

**CITY OF NEWBERG**  
**AGREEMENT WITH SPENCER AND KUPPER**  
**TO PROVIDE CONSULTING SERVICES**  
**TO THE CITY OF NEWBERG**

THIS AGREEMENT is entered into this 6th day of June, 2001 by and between the City of Newberg, a municipal corporation of the State of Oregon, hereinafter called **City**, and

Charles Kupper, Principal  
Spencer and Kupper  
2510 N.E. Thompson Street  
Portland, Oregon 97212

Phone 503 284 0342; FAX 503 287 9428

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** received authorization from the City Council on April 16, 2001 to solicit requests for proposals from qualified consultants. During late April and early May the City received three proposals from consultants and interview the three applicants on May 11.
3. **City** evaluated the consultants with the assistance of the City staff, the Chamber of Commerce, and the Newberg Downtown Association representatives and decided to recommend that the City Council authorize the employment of Spencer and Kupper.
4. **City Council** authorized the City Manager by Resolution No. 2001-2293 to execute a contract with Spencer and Kupper to create a Downtown Urban Renewal District plan.

**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 March 31, 2002 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 reach 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 30 days 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:

\$30,000.00

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.

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 a 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 Exhibits, the proposal of the **Consultant** and 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, suites, 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** 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: S Charles Kupper  
Name: CHARLES KUPPER  
Title: Principal  
Date: June 11, 2001

**CITY OF NEWBERG**

By: Duane R. Cole  
Name: Duane R. Cole  
Title: City Manager  
Date: June 7, 2001

Approved as to form:

To 6/8/2001  
Terrence D. Mahr, City Attorney

## EXHIBIT "A"

### **SCOPE OF WORK KUPPER AND SPENCER Downtown Newberg Urban Renewal Plan**

**2001**

#### **General Approach**

The consulting team will review the Ragsdale Koch Associates Report "2001 City Council Advance", which provides a context for the community and Council's interest in formulating an urban renewal plan for Downtown Newberg. In addition, Kupper and Spencer shall review the Downtown Master Plan, Chehalem Valley Vision Statement, City Council Advance 2001, and other historical documents. There is likely to be a very high level of political and public interest in renewal planning in Newberg. With that interest will come questions, issues and problems that can influence the public perception and acceptance of the renewal plan. The scope shall include sufficient flexibility to assist the parties to anticipate the broad range of issues that may arise, and if necessary, make mid-course corrections to deal with them.

A key to setting, and keeping, the renewal plan on course is *active public involvement* from start to finish of the renewal planning process. Part of the active public involvement program will be to develop a vision of the design and activity pieces of the renewal plan. Kupper and Spencer shall provide the technical help, understandings, and process needed to let *the community* develop the plan, and its major elements. This shall be accomplished through a series of carefully planned steps built around public meetings or workshops with citizen groups, and elected officials. The citizen groups will be given ample opportunity to review, discuss, and provide input and direction to each key element of the plan. Additional public meetings to address particular issues or problems in adopting the plan shall be provided. Sub-committees may also be established to work on solving problems.

#### **Work Scope and Methodology**

The consulting team work scope for the Downtown Business District Renewal Plan will include the following steps and components:

- Review and integrate previous planning efforts and studies, including the recent Downtown visioning, and Council Advance work by Ragsdale, Koch.
- Assist and advise the City in forming a citizen's committee to direct the renewal planning effort
- Develop a citizen involvement process to involve the community in all phases of developing the renewal plan.
- Develop an urban renewal plan and report, meeting all requirements of O.R. S. 457. The renewal plan process will be built around the following steps

