

**REPORT TO MAYOR AND COUNCIL****TO THE HONORABLE MAYOR AND COUNCIL:**

DATE: November 17, 2008

SUBJECT: AMENDMENT TO AN AGREEMENT WITH THE CENTER FOR EXECUTIVE SOLUTIONS IN THE AMOUNT OF \$25,000 (TOTAL CONTRACT AMOUNT OF \$45,000) TO PROVIDE LEADERSHIP AND MANAGEMENT ASSESSMENT SERVICES REQUIRED FOR FISCAL YEAR 2008-2009

Report in Brief

The City has recently resumed use of an outside firm to complete leadership and management assessments as an additional tool in evaluating finalists for key executive and management positions. The City currently contracts with The Center for Executive Solutions to perform this work under Administrative Agreement 2152. Due to the number of recruitments completed and the anticipated number of key positions to be filled during the current fiscal year, the Center for Executive Solutions will exceed its current contractual limitation of \$20,000. Typically, the top two candidates for a key executive or management position will proceed through the process with the Center prior to a final selection for a position.

Staff recommends that the City Council approve an increase of \$25,000 to the existing agreement for a total contract in the amount of \$45,000 with the Center for Executive Solutions in order to cover anticipated additional management and assessment service fees for the remainder of the fiscal year. The Center for Executive Solutions charges a flat fee of \$2900 for each assessment and \$290 per hour for follow-up coaching and leadership development services should these additional services be desired.

Background

The Human Resources Department is responsible for the design, planning, and facilitation of assessment procedures that provide hiring managers with a pool of qualified candidates from which to choose. The services of The Center for Executive Solutions provide an additional evaluation tool for management and executive positions in order that the best person is hired for the position. Due to an increased number of key management and executive positions that will be filled this fiscal year, The Center for Executive Solutions will exceed its \$20,000 contract.

Administrative Directive No. 78 provides the rules and procedures for implementing sections of Concord Municipal Code regarding the City's purchase of supplies, services, and equipment. According to the Municipal Code, City Council approval shall be required for all professional services, consulting, and other service contracts which provide for remuneration exceeding \$20,000 to the same contractor within any 12-month period regardless of funding source or type of service.

**APPROVAL OF AN AMENDMENT TO AN AGREEMENT WITH THE CENTER FOR
EXECUTIVE SOLUTIONS IN THE AMOUNT OF \$25,000 (TOTAL CONTRACT AMOUNT
OF \$45,000) TO PROVIDE LEADERSHIP AND MANAGEMENT ASSESSMENT SERVICES
REQUIRED FOR FISCAL YEAR 2008-2009**

November 17, 2008

Page 2

Discussion

Professionals at The Center for Executive Solutions use the assessment process to help ensure that the best person is hired for a key management position, using their experience, independence and objectivity to evaluate the caliber of candidates. Through the Center's Leadership and Management Assessment process, they work with the City to identify the leadership and managerial qualities that are required for success in the position. The Center then evaluates candidates in relation to those qualities, assessing leadership and management practices, skills in problem solving, communication, and interpersonal interactions, and motivators and values relative to the needs of the City.

The Center for Executive Solutions' evaluation consists of three components: 1) an online assessment that provides a complex portrait of a candidate's professional characteristics grouped into four broad categories (dealing with others, self-management, motivations and thinking style, and leadership/management characteristics), 2) an interview and cognitive testing in which key strengths and potential areas for development are explored and 3) a feedback session where the assessment results are shared with the hiring authority. A list of issues for the City to pursue through follow up interviews and additional reference checks is included in the written report. The Center also offers coaching and leadership skills development services, should these be desired.

Fiscal Impact

The recommended approval of an increase of \$25,000 to The Center for Executive Solutions standing purchase order would have immediate fiscal impact on the Human Resources Department, Recruitment & Selection program budget (100-2020-1A01-63098). As a part of the year end adjustments, funds will be added to the Department budget to absorb the increase.

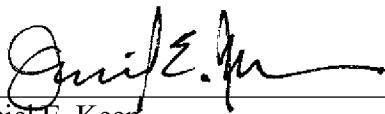
Public Contact

The City Council agenda was posted.

