



COMMUNITY DEVELOPMENT DEPARTMENT

REQUEST FOR PROPOSALS

**For Professional Consultant Services for
Downtown Newberg Parking Inventory and Utilization Study**

February 8, 2023

Address proposals to:

City of Newberg, City Hall, Community Development Department

Attention: Clay Downing, Planning Manager, 503-554-7728

Location: 414 E First Street, Newberg, OR 97132, or PO Box 970, Newberg, OR 97132

Proposals shall be emailed to clay.downing@newbergoregon.gov, Subject: Downtown Newberg Parking Inventory and Utilization Study. The City of Newberg reserves the right to reject any or all proposals.

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SECTION 1 - GENERAL INFORMATION

1.1 Proposal Request

Written proposals in response to this Request For Proposals (RFP) must be submitted no later than the proposal due date of, **2:00 p.m. local time on Wednesday, March 1, 2023**, to Clay Downing, Planning Manager.

1.2 Proposer's Proposal

Proposers responding to this proposal request must follow the directions stated within this RFP. Adherence to these rules will ensure a fair and objective analysis of the proposals. Proposals should be prepared simply and economically. Special bindings, colored displays, promotional materials, etc. are not necessary. Emphasis should be on completeness, brevity, and clarity of the content.

Provide a clear and concise description of your firm's capabilities to meet the RFP requirements. **Proposers must demonstrate prior experience in this type of work within the last five (5) years. All responses must be made in the format outlined in Section 3.** Failure to comply with or complete any part of this request may result in the rejection of your proposal.

1.3 Schedule

Advertisement	February 8, 2023
Last Day for Questions	February 22, 2023
Proposal Due at 2:00pm	March 1, 2023
Staff Recommendation	*March 7, 2023
City Manager approval	*March 10, 2023
Final product due	June 1, 2023
Project completion	June 30, 2023

* These dates are approximate and subject to change.

1.4 Issuing Office

All correspondence pertaining to this RFP should be directed to:
<https://bids.newbergoregon.gov/>.

1.5 Submitting Proposals

Submittals that are late, incomplete, or misdirected will be considered non-responsive, **with no exceptions**. The City of Newberg relies on the City of Newberg's computer system's clock to determine the correct time and is not responsible for any delays or difficulties

experienced in the submittal of a Proposal. Please do not wait until the last minute to submit your proposal. **THE LAST DAY FOR QUESTIONS IS SEVEN (7) BUSINESS DAYS PRIOR TO THE PROPOSAL DUE DATE.**

The proposal must be submitted clearly marked as follows:

City of Newberg
Attention: Clay Downing, Planning Manager
RE: Proposal to RFP: Downtown Newberg Parking Inventory and Utilization Study

Failure to clearly identify the Proposal in the subject line may cause misrouting of the Proposal and late delivery, resulting in disqualification.

1.6 Proposal Withdrawal

Any proposal may be withdrawn at any time before the "Proposal Due" date and time specified in **Section 1.3, Schedule**, by providing a written request for the withdrawal of the proposal to the City. A duly authorized representative of the firm shall execute the request. Withdrawal of a proposal will not prejudice the right of the proposer to file a new proposal on this or future projects.

1.7 Rejection or Acceptance of Proposals

The City expressly reserves the following rights to:

- a. Disregard any or all irregularities in the proposals.
- b. Reject any or all of the proposals or portions thereof.
- c. Base award with due regard to quality of services, experience, compliance with the RFP, and other factors as may be necessary under such circumstances.
- d. Reject all proposals and re-advertise at the City's sole discretion.

1.8 Selection of Consultant

The City's Selection Committee will recommend to the City Manager that the contract award be made to the proposer that is in the Committee's opinion, best qualified.

The City's Selection Committee will follow the following steps to identify the best qualified proposer:

- (i) Evaluate and rank all qualified proposals according to the evaluation criteria.
- (ii) Negotiate with the top ranked proposer for a detailed scope and acceptable fee for the project. (Negotiate with the next ranked proposer if the first one does not lead to fruition.)
- (iii) Recommend to the City Manager that the contract award be made to the

proposer that is in the Committee's opinion, best qualified after the scope and fee negotiation is complete.

