

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

June 25, 2001

Project: Valley Meadows Advanced Financing Agreement

Consultant: Anderson Engineering, Inc.

Summary of Proposed Changes:

1. **Work Involved:** Additional consulting time negotiating agreement between Willamette Valley Homes and Newberg School Dist.

2. **Cost Summary:**

Original contract amount:	\$1,615.00
Net change by previous amendments:	\$ 0
Previous total:	\$1,615.00
This amendment:	\$ 300.00
Amended contract amount:	\$ 1915.00

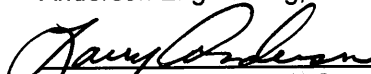
3. **Contract Time:**

This Amendment does not affect the contract schedule.

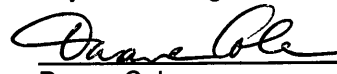
All other provisions of the professional services agreement remain in force.

ACCEPTANCE SIGNATURES:

Anderson Engineering, Inc.:

 7-9-01
Larry Anderson, PE, PLS Date
President

City of Newberg:

 7-19-01
Duane Cole Date
City Manager

Approved as to Form:

 8/1/01
Terrence D. Mahr Date
City Attorney

CITY OF NEWBERG
AGREEMENT WITH LARRY ANDERSON, P.E., P.L.S. dba
ANDERSON ENGINEERING, INC.
TO PROVIDE CONSULTING SERVICES
TO THE CITY OF NEWBERG

THIS AGREEMENT is entered into this 16th day of October, 2000 by and between the City of Newberg, a municipal corporation of the State of Oregon, hereinafter called **City**, and

Larry Anderson, P.E., P.L.S. dba
Anderson Engineering, Inc.
112 N. Springbrook Road
Newberg, Oregon 97132
503-537-1110 fax: 503-537-0910
andeng@open.org

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** related to:

HIGHWAY 99W UTILITIES REIMBURSEMENT APPLICATION

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-going work. 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 reach 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:

\$850.00

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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: Contract and Scope of Work.

This Agreement with attached Exhibits is the proposal of the **Consultant**. 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.

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other.

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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.

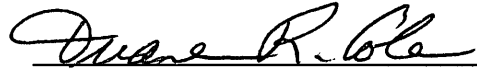
CONSULTANT

By: 
Name: Larry Anderson, P.E., P.L.S. dba
Anderson Engineering, Inc.

Title: Principal

Date: Oct 6, 2000

CITY OF NEWBERG

By: 
Name: Duane R. Cole
City of Newberg

Title: City Manager

Date: Oct. 18, 2000

Approved as to form:

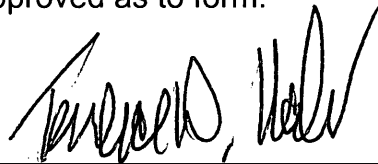

Terrence D. Mahr, City Attorney

EXHIBIT A

AGREEMENT TO THE CITY OF NEWBERG TO PROVIDE CONSULTING SERVICES

SCOPE OF WORK RELATED TO HIGHWAY 99W UTILITIES REIMBURSEMENT APPLICATION

September 8, 2000

Task

1. Complete ODOT forms for reimbursement of certain City cost to move utilities for the Highway 99W widening project. Coordinate with ODOT, Paul Chiu, Newberg Finance Department and Murray, Smith and Associates.

10 hrs

Anticipated Total Hours

10 hrs

Estimated Cost Not-to-Exceed

\$850.00

CITY OF NEWBERG
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TO PROVIDE CONSULTING SERVICES
TO THE CITY OF NEWBERG

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RECITALS:

1. **City** has need for the services of a **Consultant** with particular training, ability, knowledge, expertise and experience possessed by **Consultant** related to:

HIGHWAY 99W WATERLINE EASEMENTS

NOW, THEREFORE, in consideration of mutual promises, covenants and agreements of the parties, it is agreed as follows.

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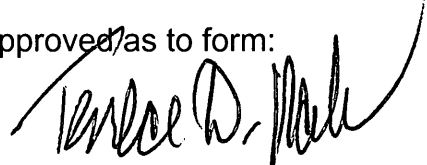

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EXHIBIT A

AGREEMENT TO THE CITY OF NEWBERG TO PROVIDE CONSULTING SERVICES

SCOPE OF WORK RELATED TO HIGHWAY 99W WATERLINE EASEMENTS

August 8, 2000

Prepared by

Anderson Engineering, Inc.

99W Waterline Easements

Scope of Professional Services

Project Description

This project involves the replacement of the 10in.dia. water main along Hwy 99W. Because of the location of the sanitary sewer and some buildings, the new line has been located outside of existing highway right-of-way and utility easements along three properties. In this case, the water line is being designed by City staff, but the City needs assistance in obtaining the three easements.

Work Scope

Tasks Provided by Consultant

- Attend kickoff meeting
- Obtain title reports for the three properties
- Write legal descriptions for easements on standard City easement dedication forms
- Contact property owners and negotiate easements

Tasks Provided by City

- Prepare easement drawings from existing waterline design drawings
- Record easements

Project Schedule

Notice to proceed:	August 21, 2000
Easements descriptions:	August 25, 2000
Easements signed and delivered for recording	September 8, 2000

Assumptions

For the purpose of developing this scope and fee the following assumptions have been made:

- Property owners are willing to dedicate the easements

Deliverables

The following shall be supplied to the City upon completion:

- Two original copies each of three easement documents ready for signing and recording.

