

INDEPENDENT CONTRACTOR AGREEMENT

This AGREEMENT is made and entered into between, the City of Newberg, hereinafter called the CLIENT, having a principal place of business at: 414 E. First Street, Newberg, Oregon 97132.

And ABC Transcription Services, LLC., hereinafter called the CONTRACTOR.

ARTICLE 1. TERM OF CONTRACT

Section 1.01. This agreement will become effective on July 17, 2023, and will continue in effect until October 17 2023 unless otherwise extended in writing by the parties.

ARTICLE 2. INDEPENDENT CONTRACTOR STATUS

Section 2.01. Contractor must certify its status as an independent contractor in accordance with Exhibit A. It is the express intention of the parties that Contractor is an independent contractor in all respects and not an employee, agent, joint venture or partner of the Client. Nothing in this agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between the Client and Contractor. Contractor understands that as in independent contractor, it will not be eligible to participate in any benefits or privileges that Client provides to its employees. Contractor shall retain the right to perform services for others during the term of this Agreement. Both the parties acknowledge that Contractor is not an employee for state or federal tax purposes. Contractor is solely responsible for the payment, when due, to appropriate taxing authorities of all federal, state, and local taxes, as well as related obligations of any nature, in connection with any payments that Contractor makes or receives under this Agreement. Client will not:

- Withhold FICA (Social Security) from Contractor's payments;
- Make state or federal unemployment insurance contributions on behalf of Contractor;
- Withhold state or federal income tax from payment to Contractor;
- Make disability insurance contributions on behalf of Contractor; or
- Obtain worker's compensation insurance on behalf of Contractor.

ARTICLE 3. SERVICES TO BE PERFORMED BY CONTRACTOR

Section 3.01. Contractor shall perform transcription services in alignment with its standard schedule of rates attached as exhibit C below.

Contractor shall follow all safety rules and procedures established for work areas and maintain work areas in a clean and orderly manner.

CLIENT EMPLOYEE INTERACTION WITH CONTRACTOR

Section 3.02. All employees of Client who wish to consult with Contractor must have the permission of City Manager of Newberg. All services will be provided will be remote at the vendors place of business.

ARTICLE 4. COMPENSATION

Section 4.01. In consideration for the services to be performed by Contractor, Client agrees to pay Contractor at their standard rate currently set to \$54.00 per hour. Client agrees to submit meeting audio in mp3 or mp4 format. This agreement will remain in place for six months unless extended by the Client. Invoices from the Contractor are to be submitted to the City of Newberg coded to the correct ledger code as meeting minutes are submitted to Client. The invoice will be transmitted electronically. The schedule of additional fees that may be charged by the Contractor are to be found in Exhibit C below.

Date for Payment of Compensation

Section 4.02. Payment is due 30 days after receipt of the invoice.

ARTICLE 5. OBLIGATIONS OF CONTRACTOR **Tools and Instrumentality's**

Section 5.01. Contractor shall have and maintain adequate hardware and software to perform the Services, however, hardware and software shall be provided for the hours spent at city hall.

Worker's Compensation

5.02. Contractor agrees to hold harmless and indemnify Client for any and all claims arising out of any injury, disability, or death to Contractor.

Confidentiality

Section 5.03. Contractor has or will have access to the following Client information: - business affairs; financial information; personal information; future plans; and other proprietary information (collectively, "Information") which are valuable, special and unique assets of Client and need to be protected from improper disclosure. Contractor agrees it will not at any time or in any manner, either directly or indirectly, use any Information for Contractor's own benefit, or divulge, disclose, or communicate in any manner any Information to any third party without the prior consent of Client. Contractor will protect the Information and treat it as confidential. A violation of this paragraph shall be a material violation of this Agreement.

ARTICLE 6. OBLIGATIONS OF CLIENT

Cooperation of Client

Section 6.01. Client agrees to comply with all reasonable requests of Contractor necessary to the performance of the Services.

ARTICLE 7. INDEMNITY AND HOLD HARMLESS

Contractor shall agree to defend, indemnify, and hold harmless the City of Newberg and its officers, agents, and employees from, for, and against all liabilities, losses, claims, and costs (including but not limited to attorney fees and expert fees) arising from or relating to Contractor's Performance under this agreement. These liabilities include but are not limited to damages for injury or death or the violation of any statute, ordinance, or regulation. This contractual indemnification provision is in addition to and does not abrogate any common law, statutory liability, or other source of indemnification that may be provided to Client.

