

CITY OF NEWBERG
PROFESSIONAL SERVICES AGREEMENT AMENDMENT NO. 3
November 5, 2002

Project: Transportation Utility Fee Formation
Consultant: Financial Consulting Solutions Group, Inc.

Summary of Proposed Changes:

1. Work Involved:

1.1 Extra work done before "stop work" order \$9,500.00

Technical review meeting with City
Two Transportation Work Group (TWG) Meetings
Three Public Meetings
Meeting with George Fox University
One Council Meeting
Revisions to financial model as a result of TWG meetings

2. Cost Summary:

Original contract amount	\$24,960.00
Net change by previous amendments:	<u>\$10,000.00</u>
Previous total:	\$34,960.00
This amendment:	<u>\$9,500.00</u>
Amended contract amount	\$44,460.00

3. Contract Time:

No Change.

All other provisions of the professional services agreement remain in force.

Financial Consulting Solutions Group, Inc.

City of Newberg

David W. Findlay 11/11/02
David Findlay Date
President

James H. Bennett 11/21/02
James H. Bennett Date
City Manager



MAR 25 2002

March 21, 2002

Mr. Dan Danicic
City of Newberg
414 East First Street
Newberg, OR 97132

ATTACHMENT

A

Dear Mr. Danicic:

Financial Consulting Solutions Group, Inc. (FCS Group) is pleased to provide this letter proposal to perform additional street utility formation services for the City of Newberg. We understand that the City would like us to prepare materials for and participate in meetings of the Transportation Task Force in support of the utility formation process.

The proposed scope of services includes the following major tasks:

1. **Transportation Task Force (TTF) Meetings.** Participate in a policy development program and share financial findings with the TTF. Develop a preliminary policy framework for the street utility and fee, and discuss the financial impacts with the task force. This work will be completed in up to four (4) meetings of the TTF. The consultant will prepare issue papers and present draft financial results in support of this process (see Task 2).
2. **Development of Policy Framework.** An "issue paper" format will be used to develop options and a recommended course of action for the formation and funding of selected street activities. Recommendations will be discussed, approved or modified by the TTF. This "issue paper" approach will help to turn policy issues into incremental decisions, which will form a consistent foundation for the City's new utility.

The consultant will research and prepare up to six (6) issue papers on identified policy issues to elicit discussion and recommendations on those issues. The following are examples of policy issues that may be addressed:

- Rate design and equity;
- Rate credits and exemptions;
- Method of billing.

We estimate that a budget of \$10,000 will be required to complete the scope as proposed.

Thank you for the opportunity to continue to serve the City of Newberg. Please call me if you have any questions about this proposal.

Yours very truly,

John Ghilarducci
Senior Project Manager

CITY OF NEWBERG
PROFESSIONAL SERVICES AGREEMENT AMENDMENT NO. 1
REVISE SCOPE OF WORK
September 20, 2001

Project: Transportation Utility Formation Scope of Work and Task Plan
Consultant: Financial Consulting Solutions Group, Inc. (FCSG)
Account #: 2-5112.580.000

THE CONTRACT SCOPE OF WORK IS HEREBY AMENDED AS FOLLOWS:

1. Section A - Financial Analysis - Item 5, revised as follows:
5. ~~Develop Review the City's existing system development charges (SDC's) using to ensure defensible cost bases for the reimbursement and improvement fee components. Determine a cost recovery structure that equitably charges new customers.~~
2. Section A - Financial Analysis - Item 7, revised as follows:
7. ~~Define Review~~ the credit approach toward SDC improvement fees for the City.
3. Section C - Public Participation - Item 1, added to read:
1. *Attend one (1) public meeting to gain first-hand knowledge of the issues and objectives important to Newberg citizens.*
4. Section C - Public Participation - Item 2 (was item 1), revised as follows:
2. ~~Conduct a "Funding Options Workshop". Meet with the Transportation Task Force. This workshop meeting will provide background information and discussion on the following issues:~~

The budget was reduced in labor and increased in expenses, however no change in overall cost.