Recommendation for Action

Staff recommends that the City Council approve an increase of \$25,000 to the current Center for Executive Solutions agreement (total contract amount of \$45,000) to cover anticipated additional management and assessment service fees for the remainder of the fiscal year.

Prepared by: Stacy R. Shell
Senior Human Resources Analyst
Stacy.shell@ci.concord.ca.us



Daniel E. Keen
City Manager
Dan.keen@ci.concord.ca.us

Reviewed by: Kay Winer
Assistant City Manager (interim)
Kay.winer@ci.concord.ca.us

AGREEMENT FOR PROFESSIONAL SERVICES

1 THIS AGREEMENT ("Agreement") is entered into on October 24, 2008 between the City of
2 Concord (the "CITY") and The Center for Executive Solutions, 505 West Olive Avenue, Suite 430,
3 Sunnyvale, California 94086 (the "CONSULTANT").

4 THE PARTIES ENTER THIS AGREEMENT based upon the following facts, understandings
5 and intentions:

6 The CITY desires to contract with The Center for Executive Solutions and The Center of
7 Executive Solutions to contract with the CITY for provision by The Center of Executive Solutions to
8 the CITY for professional services in connection with Leadership and Management Assessments as
9 further described herein, upon the terms and conditions hereinafter set forth.

10 NOW, THEREFORE, IN CONSIDERATION of the mutual covenants and promises of the
11 parties herein contained, the parties hereto agree as follows:

12 **1. Effective Date.** The effective date of this Agreement is October 24, 2008.

13 **2. Services.** CONSULTANT shall provide the basic services described in detail in
14 Exhibit A, Scope of Services, attached hereto and made a part hereof.

15 **3. Amendment.** If authorized, CONSULTANT shall furnish additional services, which
16 are in addition to the basic services. If additional services are requested by CITY, this Agreement may
17 be amended, modified, or changed by the parties subject to mutual consent and in accordance with the
18 Municipal Code by execution of an addendum by authorized representatives of both parties setting
19 forth the additional scope of services to be performed, the performance time schedule, and the
20 compensation for such services.

21 **4. Authorized Representatives.** Authorized representatives shall represent CITY and
22 CONSULTANT in all matters pertaining to the services to be ordered by CITY or rendered by
23 CONSULTANT under this Agreement except where approval for the CITY is specifically required by
24 the City Council. All requirements of CITY pertaining to the services to be rendered under this
25 Agreement by CONSULTANT shall be submitted through these representatives and CITY shall
26 cooperate with CONSULTANT in all matters relating to this Agreement in such a manner as will
27 result in the performance of such work without delay.

28 CITY'S authorized representative is authorized to execute on behalf of CITY, amendments to

1 the agreement, including amendments providing for additional compensation to CONSULTANT, not
2 to exceed \$20,000, including the base contract amount, throughout the remaining term of the
3 agreement. The Executive Director is authorized to execute on behalf of CITY, amendments to the
4 agreement, including additional compensation to CONSULTANT, not to exceed \$40,000, including
5 the base contract amount, throughout the remaining term of this agreement beyond that authorized in
6 section 6 must be approved by the CITY board.

7 The CITY authorized representative is the Director of Human Resources. The
8 CONSULTANT'S authorized representative is Andy Winzelberg, Director for the Center for
9 Executive Solutions.

10 **5. Compensation.** CONSULTANT shall be compensated on a lump sum basis for basic
11 services rendered under Section 2, as more particularly described in Exhibits A & B, Compensation;
12 and CONSULTANT shall be compensated for additional services rendered under Section 3, as more
13 particularly described in a fully approved and executed addendum to this Agreement.

14 CONSULTANT may submit monthly statements for basic and additional services rendered. It
15 is intended that payment to CONSULTANT will be made by CITY within (30) days of receipt of
16 invoice.

17 **6. Term.** The term of this Agreement, subject to termination as set forth in Section 13,
18 shall be from the effective date through June 30, 2009.

19 The CITY'S Authorized Representative may extend the term of the agreement for a period not
20 to exceed six months if necessary for the CONSULTANT to complete the Scope of Work or any
21 additional Scope of Work previously authorized by the CITY. Such Extension of time shall be in
22 writing by a duly executed addendum or amendment to this agreement.