ARTICLE 8. TERMINATION OF AGREEMENT

Section 8.01. This agreement shall terminate automatically on the date indicated above unless an extension is mutually agreed upon by both parties or earlier terminated under Section 8.02.

Section 8.02. This Agreement may be terminated as follows unless otherwise specified herein:

- a. Client and Contractor, by mutual written agreement, may terminate this Agreement at any time.
- b. Client, in its sole discretion, may terminate this Agreement for any reason on 30 days' written notice to Contractor.
- c. Either party may terminate this Agreement in the event of a material breach by the other. To be effective, the party seeking termination must give to the other party written notice of the breach and its intent to terminate. If the breaching party fails to cure the breach within 15 days of the date of the notice, the non-breaching party may terminate the Agreement at any time thereafter by giving a written notice of termination.
- d. Notwithstanding Section 8.02(c), Client may terminate this Agreement immediately by written notice to Contractor upon denial, suspension, revocation, or non-renewal of any license, permit, or certificate that Contractor must hold to provide the Services under this Agreement.

ARTICLE 9. COMPLIANCE WITH PUBLIC CONTRACTING CODE AND APPLICABLE LAW

Contractor will comply with all applicable federal, state, and local laws, regulations, codes, and ordinances, including but not limited to the following:

Section 9.01. Contractor may not discriminate against a disadvantaged business enterprise, a minority-owned or women-owned business, an emerging small business certified under ORS 200.055, or a business enterprise that is owned by a service-disabled veteran. Additionally, Contractor must comply with all applicable requirements of federal and state civil-rights law and rehabilitation statutes and must not discriminate based on race, religion, color, sex, marital status, familial status, national origin, age, mental or

physical disability, sexual orientation, source of income, or political affiliation in programs, activities, services, benefits, or employment.

Section 9.02. Contractor represents and warrants that Contractor has complied with the applicable tax laws of the State of Oregon or a political subdivision of the State of Oregon (collectively, the "Tax Laws"), including but not limited to ORS 305.620 and ORS Chapters 316, 317, and 318. Contractor covenants that it will continue to comply with the Tax Laws during the term of this Agreement. Contractor's failure to comply with the Tax Laws before the execution of this Agreement or during the term of this Agreement is a default for which Client may terminate this Agreement and seek damages and other relief available under the terms of this Agreement or applicable law.

Section 9.03. Contractor shall:

- a. Make payment promptly, as due, to all persons supplying to such Contractor labor or material for the prosecution of the work provided for under this Agreement;
- b. Pay all contributions or amounts owed to the Industrial Accident Fund by Contractor or any permitted subcontractor that are incurred in the performance of this Agreement;
- c. Not permit any lien or claim to be filed or prosecuted against Client on account of any labor or material furnished; and
- d. Pay to the Department of Revenue all sums withheld from employees under ORS 316.167.

If Contractor does not promptly pay any claim for labor or service provided to it by any person in connection with this Agreement as the claim becomes due, Client may pay the claim to the person providing the labor or service and charge the amount of the payment against funds due or to become due to Contractor from Client under this Agreement. The payment of a claim in this manner will not relieve Contractor or Contractor's surety, if any, from any obligation with respect to any unpaid claims.

Section 9.04. Contractor shall not employ any person for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or where the public policy absolutely requires it, and in such cases, except in cases of contracts for personal services as defined in ORS 279A.055, the laborer shall be paid at least time and a half pay:

- a. For all overtime in excess of eight hours a day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; and
- b. For all overtime in excess of 10 hours a day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and
- c. For work performed on Saturday and on any legal holiday specified in any applicable collective bargaining agreement or ORS 279B.020 (1)(b)(B) to (G).

The requirement to pay at least time and a half for all overtime worked in excess of 40 hours in any one week, does not apply to individuals who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. Section 201 to 209 from receiving overtime.

Contractor must give notice in writing to its employees who perform work under this Agreement, at the time of hire, before commencement of work under this Agreement, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees might be required to work.

Contractor must comply with ORS 652.220 (addressing the prohibition of discriminatory wage rates based on sex and of employer discrimination against an employee who is a complainant). Compliance is a material element of this Agreement. Failure to comply is a breach that entitles Client to terminate this Agreement for cause. Additionally, Contractor may not prohibit any of Contractor's employees from discussing the employee's wage, salary, benefits, or other compensation with another employee or another person, and Contractor may not retaliate against an employee who does so.

