

Doc # 1095

AGREEMENT

CITY OF NEWBERG
CITY RECORDER INDEX NO. 1090

PERSONAL SERVICES BY INDEPENDENT CONTRACTOR

THIS AGREEMENT MADE THIS 14th day of October, 1986.

BETWEEN THE FOLLOWING PARTIES:

CITY: City of Newberg
414 E. First St.
Newberg, OR. 97132

SERVICE PROVIDER: Sportsman Airpark, Inc.
P. O. Box 248
St. Paul Highway
Newberg, OR. 97132

It is agreed between the parties that they wish to enter into an agreement whereby the Service Provider, an independent contractor, will provide to the City certain services:

THEREFORE, IT IS AGREED AS FOLLOWS:

Section 1. Services.

Service Provider will, with his own equipment and employees and at his own risk, perform logging activities in connection with certain trees owned by the City and located at Yamhill County Tax Lot Number 3229-100.

The logging activities shall include the falling, cutting, and removal including the clean-up and restoration of the area of the designated trees. This activity is to be carried on with as little damage and disfigurement to the property as possible.

Section 2. Duties.

City is to have no control over the manner, method or details of performance, or over the selection, direction or dismissal of Service Provider's employees, and will look to Service Provider for results only. Additionally, Service Provider shall: (a) assume full responsibility for damages caused by his negligence or that of his employees or agents; (b) make all proper income tax and social security deductions and payments and file all returns and forms required in connection therewith; (c) assume full responsibility for injuries occurring to his employees while in the course of their employment, and protect himself against liability therefor by means of Workmen's Compensation insurance or otherwise as he sees fit; (d) comply with all laws, Federal and State, which may regulate the performance of this contract, including, but not limited to, laws relating to wages and hours, and keep records showing such compliance and furnish proof of such compliance to City as it may rightfully demand.

Section 3. Due Compensation.

The City will compensate Service Provider for services by giving provider all wood and materials coming from the trees that are being logged. The City makes no representation as to the amount of wood, quality of wood or logs that are to be derived from said tree.

Section 4. Independent Contractor Status.

All services and activities, rendered by Service Provider to City under this agreement are to be rendered by Service Provider as an independent contractor. The parties to this agreement do specifically agree that this agreement will render Service Provider ineligible for benefits under ORS Chapters 656 and 657, and that City shall not be liable for, responsible for, in any way or manner be required to provide Workers Compensation, Social Security or Unemployment Compensation Benefits, assessments, payments or taxes for Service Provider. Service Provider knowingly waives his rights under the Unemployment Compensation and Workers Compensation Laws. Service Provider hereby agrees with the terms of and agrees to sign Exhibit A which is attached hereto and entitled "Joint Declaration of Independent Contractor Status".

Section 5. Notice of Termination.

Should either City or Service Provider terminate this agreement in accordance with its terms, Notice of Termination shall be provided in writing by delivering or mailing written notice to City or Service Provider at the address provided within this agreement.

Section 6. Term.

The tree cutting activities shall be completed by ~~December 31, 1986.~~

April 15, 1987

Section 7. Entire Agreement.

This agreement, including Exhibit A and any amendments attached hereto, is the entire agreement between City and Service Provider and supercedes and replaces any and all prior agreements.

Section 8. Indemnity.

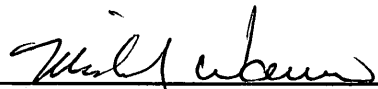
Service Provider does hereby agree to indemnify and hold harmless the City from any and all claims, actions, damages, liability and expense in connection with the damage to persons or property arising from Service Provider's activities in removing logs from Yamhill County Tax Lot 3229-100, when occasioned wholly or in part by any act or omission or condition for which Service Provider or Service Provider's agents, contracts, employees, servants, licensees, concessionaires or invitees shall be legally liable. In case the City, City's agents or employees shall, without any fault on the part of the City, City's agents or employees, be made a party by any litigation commenced by or against the City, City's agents or employees, then Service Provider shall proceed to hold the City, City's agents and employees harmless and pay all costs, expenses, and attorneys fees incurred or paid by the City, City's agents and employees in connection with such litigation.

