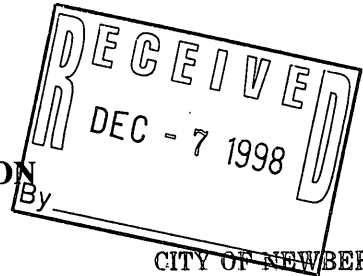


**CITY OF NEWBERG
AGREEMENT WITH BIGGS CONSTRUCTION
TO PROVIDE CONSULTING SERVICES
TO THE CITY OF NEWBERG**



CITY OF NEWBERG
CITY RECORDER INDEX NO. 11644

THIS CONTRACT is entered into this 7th day of December 1998 by and between the City of Newberg, a municipal corporation of the State of Oregon, hereinafter called **City**, and Biggs Construction, hereinafter called **Consultant**.

RECITAL S

1. **City** has need for the services of a consultant with particular training, 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. **Scope of Work:** The **Consultant** agrees to provide building plan review and/or inspection services as mandated by State statute, rule, and code. The **Consultant** shall be available for consultation or direction to other providers such as inspection personnel. The **Consultant** represents and warrants to the **City** that the **Consultant** can perform the work outlined in the Scope of Work for the fee noted in item 2 below.
2. **Compensation:** The **Consultant** agrees to perform the work at the following rate:
 - a. For plan review, including A-Level/FLS, the City shall pay the rate of 70 percent of said plan review fees as assessed by the City.
 - b. All work outside item 2a shall be done at the rate of \$40.00 per hour and shall be authorized by written memo or notice to proceed.
3. **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, give an estimated fee amount, and obtain written instructions to proceed with work in the form of a contract 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 contract amendment, the **Consultant** waives any right to collect fees for work performed.
4. **Status:** **Consultant** is not currently employed by the **City**. The parties to this contract intend that the relationship between them created by this contract is that of an employer-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 contract; 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.
5. **Work Performed:** The work to be performed by **Consultant** includes services generally performed by **Consultant** in his or her usual line of business.

6. **Taxes:** **Consultant** will be responsible for any federal or state taxes applicable to payments received under this contract. **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.
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 contract payment except as a self-employed individual.
8. **Federal Employment Status:** In the event any payment made pursuant to this contract 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. **Hold Harmless:** **Consultant** shall defend, indemnify and hold harmless **City** from and against all liability or loss and against all claims or actions based upon or arising out of damage or injury to persons or property caused by or sustained in connection with the negligent acts, errors, and omissions of the **Consultant**.
10. **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 contract, **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 Comprehensive General Liability insurance policy for at least \$1,000,000 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.
 - c) **Consultant** will at all times carry a Professional Liability/Errors and Omission type policy with limits of at least \$500,000. 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 contract.
 - d) **Consultant** shall furnish the **City** with Certificates of Insurance upon execution of contract and **City** acknowledges receipt of such Certificates of Insurance.
11. **Indemnification:** The City of Newberg, 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 paragraph 10(b) above. A certificate of insurance evidencing any policies required by this contract 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.
12. **Employees' Taxes:** **Consultant** shall also defend, indemnify and hold harmless **City** against all

liability and loss in connection with and shall assume full responsibility for, payment of all federal, state and local taxes or contributions imposed or required under unemployment insurance, social security and income tax laws, with respect to **Consultant's** employees engaged in the performance of this contract.

13. **Termination:** This contract may be terminated by either party upon 30 days written notice.
14. **Contract Duration:** This contract shall continue until terminated by either party under item 13 above.
15. **Invoices:** All invoices are payable upon receipt and payments are due within 30 days of receipt unless otherwise agreed in writing.
16. **Agreement:** 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 contract as a whole without written consent of the other. 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.

IN WITNESS WHEREOF, THE PARTIES HAVE AFFIXED THEIR SIGNATURES BELOW.

CONSULTANT

By: Gary M. Biggs
Name: Gary M. Biggs
Title: Owner
Date: 12-8-98

CITY OF NEWBERG

By: Duane R. Cole
Name: Duane R. Cole
Title: City Manager
Date: December 7, 1998

Approved as to form/content:



Terrence Mahr, City Attorney