

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT, made and entered into as of the 19th day of May, 1998, by and between the following parties:

Falconi Consulting Services
hereinafter known as
FALCONI
300 Oswego Pointe Drive
Suite 200
Lake Oswego, OR 97034
Phone: 503-699-3067
Fax: 503-636-7645
E-mail: falconi@compuserve.com

City of Newberg
hereinafter known as
CLIENT
c/o City Attorney's Office
414 East First Street
Newberg, OR 97132
Phone: 503-538-9421
Fax: 503-537-5013
E-mail: nlegal@ci.newberg.or.us

PROJECT IS REFERRED TO AS THE "NORTHSIDE ROAD PROJECT."

LOCATION AND DESCRIPTION OF PROJECT:

Location and alternative analysis for section of road limited to Mountain View Drive to the north, Crestview Drive to the south, Springbrook Road to the east, and Aspen Way to the west.

NOW THEREFORE, BE IT AGREED BY THE PARTIES AS FOLLOWS:

Terms and Conditions:

1. **FALCONI** agrees to furnish and perform those professional services specified in Scope of Work for Northside Road Project marked as exhibit "A" and hereby attached.

2. **CLIENT** agrees to compensate **FALCONI** and agreed to by **CLIENT** consistent with the professional services provided on a monthly basis, based on the percentage of work completed as determined by **FALCONI** and agreed to by the **CLIENT** consistent with the proposed budget which is marked as exhibit "B" and attached. The rate for the services shall be the rates indicated in the proposed budget. **FALCONI** represents that it can perform the Scope of Work indicated in exhibit "A" within the budgetary amounts indicated in their purposed budget in exhibit "B". The total purposed budget amount of \$64,342.00 is a not-to-exceed amount. **FALCONI** shall not exceed this amount in performing the work without obtaining prior, written consent of the **CLIENT**. Any professional services provided which exceed this amount without the prior, written consent of the **CLIENT** shall not be compensated and **FALCONI** waives any right to such compensation.

3. **FALCONI** shall perform the services specified in the Scope of Work within the budget in accordance with the schedule which is marked as exhibit "C" and hereby attached.

4. **FALCONI** shall perform all of its professional services in a workmanlike and professional manner. **CLIENT** shall indemnify and hold harmless **FALCONI** its agents, subcontractors and employees from and against all claims, damages, losses, and expenses arising out of the development of this project not caused by the failure of **FALCONI**, its agents, subcontractors and employees, to perform its and/or their services in a professional and workmanlike manner.

5. If the project is materially changed, or if **CLIENT** desires other professional services not already included in this Agreement or not customarily furnished as part of the agreed upon services, then additional consideration shall be paid to **FALCONI** which shall be subject to negotiation by both parties, however, such services shall be furnished at the rate as indicated in the purposed budget marked as exhibit "B". The terms of this agreement shall apply to such additional services.

6. All original documents prepared by **FALCONI** in performance of this Professional Service Agreement, including but not limited to original maps, plans, drawing and specifications are the property of **CLIENT** (City of Newberg) unless otherwise agreed in writing. Quality reproducible records copies shall be provided to **CLIENT** at **CLIENT**'s expense, upon request.

7. All invoices are payable upon receipt and payments are due within 30 days of receipt unless otherwise agreed in writing. Failure to pay an invoice when due shall constitute default, and interest at 14% per annum shall be payable on all such invoices. In the event of a default, **FALCONI** may elect to suspend all professional services under this Agreement until such invoice is paid in full, and may elect to terminate this Agreement as of the 30th day of default. **FALCONI** shall not be liable for any direct, indirect, incidental or consequential damages suffered by **CLIENT** his subcontractors, agents, employees and assigns as a result of any suspension or termination.

8. If the project is idle for more than 60 days there will be a remobilization charge of 10% of the contract fee to cover the cost of restarting the project.

9. 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 contract as a whole without written consent of the other.

10. **CLIENT** agrees to pay the costs and reasonable attorney's fees and disbursements incurred by **FALCONI** in connection with the

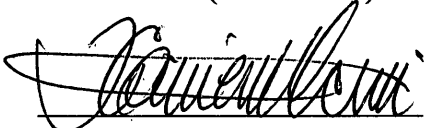
failure by **CLIENT** to make any payment in accordance with the provisions of this Agreement. The parties agree that in the event action or suit is commenced, to enforce any provision of this Agreement or in the event of any breach of this Agreement, the prevailing party shall have and recover reasonable attorney fees, both at trial and on appeal together with all other costs and disbursements allowed by law.

11. **FALCONI** shall be free from any liability for delay or failure of providing the services contemplated by this Agreement which arise from strikes, lockouts, or labor troubles of any kind, accidents, fire, earthquake, civil commotion, war or consequences of war, government acts, restrictions, or requisitions, failure of manufacturers, or suppliers suspension of shipping facilities, any act or default of a carrier or any other contingency of whatsoever nature beyond **FALCONI**'s control, including disturbances existing at the time this agreement was made. In such a situation, if the services contemplated by this Agreement are not provided during the period contracted for, **CLIENT** shall accept the services and pay for the same when provided, however, provided that the services are provided within a reasonable time after cessation of the aforementioned impediments or causes.