For Contractor's employees subject to Oregon employment laws and as required by ORS 279C.545, any worker employed by Contractor shall be foreclosed from the right to collect for any overtime provided in ORS 279C.540 unless a claim for payment is filed with Contractor within 90 days from the completion of this Agreement, providing Contractor has:

- a. Caused a circular clearly printed in boldfaced 12-point type and containing a copy of this section to be posted in a prominent place alongside the door of the timekeeper's office or in a similar place that is readily available and freely visible to workers employed on the work, and
- b. Maintained such circular continuously posted from the inception to the completion of this Agreement on which workers are or have been employed.

Section 9.05. Contractor shall promptly, as due, make payment to any person, copartnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of Contractor, of all sums that Contractor agrees to pay for the services and all moneys and sums that Contractor collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services.

All subject employers working under this Agreement are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126. Workers' Compensation Exemption Form – Exhibit B must be completed if Contractor is exempt from this requirement.

ARTICLE 10 OWNERSHIP OF WORK

All work products created by Contractor as part of Contractor's performance of this Agreement, including background data, documentation, and staff work that is preliminary to final reports, shall be the exclusive property of CLIENT. If any such work

products contain intellectual property of Contractor that is or could be protected by federal copyright, patent, or trademark laws, Contractor hereby grants CLIENT a perpetual, royalty-free, fully paid-up, non-exclusive and irrevocable license to copy, reproduce, deliver, publish, perform, dispose of, use, re-use, in whole or in part, and to authorize others to do so, all such work products. CLIENT shall have no rights in any pre-existing work product of Contractor provided to CLIENT by Contractor in the performance of this Agreement except to copy, use, and re-use any such work product for CLIENT's use only.

If this Agreement is terminated by either party or by default, CLIENT, in addition to any other rights provided by this Agreement, may require Contractor to transfer and deliver such partially completed work products, reports, or other documentation that Contractor has specifically developed or specifically acquired for the performance of this Agreement.

ARTICLE 11 GENERAL TERMS

Section 11.1. Any amendments, consents to, or waivers of the terms of this Agreement shall be in writing and signed by both parties.

Section 11.2. Waiver of any default under this Agreement by Client shall not be deemed to be a waiver of any subsequent default or a modification of the provisions of this Agreement.

Section 11.3. The provisions of this Agreement shall be construed in accordance with the laws of the State of Oregon without regard to conflict of laws principles.

Section 11.4. This Agreement and the attached exhibits constitute the entire agreement between the parties concerning its subject matter. All understandings and agreements between the parties and representations by either party concerning this Agreement are contained in this Agreement.

CONTRACTOR:
ABC Transcription Services, LLC.

By: Paula Pinyerd
(Signature)
Paula Pinyerd, Owner

CLIENT:
The City of Newberg

By: Will Worthey
(Signature)
Will Worthey, City Manager

Contractor Taxpayer Identification Number: 85-1591995

**B. CONTRACTOR IS A SOLE PROPRIETOR WORKING AS AN
INDEPENDENT CONTRACTOR**

Contractor certifies under penalty of perjury that the following statements are true:

1. If Contractor is providing labor or services under this Agreement for which registration is required under ORS Chapter 701, Contractor has registered as required by law; and
2. If Contractor performed labor or services as an independent contractor last year, Contractor filed federal and state income tax returns last year in the name of the business (or filed a Schedule C in the name of the business as part of a personal income tax return); and
3. Contractor represents to the public that the labor or services that Contractor provides are provided by an independently established business; and
4. All the statements checked below are true.

NOTE: Check all that apply. You must check at least four to establish that you are an independent contractor.

- ☐ A. The labor or services that I perform are primarily carried out at a location that is separate from my residence or are primarily carried out in a specific portion of my residence that is set aside as the location of the business.
- ☐ B. My business telephone listing is separate from my personal residence telephone listing.
- ☐ C. I perform labor or services only under written agreements.
- ☐ D. I assume financial responsibility for defective workmanship or for service not provided by purchasing performance bonds, error and omission insurance, or liability insurance, or by providing warranties relating to the labor or services that I provide.

Contractor Printed Name

Contractor Signature

Title

Date

NA

EXHIBIT B

WORKERS' COMPENSATION EXEMPTION CERTIFICATE

To be used only when Contractor claims to be exempt from workers' compensation coverage requirements.

Contractor is exempt from the requirement to obtain workers' compensation insurance under ORS Chapter 656 for the following reason (*check the appropriate boxes*):

--- **SOLE PROPRIETOR**

- ☐ Contractor is a sole proprietor; and
- ☐ Contractor has no employees; and
- ☐ Contractor will not hire employees to provide the Services.

