

CITY OF NEWBERG
AGREEMENT WITH SHAUN PIGOTT ASSOCIATES
TO PROVIDE CONSULTING SERVICES
TO THE CITY OF NEWBERG

THIS AGREEMENT is entered into this 10th day of September, 2001 by and between the City of Newberg, a municipal corporation of the State of Oregon, hereinafter called **City**, and Shaun Pigott Associates

(Consultant's name)

7080 SW Fir Loop

(Address)

Poulsbo, Oregon 97223

503 598 2534 / 968 9241

(Phone)

(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 _____ (insert words addressing the screening and selection 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 Jan. 2002, (insert date that work is completed in accordance with Schedule) 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 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

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:

\$24,655.00

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

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, the proposal of the **Consultant** (if one was submitted), the Request for Proposal (if one was used), and _____ (insert any other documents that should be referenced) 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.

collect that fee amount.

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

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

Agreement as a whole without written consent of the other.

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.

By: CONSULTANT
Shaun Pigott
Name: Shaun Pigott
Title: Principal
Date: September 10, 2001

By: CITY OF NEWBERG
Terrence D. Mahr
Name: Terrence D. Mahr
Title: Acting City Manager
Date: 09-11-01

Approved as to form:

Terrence D. Mahr
Terrence D. Mahr, City Attorney

EXHIBIT A - SCOPE OF WORK

Phase I - Development of Stormwater Utility Structure

This initial phase of the project is focused on development of the policy and legal framework on which Newberg's stormwater program will be founded. The intent is to charter a Citizens Advisory Committee and establish with the Committee the specific issues to be addressed in the formation process. As discussed in contacts with the City, this phase will also address the development of a public information plan for the community. The objective here is to determine the timing and content of materials to be communicated to the public regarding stormwater and the means available to fund such a program.

The Project Team has enjoyed a great deal of success in using an "issue paper" format to address policy topics. The issue paper is a decision tool in which the Project Team can present the issue to the Committee, identify policy options, and present a recommended course of action. This recommendation is then discussed, approved, or modified by the Committee. The key is to keep the decision-making process moving forward and not fall into a system of "revisiting" the same issue at numerous meetings. This issue paper approach will support the utility formation process by addressing policy issues as incremental decisions designed to form a consistent structure for Newberg's program. Likely issues to be addressed through this process include:

- NPDES Phase II Permitting Requirements
- Stormwater Utility Mission and Goals
- Capital, Maintenance and Regulatory Priorities
- Definition of Property Classifications
- System Development Charges for Capital Financing
- On-site Mitigation Rate Reduction Factors
- Low Income Abatements
- Direct Discharge Properties
- Levels of Service

Prior to undertaking decisions about the utility approach toward stormwater funding, it is essential that City staff, elected officials and the Advisory Committee have an opportunity to understand the stormwater issues/problems confronting the City. Recurring flooding problems are a very visible and important element of Newberg's overall stormwater concerns. However, just as significant are the water quality issues and regulations affecting development of a stormwater management program. An effective public input and decision process must be founded on a citizenry that is afforded the opportunity to understand the entire stormwater management "picture" and the opportunities such a program can provide for the future of Newberg. Therefore, the project team recommends the following work tasks to accomplish this end:

1. Conduct a two-hour workshop with the Advisory Committee regarding stormwater management and specifically the quantity and quality problems being faced by Newberg, how other cities have addressed these problems, the regulatory framework for stormwater, and the issues of concern to the Committee in undertaking a utility approach in Newberg.
2. Support the development of the Advisory Committee and participate in up to 5 meetings with the group. At the same time, develop approaches toward public information and awareness of stormwater in Newberg.
 - a. Draft a preliminary public involvement program for Newberg's Stormwater Utility that includes:

- techniques for informing the public about water quality and quantity issues, and how these issues impact the City;
 - a comparison of Newberg's situation with other cities such as Milwaukie, Tualatin, Corvallis and Tigard, as well as other mid-size cities in the West;
 - draft program goals and the roles/responsibilities of the City and project team in communicating the program to the citizens; and
 - a key event schedule to coordinate the public involvement with the development of the technical issues of the stormwater utility program.
- b. Support the activities of and lead the meetings with the Advisory Committee.
- c. Document a public information program, which focuses on supporting the successful implementation of a stormwater utility service charge.
3. Prepare a Preliminary Financial Analysis: Service Levels and Ranges of Cost
- a. Develop with the Committee and City staff recommendations on service levels and the best structure for the stormwater utility with estimated costs within categories including:
- Administration/Management
 - Planning/Engineering
 - Maintenance
 - Regulatory
 - Capital Programs
 - Water Quality
- This element of the work plan is essential toward understanding the magnitude of the City's stormwater problems - how these problems can be prioritized and finally, how efforts to deal with these problems can be financed through the utility.
4. Make Recommendations for a City Stormwater Utility Ordinance
- a. Oregon's statutes and Newberg's ordinances will be reviewed to determine their applicability within the context of the funding, water quantity and water quality objectives set for the program. Where and if indicated, the Project Team will recommend revisions to these ordinances to accommodate the objectives of the stormwater program.
- b. Prepare a technical memorandum to the City describing the results of this analysis and an proposed code revisions.
- c. Prepare either draft ordinances or proposed revisions to existing ordinances, along with references to appropriate statutory language.

