

CITY OF NEWBERG
PERSONAL SERVICES CONTRACT
Legal Advice for Challenge to Crater Lane LID

THIS AGREEMENT made and entered into this 1st day of May, 2004, by and between CITY OF NEWBERG, a municipal corporation of the State of Oregon, hereinafter called CITY, and BEERY, ELSNER & HAMMOND, LLP, hereinafter called CONTRACTOR.

W I T N E S S E T H

WHEREAS, CITY has need for the land use legal 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:

Representation of the CITY is provided in the case of Russell Mitchell and Sandy Mitchell v. City of Newberg, et al (Appellate Court Case No. A 123783; Yamhill County Case No. CV02-0360) – appeal of Yamhill County Circuit Court decision to the Oregon Court of Appeals. CONTRACTOR will provide legal advice and representation through request of the City Attorney or persons authorized by the City Attorney. Paul Elsner will act as lead attorney.

2. COMPENSATION:

A. ESTIMATE OF TOTAL COMPENSATION: The CONTRACTOR and CITY estimate that the total compensation for services through the appeal at the Court of Appeals shall not exceed \$10,000.00. This estimate is based upon the discussion between CONTRACTOR and CITY and City Attorney. Both parties realize that it is an estimate. CONTRACTOR will do its best to notify the CITY if CONTRACTOR determines that the total compensation may exceed \$10,000.00. The CONTRACTOR and CITY shall confer and amend this contract, if necessary. CONTRACTOR should do its best not to exceed \$10,000.00 without prior notice to the CITY.

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

B. HOURLY RATES:

Partners/Of Counsel	\$180.00
Senior Associates	\$150.00
Associates	\$125.00
Paralegals	\$ 95.00
Legal Assistants	\$ 75.00

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

D. CITY OBLIGATION AND ACCEPTANCE OF WORK: 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.

E. FUNDS AVAILABLE AND AUTHORIZED: 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 is 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:

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 maintains occurrence form commercial general liability for the protection of CONTRACTOR, the CITY, its Council, directors, officers, agents, and employees. Coverage includes 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.
- C. Workers Compensation Coverage: 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.

7. NOTICES:

All notices shall be made in writing and may be given by personal delivery or by mail, addressed as follows:

CITY: Terrence D. Mahr, City Attorney
City of Newberg
414 East First Street
P.O. Box 970
Newberg, OR 97132

CONTRACTOR: Beery, Elsner & Hammond, LLP
Suite 380
1750 SW Harbor Way
Portland, OR 97201

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. 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.

10. MODIFICATION:

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

11. 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.

12. 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. Venue shall be in the Circuit Court for Yamhill County, Oregon.

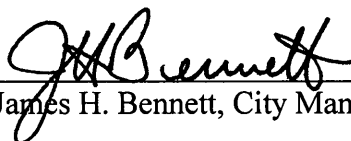
13. INTEGRATION:

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: 5/12/04

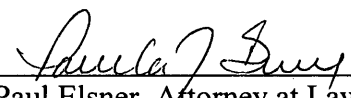
BY: 
James H. Bennett, City Manager

Approved as to Form and Content and
Approved Pursuant to Newberg City
Code, Section 31.31 – Employment of Special Counsel:

BY: 
Terrence D. Mahr, City Attorney

CONTRACTOR

DATED: 5/14/04

BY: 
for Paul Elsner, Attorney at Law