

CITY OF NEWBERG
AGREEMENT WITH Don Sylvester
TO PROVIDE CONSULTING SERVICES
TO THE CITY OF NEWBERG

THIS AGREEMENT is entered into this 19th day of December, 2003 by and between the City of Newberg, a municipal corporation of the State of Oregon, hereinafter called **City**, and

Don Sylvester
(Consultant's name)
1521 Hess Creek Ct
(Address)
Newberg OR 97132

503-538-1713
(Phone)

hereinafter called **Consultant**.

RECITALS:

1. **City** has need for the services of a **Consultant** with particular training, ability, knowledge, expertise and experience possessed by **Consultant**.
2. **City** has chosen the **Consultant** using the existing contractor process to provide services related to plumbing inspections and plan review.

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 the **City** accepts **Consultant's** completed performance or on January 1, 2005, whichever date occurs first. This fact notwithstanding, the services of **Consultant** shall be authorized and paid on a phase-by-phase basis as described in Exhibit "A".

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

This Agreement may be terminated by either party at the end of a project phase as defined in Exhibit "A" or any time upon a 30-day written notice.

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

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

Inspections:	\$50.00 Per Hour
Plan Review:	Not to exceed <u>70%</u> of the plumbing plan review fee charged to the customer

The **Consultant** shall not exceed the fee for any task included in the fee proposal amount. If the **Consultant** foresees that the fee is going to exceed the not-to-

exceed figure because the task has changed or 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 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, the **Consultant** shall notify the **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 the **City**. If **Consultant** proceeds with work prior to obtaining permission and/or Agreement amendment, the **Consultant** waives any right to collect fees for work performed.

6. Agreement Documents: This Agreement consists of the following documents which are listed in descending order of preference: This Agreement with attached Exhibits, the proposal of the **Consultant** (if one was submitted) and the Request for Proposal. Work is 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.

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 Agreement payment except as a self-employed individual.

8. 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.

9. Consultant's Warranties: The work to be performed by **Consultant** includes services generally performed by **Consultant** in his/her usual line of business. The work performed by the **Consultant** under this Agreement shall be performed in a good and businesses-like manner in accordance with the highest professional standards. The **Consultant** shall, at all times, during the term of this Agreement, be qualified, be professionally competent, and duly licensed to perform the work.

10. Indemnity: **Consultant** shall defend, indemnify and hold harmless **City** from and against all liability or loss

and against all claims, suits, actions, losses, damages, liabilities, costs, and expenses of any nature whatsoever resulting from, arising out of, or relating to the activities of the **Consultant**, or its officers, employees, subcontractors, or agents under this Agreement.

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

12. 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.

13. 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 Agreement, **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 Commercial General Liability insurance policy for at least \$1,000,000.00 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 \$2,000,000.00. The **City**, 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 this paragraph.

c) **Consultant** will carry a \$10,000.00 Bond.

d) **Consultant** shall furnish the **City** with Certificates of Insurance upon execution of Agreement. Such Certificates of Insurance evidencing any policies required by this Agreement 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.

14. **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.

15. **Ownership of Work Product:** All original documents prepared by **Consultant** in performance of this Agreement, including but not limited to original maps, plans, drawing 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 Contract. **City** shall indemnify and hold harmless **Consultant** and **Consultant's** independent professional associates or **Subconsultants** from all claims, damages, losses and expenses including attorney's fees arising out

of the City's use of any instruments of professional service for purposes outside the scope of this Contract.

16. **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.

17. **Notification:** All correspondence and notices related to this Agreement shall be directed to the Building Official for the party to whom the correspondence or notice is intended. If directed to the **City**: City of Newberg, P.O. Box 970, Newberg, Oregon 97132, Attn: John Lindstrom. If directed to the **Consultant**: Attn: Don Sylvester at the address listed above. Each party shall be responsible for notifying the other of any changes in project manager designation.

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

By: Don Sylvester
CONSULTANT

Name: Don Sylvester

Title: Plumbing Inspector

Date: 12/19/03

Division Approval: _____

Recommended for Approval By:

Michael Soderquist

Michael Soderquist, P.E., P.L.S., DEE
Community Development Director

By: James H. Bennett
CITY OF NEWBERG

Name: James H. Bennett, City Manager

Title: City Manager

Date: 12/1/03

Approved as to form:

Terrence D. Mahr 12/4/03

Terrence D. Mahr
City Attorney

EXHIBIT "A"

1. **SERVICES.** The Inspector shall render the following services to the City in accordance with reasonable professional practices and shall use his best professional judgment in carrying out such services.
 - a. Various inspections for the City of Newberg in the areas of certifications outlined in Section 3 of recitals.
 - b. Report to the Building Official and follow his instructions.
 - c. Other duties and services as requested by the City through the Building Official.
 - d. The Inspector must fulfill at Inspector's own expense, requirements of the State of Oregon Building Code Agency. Failure to maintain current levels of certification, and contractor registered status, shall be grounds for immediate termination without complying with Section 2.
2. **SCOPE.** Inspector is an Independent Contractor. Inspectors services shall be provided under the general supervision of the Building Official, but Inspector shall be an Independent Contractor for all purposes and shall be entitled to work independently to supply services mentioned in Section 3 above.

Inspector has other clients and is entitled to maintain reasonable contact with such clients while under the employment of this Agreement. Such contact shall not interfere with the scope of services identified in Section 3 above.
3. **COMPENSATION.** In consideration of the services rendered by Inspector pursuant to this contract, the City shall pay Inspector the sum of \$50.00 per hour for inspection services, the plan review fee will be figured at a not to exceed rate of 70% of the plumbing plan review fee charged to the customer. Payment shall be made on a monthly basis to be paid in accordance with City's payroll practices. The inspector shall not be entitled to holiday, vacation or sick time. Inspector shall not be entitled to receipt of any other employee benefits, including, but not limited to, medical, dental, retirement benefits, and City's workers' compensation and liability insurance coverage.
4. **HOURS OF WORK.** The City shall employ the Inspector on an as needed basis, such hours will be mutually agreed upon by the City. All inspections will take place between 8:00 a.m. and 5:00 p.m. unless prior approval is obtained by the Building Official.