

**CITY OF NEWBERG
AGREEMENT WITH
THE BENKENDORF ASSOCIATES CORPORATION
TO PROVIDE CONSULTING SERVICES
TO THE CITY OF NEWBERG**

THIS AGREEMENT is entered into this 18 day of January, 2002 by and between the City of Newberg, a municipal corporation of the State of Oregon, hereinafter called **City**, and
The Benkendorf Associates Corporation
522 SW 5th Avenue
Portland, OR 97204
503-226-0068 Fax: 503-226-2409

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 pre-qualification and price quot process to provide services related to the Crater Lane Annexation application.

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 June 30, 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 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:

\$5,200

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 Exhibits, the proposal of the **Consultant** (if one was submitted) and the Request for Price Quotes. 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 duly 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 Commercial 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** 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: [Signature]
Name: Benkendorf Associates Corp.
Title: President
Date: 1-18-02

CITY OF NEWBERG
By: [Signature]
Name: Terrence D. Mahr
Title: City Manager Pro Tem
Date: 1/10/02

Recommended for Approval By:

[Signature] 1-10-02
Michael Soderquist, P.E., P.L.S., DEE
Community Development Director

Approved as to form:

[Signature]
Terrence D. Mahr
City Attorney

THE BENKENDORF ASSOCIATES CORPORATION
T B A C



December 20, 2001

Mr. Barton Brierley, City Planner
City of Newberg
414 E. First Street
Newberg, OR 97132

Subject: Crater Lane Annexation Application Preparation

Dear Barton:

Thank you for asking *The Benkendorf Associates Corp.* to submit a Price Quote for the Crater Lane Annexation Application. We were pleased to have been pre-qualified to assist you and your staff with specific planning assignments, as the need arises. This project is of particular interest to our firm for two reasons:

- First, we prepared the analysis of the Urban Reserve areas in 1997 and this area was identified as F3 in that analysis. As you know, two alternative mixes of residential density were prepared for the area. While it was ranked #5 priority by the City and County staff, the proximity of the school and park make it a very suitable location for new residential development.
- Second, we met with two representatives of the property owners when they were considering retaining a consultant to assist them with the UGB amendment and annexation. And, based upon that introduction, we would enjoy working on this application for them.

In accordance with your request, we have prepared the following cost estimate to complete the six work tasks identified.

1. Complete the City of Newberg annexation application form.
2. Prepare a written narrative of the annexation request.
3. Prepare written findings addressing applicable criteria from the Newberg Development Code and Comprehensive Plan.
4. Prepare and mail two land use notices for the proposed annexation (about 100 each) for the Planning Commission and City Council Public Hearings.

We will meet with the planning and engineering staff to initiate the project and conduct a site visit. All of the above information will be prepared in draft form for staff review and comment. Based on the comments, we will prepare the final documents.

December 20, 2001

5. Prepare a map and legal description of the exterior boundaries of the area to be annexed.

Task 5 will be completed by Matt Dunkel & Associates, Surveyors.

6. Prepare a concept development plan for the area to be annexed, such as a map showing a possible general lot layout for future development in the area.

We will prepare two alternative sketches utilizing two different land use mix and density assumptions. Following a review by the staff, we will prepare a Concept Development Plan, at a scale suitable for public display. We ask that the City provide an electronic base map from the city's GIS system.

Professional Fee: Our fee for Tasks 1 through 4 assumes that we will be able to obtain an electronic copy of the report prepared by the staff for the UGB Amendment. The fee does not include our attendance at the Planning Commission and City Council Public Hearings.

Tasks 1 through 4	\$3,750
Task 5	400
Task 6	900
Reimbursable Expenses (copying & postage)	150
Total:	\$5,200

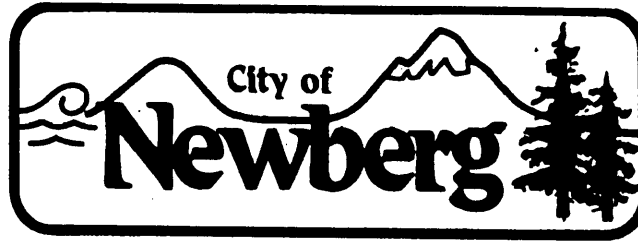
We appreciate the opportunity to submit this proposal and look forward to working with the staff and property owners, as necessary, on this assignment. Please call with any questions or clarification of our Price Quote.

Yours Sincerely,

The Benkendorf Associates Corp.


Al Benkendorf, AICP

City of Newberg
414 E. First Street
P.O. Box 970
Newberg, OR 97132



City Manager
(503) 538-9421
(503) 538-5013 FAX

Community Development Office

P.O. Box 970 • 414 E. First Street • Newberg, Oregon 97132 • (503) 537-1240 • Fax (503) 537-1272

REQUEST FOR PRICE QUOTES Crater Lane Annexation Application Preparation

The City of Newberg is requesting quotes for a land use consultant to prepare an application for an annexation to the City of Newberg. The proposed annexation would involve 11 properties totaling 65 acres. Most of the area was recently brought into the Newberg Urban Growth Boundary. The property owners are requesting that the City Council initiate an annexation application for the area. If the City Council approves this request, the City would be responsible for preparing a land use application for annexation in accordance with its own standards. The City wishes to consider whether City staff or a hired land use consultant would prepare the application.

Significant background information is available for the area because of the prior UGB amendment. The following have already been prepared for the area:

1. Traffic study.
2. Potential zoning.
3. Concept utility plan.
4. Mailing lists

The selected consultant would do the following:

1. Complete the City of Newberg annexation application form.
2. Prepare a written narrative of the annexation request.
3. Prepare written findings addressing applicable criteria from the Newberg Development Code and Comprehensive Plan.
4. Prepare and mail two land use notices for the proposed annexation (about 100 each)

And, as a deductible alternatives:

5. Prepare a map and legal description of the exterior boundaries of the area to be annexed.
6. Prepare a concept development plan for the area to be annexed, such as a map showing a possible general lot layout for future development in the area.

Work is expected to begin after January 9, 2002. The application should be completed by February 20, 2002. The City has budgeted \$6,000 for all of the above tasks.

Price quotes should not exceed two pages. Price quotes must be received by 5:00 p.m. on December 20, 2001. The price quote may be delivered by any of the following methods: (1) mailed to the Newberg Community Development Office, P.O. Box 970, Newberg, OR 97132; (2) hand delivered to Newberg City Hall, 414 E. First Street; or, (3) faxed to 503-537-1272; (4) e-mailed to nplan@ci.newberg.or.us.

Questions regarding this request may be directed to Barton Brierley, City Planner, at 503-537-1212.

Attachments: Petition, Area Map, Annexation Process

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