1.9 Requirement of Insurance

The successful proposer will be required to meet the City's insurance coverage as described in the sample Professional Services Agreement (see **Appendix A**). Insurance coverage includes the following categories of insurance:

- a. Commercial general liability - \$2,000,000.00 (see PSA for details)
- b. Professional liability/errors & omissions - \$500,000.00
- c. Automobile liability - \$1,000,000
- d. Workers' compensation – As required by ORS 656.017

The successful proposer shall provide certification of all coverages and shall name the City of Newberg as "an additional insured" on all except workers' compensation insurance policies prior to signing the contract. The City is defined as the entity named on the declarations page of the coverage agreement and its officers, employees, and agents including volunteers, authorized to act on behalf of the City.

1.10 Execution of Contract

It is anticipated that the contract should be signed by the City Manager within a week of award of the contract.

1.11 Public Records

Any material submitted by the proposer shall become the property of the City unless otherwise specified. During the evaluation of proposals and the selection of the Consultant, the proposals shall be confidential. After the selection process has been completed, the proposals shall be open to public inspection. Proposals should not contain any information which the proposers do not wish to become public. If it is necessary to submit confidential information in order to comply with the terms and conditions of this RFP, each page containing confidential information should be clearly marked "NOT FOR PUBLIC DISCLOSURE CONFIDENTIAL TRADE SECRETS". The City accepts no liability for the inadvertent or unavoidable release of any confidential information submitted, and claims arising out of any public record request for such information shall be at the proposer's expense.

1.12 Tax ID Number

Proposals must state the proposer's Federal/State of Oregon Taxpayer Identification Number.

1.13 Recycled Products Statement

Proposers shall use recyclable products to the maximum extent economically feasible in the preparation of the proposals, and the selected proposer shall continue the same practice in the performance of the contract work in accordance with ORS 279B.270.

1.14 Federal/State/Local Requirements

The selected proposer shall comply with all Federal, State and local laws, regulations, executive orders and ordinances applicable to the work under this contract, including, without limitation, the provisions of ORS 279B.220, 279B.230, 279B.235, and 279B.270. In addition, proposers agree to comply with:

- a. Title VI of the Civil Rights Act of 1964;
- b. Section V of the Rehabilitation Act of 1973;
- c. The American with Disabilities Act of 1990 and ORS 659.425;
- d. All regulations and administrative rules established pursuant to the foregoing laws; and
- e. All other applicable requirements of Federal and State civil rights and rehabilitation statutes, rules and regulations.

Proposer is subject to the Oregon Worker's Compensation Law and shall comply with ORS 656.017, which requires the provision of Worker's Compensation coverage for all employees working under this contract. The City's programs, services, employment opportunities and volunteer positions are open to all persons without regard to race, religion, color, national origin, sex, age, marital status, disability or political affiliation.

1.15 Payment

The City will pay the Consultant under contract for services performed based on the approved rates and the scope of work completed. The City will make monthly progress payments within thirty (30) calendar days following receipt of properly itemized invoices.

Payments for extra work not described in the PSA scope of services will only be made when authorized in advance and in writing by the City's Project Manager prior to such work being performed by the Consultant.

If the Consultant anticipates that the fee is going to surpass the not-to-exceed figure because a task has changed and 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 exceeding amount.

SECTION 2 - SCOPE OF WORK

2.1 Invitation

The City of Newberg is requesting proposals from firms (hereinafter referred to as the "Consultant") qualified and interested in providing professional consulting services to the City for the purpose of conducting Downtown Newberg Parking Inventory and Utilization Study (hereinafter referred to as the "Project").

This RFP contains the necessary information to understand the basic scope of work and responsibility, the consultant selection process, and the required documentation in submitting a proposal. Direct any questions to Clay Downing, Planning Manager.

2.2 Overview

The City of Newberg seeks technical assistance to conduct an evaluation of the downtown parking system which will supplement the City's [Strategic Parking Management Plan \(2016\)](#). The Scope of work under this Project includes hiring a consultant to take a lead role in conducting a review of the use dynamics and access characteristics of the on- and off-street parking supplies in downtown Newberg. The study will build on the foundation created by the [Strategic Parking Management Plan \(2016\)](#) and develop recommended strategies to improve the efficiency of the City's parking system in order to provide an updated platform for decision-making and future growth.

Up to \$50,000 is available for consultant services.