Products

A workshop with the Advisory Committee on stormwater management, Newberg's current status in stormwater and work planning for the Committee. This will culminate in the Committee's work plan for the first phase of this project.

A charter which establishes and guides the Citizen's Advisory Committee and up to five meetings with this Committee for purposes of review and decision-making regarding the issues making up the framework for the utility. Issue papers supporting the Advisory Committee work plan will also be prepared as part of this ordinance development phase.

A public awareness plan depicting the steps to be undertaken in "raising the citizenry's consciousness" regarding stormwater and flood control in Newberg.

A methodology/plan for contacting and informing the large rate paying entities regarding the program and the utility approach.

A draft of proposed ordinance(s) supporting the utility approach toward stormwater management.

Phase II - Financial Analysis and Fee/Rate Structure

Prepare an Analysis of Several Possible Fee Structures and Propose Operating Policy Statements for the Stormwater Utility.

1. Once the legal framework for the program is established (Phase 1), an evaluation of fee structures can be developed. The first step in this process is a "Funding Options Workshop" which the Project Team will conduct. This workshop with the Advisory Committee is intended to provide background on the range of funding options available to the program, establish a "rate philosophy", determine what (if any) exemptions and credits to the service charge structure are appropriate, gain an understanding of how a funding mix can be developed, and finally, evaluate alternative fee structures in terms of revenue needs and rate elasticity.
2. Based on the results of this workshop, the Project Team will be in a position to conduct a detailed analysis of those fee structure elements most consistent with Newberg's program goals. The analysis will include those criteria identified during the workshop, which are expected to include:
 - legal defensibility
 - revenue capacity
 - equity
 - implementation/maintenance costs
 - implementation time frames, and
 - public acceptance
3. In terms of the primary revenue source, a stormwater service charge can be structured in a number of ways. The Project Team will review the options available under three general headings:
 - Impervious Area Stormwater rates are set in direct proportion to the measured - estimated or assumed extent of impervious area for each property.
 - Density of Use Rates are determined through a runoff coefficient which is applied to specific types of land use or percent of impervious coverage for each parcel.
 - Flat Fee This structure employs a uniform or flat fee for each type of property typically based on land use classification.

Newberg's final service charge approach will likely reflect a combination of the above elements. How these elements are arranged will be a function of the criteria discussed above. The Project Team will present a specific recommended approach toward the rate that fully evaluates and costs the approach opposite these evaluation criteria.

4. The City's budget elements for stormwater will be critical for not only rate structure guidance, but all elements of the stormwater program. The Project Team suggests the following for consideration in developing the stormwater budget:
 - Design Criteria
 - Regulatory Structure
 - Permit Review

- Maintenance Priorities
 - Capital Program - Priorities and Funding
 - Enforcement
 - Basin Planning - Delineation, Priority, Structure
 - Fee Structure Management
 - Stormwater System Inventory
 - Emergency Response
 - Nonpoint Source Management and NPDES Phase II Compliance
5. Make recommendations for fee rates for various classifications of users. Charging for stormwater services reflects a rationale that those who contribute runoff to the stormwater system should logically contribute to paying for services that mitigate the effects of this stormwater runoff. Newberg's rate design should also reflect this logic.
 6. The actual rate developed by the Project Team will reflect the directions established during the previous Task. If Newberg wishes to relate its funding approach to contribution of runoff, then a form of an impervious surface based rate is indicated. The Project Team will prepare options under this heading that consider:
 - measured impervious area
 - estimated impervious lot coverage
 - runoff coefficients
 - density of development factors
 - basin specific rates
 - appropriate/defensible categories for flat rates
 7. Once the final rate design is established, the Project Team will apply the customer demographics prepared by the City to determine the revenue potential for the utility at alternative base rates. The Team has developed an accurate system of estimating a jurisdiction's stormwater utility revenue potential by combining existing water/sewer account data with land use statistics and population density data. Using regression analysis and a database compiled through our previous experience, we have found these variables to correlate very well with revenue. This information, in addition to the data already compiled by the City, will result in an accurate revenue estimate by customer classification.

Products

A Final Report to the City and Committee detailing the recommended approach, including the final rate design, billing algorithm (how an individual service charge is calculated within the billing system structure), utility billing system database implications, the logic supporting the approach, and its application to the land use classifications identified by the City. The end result will be a rate structure that is cost of service based, consistent and legally defensible.

As an appendix to this final product, "Issue Papers" will be prepared for all key policy decisions affecting development of Newberg's rate/fee structure.

CONSULTANT'S FEE

The hourly rate for Shaun Pigott and John Ghilarducci will be \$115 . The will be no mark-up of travel related or direct production expenses.

Phase I

The cost estimate through the Utility Development Phase of the project is as follows:

Labor	\$ 9,775	(85 total hours; SPA @ 65 hrs; FCSG @ 20 hrs)
Out-of-Pocket Costs	<u>\$ 950</u>	
Total Phase I	\$ 10,725	

Phase II

The cost estimate through the Rate Structure Design Phase of the project is as follows:

Labor	\$ 12,880	(112 total hours; SPA @ 87 hrs; FCSG @ 25 hrs)
Out-of-Pocket Costs	<u>\$ 1,050</u>	
Total Phase II	\$ 13,930	

Total Project Cost	\$24,655
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