1. **Citizen Task Force Meeting 1** – Provide written materials and presentations to familiarize the Task Force with urban renewal and tax increment financing. Review city documents and other sources, and assist the Task Force group in identifying the preliminary or DRAFT goals and objectives,. (Note that the data gathering to develop the projections will begin immediately in order to assist with guiding the citizen input process, to help define expectations, and to answer the financial impact questions as soon as possible. A working DRAFT model shall be prepared, with City staff assistance, in order to quickly estimate the impacts of the Urban Renewal District. Item number 7 below, shall be the development of the final version after the public input process.)
  2. **Citizen Task Force Meeting 2** – Assist the Task Force in identifying a preliminary or DRAFT project area boundary and other opportunity areas that may be beneficial to the Renewal Plan. Present initial list of goals and objectives to the Task Force. Prepare for the community meeting. Allow the Task Force to discuss, expand, and revise the list of project goals.
  3. Identify existing conditions and blighting influences within the proposed boundary
  4. **Citizen Involvement -- General Public Meetings 3 & 4** – Formulate a design plan or strategy, and a list of renewal project activities to carry out the design work, and implement renewal plan goals. These two meetings will combine and integrate design concepts with the ORS requirement to identify projects to be carried out and funded by the urban renewal plan. Allow the community to discuss, expand, and revise the list of project goals and revise the DRAFT project area boundary.
  5. Work with City staff, elected officials, local real estate professionals, and other knowledgeable parties to develop information on potential new assessed value growth within the urban renewal boundary. Use this information as the basis for one or more projections of tax increment revenue over a 20-25 year projection period.
  6. Work with city staff to produce cost estimates of activities proposed for urban renewal funding. Incorporate cost estimates in a capital improvement program for the Report on the Renewal plan, and for review by community group. Based upon this list of project costs and activities, establish a preliminary maximum indebtedness for the Plan.
  7. Utilizing estimates of value growth, and Assessor's data, prepare an analysis of the tax impacts of carrying out the Renewal Plan. Kupper and Spencer shall assist in meeting with the School District, Chehalem Park and Recreation District, and Yamhill County regarding the impacts of the proposed Renewal Plan.
  8. **Citizen Task Force Meeting 5** – Public review, discussion, and comment on financial plan identified for inclusion in the plan. Public discussion and comment may produce a number of different elements of the urban renewal plan. The community group will be given the estimates of project revenues, project costs, and an estimated timetable for funding and carrying out all projects. The public discussion and comment may result in a modification of costs, or funding mechanisms, or deletion of projects. These changes will be provided in the final plan document.
  9. **Citizen Task Force Meeting 6** – Review of a draft Urban Renewal Plan and Report document with contents meeting all requirements of ORS 457.
  10. Preparation of required special notice, letters to affected taxing bodies, and draft of Ordinance adopting urban renewal plan
  11. Presentation of Urban Renewal Plan maximum debt to Yamhill County
  12. Presentation of Urban Renewal Plan to City Planning Commission
  13. Presentation of Urban Renewal Plan to City Council for adoption.
  14. Publication of notice of adoption and recording with County
- *The Urban Renewal Plan effort also will incorporate the following elements, provided by other firms on the project team.*

- **Design Planning, Concepts, and Graphics** – Group McKenzie will provide design services and expertise to aid the Committee and general public to make decisions on concepts and activities to be funded by the urban renewal program. The Design effort will be integrated into renewal planning process, and its results will feed directly into the activities to be included in the urban renewal plan.
- **Implementation and Alternative Sources of Funding** Mark Clemons, of Group McKenzie, and formerly director of economic development for the Portland Development Commission, will lead this project task. It will be a separate, brief document noting key elements of an implementation strategy, and identifying alternative sources of funding for projects included in the renewal plan. It can be expected that there will be limited funds in early phases of the renewal plan, and also that the overall demands for renewal funding may exceed the renewal program's long-term funding ability.
- **On-the spot graphics support** Robert Foster, who has served in this capacity at other Newberg meetings, will attend the design meetings, to help provide immediate visualization of concepts, or to develop graphics for use in publicity, or plan documents.
- **Legal Review** – Karen Williams, of Lane, Powell, Spears, Lubersky, and recently chief counsel for the Portland Development Commission, will review the final plan and report document, and draft adopting Ordinance for legal adequacy

## PRODUCTS OF THE ASSIGNMENT

During the course of the assignment, the consulting team will provide the City of Newberg with the following products:

- A draft ordinance forming an urban renewal agency for the City of Newberg
- Printed informational material describing the urban renewal process, tax increment financing, information on steps in putting together an urban renewal plan, and other information needed to guide citizens or elected officials in the planning process.
- A completed Urban Renewal Plan and Report, meeting all requirements of ORS 457.
- Two public sessions discussing and developing design concepts and activities for the Plan area, and graphics illustrating those concepts.
- A report on key implementation steps, and alternate funding sources.
- Model text for Special Notice on plan adoption, and letters to taxing bodies.
- A Renewal Agency resolution, and a Council Ordinance adopting the urban renewal plan
- An outline of an agreement between City and Agency providing for Agency reimbursement of City Renewal Plan costs.
- All final written and graphic materials, not including conceptual drawings by the artist, will be delivered to the City in a digital format that has been approved by the City of Newberg.

**PROPOSED TIMETABLE  
NEWBERG URBAN RENEWAL PLAN**

**(All Dates below are weeks, beginning Monday)**

| <b>TASK</b>                    | <b>Meeting</b> | <b>3215<br/>Schedule</b> | <b>Normal<br/>Schedule</b> | <b>Slower<br/>Schedule</b> |
|--------------------------------|----------------|--------------------------|----------------------------|----------------------------|
| Renewal Review, Goals          | 1              | 26-Jun                   | 2-Jul                      | 9-Jul                      |
| Area Boundaries                | 2              | 2-Jul                    | 16-Jul                     | 30-Jul                     |
| Design and Projects 1          | 3              | 16-Jul                   | 6-Aug                      | 27-Aug                     |
| Design and Projects 2          | 4              | 30-Jul                   | 27-Aug                     | 17-Sep                     |
| Financial Information          | 5              | 20-Aug                   | 24-Sep                     | 22-Oct                     |
| Draft of Renewal Plan          | 6              | 17-Sep                   | 29-Oct                     | 19-Nov                     |
| Planning Commission Review     |                | 17-Sep                   | 12-Nov                     | 26-Nov                     |
| Council Adoption - 1st Reading |                | 24-Sep                   | 26-Nov                     | 10-Dec                     |