

CITY OF NEWBERG

ADDENDUM TO AGREEMENT WITH EXECUTIVE LEADERSHIP INSTITUTE TO
PROVIDE CONSULTING SERVICES TO THE CITY OF NEWBERG

THE AGREEMENT between the City of Newberg and the Executive Leadership
Institute dated May 31, 2002, is hereby amended as follows:

Performance shall be completed on or before April 30, 2003.

All other portions of the agreement shall remain unaltered.

IN WITNESS WHEREOF, the parties have executed this Addendum Agreement:

State of Oregon, acting by and through
The State Board of Higher Education, on
behalf of Portland State University:

CONSULTANT

CITY OF NEWBERG

By: Denise I. Wendler

By: James H. Bennett

Name: Denise I. Wendler
Title: Director of Business Affairs

Name: James H. Bennett

Title: Director of Business Affairs

Title: City Manager

Date: 10/29/02

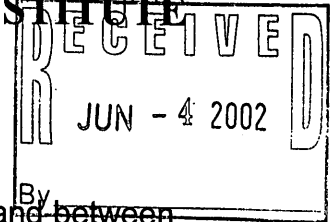
Date: 11/12/02

Approved as to form:

Terrence D. Mahr

Terrence D. Mahr
City Attorney

City of Newberg
**AGREEMENT WITH EXECUTIVE LEADERSHIP INSTITUTE
TO PROVIDE CONSULTING SERVICES
TO THE CITY OF NEWBERG**



THIS AGREEMENT is entered into this 15th day of May, 2002, by and between the City of Newberg, a municipal corporation of the State of Oregon, hereinafter called **City**, and State of Oregon acting by and through the State Board of Higher Education, on behalf of Portland State University, Executive Leadership Institute, Hatfield School of Government, P. O. Box 751, Portland, Oregon 97207-0751 — 503 222-7846; 503 725-8250, hereinafter called **Consultant**.

RECITALS:

1. **City** has need for services of a **Consultant** with particular training, ability, knowledge, expertise and experience possessed by **Consultant**.
2. The **Consultant** has previously performed services to complete the Chehalem Community Vision Plan.
3. The previous contract has expired without completion of services by **Consultant**.
3. The **City** would like the **Consultant** to perform additional service to complete the unfinished items.
4. In addition, **City** would like the **Consultant** to provide additional services.

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 October 31, 2002 whichever date occurs first.

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. Work performed prior to termination will be fully reimbursed to **Consultant** by the **City**.

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:

\$16,548.55

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, and 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 an employee of the State of Oregon.

8. **Federal Employment Status:** In the event any payment made pursuant to this Agreement is to be charged against federal funds, **Consultant** certifies that they are not currently employed by the federal government, except as an independent contractor, and the amount charged does not exceed their 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, to the extent permitted by Oregon law (ORS 30.260 through 30.300) and the Oregon Constitution Article XI, Section 7.

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** as an agency of the State of Oregon is self insured through the State Liability Fund administered by the Risk Management Division, Department of General Services. All **Consultant's** personnel acting within the scope of their employment are covered for claims arising out of a single accident or occurrence, limited by ORS 30.270.

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 jointly co-owned by the **City** and E.L.I. 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.

State of Oregon, acting by and through
The State Board of Higher Education, on
behalf of Portland State University:

CONSULTANT

By: Denise I. Wendler

Name:

Denise I. Wendler

Title:

Director of Business Affairs

Date: 5-31-02

CITY OF NEWBERG

By: JH Bennett

Name:

JAMES H. BENNETT

Title:

CITY MANAGER

Date:

May 29, 2002

Approved as to form:

TDM 5/20/02

Terrence D. Mahr, City Attorney

Exhibit A: Work Scope

TASK	STATUS IN PRIOR CONTRACT	TASKS ACTUALLY CARRIED OUT
Elected official workshops	2 workshops	2 elected official workshops completed fall 2001
Asset Inventory	Asset Inventory	Asset Inventory completed
Elements 1 & 3: Meetings with Steering Committee	6 meetings between Feb 1 & Sept 1, 2001	- Steering Committee: 22 meetings - Other: 5 working sessions
Element 2: Community Forums & Focus Groups	2 English Forums 1 Latino Focus Group	2 English forums: ~40-50 attendees each 1 Spanish forum with 10 Focus groups: 85 attended
Financial Analysis	Not included in contract	Produced: - Consolidated Jurisdiction operating budget - Joint capital improvements pgm & project by project financial analysis
Element 4: Operate issue resolution, objectives definition and work program development sessions	Included in contract	In process; will be completed & paid for within 1 st year contract carryover balance; meetings for this were included in the original 6 committed meetings
Element 5: Strategic Plan document preparation	Included in contract	In process; will be completed & paid for by existing contract carryover balance
Element 6: Process Accountability	Included in contract	Will be paid for by existing contract carryover balance
Element 7: Prepare 2 nd year work program	Included in contract	Already completed
Second year tasks NOT INCLUDED IN CONTRACT , but needed to complete Strategic Plan: - Continued Steering Committee meetings from Jan 1, 2002, thru April or May 2002 to coordinate & finalize: - Capital projects list & financial analysis - Operating improvements list - Latino project list; incorporate in plan - Plan final community forums or "hearings" on draft plan: - Plan & coordinate 2nd survey & incorporate results in plan - Integrate 2nd survey into strategic plan - Support preparation of & attend final community Forums (2) for public review of draft plan; incorporate results into plan - English "hearing" or Forum - Spanish "hearing" or Forum	Not included in existing contract	Requested \$7,400 in addition to existing contract carryover to carry out these tasks as part of 2nd year work.
New Proposed Total Contract Amount		Carryover + 2 nd year contract amount \$9,148.55 + \$7,400 = \$16,548.55