2.3 Study Area & Scope of Work for Project

The proposed study area is located in and around downtown Newberg. (see map below)

Downtown Newberg - Study Area



**City of Newberg Downtown
Parking Study Area**
Newberg, Oregon

- Existing Parking Study Boundary
- ### Blocks Inside Study Boundary
- ### Blocks Outside Study Boundary



The work is expected to include:

- Conduct an inventory of the entire supply of on- and off-street public parking in downtown Newberg (see Study Area map);
- Creation of a study report containing an inventory of supply of on- and off-street parking, parking utilization findings, peak-season parking demand projections, and recommendations on parking management strategies including wayfinding, enforcement, economic development, and public education strategies;
- Interpret parking and visitation data to generate peak-season parking demand projections occurring seasonally between June and September;
- Creation of a public brochure or flyer summarizing the study report and its findings;
- Collaboration and/or data sharing with Destination Marketing Organization (Taste Newberg), Newberg Downtown Coalition, and local Chamber of Commerce (Chehalis Valley Chamber of Commerce); and
- Leading and conducting a minimum of one community open house or virtual community open house regarding study methods and findings.

Timing: The final report is due to the City no later than **June 1, 2023** and must be provided in both paper and digital form.

Two copies of all deliverable materials should be generated, including materials from public meetings. All original research materials collected for this project must be delivered to the City with the final product.

All public meetings must be properly documented with photographs.

Staff and local partners will work with the consultant throughout the process. Additionally, staff can provide assistance with mapping, administrative support, and data requests.

2.4 Scope of Professional Services & Responsibility

The Consultant shall provide adequate personnel and resources to accomplish the objectives of this Project. Various tasks for this Project are outlined later in this section. Key personnel must be identified, and the time allocated for each task needs to be clearly specified.

The Consultant is expected to provide a highly qualified and experienced team and be able to deliver satisfactory products and services.

All recommendations and information produced in this Project shall comply with applicable Federal, State and City regulations and requirements.

The City requires completion of the Project according to the timetable listed in Section 1.3.

Essential tasks are listed in the following pages and shall include:

Task A Project Management

The Consultant shall act as a manager of the Consultant's team, including any sub-consultants. The Consultant shall manage and coordinate all components of the Project and take a proactive role in keeping all tasks on schedule and ensure timely completion of the Project.

The Consultant shall ensure full coordination with City staff and be responsive to any email and telephone discussions, in addition to the minimum meetings as listed under various tasks in the scope of work. The Consultant shall be in contact with the City frequently enough to ensure a timely City review of deliverables. The Consultant is expected to work with all stakeholders in a responsible manner. The Consultant shall perform all, but not limited to, the following sub-tasks:

Task A-1 Kickoff Meeting

The Consultant shall organize a kickoff meeting with City staff. Assume no more than two (2) hours for the meeting to achieve the following:

- Define project goals
- Outline project and management approach
- Identify roles and responsibilities
- Confirm scope and schedule

Task A-2 Administration

The Consultant shall update and email a detailed project schedule each month to the City’s Project Manager. Provide high performance in project leadership, schedule management, tracking project budget and expenditures, quality control and assurance, maintaining accurate record keeping and follow-up on all action items. Deliver the entire project within the prescribed budget. Any possible modifications of the scope shall be identified in early stages such that action plans can be developed to avoid or minimize them.

Attend meetings as noted under various tasks. Prepare all project related agendas. All agendas and the supporting information shall be distributed via emails to the City’s Project Manager at least three (3) business day prior to any meetings.

Submit a summary report of work completed by sub-tasks with the final invoice. Indicate each individual’s time spent on each sub-task. Alert the City if any issues or concerns may affect the progress and/or cost of the project.

Task B Stakeholder Involvement

The Destination Marketing Organization (Taste Newberg) and Newberg Downtown Coalition have expressed a considerable amount of interest in this project and the consultant should expect an initial meeting and an update meeting with this group. The City will complete the notices, agendas, and minutes for these meetings as needed.

Task C Deliverables

The Consultant shall provide the reports and documents outlined in Section 2, subject to acceptance by the City.

2.5 City’s Responsibility

The City will perform the following tasks:

1. Provide a Project Manager responsible for the overall project management and coordination between the Consultant and the City, and with any of the City’s other service providers.
2. Prepare all project-related meeting minutes.