Engineering Budget

Easement Documents	\$700
Acquisition assistance 10 hours @ \$85.00	\$850
Total Not to Exceed	\$1550.00

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NSP LAWSUIT SETTLEMENT SUPPORT

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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: Larry Anderson

Name: Larry Anderson, P.E., P.L.S. dba
Anderson Engineering, Inc.

Title: Principal

Date: Oct 6, 2000

CITY OF NEWBERG

By: Duane R. Cole

Name: Duane R. Cole
City of Newberg

Title: City Manager

Date: Oct. 23, 2000

Approved as to form:

Terrence D. Mahr
Terrence D. Mahr, City Attorney

EXHIBIT A

AGREEMENT TO THE CITY OF NEWBERG TO PROVIDE CONSULTING SERVICES

SCOPE OF WORK RELATED TO NSP LAWSUIT SETTLEMENT SUPPORT August 2, 2000

<u>TASK</u>	<u>ESTIMATED HOURS</u>
Punch-list Tracking - 10 weeks	
Daily Journal	2 hours per week
Track weather, activity on projects and contacts	
Weekly Progress Report	2 hours per week
Summary of daily journal. Submit to Terry Mahr for distribution to Mike Soderquist and Jim Martin.	
Reminder Letters	1 hour per week
Bi-weekly letter to Robert Simon with copy to City, listing the work completed, work in progress and work remaining.	
Plan Review	10 hours
Review and approve design submittal for alley retaining wall. <i>Anticipating two submittal reviews with red-line mark-up and one final review for approval. (This is the most expensive fix on the list and it will be a battle to get it done right. Also, if they haven't started on the design, it will be difficult to get it done on time.)</i>	
Field Inspection	2 hours per week avg.
Semi-weekly drive-by check when activity is slow. Daily inspection during paving and retaining wall construction.	
Final Report	4 hours
Sign-off of punch list certifying that all the work is completed. Copy to City and NSP.	
Arbitration	
Anticipated work includes:	
Prepare documents	8 hours
Meet with City and Attorneys prior to arbitration	8 hours
Represent City at arbitration	<u>8 hours</u>
Total Estimated Hours	108 hours
Estimated Fee	\$9,180.00

CITY OF NEWBERG
AGREEMENT WITH LARRY ANDERSON, P.E., P.L.S. dba
ANDERSON ENGINEERING, INC.
TO PROVIDE CONSULTING SERVICES
TO THE CITY OF NEWBERG

THIS AGREEMENT is entered into this 10th day of October, 2000 by and between the City of Newberg, a municipal corporation of the State of Oregon, hereinafter called **City**, and

Larry Anderson, P.E., P.L.S. dba
Anderson Engineering, Inc.
112 N. Springbrook Road
Newberg, Oregon 97132
503-537-1110 fax: 503-537-0910
andeng@open.org

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** related to:

VALLEY MEADOWS SUBDIVISION
ADVANCED FINANCING REIMBURSEMENT AGREEMENT

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-going work. 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 reach 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:

\$1,615.00

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: Contract and Scope of Work.

This Agreement with attached Exhibits is the proposal of the **Consultant**. 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 dully 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 Comprehensive 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.

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Anderson Engineering, Inc.

Title: Principal

Date: Oct 6, 2000

CITY OF NEWBERG

By: 
Name: Duane R. Cole
City of Newberg

Title: City Manager

Date: Oct. 23, 2000

Approved as to form:

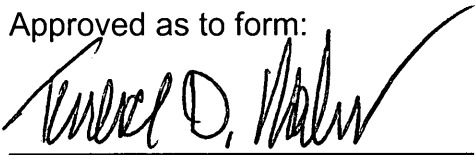

Terrence D. Mahr, City Attorney

EXHIBIT A

AGREEMENT TO THE CITY OF NEWBERG TO PROVIDE CONSULTING SERVICES

SCOPE OF WORK RELATED TO VALLEY MEADOWS SUBDIVISION ADVANCED FINANCING REIMBURSEMENT AGREEMENT

September 8, 2000

Task

1.	Evaluate application, prepare independent cost distribution	2 hrs
2.	Contact parties and try to resolve differences without the AFA process	2 hrs
3.	If the parties decide to go through with the AFA, prepare the engineer's report and schedule the informational meeting	5 hrs
4.	City to notice the parties of the meeting	0 hrs
5.	Attend informational meeting and present engineer's report	3 hrs
6.	Incorporate any changes in the engineer's report based on information from the meeting	3 hrs
7.	Schedule the council meeting - City to send notices	0 hrs
8.	Attend the council meeting and present the engineer's report	4 hrs
9.	City to record the AFA ordinance and collect reimbursement(s)	<u>0 hrs</u>
Anticipated Total Hours		19 hrs

Estimated Cost Not-to-Exceed

\$1,615.00