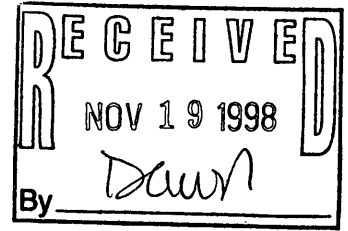


BEERY & ELSNER LLP
ATTORNEYS AT LAW

SUITE 250
1750 SW HARBOR WAY
PORTLAND, OREGON 97201-5164

TELEPHONE (503) 226-7191
FACSIMILE (503) 226-2348



November 18, 1998

Terrence D. Mahr, Esq.
City Attorney, City of Newberg
414 East First Street
Newberg, OR 97132-2993

CITY OF NEWBERG
CITY RECORDER INDEX NO. 1641

RE: Baker Rock Appeal (LUBA No. 98-141)
Newberg Legal File No. 30008-01920

Dear Terry:

I am returning herewith one executed original of the Personal Services Contract in the above matter, per your request.

I am also returning the executed agreement as to the not-to-exceed figure of \$10,000 for this appeal. As you know, we have now produced and filed (as of November 13, 1998) the Petition for Review. That leaves oral argument and any follow-up analysis of the decision of the Board. As of completion of the brief, I estimate we will have exhausted roughly \$9,000 of the allocated contract amount, leaving roughly \$1,000 for oral argument. This should be close to enough resources to get the job done. I will, of course, let you know as soon as it appears we may in fact exceed the estimate (such as if we believe a reply brief is warranted).

Thank you again for the opportunity to serve the City of Newberg. I am happy with the Petition for Review and hope you and your client are as well. Best wishes for a peaceful Thanksgiving holiday.

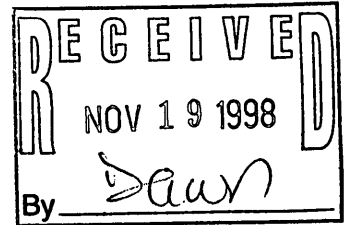
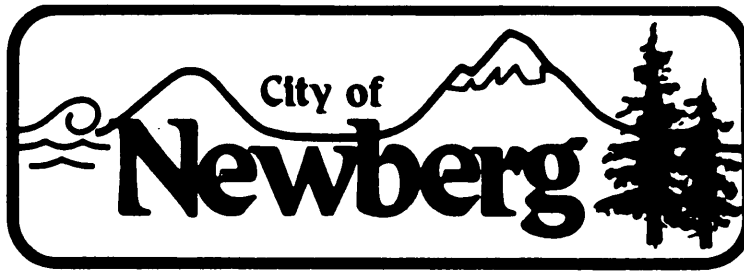
Best regards,

A handwritten signature in cursive script, appearing to read "Pamela".

Pamela J. Beery

PJB/gp

Enclosures



City Manager
(503) 538-9421

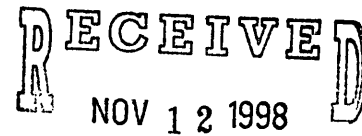
414 East First Street
Newberg, Oregon 97132-2993

City Attorney
(503) 537-1208

November 10, 1998

City Hall Fax
(503) 537-5013

Pamela J. Beery, Attorney at Law
Beery & Elsner LLP
Suite 250
1750 SW Harbor Way
Portland, OR 97201-5164
(503) 226-7191



Dear Pam:

RE: Legal Services
Baker Rock Appeal (LUBA No. 98-141)
Newberg Legal File No. 30008-01920

Enclosed are duplicate originals of the contract that you sent to me on October 12, 1998. Please sign and then return one original to me along with a copy of this letter.

As you are aware, cost is a very important factor to the City of Newberg and the City of Dundee. In our discussions, you have given me an estimate of \$10,000.00 to handle this matter for the City of Newberg and Dundee before the Land Use Board of Appeals. Although I realize that the contract is based on hourly rates, I would like an indication that the \$10,000.00 is a not-to-exceed figure. If it becomes apparent that your services will exceed this amount, please inform me in time to receive additional authorization from the City.

As you know, the City of Dundee is participating in the cost of the services and support of the appeal. The City of Newberg will consult and concur with the City of Dundee concerning any major decisions that will affect the outcome of this appeal. It is the intention of the City of Newberg to consult and cooperate in a joint decision-making effort with the City of Dundee. The City of Newberg appreciates very much the City of Dundee's willingness to cooperate with them.