3. Provide legal review of all contract documents.
4. Provide previous documents. If any of these documents are utilized, the Consultant shall verify to ensure the accuracy.
5. Make available City policies, regulations, guidelines and records such as as-built information and geographically referenced GIS maps, as available.
6. Assemble and transfer all required information and data, both hard copy and electronic, at no charge to the Consultant.
7. Coordinate communication among City staff and provide a unified guidance/direction to the Consultant.
8. Coordinate staff review. Staff review time for the deliverables will be 2 weeks.
9. Ensure that City staff members provide timely responses to questions and be available for any meetings requested by the Consultant. Meetings between City staff and the Consultant take place at the Newberg City Hall Building, 414 E First Street, Newberg, OR 97132 or virtually.
10. Review and process Consultant's payment requests.
11. Perform other tasks as negotiated.
12. Create a project webpage on the City website and post updates.

SECTION 3 – PROPOSAL REQUIREMENTS AND EVALUATION

3.1 Proposal Submittal

To receive consideration, submit proposals in accordance with the following instructions:

Proposals should be prepared simply and economically, providing a straightforward, concise description of proposer’s capabilities to satisfy the requirements of the RFP. Emphasis should be on completeness and clarity of the content.

The City, at its sole discretion, has the right to negotiate with any or all proposers regarding their proposals. Additionally, the City may reject or accept any or all proposals or parts thereof, submitted in response to this RFP.

The City recognizes that in the submittal of proposals, certain information is proprietary to the proposer and that the safeguarding of this information is necessary. Accordingly, the City will make every effort to prevent any disclosure of data supplied by any proposer where the proposer identifies those portions of its proposal that are proprietary. See **Section 1.13, Public Records**.

The proposal is due by the date and time identified in Section 1.1. Proposals submitted after this time will not be accepted.

3.2 Incurred Costs

The City is not liable for any costs incurred by proposers in the preparation and/or presentation of their proposals.

3.3 Content of Proposals and Evaluation Criteria

All proposals shall include the information identified in the following table and be presented in the order as indicated. The total number of pages for the proposal shall not exceed 10 pages, not including supplemental information. The supplemental information can include key individual resumes and should not exceed 10 pages. The evaluation criteria and maximum possible points are noted for each item of information. An explanation of each item appears immediately in the following sub-sections.

CONTENT AND EVALUATION CRITERIA	MAXIMUM SCORE
1. Introductory letter	10
2. Key personnel qualifications	30
3. Project scope and understanding	30
4. Project schedule (11" x 17" allowed)	10
5. Additional supporting information & references	20
Totals	100

All supporting information shall be presented in a separate section at the end of the proposal. Front and back covers, as well as section dividers are not counted in the page limit requirements. Each page shall be 8-1/2" x 11", unless otherwise noted. When using double-sided printing, each side of the page is counted as one page.

3.3.1 Introductory Letter

The introductory letter shall include, but need not be limited to, the following information:

- The name of the firm, as well as, the signature, printed name and title, telephone and fax number of the officer authorized to represent the Consultant in any correspondence, negotiations and sign any contracts that may result.
- The address of the office that will be providing the service, a project manager's name, telephone number, fax number, and e-mail address.
- The Federal and State tax identification numbers, and the State of incorporation, if applicable, must also be included.
- Indicate whether the proposer is a "Resident Bidder" as defined in ORS 279A.120 and provide a statement that the proposal is valid for sixty (60) days after the submission deadline.

The proposer may use this section to introduce the proposal or to summarize the key provisions of the proposal.

3.3.2 Key Personnel Qualifications

Provide a statement that portrays how the qualifications and experience of the Consultant's and sub-consultant's key personnel relate to the described work. The City expects

commitment and prefers no reshuffling of personnel during the Project. The response should address the following:

- A brief resume outlining the experience and qualifications of the person who would be directly responsible for this Project. Identify any applicable registrations and indicate the number of other projects that will be managed by this person during the time they would be managing this Project.
- A list of other individuals who would support and contribute to the Project until its completion, with a summary of each team member's area of responsibility, expertise, experience and qualifications for this work.
- Key personnel experience with this type of project, and familiarity with the City of Newberg.

3.3.3 Project Scope and Understanding

The Consultant shall include a statement of understanding of the Project. Describe the approach and methodology of managing work tasks and coordination, sequence and control of field and office operations to accomplish the work in a timely manner. Indicate how the Consultant ensures project progress and quality control.

Also include how and to what extent the need for utilizing City personnel to assist the Consultant within the duration of the Project will be and indicate the approximate time requirement.

Provide a detailed work plan that describes how the Consultant will organize and conduct the Project by tasks as described in **Section 2, Scope of Work**. This plan must include targeted completion dates of each deliverable. If the Project can or cannot be completed in the timeframe noted under **Section 1.3**, please indicate the proposed schedule.