23 **7. Standard of Performance.** CONSULTANT represents to CITY that the services shall
24 be performed in an expeditious manner, and with the degree of skill and care that is required by
25 current, good, and sound procedures and practices. CONSULTANT further agrees that the services
26 shall be in conformance with generally accepted professional standards prevailing at the time work is
27 performed.

28 **8. Performance by Consultant** CONSULTANT shall not employ other consultants or

1 contractors without the prior written approval of the CITY. CONSULTANT hereby designates the
2 CONSULTANT'S representative as the person primarily responsible for the day-to-day performance
3 of CONSULTANT'S work under this Agreement. CONSULTANT shall not change the
4 CONSULTANT'S representative without the prior consent of the CITY. Unless otherwise expressly
5 agreed by the CITY, CONSULTANT'S representative shall remain responsible for the quality and
6 timeliness of performance of the services, notwithstanding any permitted or approved delegation
7 hereunder.

8 **9. Ownership and Maintenance of Documents.** All documents furnished by
9 CONSULTANT pursuant to this Agreement are instruments of CONSULTANT's services in respect
10 to this project. They are not intended nor represented to be suitable for reuse by others on extensions
11 of this project or on any other project. Any reuse without specific written verification and adoption by
12 CONSULTANT for the specific purposes intended will be at user's sole risk and without liability or
13 legal exposure and expenses to CONSULTANT, including attorney's fees arising out of such
14 unauthorized reuse.

15 CONSULTANT's records, documents, calculations, and all other instruments of service
16 pertaining to actual project shall be given to AGECCNY at the completion of the project. The CITY
17 reserves the right to specify the file format that electronic document deliverables are presented to the
18 CITY. If agreement is terminated per Section 13, deliverables shall be provided based on Section 13
19 requirements.

20 **10. Indemnification.** CONSULTANT agrees to defend, indemnify and hold harmless the
21 CITY, its officers, agents, employees and volunteers from and against any and all claims, demands,
22 actions, losses, damages, injuries, and liability (including all attorney's fees and other litigation
23 expenses) arising out of the negligent acts or omissions of CONSULTANT in the performance of this
24 Agreement.

25 **11. Insurance.** CONSULTANT shall, at its own expense, procure and maintain in full
26 force at all times during the term of this Agreement the following insurance:

27 **A. Commercial General Liability Coverage.** CONSULTANT shall maintain
28 commercial general liability insurance with limits of no less than one million dollars

1 (\$1,000,000) combined single limit per occurrence or two million dollars (\$2,000,000)
2 aggregate limit for bodily injury, personal injury, and property damage.

3 **B. Automobile Liability Coverage.** CONSULTANT shall maintain automobile liability
4 insurance covering all vehicles used in the performance of this Agreement providing a One
5 Million Dollar (\$1,000,000) combined single limit per occurrence for bodily injury, personal
6 injury, and property damage.

7 **C. Professional Liability Coverage.** CONSULTANT shall maintain professional
8 liability insurance with coverage for all negligent errors, acts or omissions committed by
9 CONSULTANT, its agents and employees in the performance of this Agreement. The amount
10 of this insurance shall be not less than five hundred thousand dollars (\$500,000) on a claims
11 made annual aggregate basis or a combined single limit per occurrence basis.

12 **D. Compliance with State Workers' Compensation Requirements.** CONSULTANT
13 covenants that it will insure itself against liability for Workers' Compensation pursuant to the
14 provisions of California Labor Code §3700, et seq. CONSULTANT shall, at all times, upon
15 demand of the City Council and properly authorized agents, furnish proof that Workers'
16 Compensation Insurance is being maintained by it in force and effect in accordance with the
17 California Labor Code.

18 **E. Other Insurance Provisions.** The policies are to contain, or be endorsed to contain
19 the following provisions:

20 (1) CITY, its officers, agents, employees, and volunteers are to be covered
21 as additional insureds as respects: Liability arising out of activities performed by or on
22 behalf of CONSULTANT and operations of CONSULTANT, premises owned,
23 occupied, or used by CONSULTANT. The coverage shall contain no special
24 limitations on the scope or protection afforded to CITY, its officers, officials,
25 employees, or volunteers.

26 (2) CONSULTANT'S insurance coverage shall be primary insurance with
27 respect to CITY, its officers, officials, employees, and volunteers. Any insurance, risk
28 pooling arrangement, or self-insurance maintained by CITY, its officers, officials,

1 employees, or volunteers shall be in excess of CONSULTANT'S insurance and shall
2 not contribute with it.

