

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made and effective as of November 13, 1996 and is entered into by and between the City Attorney of the City of Newberg, an Oregon Municipal Corporation, ("City"), and Columbia Investigations, Inc. ("Contractor").

RECITALS:

1. City desires to obtain investigative services concerning allegations contained in a complaint (NSP Development, Inc., et al v. City of Newberg, et al, US District Court Case No. CV96-1450HA), alleging that City staff made racial remarks involving an Afro-American engineer.
2. Contractor is qualified by special training and experience to provide such service.
3. Contractor has reviewed City's file concerning such service and feels that the Contractor can complete the scope of work within the amount of fees allocated for the scope of work.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, it is agreed as follows:

1. **Scope of Work.** Contractor agrees to interview and investigate certain allegations contained in the above referenced complaint concerning racial remarks and provide a confidential report concerning such investigation to the City Attorney of the City of Newberg. Such report shall be held in confidence and is not a matter of public record. Contractor shall make every effort to see that the report is confidential. Said report may be used in personnel action and is exempt under the public records law [ORS 192.501(12)]. The investigation services as furnished by Contractor under the direction and request of the City Attorney, and as such, is a work product of the City Attorney's. Contractor is working directly for the City Attorney and all reports shall be privileged from any discovery.
2. **Assignment of Work.** The City Attorney shall serve as Contractor's contact representing the City. The City Attorney shall monitor, coordinate, assist and respond to any inquiries from the Contractor concerning the investigation. The City Attorney shall be responsible for promptly processing any bills or charges from the Contractor. Contractor agrees to consult with the City Attorney in a reasonable manner to provide services effectively and efficiently and with minimal expense to the City.
3. **Personal Service.** The City has selected Contractor, specifically Richard L. Bittner and consents to the use of an additional investigative services from J. Kenneth Moore, M.Ed. This selection is based upon their reputation and specialized expertise in criminal and civil investigations. In any event, Contractor shall not assign work under this Agreement to a third party without prior written approval by the City Attorney.
4. **Standards of Services.** Services performed by Contractor shall be confidential and performed in a comparable manner and with the same degree of care, skill, diligence, competency and knowledge which is ordinarily exhibited and possessed by other professionals in good standing in the same or similar field in the same community as Contractor. Contractor shall at all times

maintain appropriate professional liability insurance in an amount not less than the liability limits of the Oregon Tort Claims Act.

5. Payment. City shall pay Contractor for services at an hourly rate of **Forty Dollars (\$40.00)** for one investigator or **Seventy Dollars (\$70.00)** for two investigators. The mileage rate is **\$.30** per mile. Interviews of potential subjects may be conducted by two investigators. Contractor shall provide to City a detailed statement of incurred expenses. Payment for all services provided pursuant to this Agreement shall not exceed **Two Thousand Five Hundred Dollars (\$2,500.00)** without specific written agreement between City and Contractor. Any services which exceed or costs that are incurred over \$2,500.00 prior to receiving written agreement by City, shall be waived and Contractor shall not make any claim for such services or costs. Contractor shall promptly notify City Attorney at any time if it determines that actual billings may exceed \$2,500.00. Contractor represents that Contractor has reviewed the City's file and in its judgment, believes that the scope of work can be accomplished at a cost not to exceed \$2,500.00. This Agreement shall automatically terminate and without further action of the parties at such time as services billed reach \$2,500.00. However, Contractor shall provide City with all documents and other matters prepared by Contractor pursuant to work performed under Agreement.

Contractor shall provide a billing statement to the City Attorney in a form acceptable to the City on or near the 20th of each month. City shall make payment to Contractor within thirty (30) days of receipt unless otherwise agreed.

6. Term. This Agreement is effective upon execution by City. The maximum term of this Agreement shall be thirty (30) days, unless extended by mutual agreement.

7. Termination. Either party may terminate this Agreement provided that the party seeking termination advises the other party in writing with sufficient and reasonable time to allow transition of files from Contractor to the City through the City Attorney. Contractor shall be entitled to payment for all satisfactory services rendered prior to termination, including service necessitated by termination and transition of assigned cases if termination is at the direction of City, as long as said services are within the amount specified in paragraph 5 above.

8. Independent Contractor. Contractor is acting as an independent contractor and is not an employee of City and as such, accepts full responsibility for taxes or other obligations associated with payment for services under this Agreement. As an independent contractor, neither Contractor nor any of its members, agents, or employees shall receive any benefits normally accruing to City employees unless otherwise required by law.

9. Nondiscrimination. No person shall be denied or subjected to discrimination in the receipt of benefits of any service or activity made possible by or resulting from this Agreement on the grounds of sex, race, color, creed, marital status, age or national origin. Any violation of this provision shall be considered a material violation of the Agreement and shall be grounds for cancellation or suspension by City.

10. Statutory Requirements/Workers' Compensation. ORS 279.310 to 279.430, relating to public contracting, are incorporated herein by reference to the extent that said statutes are applicable to professional service agreements of this nature. The Contractor shall comply with ORS 656.017 for all employees who work in the State of Oregon for more than ten (10) days. The Contractor shall provide the City of Newberg with certification of workers' compensation insurance

with employer's liability in the minimum amount of One Hundred Thousand Dollars (\$100,000.00).

11. **Amendments and Severability.** Any amendments or extensions of this Agreement shall be in writing. Contractor shall refer any questions concerning this Agreement to the City Attorney. If any part of this Agreement is declared void, other parts of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have hereto affixed their signatures as of the date hereafter written.

CITY OF NEWBERG,
an Oregon Municipal Corporation

By Terrence D. Mahr
Terrence D. Mahr, City Attorney

11/14/96
Date

COLUMBIA INVESTIGATIONS, INC.

By Richard L. Bittner
Richard L. Bittner
Contractor's Tax ID No.: 484 SB-8452

11-14-96
Date