3.3.4 Project Schedule

Prepare a project schedule for each significant segment of the work, from "Notice to Proceed" to completion.

3.3.5 Detailed Consultant Scope & Fee Negotiations

Provide a cost estimate showing description and budget for each task. Cost alone shall not determine the City's decision. Consultant selection will be based on qualifications.

3.3.6 Additional Supporting Information

Supporting materials should include only resumes, references and public client list. The reference list must include a minimum of three (3) clients with projects similar to this one. Please include the name, address, phone number, fax number and e-mail of the contact person for each reference. Detail the type of work done that supports the listed mandatory requirements in this RFP. Indicate if the listed projects were delivered on time and

on budget. The projects included as a reference should be projects which the key personnel were directly involved with. Indicate the role the key personnel held on those projects.

APPENDIX A: Standard City of Newberg Professional Services Agreement



AGREEMENT WITH _____
TO PROVIDE CONSULTING SERVICES

THIS AGREEMENT is entered into this _____ day of _____, 2023 by and between the City of Newberg, a municipal corporation of the State of Oregon, hereinafter called **City**, and

Consultant: _____
Address: _____
Phone: _____
Mail: _____

hereinafter called **Consultant**.

RECITALS:

- City** has need for the services of a **Consultant** to provide services to conduct Public Outreach and Education Programming for Property Owners and to Assess the Potential for Creating a Historic Downtown District in Newberg.
- City** has chosen the Consultant using the Request for Proposals process to provide services related to conduct Public Outreach and Education Programming for Property Owners and to Assess the Potential for Creating a Historic Downtown District in Newberg based on the ability, knowledge, expertise and experience possessed by **Consultant**.

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 **City** accepts **Consultant's** completed performance or on August 31, 2023 whichever date occurs first. Time is of the essence of this Agreement.

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. **City** may, at its sole discretion terminate this Agreement in whole or part upon a 30-day written notice to **Consultant**. **City** may terminate immediately upon notice to **Consultant** that **City** does not have funding, appropriations, or other necessary expenditure authority to pay for **Consultant's** work. **City** may terminate Agreement at any time for material breach, upon issuance of a 10-day written notice to **Consultant**.

3. **Scope of Work:** **Consultant** agrees to provide the services provided in the Scope of Work which is Exhibit "A" and is attached hereto and incorporated by this reference. **Consultant** represents and warrants to **City** that **Consultant** can perform the work outlined in the Scope of Work for the fee proposal amount.

4. **Compensation:** **Consultant** agrees to perform the work for a not-to-exceed fee as indicated in their professional fee proposal included in the Scope of Work. The not-to-exceed figure is:

\$XXXXX

Consultant shall not exceed the fee for any tasks and reimbursable expenses included in the fee proposal amount. If **Consultant** foresees that the fee is going to exceed the not-to- exceed figure because the task has changed or is outside the scope, **Consultant** shall notify **City** in writing of the circumstances with an estimated amount that the fee is to be exceeded. **Consultant** shall obtain written permission from **City** before exceeding the not-to-exceed fee amount. If **Consultant** does work that exceeds the maximum fee amount prior to obtaining the written permission,

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, **Consultant** shall notify **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 **City**. If **Consultant** proceeds with work prior to obtaining permission and/or Agreement amendment, **Consultant** waives any right to collect fees for work performed.

6. **Invoice Submission and Payment:** **City** must pay **Consultant** only after receiving from **Consultant** a correct and documented billing statement containing (i) a description of the services performed, (ii) the dates and details of the services performed, (iii) data, receipts, and other documentation establishing payment or satisfaction of **Consultant's** duties under this Agreement, and (iv) any other information that may be required by **City**. **Consultant** may submit certified billing statements for payment no more often than once each month based on services performed during the preceding month. **City** will make approved payments within 35 days after **City's** receipt of a complete billing statement.

7. **Agreement Documents:** This Agreement consists of this Agreement and any attached and referenced Exhibits. Work is under the sole control of **Consultant**; however, the work contemplated herein must meet the approval of **City** and shall be subject to **City's** general right of inspection and supervision to secure the satisfactory performance thereof.

8. **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.

9. **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.

