

CITY OF NEWBERG
AGREEMENT WITH ECONorthwest
TO PROVIDE CONSULTING SERVICES
TO THE CITY OF NEWBERG

THIS AGREEMENT is entered into this 9th day of April, 2001 by and between the City of Newberg, a municipal corporation of the State of Oregon, hereinafter called **City**, and **ECONorthwest**

99 W. 10th Avenue, Suite 400
Eugene, OR 97401-3001

541-687-0051

(Phone)

541-344-0562

(Fax)

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 quotes process.

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 July 31, 2001 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:

\$10,000

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, Exhibit A, the proposal of the **Consultant**, and Exhibit B, the Request for Quotes. 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 **C** i t y's

3/22/01

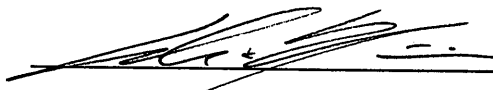
Page 3

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

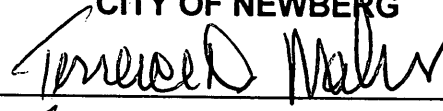
By: 

Name: Ernie Niemi

Title: Vice President

Date: 4-3-01

CITY OF NEWBERG

By: 

Name: TERRENCE D. MAHR

Title: Acting City Manager

Date: 4/9/01

Approved as to form:



Terrence D. Mahr, City Attorney

EXHIBIT A

SCOPE OF WORK AND BUDGET

The City of Newberg is preparing a master plan for its riverfront district. It has a consultant team assisting with that planning. The City and the consulting team concluded that would be useful to have additional information about economic issues related to the potential future development. This exhibit describes the tasks that ECONorthwest will complete to assemble and present that information. The emphasis on the tasks is not on collecting data, but on developing an understandable, supportable, and intuitively reasonable assessment of what is possible and likely in the study area.

ECONorthwest will complete four tasks:

- **Task 1: Site visit and coordination meeting.** Terry Moore will meet with City staff and consultant in Newberg to (a) visit the site; (b) clarify scope, products, schedule, and responsibilities; and (c) pick up relevant data from the City. Moore will send the City a list of the types of documents and data desired; the City will assemble what it has available and give it to Moore at the meeting.
- **Task 2: Data collection and evaluation.** Newberg does not have much recent economic information. Fortunately, ECO is conducting other related work that allows us to provide some economies to the City. As part of its work for the Willamette Valley Futures Project, ECO has already collected information on long-run population and employment forecasts for Yamhill County and Newberg. ECO has requested, and should receive within a few weeks, the confidential state employment records from the Department of Revenue¹ that will allow it to show past and current employment in Newberg by industry type. ECO should be able to get quickly to an economic overview of Newberg.

The City and its other consultants will provide ECO with information about the study area (buildable land, services, constraints). The City will provide basic plan information for the entire City (e.g., buildable land, zoning, policy constraints). Studies related to the Newberg By-Pass may have some additional information. Depending on what data are available, ECO may chose to supplement them with information from a data service (Claritas) that can provide updates and short-run forecasts for Newberg.

ECO will assemble these data into a loose-leaf notebook, and summarize them in a few pages. That summary will be background for some interviews ECO will conduct of people knowledgeable about development in Newberg. The City will identify and notify five people (real estate brokers, developers, bankers, industry representatives) that ECO staff will then interview by phone.

¹ Referred to as the ES2020 data.

- **Task 3: Technical memorandum on market issues and their implications for design.** Information gathered in the previous tasks will be summarized in a technical memorandum of about 10-15 pages in length. The memorandum will focus on conclusions, not description of trends. In other words, ECO want this to be a document that says "Given our assessment of market conditions, here is our assessment of what kind of development is possible in the study area, and what kinds of things the City and others should do if they want to increase the probability of its occurrence." ECO will send a draft of the memorandum to the City by the morning of April 16, at the latest, so that the City has the material available for a public meeting scheduled for April 18 (ECO is not scheduled to attend that meeting). After that meeting, Terry Moore will meet with City staff and consultants in Newberg to discuss the draft memorandum. Based on comments received at that meeting, or sent in writing by the City within a week of the meeting, ECO will revise the technical memorandum and send the City a final version.
- **Task 4: Response to follow-up questions.** The technical memorandum of Task 3 should provide the planning and design team, the City, and the public, with a market context for their long-run planning. ECO's scope does not include assistance with the development of a preferred vision or master plan. The budget allows for seven hours of Terry Moore's time for Task 4 that the City may use as it chooses. It may want on-going advice (e-mail, fax, telephone) as it develops the master plan. Or, it may choose to wait until a preferred alternative is chosen, and then have Moore review it and comment on it in writing (the budget will allow for only a brief memorandum focused on key issues, and no meeting).

SCHEDULE

Tasks 1 through 3 will be completed by April 16. ECO will provide the City by e-mail with an electronic copy of its draft memorandum by 10 AM on Monday, April 16. After its public meeting on April 18, the City will either approve the memorandum or provide ECO by e-mail with written comments on desired changes. Terry Moore will meet once with the City after April 18 to discuss comments and potential changes to the draft memorandum.

Task 4 can be completed within one week of receiving the whatever version of a final alternative the City chooses to send ECO for comment. The expectation is that the final alternative will be sent to ECO around the end of May, but the exact time will be decided later.

STAFFING

Terry Moore will be project manager for ECONorthwest. He will be assisted, depending on the tasks and their availability, by David Helton, Bob Parker, or Jim Ebenhoh.

BUDGET

The budget for this project is \$10,000. ECO will bill the City based on deliverables as follows:

After Task 1 meeting: \$2,000

After delivery of draft memorandum on April 16: \$6,000

After delivery of final memorandum: \$1,200

After providing up to six hours of consultation anytime between April 16 and June 30:
\$800.

ECONorthwest

ECONOMICS • FINANCE • PLANNING

CITY OF NEWBERG
CITY RECORDER INDEX NO. 1826

Phone • (541) 687-0051
FAX • (541) 344-0562
info@eugene.econw.com

Suite 400
99 W. 10th Avenue
Eugene, Oregon 97401-3001

Other Offices
Portland • (503) 222-6060
Seattle • (206) 622-2403

TO: David Beam City of Newberg	3 August, 2001
	ECO Project # 6677
	Via: US Mail
FROM: Helen Rosenau	

List of Materials/Remarks

I return one contract amendment A, signed by Terry Moore, for ECONorthwest to assist the City of Newberg with a master plan for its riverfront district. I kept the second copy for my files.

Call if you have any questions. My direct line is (541) 687-2544.

AMENDMENT A

**CITY OF NEWBERG
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TO THE CITY OF NEWBERG**

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As of the date of Amendment A of this agreement, the expiration date of this agreement is extended to December 31, 2001. To date, ECO completed and has been paid in full for Tasks 1 to 3. Task 4, which has a budget of \$800 to provide on-going advice to the City, has not been completed. The City has requested this agreement expiration date so as to have the consultant's services available through the public review process of the Draft Riverfront Plan. The scope of Task 4 remains unchanged.

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.

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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.

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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: Terry Moore
Title: VP
Date: 8.3.01

CITY OF NEWBERG

By: 
Name: Duane Cole
Title: City Manager
Date: July 19, 2001

Approved as to form:


Terrence D. Mahr, City Attorney