12. This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, written and oral, courses of dealing, or other understandings between the parties. No modification of this Agreement shall be binding unless in writing and signed by both parties.

IN WITNESS WHERE OF THE PARTIES HAVE AFFIXED THEIR SIGNATURES:

**FALCONI CONSULTING
SERVICES (FALCONI)**



Xavier R. Falconi, P.E.
President

5/19/98

Date

CITY OF NEWBERG (CLIENT)

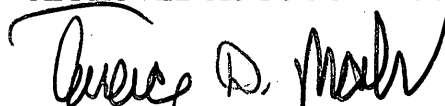


Duane R. Cole
City Manager

May 15, 1998

Date

APPROVED AS TO FORM/CONTENT:



Terrence D. Mahr
City Attorney

5/15/98

Date

Exhibit "A"

NORTHSIDE ROAD PROJECT

CITY OF NEWBERG

SCOPE OF WORK

INTRODUCTION

The City of Newberg has adopted a Transportation System Plan that includes recommendations for public transportation, bicycle/pedestrian system, air service, and pipeline transportation improvements. The identified improvements have been prioritized and a implementation schedule developed.

The long term transportation improvements for the street system include capacity improvements and non-capacity improvements. Springbrook Road, Crestview Drive, Aspen Way and Mountainview Drive are among the sixteen projects identified under the capacity improvements category.

This scope of work is to provide consulting services only in the area limited by Mountainview Drive to the north, Crestview Drive to the south, Springbrook Road to the east and Aspen Way to the west.

TASK 1 - REVIEW DESIGN CONCEPTS/LAND USE ALTERNATIVES, TRAFFIC ENGINEERING ANALYSIS

On the performance of this task the consulting team will provide the following anticipated services:

- Attend project kick off meeting with the purpose of establishing a clear direction to begin the project.
- Conduct technical interviews with the Oregon Department of Transportation key staff, the Yamhill County representative, and railroad assigned staff to this project. The purpose of these interviews would be to gather sufficient new information that would help the consulting team in making recommendations to the City on the status of this project. It would also help to gain a better understanding in assessing the perceived needs of this project. (Five meetings total)

- Using all available information, the consulting team will prepare an arc view base map with the purpose of producing a blueprint of existing conditions in the project area. This map will facilitate the evaluation of additional information that would be needed as we proceed with this project.
- Prior traffic engineering studies performed in the City of Newberg will be evaluated. The consulting team will also review existing traffic data and make recommendations to the City on updating this information as needed.
- After evaluating existing traffic engineering information, the consulting team will proceed with a traffic analysis to determine the roadway cross section needed according to projected traffic figures. This will include the determination of the need for the installation of future traffic signals if warranted.

Deliverables

- Arc View base map.
- A memorandum with a summary of technical interviews, evaluation of existing project information and recommendations from the consulting team. This document will also include a list of additional information that would be needed to continue with this project.
- A technical memorandum with recommendations on the roadway cross section configuration and capacity analysis for the project intersections.

TASK 2 - DETERMINING PREFERRED ALIGNMENT

In this task the consulting team will make recommendations on the roadway design parameters including general roadway signage, dimensions of traffic lanes, sidewalks and bike lanes. Based on the roadway design parameters, the consulting team will prepare three alternatives (north, south and central) with schematic capital cost estimates.

The recommendations on the evaluation of alternatives will take into consideration consistency with local land use plans, railroad crossing requirements and utility relocation. The consulting team recommends that a Level 1 environmental investigation be conducted as part of this task, so that these issues can be accounted for in determining the preferred alternative.

It is anticipated that during the performance of this task the consulting team will meet with City staff to review the roadway design parameters and alternatives. (Three meetings total)

Deliverables

- A technical memorandum summarizing all the roadway design parameters with recommendations on the preferred alternative to the City. This will

include cost estimates, typical cross sections and three sheets (11"x17") showing each of the alternatives.

TASK 3 - FUNDING STRATEGIES

In the performance of this task, the following specific subtasks are anticipated to be included:

- Review current funding sources, including System Development Charges (SDCs), Local Improvement Districts (LIDs), ODOT off-system improvements, City of Newberg and Yamhill County Capital Improvement Plans.
- Formulate three basic strategies, including local and non-local match. Determine assumptions, methodology and overall list of funding sources.
- Prepare spreadsheet analysis of funding as they are applicable to this project. This task will also consider project phasing for funding sources and construction.

At the conclusion of this task the consulting team will meet with City staff to determine how subsequent presentations in task 4 will occur. (One meeting)

Deliverables

- A memorandum with findings and recommendations on funding sources and strategies will be presented to the City for review and discussion.