10. **Consultant's Warranties:** The work to be performed by **Consultant** includes services generally performed by **Consultant** in his/her usual line of business. **Consultant** will perform the work required under this Agreement consistent with the professional skill and care ordinarily provided by recognized firms practicing and providing similar work in the same or similar locality under the same or similar circumstances. **Consultant** shall, at all times, during the term of this Agreement, be qualified, be professionally competent, and duly licensed to perform the work.

11. **Indemnity:** **Consultant** shall defend, indemnify and hold harmless **City** and its consultants, councilors, employees, agents, volunteers, and representatives for, from, and against any and all loss, liability, damage, demands, claims, costs, and expenses, including reasonable attorney and expert fees, to the extent caused by the acts or omissions of the **Consultant** or its agents, consultants, employees, or representatives, including without limitation for:
- a) Breach of this Agreement by the Consultant;
 - b) Death, personal injury (including bodily injury), property damage, or violation of law, regulation, or orders, to the extent caused by the performance of the Consultant or those for whom the Consultant is responsible;
 - c) Violation or infringement of third-party intellectual property rights by the Consultant;
 - d) Any negligent acts or omissions or willful misconduct by the Consultant or persons for whom the Consultant is responsible; and
 - e) Claims for compensation asserted by the Consultant's employees (including wage-and-hour or benefit claims) or any violation of federal, state, or local wage-and-hour or labor laws and regulations by the Consultant or persons for whom the Consultant is responsible.

Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section. In claims against any person or entity indemnified under this Section by an employee of the Consultant, the Consultant itself, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Section shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Consultant under workers' compensation acts, disability benefit acts, or other employee benefit acts. No indemnification provided by the Consultant under this Section is required to indemnify the Indemnitees to the extent of liability for death or bodily injury to persons or damage to property caused in whole or in part by their own acts, omissions, or negligence, but the Consultant must provide indemnity to the extent of its own negligence or the negligence of its consultants, employees, or representatives to the extent required by law or by this Agreement.

12. **Independent Contractor:** **Consultant** is not currently employed by **City**. The parties to this Agreement intend that **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 **City** and shall be subject to **City's** general right of inspection and supervision to secure the satisfactory performance thereof.

13. **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.

14. **Insurance:** **Consultant**, at its sole cost, will procure and maintain at all times while performing services the following insurance issued by responsible carriers rated A VII or better by A.M. Best's rating service (unless otherwise approved by **City**), and in a form and substance reasonably satisfactory to **City**, that affords at least the minimum coverage limits set forth below:

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) Employer's liability insurance with minimum limits of \$1,000,000 for bodily injury for each accident, without restriction as to whether covered by workers' compensation; \$1,000,000 for bodily injury or disease for each employee; and \$1,000,000 for bodily injury or disease aggregate, per claim.

c) Commercial general liability ("CGL") and, if necessary, commercial excess or umbrella insurance in at least the following minimum amounts:

- Combined single limit (per occurrence): \$1,000,000
- Aggregate (per Project): \$2,000,000
- Products/completed operations aggregate (per Project): \$2,000,000
- Contractual liability (per occurrence): \$1,000,000

d) **Consultant** will purchase and maintain CGL insurance on an occurrence basis, written on ISO Form CG 00 01 (12 04 or later) or an equivalent form approved in advance by **City**. CGL coverage must include all major coverage categories, including bodily injury, property damage, and products/completed operations coverage maintained for at least six years following final payment. The CGL insurance must also include the following: (i) separation of insured, and (ii) per-Project aggregate.

e) Commercial umbrella/excess liability coverage with a minimum coverage limit of \$5,000,000 and including: (i) "Pay on behalf of" wording; (ii) concurrency of effective dates with primary coverage; (iii) punitive damages coverage (unless prohibited by law); (iv) application of aggregate (when applicable) in primary coverage; and (v) drop-down feature. All third-party liability insurance will be scheduled to the umbrella/excess coverage.

f) Business automobile liability insurance alone or in combination with commercial umbrella insurance covering any auto (including owned, hired, and nonowned autos) on ISO Form CA 00 01 or an equivalent form with minimum limits of \$1,000,000 each person and each occurrence for bodily injury or property damage, and including additional insured endorsement, contractual liability, and pollution liability coverage, which includes vehicle overturn and collision.

g) Professional Liability/Errors and Omission type policy with limits of at least \$2,000,000.00. 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.