3 (3) Any failure to comply with the reporting provisions of the policy shall
4 not affect the coverage provided to the CITY, its officers, officials, employees, or
5 volunteers.

6 (4) The aforementioned policies shall be issued by an insurance carrier
7 having a rating of Best A-7 or better which is satisfactory to the City Attorney and
8 shall be delivered to CITY at the time of the execution of this Agreement or as
9 provided below. In lieu of actual delivery of such policies, a Certificate issued by the
10 insurance carrier showing such policy to be in force for the period covered by the
11 Agreement may be delivered to CITY. Such policies and certificates shall be in a form
12 approved by the City Attorney. Except for worker's compensation and professional
13 liability insurance, the policies mentioned in this subsection shall name CITY as an
14 additional insured and provide for thirty (30) days notice of cancellation to CITY. Said
15 policies shall not be canceled earlier than, nor the amount of coverage reduced earlier
16 than, thirty (30) days after the CITY receives notices from the insured of the intent of
17 cancellation or reduction.

18 **12. Suspension of Work.** CITY may, at any time, by ten (10) days' written notice,
19 suspend further performance by CONSULTANT. All suspensions shall extend the time schedule for
20 performance in a mutually satisfactory manner, and CONSULTANT shall be paid for services
21 performed and reimbursable expenses incurred prior to the suspension date. During the period of
22 suspension, CONSULTANT shall not receive any payment for services, or expenses, except for
23 reasonable administration expenses, incurred by CONSULTANT by reason of such suspension.

24 **13. Termination.** CITY may terminate this Agreement for any reason upon ten (10) days
25 written notice to the other party. CITY may terminate the Agreement upon five (5) days written notice
26 if CONSULTANT breaches this Agreement. In the event of termination, CONSULTANT shall
27 promptly deliver to the CITY any reports or other written, recorded, photographic, or visual materials
28 and other deliverables prepared for the CITY prior to the effective date of such termination. After

1 receipt of deliverables, CITY will pay CONSULTANT for the services performed as of the effective
2 date of the termination.

3 **14. Compliance with Civil Rights.** During the performance of this contract,
4 CONSULTANT agrees as follows:

5 **A. Equal Employment Opportunity.** In connection with the execution of this
6 Agreement, CONSULTANT shall not discriminate against any employee or applicant for
7 employment because of race, religion, color, sex, or national origin. Such actions shall include,
8 but not be limited to, the following: employment, promotion, upgrading, demotion, or transfer;
9 recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of
10 compensation; and selection for training including apprenticeship.

11 **B. Nondiscrimination Civil Rights Act of 1964.** CONSULTANT will comply with all
12 federal regulations relative to nondiscrimination in federally assisted programs.

13 **C. Solicitations for Subcontractors including Procurement of Materials and
14 Equipment.** In all solicitation, either by competitive bidding or negotiations, made by
15 CONSULTANT for work to be performed under a subcontract including procurement of
16 materials or leases of equipment, each potential subcontractor, supplier or lessor shall be
17 notified by CONSULTANT of CONSULTANT'S obligation under this Agreement and the
18 regulations relative to nondiscrimination on the grounds of race, religion, color, sex, or
19 national origin.

20 **15. Independent Contractor.** In assuming and performing the services, CONSULTANT
21 is an independent contractor and shall not be eligible for any benefits, which the City may provide its
22 employees, except as expressly provided for in the Agreement. All persons, if any, hired by
23 CONSULTANT shall be employees or subcontractors of CONSULTANT and shall not be construed
24 as employees or agents of the City in any respect. CONSULTANT shall have responsibility for and
25 control over the means of providing services under this Agreement.

26 **16. Compliance with Laws.** CONSULTANT shall comply with all applicable Federal,
27 State of California, and local laws, rules, and regulations and shall obtain all applicable licenses and
28 permits for the conduct of its business and the performance of the services.

1 **17. Choice of Laws.** This Agreement shall be construed and interpreted in accordance
2 with the laws of the State of California, excluding any choice of law rules which may direct the
3 application of the laws of another jurisdiction.