--- **FOR-PROFIT CORPORATION**

- ☐ Contractor's business is incorporated; and
- ☐ All employees of the corporation are officers or directors and have a substantial ownership interest* in the corporation; and
- ☐ All work will be performed by the officers and directors; Contractor will not hire other employees to provide the Services.

--- **NONPROFIT CORPORATION**

- ☐ Contractor's business is incorporated as a nonprofit corporation; and
- ☐ Contractor has no employees (all work is performed by volunteers); and
- ☐ Contractor will not hire employees to provide the Services.

--- **PARTNERSHIP**

- ☐ Contractor is a partnership; and
- ☐ Contractor has no employees; and
- ☐ All work will be performed by the partners (Contractor will not hire employees to provide the Services; and
- ☐ Contractor is not engaged in work performed in direct connection with the construction, alteration, repair, improvement, moving, or demolition of an improvement to real property or appurtenances to it.**



LIMITED LIABILITY COMPANY

- ☒ Contractor is a limited liability company; and
- ☒ Contractor has no employees; and
- ☒ All work will be performed by the members of the company (Contractor will not hire employees to provide the Services; and
- ☒ If Contractor has more than one member, Contractor is not engaged in work performed in direct connection with the construction, alteration, repair, improvement, moving, or demolition of an improvement to real property or appurtenances to it.**

*NOTE: Under OAR 436-050-0005, a shareholder has a "substantial ownership" interest if the shareholder owns 10% of the corporation, or if less than 10% is owned,

the shareholder has ownership that is at least equal to the average percentage of ownership of all shareholders.

****NOTE:** Under certain circumstances, partnerships and limited liability companies may claim an exemption even when performing construction work. The requirements for this exemption are complicated.

<u>PAULA Pinyard</u>	<u>Paula Pinyard</u>
Contractor Printed Name	Contractor Signature
<u>Clerk ABC Transcription</u>	<u>July 13, 2023</u>
Title	Date



ABC Transcription Services, LLC.

City of Newberg 2023-2024 Transcription Services Proposal

ABC Transcription's 2023-2024 services proposal is as presented below for your review as you consider our forthcoming contract renewal. Rates will be effective July 1, 2023.

Transcription Services:

Base transcription rates are calculated on a transcript preparation (labor hour) to meeting length ratio, unless otherwise noted. (*Special Considerations Below*)

City Council/Board/Commission/Committee Minutes (5:1): \$54/labor hr. (\$270/audio hr.)
Meeting minutes submission in 12-15 business days

Verbatim minutes (4:1): \$54/labor hr. (\$216/audio hr.)
Deadlines as determined.

Special Considerations:

Add to base labor hr. rate:

Poor Audio Quality	\$3
Turnaround Time	
5 business days or less	\$15
6 to 11 business days	\$10

Meeting Length:

Longer than 2.5 hours:	\$2	Longer than 3 hours:	\$3
Longer than 3.5 hours:	\$5	Longer than 4 hours:	\$6
Longer than 4.5 hours:	\$7	Longer than 5 hours:	\$8

Meetings longer than three (3) hours may be subject to extended turnaround times.

Heavy Accents/Excessive Editing, Rewriting, or Research: \$4

Technical content such as Code rewrites, transportation studies, etc. requiring excessive map, Code, or Staff report references or research.

Administrative Matters:

Turnaround time periods start the day ABC is notified the meeting's audio has been uploaded. Notifications received after 12 pm (PST) result in an added business day.

We sincerely appreciate your email to abc4transcription@yahoo.com when the meeting audio and materials are loaded in our shared Dropbox folder.

Providing meeting audio in mp3 or mp4a format helps us serve you more efficiently. Additional fees apply for video to audio conversion.

Thanks a bunch!

ABC Transcription Services, LLC.

Supplemental Information

- With more than 18 years of experience transcribing public meetings in accordance with public records law, ABC Transcription is well acquainted with the policies and procedures regarding the public record. ABC Transcription also understands the importance of nuances and tone within meetings, as well as maintaining a clear record.
- ABC works hard to ensure speakers sound their best while maintaining accuracy for the record. Our clients trust us to provide accurate, on-time transcripts.
- In its last performance survey, ABC Transcription received 93% Excellent and 6% Good ratings in the overall quality of its service and meeting transcripts. To view our survey responses, click on the "Responses '17;" tab at the top of the page here: <https://bit.ly/ABCPerformanceSurvey2021>.

Company Profile

Contact: Paula Pinyerd, Owner

Address: 42340 NW Depot St, Banks, OR 97106

Mobile: 503-310-3482

Email: abc4transcription@yahoo.com

Certificate of Insurance: *Available Upon Request*