applicable for any Development Code or Comprehensive Plan text amendments that are necessary for Riverfront Plan implementation. The contractor is not responsible for providing code language and ordinances for any text amendments beyond the level of effort included in the project budget.

Contractor Deliverables

- 8 copies of draft Riverfront Plan, 1 reproducible copy, and one electronic copy provided to City for review
- Draft plan to include at minimum existing conditions report, an evaluation of ESA requirements and recommendations on ESA compliance factors that contribute to the protection of water quality and habitat, a citizen input report, the proposed Riverfront Plan alternative, concept transportation and utility plans, and visual materials for illustration of the plan
- Draft Comprehensive Plan map amendments to implement the proposed Riverfront Plan

City Tasks

- Review and comment on draft Riverfront Plan.
- Route draft Riverfront Plan to Yamhill County and any other affected agencies for review and comment. Coordinate with County to obtain comments on draft plan.
- Forward comments on draft plan to Contractor.

Product #9 Community Results Workshop

Purpose: The second community meeting will provide an opportunity for public review of the Draft Riverfront District Master Plan.

This task is included under Product #5, Public Workshops, as described above.

Product #10 Final Draft Riverfront District Master Plan

Purpose: To incorporate comments into the draft master plan.

Contractor Tasks

- Review input from community workshops with City and make revisions to draft plan
- Review input from City and County reviews and make revisions to draft plan.
- Refine proposed Comprehensive Plan map amendments.
- Refine recommendations on Comprehensive Plan or Development Code amendments.
- The expectation for the contractor's level of effort in the revision process is contained within the project budget. Additional revisions beyond the project budget for this task are beyond the Contractor's scope of work.
- Prepare a preliminary list of major public improvements, including cost estimates and implementation timing.

Contractor Deliverables

- 10 copies of final Draft Riverfront Plan, 1 reproducible copy, and 1 electronic copy to City. Revisions to be completed to the level of effort included within the budget for this task
- Preliminary list of major public improvements, including cost estimates and implementation timing

City Tasks

- Provide comments to Contractor for revision of the draft plan.
- Review input from community workshop with Contractor and propose any necessary revisions to draft plan.

Product #11 Final Riverfront District Master Plan

Purpose: Presentation of the recommended Master Plan to NUAMC.

Contractor Tasks

- Attend NUAMC meeting with City and County to present final draft plan.
- Incorporate changes recommended by NUAMC into plan. The expectation for the contractor's level of effort in the revision process is contained within the project budget. Additional revisions beyond the project budget for this task are beyond the Contractor's scope of work.

Contractor Deliverables

- Attend NUAMC meeting
- Incorporate changes recommended by NUAMC to the level of effort specified in the project budget

City Tasks

- Provide Final Draft Riverfront Plan to NUAMC.
- Coordinate with NUAMC and County to set up NUAMC meeting.
- Attend NUAMC meeting with Contractor and County to present final draft plan.
- After NUAMC meeting and receipt of revised plan, hold applicable City hearings to consider adoption of the Riverfront District Master Plan.

Product #12 Completed Project Contract

Purpose: To closeout the grant contract and complete DLCD grant requirements.

Contractor Tasks

- Provide 8 final copies and 1 reproducible copy of all work products to City.
- Provide 1 digital copy of all work products to City. Digital copies must be compatible with City's systems.

Contractor Deliverables

- 8 final copies and 1 reproducible copy of all materials to City
- Digital copies of all materials to City. Digital copies must be compatible with City's systems

City Tasks

- Grant closeout with DLCD.

Product #13 Contingency

Purpose: To provide limited funding for contingencies. Since the development of a master planning process is dynamic in nature and as such the results are unpredictable, a contingency is established to provide funding for unforeseen tasks.

Contractor Tasks

- Assist the City to identify project tasks as needed.

Contractor Deliverables

- Amend Contract Scope to include contingency tasking.

City Tasks

- Assist in identifying and evaluating project tasking.

**Newberg Riverfront Master Plan
Project Budget**

Task	Budget				
	CDA	GW	FES	KPFF	Total
1. Consultant Selection	\$0	\$0	\$0	\$0	\$0
2. Project Contract	\$1,386	\$0	\$0	\$0	\$1,386
3. Existing Conditions Brief	\$1,269	\$1,250	\$1,250	\$1,250	\$5,019
4. Natural Resources Review	\$500	\$0	\$2,000	\$0	\$2,500
5. Public Involvement Program Materials	\$2,688	\$1,000	\$0	\$0	\$3,688
6. Transportation Needs Assessment	\$500	\$750	\$0	\$3,750	\$5,000
7. Public Workshops	\$3,078	\$2,600	\$0	\$1,000	\$6,678
8. Draft Riverfront District Master Plan	\$6,027	\$4,500	\$1,000	\$2,000	\$13,527
9. Community Results Workshop	\$0	\$0	\$0	\$0	\$0*
10. Final Draft Riverfront District Master Plan	\$2,664	\$1,250	\$250	\$750	\$4,914
11. Final Riverfront District Master Plan	\$2,786	\$1,250	\$0	\$500	\$4,536
12. Completed Project Contract	\$252	\$0	\$0	\$0	\$252
13. Contingency					\$2,500
Total	\$21,150	\$12,600	\$4,500	\$9,250	\$50,000

* "Community Results Workshop" is included with the "Public Workshops" task.

Abbreviations:

CDA: CDA Consulting Group

GW: GreenWorks, P.C.

FES: Fishman Environmental Services

KPFF: KPFF Consulting Engineers

Budget notes: The above project budget table is used to base the projected level of effort relating to each of the identified tasks. The level of effort for each task is relative to the available funding. Circumstances could arise where additional staff time and refinement of work products are desired by the City which are beyond the budgeted level of effort identified within this overall project budget. It is recognized that additional staff time and refinement of work products beyond the specified level of effort constitutes a change in scope.

Exhibit B

REQUEST FOR PROPOSALS NEWBERG RIVERFRONT DISTRICT MASTER PLAN

The City of Newberg requests proposals for consulting services to create a Riverfront District Master Plan. The approximately 200 acre project area along the Willamette River is outside Newberg's City Limits, but within the Urban Growth Boundary.

The City desires to create a master plan of mixed uses that takes advantage of the area's natural, scenic and recreational opportunities. The master plan will include the following: 1) A map of proposed zoning and comprehensive plan districts for the properties within the area. These might be a combination of current residential, commercial, and industrial zone classifications, or new riverfront zoning classifications; 2) Proposed Development Code and Ordinance language to implement the master plan; 3) Plans for open spaces, recreational areas, and trails in the area; and, 4) General transportation and utility plans for the area.

Proposals must be received by 5:00 p.m. on October 6, 1999. Proposers should submit five copies plus one unbound reproducible copy to the Newberg Community Development Office, P.O. Box 970, Newberg, OR 97132. Proposals shall include: 1) A statement of qualifications; 2) A proposed work scope, methodology, and schedule; 3) A description of products; and, 4) A proposed project budget.

Proposals are considered preliminary and generally should not exceed 8 pages. Following receipt of proposals, the City will select a preferred consultant. The City and consultant will then develop a detailed project scope, schedule, and budget. Contract execution will depend on the budget and available funding.

A detailed project description is available by contacting the Newberg Community Development Office at (503) 537-1240. Questions may be directed to Barton Brierley, City Planner.