15. Insurance Terms and Requirements.

a) **Consultant's** liability insurance policies (i) must include **City** as an additional insured; (ii) must be primary coverage and may not seek contribution from any insurance or self-insurance carried by **City**; (iii) must apply separately to each insured against whom a claim is made or suit is brought; and (iv) must be maintained without interruption from the effective date of this Agreement to the termination date of this Agreement or, if applicable, a later date specified by **Consultant's** tail insurance.

b) If **Consultant**, for any reason, fails to maintain required insurance coverage, the failure will be deemed a material breach of this Agreement, and **City**, at its sole discretion, may suspend or terminate this Agreement. Failure to maintain the insurance coverage required by this Agreement will not waive **Consultant's** duties to **City**.

c) Before **Consultant's** services begin, **Consultant** will supply to **City** a completed insurance certificate evidencing the coverages required under this Agreement. **Consultant** will notify **City** in writing at least 30 days before any cancellation, lapse, or expiration of any insurance required by this Agreement.

d) If **Consultant** has any self-insured retention or deductibles for any of the required coverages, **Consultant** must identify them on the certificate of insurance and provide satisfactory evidence of financial responsibility for such obligations. Satisfaction of all self-insured retentions or deductibles is the sole responsibility of **Consultant**.

e) **Consultant's** obligation to provide insurance continues even if **City** fails to demand or inspect certificates of insurance or other evidence of compliance with this Agreement. **City's** acceptance of certificates does not constitute approval of them or acknowledgment that the requirements of this Agreement have been fulfilled.

f) The insurance provided by **Consultant** under this Agreement is not required to indemnify **City** or its employees or agents to the extent that liability for death or bodily injury to persons or damage to property is caused by their own negligence, but the insurance must require indemnity to the extent of the fault of **Consultant** or its subconsultants.

g) By requiring insurance, **City** does not represent that coverage and limits will necessarily be adequate to protect **Consultant**. Insurance in effect or procured by

Consultant does not reduce or limit **Consultant's** indemnification and defense duties to **City**.

h) **Consultant** will cause each of its subconsultants to indemnify **City** and to purchase and maintain in full force and effect the same insurance as specified for **Consultant** in this Article 10. **Consultant** will be responsible for the subconsultants' coverage if the subconsultant fails to purchase and maintain the required insurance. When requested by **City**, **Consultant** will furnish copies of certificates of insurance establishing coverage for each subconsultant. **City** may in its sole discretion agree to adjust coverage limits or terms for a specific subconsultant.

16. **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.

17. **Ownership of Work Product:** All original documents prepared by **Consultant** in performance of this Agreement, including but not limited to original maps, plans, drawings, 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 Agreement. Subject to the limitations of the Oregon Constitution and the Oregon Tort Claims Act, ORS Chapter 30, **City** shall indemnify and hold harmless **Consultant** and **Consultant's** independent professional associates or Subconsultants from all claims, damages, losses and expenses including attorney fees arising out of the **City's** use of any instruments of professional service for purposes outside the scope of this Agreement.

18. **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.

19. **Litigation:** Unless otherwise agreed by the parties, every claim, dispute, or other matter in question arising out of or related to this Agreement shall be resolved through litigation. All litigation will be held in the State of Oregon with venue in Yamhill County or the U.S. District Court for the District of Oregon.

20. **Other Service Providers:** **City** reserves the right to enter into other agreements for work additional to or related to **Consultant's** Services, and **Consultant** agrees to fully cooperate with these other contractors and with **City** personnel. When requested by **City**, **Consultant** shall coordinate its performance under this Agreement with such additional or related work. **Consultant** shall not interfere with the work performance of any other contractor or **City** employees.

21. **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 **City**: City of Newberg, P.O. Box 970, Newberg, Oregon 97132, Attn: Clay Downing. If directed to **Consultant**: Attn: _____ at the address listed above. Each party shall be responsible for notifying the other of any changes in project manager designation.

22. **Compliance with Applicable Law:** In the performance of this Agreement, **Consultant** shall comply with all applicable federal, state, and local laws, ordinances, regulations, and administrative rules, including but not limited to the following requirements of ORS 279A 279B, and 279C:

a) Nondiscrimination (Required by ORS 279A.110). **Consultant** shall not discriminate against a disadvantaged business enterprise, a minority-owned or women-owned business, an emerging small business certified under ORS 200.055, or a business enterprise that is owned by a service-disabled veteran. Additionally, **Consultant** must comply with all applicable requirements of federal, state, and local civil rights law and rehabilitation statutes and must not discriminate based on race, religion, color, sex, marital status, familial status, national origin, age, mental or physical disability, sexual orientation, source of income, or political affiliation in programs, activities, services, benefits, or employment.

