

**CITY OF NEWBERG  
PROFESSIONAL SERVICES AGREEMENT AMENDMENT NO. 1**

**September 30, 1999**

**Project:** Contract Engineering Services  
**Consultant:** By Richwine Environmental, Inc.



---

**Summary of Proposed Changes:**

**1. Work Involved:**

Increase budget to allow continuation of **Engineer's** services at roughly present levels through December 31, 1999.

**2. Cost Summary:**

|                                    |                 |
|------------------------------------|-----------------|
| Original contract amount:          | \$18,375        |
| Net change by previous amendments: | <u>-0-</u>      |
| Previous total:                    | \$18,375        |
| This amendment:                    | <u>6,175</u>    |
| Amended contract amount:           | <b>\$24,500</b> |

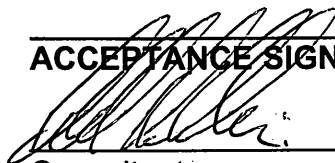
**3. Contract Time:**

Contract is to run through December 31, 1999, or until the not-to-exceed amount is met.

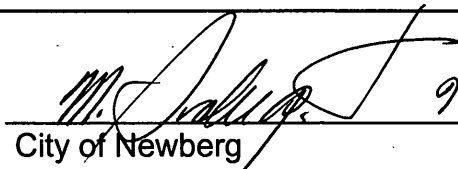
All other provisions of the professional services agreement remain in force.

---

**ACCEPTANCE SIGNATURES:**

  
\_\_\_\_\_  
Consultant                      Date

President  
\_\_\_\_\_  
Title

  
\_\_\_\_\_  
City of Newberg                      Date

COMMUNITY DEV'T DIRECTOR  
\_\_\_\_\_  
Title

**CITY OF NEWBERG  
AGREEMENT WITH RICHWINE ENVIRONMENTAL, INC.  
TO PROVIDE CONTRACT ENGINEERING SERVICES  
TO THE CITY OF NEWBERG**

THIS CONTRACT is effective as of the first day of April, 1999, by and between the City of Newberg, a municipal corporation of the State of Oregon, hereinafter called **City**, and Richwine Environmental, Inc., P.O. Box 7177, Beaverton, OR 97007-7177, hereinafter called **Consultant**.

**RECITAL:**

**City** has need for the services of an engineer with particular training, ability, knowledge, expertise and experience possessed by Eugene Appel (and his representative, Robert Bielman), hereinafter called **Engineer**.

**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 the services of the **Engineer** (acting as an agent of the **City**) as described in the Scope of Services, which is Exhibit "A" and attached hereto and incorporated by this reference. The **Consultant** represents and warrants to the **City** that the **Engineer** will perform the work outlined in the Scope of Work at the compensation rate in the fee proposal up to the not-to-exceed amount.

2. **Compensation:** The **Consultant** agrees to have the work performed by the **Engineer** for a not-to-exceed fee as outlined in Exhibit "B," Compensation.

The **Consultant** shall not exceed the proposed fee indicated in Exhibit "B." If the **Consultant** sees that the fee is going to exceed the not-to-exceed figure because the work 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 maximum fee. If the **Consultant** allows work to be done by the **Engineer** that exceeds the maximum proposed level of effort prior to obtaining the written permission, the **Consultant** waives any right to be reimbursed for the exceedance.

3. **Additional Work Not Shown Within The Scope of Work:** If the **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 the **City** an estimated fee amount, and obtain written instructions to proceed with the work in the form of a contract amendment prior to proceeding with the work and incurring any costs on behalf of the **City**. If **Consultant** allows the **Engineer** to proceed with the work prior to obtaining permission and/or a contract amendment, the **Consultant** waives any right to

collect fees for work performed.

4. **Status:** **Engineer** 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-agent/engineer. No agent, employee, or servant of the **Consultant** shall be or shall be deemed to be an employee, agent or servant of the **City** except that the **Engineer** shall be deemed to be an agent of the **City** as stated above. **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 the **Consultant**; however, the work contemplated herein must meet the approval of the **City** and shall be subject to the **City's** general right of inspection and supervision to secure the satisfactory performance thereof.

5. **Work Performed:** The work to be performed by the **Engineer** includes services generally performed by the **Engineer** in his usual line of business.

6. **Taxes:** **Consultant** will be responsible for any federal or State taxes applicable to payments received under this contract. The **City** will report the total of all payments to the **Consultant**, including any expenses, in accordance with federal Internal Revenue Service and State of Oregon Department of Revenue regulations.