4 **18. Non-Waiver.** The waiver by either party of any breach of any term, covenant, or
5 condition contained in the Agreement, or any default in their performance of any obligations under the
6 Agreement shall not be deemed to be a waiver of any other breach or default of the same or any other
7 term, covenant, condition, or obligation, nor shall any waiver of any incident of breach of default
8 constitute a continuing waiver of same.

9 **19. Enforceability.** In the event that any of the provisions or portions of application of
10 any of the provisions of the Agreement are held to be illegal or invalid by a court of competent
11 jurisdiction, CITY and CONSULTANT shall negotiate an equitable adjustment in the provisions of
12 the Agreement with a view toward effecting the purpose of the Agreement. The illegality or invalidity
13 of any of the provisions or portions of application of any of the provisions of the Agreement shall not
14 affect the legality or enforceability of the remaining provisions or portions of application of any of the
15 provisions of the Agreement.

16 **20. Integration.** The Agreement contains the entire agreement and understanding between
17 the parties as to the subject matter of this Agreement. It merges and supersedes all prior or
18 contemporaneous agreements, commitments, representation, writings, and discussions between
19 CONSULTANT and CITY, whether oral or written.

20 **21. Successors and Assigns.** CITY and CONSULTANT respectively, bind themselves,
21 their successors, assigns, and legal representatives. CONSULTANT shall not assign or transfer any
22 interest in the Agreement without the CITY'S prior written consent, which consent shall be in the
23 CITY'S sole discretion. Any attempted assignment or transfer in breach of this provision shall be
24 void.

25 **22. Attorney's Fees.** If either party to this Agreement commences any legal action against
26 the other party arising out of this Agreement, the prevailing party shall be entitled to recover its
27 reasonable litigation expenses, including court costs, expert witness fees, discovery expenses, and
28 attorney's fees.

1 **23. Financial Records.** Records of CONSULTANT's direct labor costs, payroll costs,
2 and reimbursable expenses pertaining to this project covered by this Agreement will be kept on a
3 generally recognized accounting basis and made available to CITY if and when required.

4 **24. Notices.** All notices required hereunder shall be in writing and mailed postage prepaid
5 by Certified or Registered mail, return receipt requested, or by personal delivery to the CITY's address
6 as shown below, or such other places as CITY or CONSULTANT may, from time to time,
7 respectively, designate in a written notice given to the other. Notice shall be deemed received three (3)
8 days after the date of the mailing thereof or upon personal delivery.

9
10 To CITY

**Daniel E. Keen
City Manager
City of Concord
1950 Parkside Drive
Concord, CA 94519-2578
Phone: (925) 671-3038
Fax: (925) 798-0636**

11
12
13
14 To CONSULTANT

**Andy Winzelberg, Director
The Center for Executive Solutions
505 West Olive Avenue, Suite 430
Sunnyvale, CA 94086
Phone: (408)530-1800
Fax: (408)245-6825**

15
16
17
18
19 **IN WITNESS WHEREOF**, the parties have executed this Agreement in one (1) or more
20 copies as of the date and year first written above.

21
22 **CONSULTANT**

**CITY OF CONCORD, a Municipal
Corporation**

23
24 By: _____

By: _____

25 Name: Andy Winzelberg
26 Title: Director
 Address: 505 West Olive Avenue, Suite 430
 Sunnyvale, CA 94086
27 Telephone: (408)530-1800

Name: Daniel E. Keen
Title City Manager
Address: 1950 Parkside Drive
 Concord, CA 94519
Telephone: (925) 671-3150

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

APPROVED AS TO FORM:

ATTEST:

City Attorney

City Clerk

Date: _____, 200__

FINANCE DIRECTOR'S CERTIFICATION:

Concord, California

Date: _____, 200__

I HEREBY CERTIFY THAT ADEQUATE FUNDS EXIST OR WILL BE RECEIVED DURING THE CURRENT FISCAL YEAR 2008/09 TO PAY THE ANTICIPATED ADDITIONAL EXPENSES TO BE INCURRED PURSUANT TO THIS CONTRACT. THE SUM OF \$25,000 FOR A TOTAL NOT TO EXCEED \$45,000 DURING THE FISCAL YEAR 2008/09 PERIOD. Account Code 100-2020-1A01-63098.

Finance Director's Signature