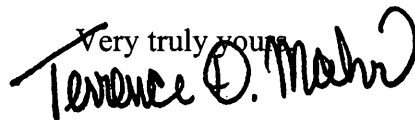
The City of Newberg accepts full responsibility for the cost of your services. The City of Newberg will be paying your bills and then submitting copies your bills to the City of Dundee. The City of Dundee has agreed to reimburse the City of Newberg one-half the cost of your services up to a figure of \$2,500.00.

Administration: 538-9421/Fax: 537-5013 • Community Development: 537-1214/Fax: 537-1272 • Court: 537-1203/Fax: 537-1277
Finance/Water Billing: 537-1205/Fax: 537-5013 • Fire: 537-1230/Fax: 538-7441 • Police: 538-8321/Fax: 538-5393
Public Library: 538-7323/Fax: 538-9720 • Public Works: 537-1233 • Treatment Plant: 537-1671/Fax: 538-9113

"Working Together For A Better Community - Serious About Service"

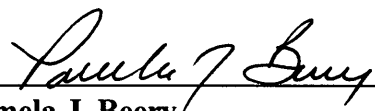
Pamela J. Beery, Attorney at Law
Beery & Elsner LLP
November 10, 1998
Page 2 of 2

We look forward to working with you on the matter and appreciate your professional and prompt response to our request for services. Further, I appreciate your willingness to proceed while we work out the details of the contract. I have had dealings and contact with Chris Gilmore who's knowledge of land use law is very impressive. Again, I look forward to working with you and Chris on the case. I will be forwarding a copy of the contract along with this letter to the City of Dundee.

Very truly yours,

By: DMW

Terrence D. Mahr
City Attorney

AGREED as to the not-to-exceed amount of Ten Thousand Dollars (\$10,000.00):


Pamela J. Beery
Attorney at Law

11/13/98
Date

TDM:dmw
Enclosure

pc: George Lewis, City Administrator for City of Dundee
F:\LEGAL\WP5FILES\LUBA\Baker Rock\Beery1198.wpd

CITY OF NEWBERG
PERSONAL SERVICES CONTRACT

THIS AGREEMENT made and entered into this 4th day of Nov., 1998, by and between CITY OF NEWBERG, a municipal corporation of the State of Oregon, hereinafter called CITY, and BEERY & ELSNER, LLP, hereinafter called CONTRACTOR.

W I T N E S S E T H

WHEREAS, CITY has need for the services of a law firm with the particular training, ability, knowledge, and experience possessed by CONTRACTOR, and

WHEREAS, CITY has determined that CONTRACTOR is qualified and capable of performing the professional services as CITY does hereinafter require, under these terms and conditions set forth,

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

1. **LEGAL SERVICES TO BE PROVIDED:**

CONTRACTOR shall provide the following professional services:

A. CONTRACTOR will be responsible for CITY legal representation as authorized by the City Attorney. Authorization to perform specific tasks will come from the City Attorney or other persons directly authorized by the City Attorney. Pamela Beery will act as lead attorney.

B. Unless otherwise specified by the City Attorney, CONTRACTOR will:

Draft and review legal documents and correspondence and otherwise provide legal representation to the City pertaining to the pending LUBA appeal No. 98-141, City of Newberg vs. Yamhill County and Baker Rock.

2. **COMPENSATION:**

A. Payment will be made to the CONTRACTOR for the services identified based upon a detailed monthly billing showing work performed.

B. Hourly rates:

Partners	\$145.00
Associates	\$100.00
Legal Assistants	\$ 75.00

C. The direct cost for such items as long distance charges, messenger services, printing, copy charges and the like will be billed to CITY.

- D. Payment by CITY shall release CITY from any further obligation for payment to CONTRACTOR for services performed or expenses incurred as of the date of and included in the statement of services. Payment shall not be considered acceptance or approval of any work or waiver of any defects therein. CONTRACTOR may impose a finance charge of 1.5% on unpaid balances net 30 days.
- E. CITY certifies that sufficient funds are available and authorized, or will be authorized, for expenditure to finance the cost of this Contract.

3. CONTRACTOR IDENTIFICATION:

CONTRACTOR's Employer Identification Number (EIN), as designated by the Internal Revenue Service, 93-1234801.

4. STATUS OF CONTRACTOR AS INDEPENDENT CONTRACTOR:

CONTRACTOR shall be an independent CONTRACTOR for all purposes and shall be entitled to no compensation other than the compensation provided for under paragraph 2 of this Contract.

