

CITY OF NEWBERG
AGREEMENT WITH CMTS, INC.
TO PROVIDE CONSULTING SERVICES
TO THE CITY OF NEWBERG

THIS AGREEMENT is entered into this 4th day of March, 2002 by and between the City of Newberg, a municipal corporation of the State of Oregon, hereinafter called **City**, and

CMTS, Inc.
3207 SW First Street
Portland, Oregon 97201
503-242-1388 Fax: 503-242-0094
CMTS4@aol.com

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 Request for Proposals Process to provide Inspection Services for the Hancock Street Sanitary Sewer Replacement Project.

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 April 15, 2002 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 at 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:

Regular Rate: \$50.00
Overtime Rate: \$75.00

The **Consultant** shall not exceed the fee for any task included in the fee proposal amount. If the **Consultant** sees 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 (if one was used). 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, 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, at all times, carry a Professional Liability/Errors and Omission type policy with limits of at least \$500,000.00. 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) **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.

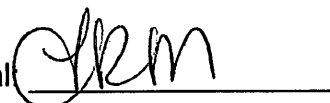
15. **Ownership of Work Product:** All original documents prepared by **Consultant** in performance of this Agreement, including but not limited to original

maps, plans, drawing and specifications are the property of **City** unless otherwise agreed in writing. Quality reproducible records copies shall be provided to **City** at **City's** expense, upon request. **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 any unauthorized use of any instruments of professional service.

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.

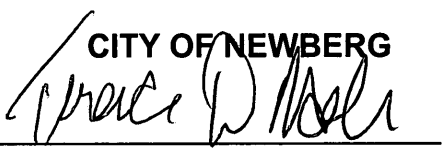
IN WITNESS WHEREOF, the parties have executed this Agreement on the date first above mentioned.

CONSULTANT
By: 
Name: Yvonne J. McClarn
Title: CEO - NW Region
Date: 03/04/02

Division Approval 

Recommended for Approval By:


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

CITY OF NEWBERG
By: 
Name: Terrence D. Mahr
Title: City Manager Pro Tem
Date: 02/28/02

Approved as to form:

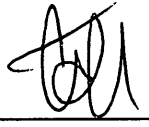

Terrence D. Mahr
City Attorney

Exhibit "A"

SCOPE OF WORK HANCOCK SANITARY SEWER INSPECTION SERVICES

CMTS, Inc. (Consultant) agrees to provide construction inspection services for the Hancock Street Sanitary Sewer Replacement Project to the City of Newberg as outlined in this Scope of Work.

Project Duration:

The project duration is March 4 through April 1, 2002. Hours of work will be 8:00 p.m. to 4:00 a.m., Monday through Thursday.

Fee Schedule:

Regular Rate = \$50.00
Overtime Rate = \$75.00

Inspector's duties:

- to observe construction practices of the contractor
- verify, as the need arises, that the contractor is laying sewer line to line and grade
- verify that the compaction of backfill meets Contract Document requirements
- record daily activities of the contractor (forms provided by the City) for the duration of the project

Inspector to Provide:

Hard hat
Safety vest
First Aid Package
Gloves
Goggles
Manhole Hook
Flashlight

Education & Professional Affiliations

Tony Sena's Advanced Plumbing and UPC Code Course, Clackamas Community College
City of Wilsonville, City Councilman 1996-1998
City of Wilsonville, Urban Renewal Agency Board Member 1996-1998
League of Oregon Cities Member 1996-1998
City of Wilsonville, Library Board Liaison 1996-1998
Development Review Board Member, Panel A, 1994-1996
Assoc. of General Contractors Apprenticeship Board Member, Employers Side 1994-1997
State of Oregon CCB
Certified Nurses Aid, American Red Cross
Confined Space Entry, 04/07/01
First Aid/CPR, 07/07/01
Competent Person Trenching & Excavation, 07/12/01
Work Zone Traffic Control, 07/28/01
OSHA 10-Hr Safety Compliance Course, 11/17/01
Licensed Commercial Truck Driver, Class A with Passenger Endorsement, #3685739 exp 11-3-2001
Conversational Spanish

Employment History (Firm/Location/Title/Date)

CMTS, Inc./Bureau of Environmental Services/Portland, OR/2001
CMTS, Inc./Bureau of Transportation/Portland, OR./2001
CMTS, Inc.-Western Federal Lands Highway Division/Idaho/Construction Inspector/2000
American Underground Construction Inc./Wilsonville, OR/Vice President/1982-2000

Qualifications

Mr. Luper has over 20 years of progressive construction experience. His experience includes over 18 years in grading, sub-grade, survey, street improvements, installation of curbs, sidewalks, driveways, inlets, manholes, demolition of existing streets, widening of street and intersections. Mr. Luper also has experience in sanitary and storm sewer to ensure proper line and grade, water lines in all sizes, plan reading, specification interpretation and designing projects. He was instrumental in helping update the City of Wilsonville's Code Compliance for 2040. Mr. Luper was a member of the Association of General Contractors Apprenticeship Board, which oversaw the training of all apprentices for the State of Oregon.