Section 9. This agreement has been prepared by the City Attorney for City. No legal advice has been given to Service Provider. Service Provider has been given the opportunity to review this agreement and have this agreement reviewed by his own independent legal counsel. Service Provider signs this agreement voluntarily and acknowledges he has been given no representations or legal advice from the City or City Attorney.

IN WITNESS WHEREOF, the parties hereto have executed this agreement at Newberg, Oregon on the date first above written.

CITY: CITY OF NEWBERG

SERVICE PROVIDER: SPORTSMAN AIRPARK, INC.

BY: 
Michael Warren - City Manager

BY: 
Sam M. Whitney - President

DATE: 10-13-86

DATE: 10-13-86

EXHIBIT A

JOINT DECLARATION OF INDEPENDENT CONTRACTOR STATUS

This joint declaration is executed by the City of Newberg and Sportsman Airpark, Inc. in regard to services provided by Sportsman Airpark, Inc. pursuant to a certain contract entered into between the City of Newberg and Sportsman Airpark, Inc. on October 14, 1986, and in accordance with ORS 656.029.

The City of Newberg has contracted with Sportsman Airpark, Inc. to provide services and/or perform specific functions as follows:

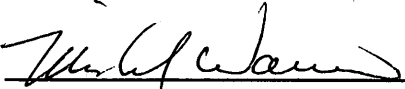
Logging activities on Yamhill County Tax Lot No. 3229-100

The City of Newberg and Sportsman Airpark, Inc. entered into this contract on the premise that Sportsman Airpark, Inc. was to exercise it's own independent judgment in the performance of the contract requirements. The employment of Sportsman Airpark, Inc. is in accordance with the Charter and ordinances of the City of Newberg and is completely independent and apart from supervision by any city staff member or the City Manager. No instructions are given to Sportsman Airpark, Inc. Sportsman Airpark, Inc. is required only to perform those services and/or work as required by the contract above referred to.

This agreement is executed to specifically meet the requirements of ORS 656.029 and establish that the services rendered by Sportsman Airpark, Inc. are as an independent contractor who is self insured under the workers compensation law.

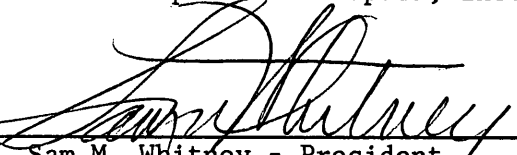
DATED this 14th day of October, 1986.

City of Newberg - A Municipal
Corporation of the State of Oregon:

BY: 

BY: _____

Contractor - Sportsman Airpark, Inc.:

BY: 
Sam M. Whitney - President

JACK C. NULSEN, JR.
ATTORNEY AT LAW
404 E. FIRST STREET P.O. BOX 740
NEWBERG, OREGON 97132

Telephone (503) 538-2138

October 15, 1986

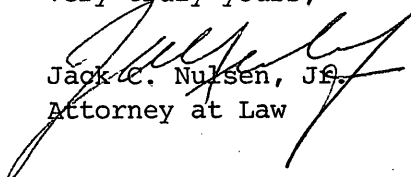
City of Newberg
E. First Street
Newberg, OR 97132

Dear Sir:

I have reviewed the Agreement between the City of Newberg and Sportsman Airpark, Inc. with Mr. Sam Whitney and we are concerned about the meaning of "restoration of the area."

If the intent is (1) Mr. Whitney clean up, to the extent of piling the limbs, etc for the city to burn at a later date (2) does not include Mr. Whitney planting new trees, grass or shrubs, then I believe no changes in the agreement will be necessary.

Very truly yours,


Jack C. Nulsen, Jr.
Attorney at Law

JCN/en

c.c. Mr. Whitney