TASK 4 - REVIEW MEETINGS/COORDINATION

In this task, the consulting team and City staff will hold follow up meetings with property owner and representatives, roads committee and stakeholders initially interviewed in task 1. The purpose of these meetings would be to review the preferred alignment, and to determine any compatibility with other future projects in the area. It is expected that during this task the consulting team will start the process of working with the City's Public Involvement consultant. (Four meetings total)

TASK 5 - FINAL REPORT/IMPLEMENTATION PLAN

The consulting team will prepare a final report/implementation plan that the City of Newberg would use to evaluate the policy, fiscal implications and practicality of pursuing the development of the Northside Road Project. The team will be available to serve as technical support on a final presentation of this document to the City Council at the request of the City Manager.

Deliverables

- A final report/implementation plan with findings, recommendations, technical support data and fee estimates for the City to make a decision on proceeding with the development of the Northside Road Project.

Exhibit "B"

NORTHSIDE ROAD PROJECT

PROPOSED BUDGET

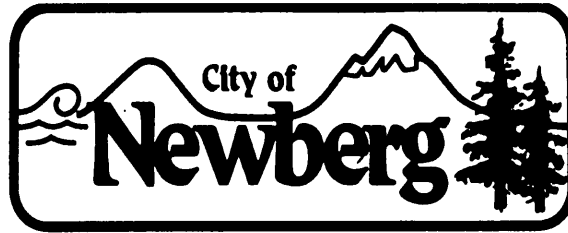
<u>Team Member</u>	<u>Hourly Rate</u>	<u>Hours</u>	<u>Amount</u>
Xavier Falconi	\$ 90.00	224	\$20,160.00
Todd Chase	\$110.00	90	9,900.00
Tom Walsh	\$ 97.00	98	9,506.00
Frank Charbonneau	\$ 95.00	32	3,040.00
John Boskett	\$ 65.00	60	3,900.00
Technical Support	\$ 54.50	158	8,611.00
Subtotal		662	<u>\$55,117.00</u>
 <u>Environmental Sub-Consultant</u>			
Perform Level 1 Assessment			\$ 3,500.00
 <u>Administrative Support</u>			
Report, memorandums, correspondence, billings			\$ 4,175.00
 <u>Direct Expenses</u>			
Copies, Faxes, Traffic Counts (4)			\$ 1,550.00
 Total Proposed Budget			 \$64,342.00

EXHIBIT "C"

Northside Road Project Schedule

Tasks/Subtasks	February '98				March '98				April '98				May '98				June '98			
	1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4
1. Review Design Concepts																				
A. Technical Interviews																				
B. Base Mapping Analysis																				
C. Traffic Engineering Analysis																				
D.. Technical Memo																				
2. Determining Alignment																				
A. Develop 3 Alternatives (Plans, X-sections, Estimates)																				
B. Review																				
C. Technical Memo																				
3. Funding Strategies																				
A. Research/Review Funding So																				
B. Develop Strategies (3)																				
C. Develop Spreadsheet																				
4. Meetings/Coordination																				
5. Develop Final Report and Implementation Plan																				
Technical Meetings																				

City Attorney
(503) 537-1206

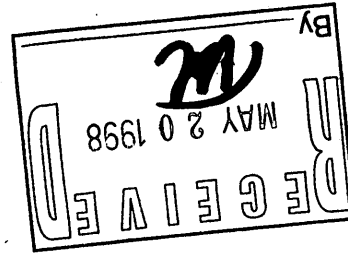


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Legal FAX (503)537-1277
E-mail: nlegal@ci.newberg.or.us

May 15, 1998

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300 Oswego Pointe Drive
Suite 200
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Phone: 503-699-3067
Fax: 503-636-7645



RE: Services to Northside Road Project

I am sending two hard copies of the contract for your signature. I received your messages yesterday. You indicated that you wanted to go ahead and get the contract signed. I have attached the exhibit "C" for the schedule that you sent me. Since your response letter was sent on April 8th, you may wish to review the schedule to make sure that there it does not need updating. If there is some updating, please check with Larry Anderson to make sure that he approves the schedule. If Larry approves a new schedule, we will just attach it as exhibit "C" when you mail back the signed copies and we will initial the schedule.

In your April 8th letter, you proposed two additional paragraphs. Those paragraphs were not proposed in your original contract. Rather than renegotiate at this point, I have excluded them from the final contract. It is my understanding of your message that you wish to proceed with signing the contract rather than negotiating further.

Very truly yours,

Terrence D. Mahr
City Attorney

TDM:dmw
Attachment: Professional Services Agreement
pc: Larry Anderson
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Building: 537-1240 ● Community Development: 537-1210 ● Finance: 537-1201 ● Fire: 537-1230
Library: 538-7323 ● Municipal Court: 537-1203 ● Police: 538-8321 ● Public Works: 537-1214 ● Utilities: 537-1205
Municipal Court Fax: 537-1277 ● Community Development Fax 537-1272 ● Library Fax: 538-9720

"Working Together For A Better Community-Serious About Service"