7. **Benefits:** Neither the **Engineer** nor the **Consultant** will 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, the **Consultant** certifies that he is not currently employed by the federal government and the amount charged does not exceed his normal charge for the type of services provided.

**9. Hold Harmless:**

a) The **Consultant** shall defend, indemnify and hold harmless the **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** or the **Engineer**.

b) The **City** shall indemnify and hold harmless the **Consultant**, its agents, the **Engineer**, subcontractors and employees from and against all claims, damages, losses, and expenses arising out of the development of this project not caused by the failure of the **Consultant**, its agents, the **Engineer**, subcontractors and employees, to perform their services in a professional and workmanlike manner.

**10. Insurance:**

a) The **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 of their subject workers; or by signing this contract, **Consultant** represents that he is a sole proprietor and is exempt from the laws requiring workers' compensation coverage.

b) The **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) The **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) The **Consultant** shall furnish the **City** with Certificates of Insurance upon execution of this contract. The **City**, its agents, employees and officials, all while acting within their official capacities as such, shall be named as additional insureds on the insurance specified in paragraph 10(b) above.

Certificates 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 each certificate. The **City** has the right to reject any certificate for unacceptable coverage and/or companies. The **City** acknowledges receipt of such Certificates of Insurance.

**11. Employees' Taxes:** The **Consultant** also shall defend, indemnify and hold harmless the **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 the **Consultant's** employees engaged in the performance of the work covered by this contract.

**12. Termination:** This contract may be terminated by either party any time upon 30 days written notice.

**13. Contract Duration:** Except as provided for under paragraph 3, the duration of this contract shall be in accordance with Exhibit "A" or until project completion, whichever comes first.

**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 contract as a whole without written consent of the other.

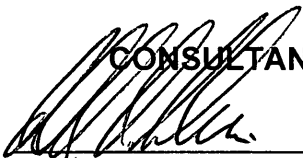
**15. Entire Agreement:** This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, written and oral, courses of dealing, or other understanding between the parties. No modification of this Agreement shall be binding unless in writing and signed by both parties.

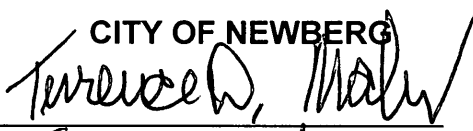
**16. Additional Services:** If the project is materially changed, or If the **City** desires other professional services not already included in this Agreement or not customarily furnished as part of the agreed upon services, then additional consideration shall be paid to the **Consultant** which shall be subject to negotiation by both parties, however, such services shall be furnished per the direct labor rate outlined in the professional fee proposal in the scope of work. Indirect labor costs and fixed fee shall be applied to the direct labor costs for these extra services in

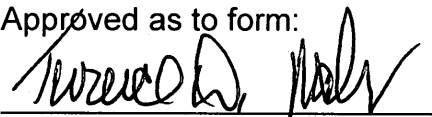
accordance with this agreement. The terms of this agreement shall apply to such additional services.

17. **Documents:** All original documents prepared by the **Consultant** in performance of this Professional Services Agreement, including but not limited to original maps, plans, drawing and specifications are the property of the **City** unless otherwise agreed in writing. Quality reproducible records copies shall be provided to the **City** at the **City's** expense, upon request. Any reuse, change or alteration to original documents prepared by the **Consultant** is not permitted without written verification or adaption by the **Consultant**. The **City** shall indemnify and hold harmless the **Consultant** and the **Consultant's** independent professional associates or consultants from all claims, damages, losses and expenses including attorney's fees arising out of any unauthorized use of any instruments of professional service.

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

By:   
Name: Reynold D. Richwine  
Title: President  
Date: August 20, 1999

CITY OF NEWBERG  
By:   
Name: TERRENCE D. MAHR  
Title: Acting City Manager  
Date: August 20, 1999  
23

Approved as to form:  
  
Terrence D. Mahr, City Attorney

**- EXHIBIT "A" -  
SCOPE OF SERVICES**

The **City** wishes to continue the implementation of the **City's** capital improvements program (CIP) in the absence of a full-time CIP manager. The **Consultant** shall provide the services of Eugene Appel and Robert Bielman to assist in implementing the **City's** CIP. The duration of this contract will extend to December 31, 1999, or until the not-to-exceed amount specified in Exhibit "B" is met, or until the **City** notifies the **Consultant** that his services are no longer required, whichever occurs first.

Contract with Richwine Environmental, Inc.  
August 20, 1999  
Page 5

**- EXHIBIT "B" -  
COMPENSATION**

The services of Eugene Appel and Robert Bielman shall be provided at a rate of \$52.50 per hour, up to a "not-to-exceed" amount of \$18,375.00.