CMTS, Inc.-City of Portland, Bureau of Environmental Services, 2001

Mr. Luper worked as a Civil Inspector responsible for ensuring contract compliance on underground utility projects for the Bureau of Environmental Services. He was responsible for observation of 84" storm main installation, storm ceptor and manhole installation, storm drain retention systems, sewer main and manhole installation, curb installation, and gutter/street/catch basin installation. Some of this work required Mr. Luper to work in confined spaces. His job duties included preparation of daily reports, as-builts, regular communication with his City supervisor, and maintenance of photo logs.

CMTS, Inc.-City of Portland, Bureau of Transportation, 2001

Mr. Luper is served as a construction inspector on City of Portland, Bureau of Transportation projects. His work involved observation of storm drain installation, manhole installation, curb installation, and gutter/street/catch basin installation. Mr. Luper ensured work was performed according to contract and City specifications. He also inspected sidewalks, curbs, some structural work and asphaltic concrete and street installation. Mr. Luper dealt with the demolition of streets from private to public projects. Mr. Luper prepared daily reports, maintained a photo log, and prepared as-built drawings.

CMTS, Inc.-Western Federal Lands Highway Division, 2000

Mr. Luper worked as a Construction Inspector for the Western Federal Lands Highway Division in Idaho on the Clover Three Creek project. He was responsible for the inspection of asphalt paving, rock surfacing, site excavation, hillside and road stabilization, and concrete pours for bridge footings and box culverts. His other responsibilities included performing standard material tests, which included soils, aggregates, concrete and asphalt mix. Mr. Luper was also responsible for preparation of daily reports, punch list items, drafting of change orders, project liaison, and reported to Project Engineer daily.

American Underground Construction Inc., 1982 – 2000

Mr. Luper was the Vice President and Foreman. He was responsible for inspection of all pipe installation for proper line and grade. Mr. Luper was also responsible for the installation of sanitary and storm sewers, water mains, curbs, sidewalks and approach ramps for subdivisions, public and private roads and industry. Mr. Luper worked on the Harney Park Street Development project in southeast Portland and installed ductile iron water main for the project. His previous projects included the Foster/Powell Project Phase One and Two and the Crystal Springs Water District project.

References

Joe Luper	503.829.9407
Bob Trazerso	503.656.0663
Tom Imhoff	503.823.7035

Salary Costs: Based on City of Newberg's CIP construction schedule starting 2003

Position Titles	90 Day Introductory Hourly Rate	Direct Hourly Rate	Multiplier (Overhead)	Billing Rate for Direct Hourly Only	OT Rate
Construction Management	\$30.00	\$32.00	2.0	\$64.00	\$96.00
Construction Inspection	\$23.00	\$25.00	2.0	\$50.00	\$75.00
Specialty Inspection (Electrical, Mechanical, Structural)	\$25.00	\$27.00	2.0	\$54.00	\$81.00

Overtime rate shall be charged at 1.5 times the direct hourly rate. Overtime is calculated after 40 regular hours in a workweek. Holidays are not included in the 40-hour workweek. Workweek is defined as Monday through Friday.

Non-Salary Cost:

Cell Phone Cost: CMTS will invoice the City of Newberg \$60.00 a month per employee cell phone, if phone required.

Other Clients Rate Review Summary:

As suggested in the RFQ, below is the approved CMTS, Inc. hourly rates for the recently awarded City of Portland BES Contract based on 2001 rates. Contract Administrator: Sue Williams, 503.823.5520

City of Portland BES Job Description	90 Day Introductory Billing Rate	Regular Billing Hourly Rate	OT Rate
Construction Management	\$58.00	\$62.00	\$80.60
Construction Inspection	\$44.00	\$46.00	\$59.80
Technician	\$34.00	\$37.00	\$48.10

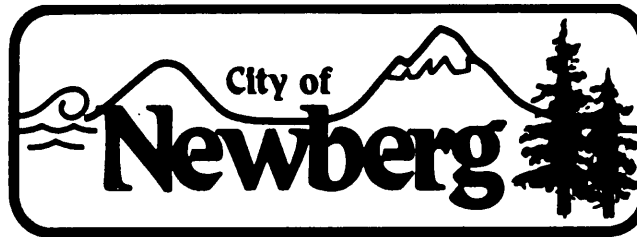
These rates may be adjusted to an amount not to exceed the average inflation rate for the City of Newberg metropolitan area, as determined by the U.S. Department of Labor Statistics, and certified by the City of Newberg Auditor on an annual basis.

