

**CITY OF NEWBERG**  
**AGREEMENT WITH SUBURBAN WEST MAINTENANCE**  
**TO PROVIDE PROFESSIONAL SERVICES**  
**TO THE CITY OF NEWBERG**

THIS AGREEMENT is entered into this 28<sup>th</sup> day of September, 2001, by and between the City of Newberg, a municipal corporation of the State of Oregon, hereinafter called **City**, and Suburban West Maintenance

PO Box 3252

Tualatin, Oregon 97062

(503) 670 - 7722

(503) 670 - 0737

hereinafter called **Service Provider**.

**RECITALS:**

1. **City** has need for the services of a **Service Provider** with particular training, ability, knowledge, expertise and experience possessed by **Service Provider**.
2. **City** has chosen the **Service Provider** using the Request for Proposals

**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 **Service Provider's** completed performance or on December 31, 2001 whichever date occurs first. This fact notwithstanding, the services of **Service Provider** shall be authorized and paid on a phase-by-phase or lump sum basis as described in Exhibit "A."

Expiration shall not extinguish or prejudice **City's** right to enforce this Agreement with respect to any reach of a **Service Provider** warranty or any fault or defect in **Service Provider'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 **Service Provider**. The **City** may terminate immediately upon notice to the **Service Provider** that the **City** does not have funding, appropriations, or other necessary expenditure authority to pay for **Service Provider'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 at any time upon 30 days written notice.

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

4. **Compensation:** The **Service Provider** 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:  
\$3,000.00

The **Service Provider** shall not exceed the fee for any task included in the fee proposal amount. If the **Service Provider** sees that the fee is going to exceed the not-to-exceed figure because the task has changed or is outside the scope, the **Service Provider** shall notify the **City** in writing of the circumstances with an estimated amount that the fee is to be exceeded. The **Service Provider** shall obtain written permission from the **City** before exceeding the maximum fee amount. If the **Service Provider** does work that exceeds the maximum fee amount prior to obtaining the written permission, the **Service Provider** 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 **Service Provider** shall notify the **City** of such work, provide an estimated fee amount, and obtain written instructions to proceed with work in the form of a Agreement amendment prior to proceeding with work and incurring any costs on behalf of the **City**. If **Service Provider** proceeds with work prior to obtaining permission and/or Agreement amendment, the **Service Provider** 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 and the proposal of the **Service Provider**.

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

10. **Indemnity:** **Service Provider** shall defend, indemnify and hold harmless **City** from and against all liability or loss and against all claims, suites, actions, losses, damages, liabilities, costs, and expenses of any nature whatsoever resulting from, arising out, or relating

to the activities of the **Service Provider**, or its officers, employees, subcontractors, or agents under this Agreement.

11. **Independent Contractor:** **Service Provider** is not currently employed by the **City**. The parties to this Agreement intend that the **Service Provider** perform all work as an Independent Contractor. No agent, employee, or servant of **Service Provider** 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 **Service Provider**, 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:** **Service Provider** 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 **Service Provider**, including any expenses, in accordance with the Federal Internal Revenue Service and the State of Oregon Department of Revenue regulations.

13. **Insurance:**

a) **Service Provider**, its subcontractors, 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, **Service Provider** represents that he or she is a sole proprietor and is exempt from the laws requiring workers' compensation coverage.

b) **Service Provider** will, at all times, carry a Comprehensive General Liability insurance policy for at least \$500,000.00 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 \$1,000,000.00. 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) **Service Provider** will, at all times, carry a Professional Liability/Errors and Omission type policy with limits of at least \$250,000.00. 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 Agreement.

d) **Service Provider** 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. **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.

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

**SERVICE PROVIDER**

By: Darren Rahier

Name: Darren Rahier

Title: President

Date: 9-28-01

**CITY OF NEWBERG**

By: Duane Cole

Name: Duane Cole

Title: City Manager

Date: 9/27/2001

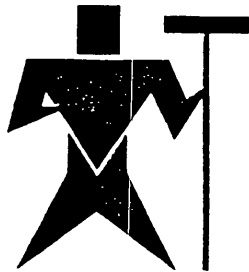
Approved as to form:

Terrence D. Mahr 9/27/01

Terrence D. Mahr, City Attorney

EXHIBIT A

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# **Suburban West Maintenance**

**Janitorial Service and Floor Care**

**Since 1961**

September 4, 2001

John Raineri  
City of Newberg  
PO Box 970  
Newberg, OR 97132

Dear John:

Following is our quote for the carpet cleaning in the Public Safety building, Public Library and City Hall. We carry the necessary insurance, \$1 million liability and property damage with a \$2 million aggregate and the people doing the carpet cleaning will have background checks performed.

We use a truck mounted extractor for the carpet cleaning. As you know, this is the best method for carpet cleaning. The cost per square foot for the carpet cleaning will be \$.11 per square foot. If you have any questions please feel free to call me at 503-691-0776.

Regards,

A handwritten signature in cursive script, appearing to read "Darren Rahier".

Darren Rahier  
Suburban West Maintenance

**Carpet Areas**

Below is listed the approximate carpeted areas of city buildings in square feet

Location

**Waste Water Treatment**

Training Room and Manager's Office

**City Hall**

|              |       |
|--------------|-------|
| Basement     | 2,500 |
| First Floor  | 2,430 |
| Second Floor | 2,920 |

**Public Safety Building**

All hallways and back entrance to building, Patrol Briefing,

|                                              |       |
|----------------------------------------------|-------|
| Report Writing, Training Room and 911 Center | 4,544 |
| Remainder of the building                    | 4,456 |

**Newberg Public Library**

|                    |        |
|--------------------|--------|
| All carpeted areas | 10,000 |
|--------------------|--------|

|                                            |               |
|--------------------------------------------|---------------|
| <b>Total square footage ( approximate)</b> | <b>26,850</b> |
|--------------------------------------------|---------------|