b) Tax-Compliance Warranty (Required by ORS 279B.045). **Consultant** represents and warrants that **Consultant** has complied with the applicable tax laws of the State of Oregon or a political subdivision of the State of Oregon (collectively, "Tax Laws"), including but not limited to ORS 305.620 and ORS Chapters 316, 317, and 318. **Consultant** covenants that **Consultant** will continue to comply with the Tax Laws during the term of this Agreement. Failure by **Consultant** to comply with the Tax Laws before the execution of this Agreement or during the term of this Agreement is a default for which **City** may terminate this Agreement and seek damages and other relief available under the terms of this Agreement or under applicable law.

c) Payment of Labor (Required by ORS 279B.220 and 279C.505).

- **Consultant** shall make payment promptly, as due, to all persons supplying labor or material to **Consultant** for the performance of services provided for in this Agreement;
- **Consultant** shall pay all contributions or amounts due the Industrial Accident Fund from **Consultant** or Subconsultant incurred in the performance of this Agreement;
- **Consultant** shall not permit any lien or claim to be filed or prosecuted against **City** on account of any labor or material furnished; and
- **Consultant** shall pay to the Department of Revenue all sums withheld from employees under ORS 316.167.

- If **Consultant** fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to it by any person in connection with this Agreement as such claim becomes due, **City** may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due **Consultant** by reason of such contract. The payment of a claim in this manner shall not relieve **Consultant** or **Consultant's** surety, if any, from obligation with respect to any unpaid claims.
- d) Payment for Medical Care and Workers' Compensation. As required by 279B.230 and 279C.530:
- **Consultant** shall promptly, as due, make payment to any person, co-partnership, association, or corporation furnishing medical, surgical, and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of **Consultant**, of all sums that **Consultant** agrees to pay for the services and all moneys and sums that **Consultant** collected or deducted from the wages of employees under any law, contract, or agreement for the purpose of providing or paying for the services.
 - All subject employers working under this Agreement are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.
- e) Hours of Labor; Pay Equity; Salary Discussions (required by ORS 279B.020, 279B.235, and 279C.540).
- **Maximum Hours.** **Consultant** shall not employ any person for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or where the public policy absolutely requires it, and in such cases, except in cases of contracts for personal services as defined in ORS 279A.055, the laborer shall be paid at least time and a half pay:
 - For all overtime in excess of eight hours a day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; and
 - For all overtime in excess of 10 hours a day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and

- For work performed on Saturday and on any legal holiday specified in any applicable collective bargaining agreement or ORS 279B.020 (1)(b)(B) to (G).

The requirement to pay at least time and a half for all overtime worked in excess of 40 hours in any one week, does not apply to individuals who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. Section 201 to 209 from receiving overtime.

f) Notice to Employees.

- **Consultant** shall give notice in writing to its employees who perform work under this Agreement, either at the time of hire or before commencement of work on this Agreement, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.
- **Consultant** shall comply with ORS 652.220 (prohibiting discriminatory wage rates based on sex and requiring that employer not discriminate against an employee who is a complainant). Compliance with this Section 22.f is a material element of this Agreement. Failure to comply is a breach that entitles **City** to terminate this Agreement for cause.
- **Consultant** may not prohibit any of **Consultant's** employees from discussing the employee's wage, salary, benefits, or other compensation with another employee or another person, and **Consultant** may not retaliate against an employee who does so.

g) Limitation on Claims. For **Consultant's** employees subject to Oregon employment laws and as required by ORS 279C.545, any worker employed by **Consultant** shall be foreclosed from the right to collect for any overtime provided in ORS 279C.540 unless a claim for payment is filed with **Consultant** within 90 days from the completion of this Agreement, providing **Consultant** has:

- Caused a circular clearly printed in boldfaced 12-point type and containing a copy of this section to be posted in a prominent place alongside the door of the timekeeper's office or in a similar place that is readily available and freely visible to workers employed on the work, and
- Maintained such circular continuously posted from the inception to the completion of this Agreement on which workers are or have been employed.

[Signature page follows]

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

CITY OF NEWBERG

By: _____

By: _____

Name: _____

Name: Will Worthey

Title: _____

Title: City Manager

Date: _____

Date: _____

Department Approval:

Doug Rux
Community Development Director

Approved as to Form and Content:

James Walker
City Attorney