

CITY OF NEWBERG
AGREEMENT WITH
CRANE & MERSETH ENGINEERING/SURVEYING
TO PROVIDE CONSULTING SERVICES
TO THE CITY OF NEWBERG

CITY OF NEWBERG
CITY RECORDER INDEX NO. 2004

THIS AGREEMENT is entered into this 9th day of May, 2003 by and between the City of Newberg, a municipal corporation of the State of Oregon, hereinafter called **City**, and

Suzanne Crane Engineering
dba Crane & Merseith Engineering / Surveying
6566 SE Lake Rd., Suite D
Milwaukie, OR 97222
(503) 654-2005 Fax: (503) 654-2765

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 **Consultant** using the current General SOQ list related to general surveying services.

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 one year from the effective date of this contract, whichever date occurs first. This fact not withstanding, 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:

\$2,000.00

The **Consultant** shall not exceed the fee for any task included in the fee proposal amount. If the **Consultant** foresees 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 including the scope of work and terms of compensation; proposal of the **Consultant** (if one was submitted); the Request for Proposal (if one was used). 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 indemnify and hold harmless **City** from and against all liability or loss and against all claims, suits, actions, losses, damages, liabilities, costs, and expenses 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** 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.

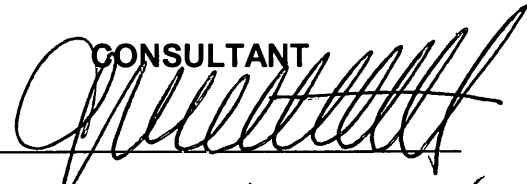
15. **Ownership of Work Product:** All original documents prepared by **Consultant** in performance of this Agreement, including but not limited to original maps, plans, drawing and specifications are the property of **City** unless otherwise agreed in writing. Quality reproducible records copies of final work

product, including digital files of text and drawings shall be provided to **City** at the conclusion or termination of this Contract. **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 the City's use of any instruments of professional service for purposes outside the scope of this Contract.

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.

17. **Notification:** All correspondence and notices related to this Agreement shall be directed to the project manager for the party to whom the correspondence or notice is intended. If directed to the **City**: City of Newberg, P.O. Box 970, Newberg, Oregon 97132, Attn: Annette de Paz, Engineering. If directed to the **Consultant**: Attn: Edward A. Crane, PE/PLS at the address listed above. Each party shall be responsible for notifying the other of any changes in project manager designation.

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

By: 
Name: GORDON MERSETH
Title: VP
Date: MAY 1, 2003
Division Approval: 
Recommended for Approval By: 
Michael Soderquist, P.E., P.L.S., DEE
Community Development Director

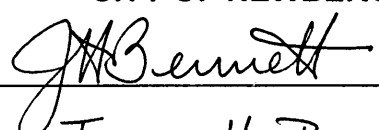
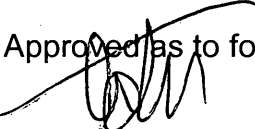
CITY OF NEWBERG
By: 
Name: James H. Bennett
Title: City Manager
Date: 5/9/03
Approved as to form: 
Terrence D. Mahr
City Attorney

EXHIBIT A

Article 1. SURVEYING SUPPORT SERVICES AGREEMENT

In consideration of the fees for Professional Services as set forth in Section 3 below, the **CITY OF NEWBERG**, hereinafter called the **CITY** agrees to reimburse the firm of **Suzanne Crane Engineering, Inc.** (dba CRANE & MERSETH ENGINEERING / SURVEYING) hereinafter called **CaMES**, for services of a Professional Land Surveyor as requested by the **CITY**. The extent of such services will be determined prior to the provision of any such services with the request for services made in writing, either in hard copy and/or by electronic mail. A written response stating the schedule and estimated fee for such services will also be provided prior to service provision.

Edward A. Crane PE/PLS, will be assigned as the primary contract surveyor and will be directly responsible to the **CITY** for any services provided. Professional services will be provided by either Edward A. Crane or may be provided by Suzanne T. Crane, PE/PLS. Steve Kebbe, PE (inactive PLS) may provide assistance at times.

Article 2. SCOPE OF SERVICES

Services covered under this contract will be specifically requested by **CITY's** staff on a task-by-task basis and may consist of, but is not limited to:

- A. Consultation on technical phases of surveying such as property ownership, boundary resolution, easement and right-of-way determination, preparation of legal documents such as easement descriptions and maps, right-of-way takes, re-monumentation, record of survey, etc.
- B. Consultation in person, by telephone, e-mail, or FAX to provide technical advice, product review, or other information relating to the practice of surveying.
- C. Review of surveying techniques and products involving topographic data collection, property (boundary) research, field notes, collected data, monumentation, and other products of surveying activities.
- D. Consult with Public Works staff on specific problems or issues related to surveying.

Article 3. COMPENSATION

- A. The parties have agreed that **CaMES** will be paid for said services on an hourly basis for time

spent, plus expenses. Fees and expenses will be billed monthly as work progresses and payment shall be due thirty days after the date of such billing. Labor for services of a Professional Land Surveyor will be invoiced to the **CITY** at **\$110/hour**. Should any other staff assistance be required, hourly rates will be provided and agreed upon prior to provision of any such services.

- B. Direct expenses for mileage relating to the professional services will be invoiced at **\$0.36/mile**. Other direct expenses such as telephone, postage, reproduction, and similar routine business costs are included in the labor hourly rate.

Article 4. GENERAL CONDITIONS

- A. **CaMES** makes no warranty, expressed or implied, as to its findings, recommendations, or professional advice, except that the same will be promulgated after being prepared in accordance with generally accepted professional practice. **CaMES** will not be responsible for the interpretations and recommendations by others of the information developed or guidance provided. **CaMES** is not being retained to provide a professional surveyor's seal on documents that are prepared without their full knowledge and oversight of the document's preparation.
- B. When necessary, the **CITY** will provide for the right of entry to **CaMES** employees. While **CaMES** will take all reasonable precautions to minimize any damage to property. It is understood by the **CITY** that in the normal course of field work, some damage may occur, the correction of which is not part of this Agreement. **CaMES** shall not be obligated to restore property to its pre-project state following such work.