Rates for all additional classifications not listed above that may be required under this contract will be developed during contract negotiations.

CMTS Employee Benefits Include:

- Two weeks paid vacation after one year of service.
- Accrued sick pay of 40 hours per year.
- Seven paid holidays each year.
- CMTS pays full medical for employee only. Dental and life coverage and dependent coverage also offered.
- Insurance deductions on a pre-tax basis.
- Educational plan (contribution toward classes relating to individual job assignment).
- Opportunity for immediate enrollment in CMTS 401(k) Plan.
- Direct deposit for payroll.

City of Newberg
414 E. First Street
P.O. Box 970
Newberg, OR 97132



City Manager
(503) 538-9421
(503) 537-5013 FAX

Community Development Office

P.O. Box 970 • 414 E. First Street • Newberg, Oregon 97132 • (503) 537-1240 • Fax: (503) 537-1277

February 12, 2002

Keith Jehnke
AKS Engineering
503-925-8969

Gordon Merseth
Crane & Merseth
503-654-2575

Bob Fuller / PDX
CH2M Hill
503-235-2445

Michael Poissant
Westech Engineering
503-585-3986

Yvonne McClain
CMTS
503-242-0094

Terry Goodman
WRG Design
503-603-9944

REQUEST FOR PROPOSAL

Hancock Street Sanitary Sewer Replacement Construction Inspection Services

The City of Newberg is in need of a Construction Inspector for the Hancock Street Sanitary Sewer Project. The duration of the inspection services is approximately February 25 - March 30, 2002. The sewer line is located within a State Highway, therefore most of the work will occur during the night hours, 8:00 p.m. to 4:00 a.m., Monday through Friday.

We would like for your company to submit a proposal for these inspection services along with a resume of the individual selected. **Please FAX your proposal no later than Friday, February 22, 2002.**

If you have any questions or need additional information please call me at (503) 537-1237.

Sincerely,

John J. Raineri
Engineering Technician

ACORD™ CERTIFICATE OF LIABILITY INSURANCE		DATE (MM/DD/YYYY) 3/1/2002	
PRODUCER Arnold, Bruce & Doerfler 1405 SW 14th Avenue PO Box 967 Portland Or 97207 (503)222-1951		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
007		INSURERS AFFORDING COVERAGE	
INSURED CMTS INC. 3207 SW 1ST AV #225 PORTLAND, OR 97201		NAIC # INSURER A: ST PAUL FIRE & MARINE (Portland) INSURER B: KEMPER INSURANCE INSURER C: ADMIRAL INSURANCE COMPANY INSURER D: INSURER E:	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.						
INSR LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	X	GENERAL LIABILITY ☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☒ PRO-JECT ☐ LOC	CK08701723 PER FORM CG2012	10/1/2001	10/1/2002	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
A		AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ ALL OWNED AUTOS ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ☐ NON-OWNED AUTOS	CK08701723	10/1/2001	10/1/2002	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
		GARAGE LIABILITY ☐ ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY: AGG \$
A		EXCESS/UMBRELLA LIABILITY ☒ OCCUR ☐ CLAIMS MADE ☐ DEDUCTIBLE ☒ RETENTION \$10,000	CK08701723	10/1/2001	10/1/2002	EACH OCCURRENCE \$ 4,000,000 AGGREGATE \$ 4,000,000 \$ \$ \$
B		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below	7BG085265-02	7/1/2001	7/1/2002	☒ WC STATU-TORY LIMITS ☐ OTH-ER E.L. EACH ACCIDENT \$ 500,000 E.L. DISEASE - EA EMPLOYEE \$ 500,000 E.L. DISEASE - POLICY LIMIT \$ 500,000
C		OTHER PROFESSIONAL LIABILITY "CLAIMS MADE" RETRO: 10/1/98	A01PL14129	10/1/2001	10/1/2002	EACH OCCUR 1,000,000 AGGREGATE LMT 2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS
 ALL OPERATIONS OF THE NAMED INSURED SUBJECT TO POLICY TERMS, CONDITIONS AND EXCLUSIONS.

CITY OF NEWBERG IS AN ADDITIONAL INSURED UNDER THE GENERAL LIABILITY COVERAGE WITH RESPECT TO THEIR CONTRACT WITH THE INSURED EFFECTIVE MONDAY, MARCH 4, 2002.

CERTIFICATE HOLDER

CITY OF NEWBERG
 414 EAST FIRST STREET
 P.O. BOX 970
 NEWBERG, OR 97132

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE
 JOHN C DOERFLER

DOERFLER