5. TERM AND TERMINATION:

- A. The term of this agreement shall be from September 21, 1998 to the end of the project or upon written notice from City Attorney. This agreement may be renewed for additional periods by mutual agreement of the parties.
- B. At any time with or without cause, CITY or CONTRACTOR shall have the right to terminate this Contract. If CITY terminates the Contract it shall deliver full payment to CONTRACTOR for services rendered to the date of termination.

6. INDEMNITY AND INSURANCE:

- A. Indemnity: CONTRACTOR acknowledges responsibility for any and all liability arising out of the performance of this contract and agrees to hold CITY harmless from and indemnify CITY for any and all liability, settlements, loss, costs, and expenses in connection with any action, suit, or claim resulting or allegedly resulting from CONTRACTOR's acts, omissions, activities or services in the course of performing this contract.
- B. Liability Insurance: CONTRACTOR shall maintain occurrence form commercial general liability for the protection of CONTRACTOR, the CITY, its Council, directors, officers, agents, and employees. Coverage shall include personal injury, bodily injury, including death, and broad form property damage, including loss of use of property, occurring in the course of or in any way related to CONTRACTOR's operations, in an amount not less than \$1,000,000 combined single limit per occurrence. At the CITY's request, such insurance shall name the CITY as an additional insured.

- C. Workers Compensation Coverage: If CONTRACTOR employs one or more subject workers, CONTRACTOR hereby certifies that he/she has qualified for State of Oregon Worker's Compensation coverage either as a carrier-insured employer or as a self-insured employer. CONTRACTOR shall provide to the CITY a certificate of insurance (be they carrier or self-insured) evidencing coverage.

7. METHOD AND PLACE OF GIVING NOTICE, SUBMITTING BILLS, MAKING PAYMENTS:

All notices, bills and payments shall be made in writing and may be given by personal delivery or by mail. Notices, bills and payments sent by mail should be addressed as follows:

CITY: Terrence D. Mahr
City Attorney
City of Newberg
414 E. 1st Street
Newberg, OR 97132

CONTRACTOR: Beery & Elsner, LLP
Suite 250
1750 SW Harbor Way
Portland, OR 97201

When so addressed, such notices, bills and payments shall be deemed given upon deposit in the United States mail, postage prepaid.

8. WORK IS PROPERTY:

All work, including, but not limited to documents, drawings, papers, electronic media, and photographs, performed or produced by CONTRACTOR under this contract, shall be the property of the CITY.

9. INTELLECTUAL PROPERTY:

The interest in any intellectual property, including, but not limited to copyrights and patents of any type, arising from the performance of this contract shall vest in the CITY. CONTRACTOR shall execute any assignment or other documents necessary to effect this paragraph. CONTRACTOR shall transfer to the CITY any data or other tangible property generated by CONTRACTOR under this contract and necessary for the beneficial use of intellectual property covered by this paragraph.

10. INCOME TAX WITHHOLDING:

CONTRACTOR shall pay, if applicable, all sums withheld from employees pursuant to ORS 316.167.

11. PAYMENT OF CLAIMS BY THE CITY:

If CONTRACTOR fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to CONTRACTOR or a subcontractor, or by any person in connection with this contract as the claim becomes due, the CITY may pay the claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due to CONTRACTOR pursuant to this contract. The CITY's payment of a claim under this Paragraph shall not relieve CONTRACTOR or CONTRACTOR's surety, if any, from responsibility for those claims.

12. MODIFICATION:

Any modification of the provisions of this contract shall be reduced to writing and signed by the parties.

13. NO WAIVER OF LEGAL RIGHTS:

A waiver by a party of any breach by the other shall not be deemed to be a waiver of any subsequent breach.

14. COMPLIANCE WITH LAWS:

CONTRACTOR shall comply with all federal, state and local laws and ordinances applicable to public contracts as to the work to be done under this Contract.

15. INTEGRATION:

This contract contains the entire agreement between the parties and supersedes all prior written or oral discussions or agreements regarding the same subject.

IN WITNESS WHEREOF, CITY has caused this Contract to be executed in duplicate originals by its duly authorized undersigned agents and CONTRACTOR has executed this Contract on the date hereinabove first written.

CITY OF NEWBERG

DATED: 11/9/1998

BY: [Signature]

DATED: 11/6/98

BY: [Signature]

CONTRACTOR

DATED: 11/13/98

BY: [Signature]

DATED: 11/13/98

BY: [Signature]