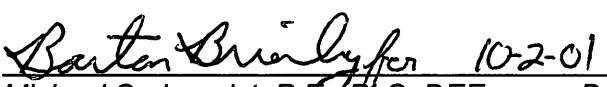
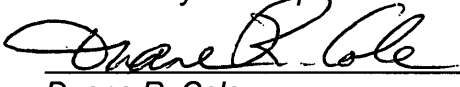
2. Cost Summary	Original Contract Amount		\$	24,960.00
	Net Change by Previous Amendments	#	\$	0.00
	Previous Total		\$	24,960.00
	This Amendment		\$	0.00
	New Contract Amount to Date		\$	24,960.00

3. **Time Extension:** None.
4. **Completion Date:** No change.

All other provisions of the professional service agreement remain in full force.

5. ACCEPTANCE SIGNATURES:

CITY OF NEWBERG

 David W. Findlay President, FCS Group, Inc.	 Michael Soderquist, P.E., PLS, DEE Community Development Director	 Duane R. Cole City Manager
Date	Date	Date
		10/3/2001

**CITY OF NEWBERG
AGREEMENT WITH
FINANCIAL CONSULTING SOLUTIONS GROUP, INC. (FCSG)
TO PROVIDE CONSULTING SERVICES
TO THE CITY OF NEWBERG**

THIS AGREEMENT is entered into this 11th day of Sept, 2001 by and between the City of Newberg, a municipal corporation of the State of Oregon, hereinafter called **City**, and

Financial Consulting Solutions Group, Inc. (FCSG)
8201 - 164th Avenue NE, Suite 300
Redmond, Washington 98052
1-425-867-1802 Fax: 1-425-867-1937
www.fcsgroup.com

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 Qualifications 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 December 31, 2001 whichever date occurs first. This fact notwithstanding, the services of **Consultant** shall be authorized and paid 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:

\$ 24,960

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, 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 negligent activities of the Consultant, or its officers, employees, subcontractors, or agents under this Agreement, provided that if the Consultant and City are concurrently

negligent, Consultant shall be required to indemnify and defend only in proportion to negligence of Consultant. These indemnity provisions shall not require Consultant to defend or indemnify the City against any action based solely on the alleged negligence of the City.

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 joint property of City and Consultant 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.

CONSULTANT
By: *David W. Findlay*
FCS Group, Inc.
Name: DAVID W. FINDLAY
Title: President
Date: 8-10-01

CITY OF NEWBERG
By: *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

CITY OF NEWBERG TRANSPORTATION UTILITY FORMATION **SCOPE OF WORK AND TASK PLAN**

A. Financial Analysis

1. Meet with City staff. This kick-off meeting will serve to establish communication protocols, product responsibility, and data needs. The consultant will collect the initial data set.
2. Conduct an analysis of funding and fee structure options consistent with the City of Newberg's near-term and long-range program and revenue goals. The analysis will include those criteria identified during the workshop as appropriate for the City, which may include:
 - Defensibility;
 - City's revenue capacity;
 - City's bonding capacity;
 - Fairness and equity;
 - Implementation/maintenance costs;
 - Feasibility and scheduling; and
 - Public acceptance.

The City's transportation utility rate design will likely reflect the rationale that those who use the transportation system should logically pay for its operation and maintenance. This goal is often achieved by using one or more of the following general approaches:

- Trips: Base the fee for all customers on actual or estimated trips generated – either average daily or peak-hour trips.
 - Parking Spaces: Base the fee for nonresidential customers on the number of parking spaces, as a measure of potential trips generated.
 - Number of Employees: Base the fee for nonresidential customers on the number of employees, as a measure of trips generated.
3. Develop or adapt an existing revenue requirement model, to include baseline and projected O & M costs, debt service and fund balance projections, capital outlays, and cash reserve planning elements. The model will be designed to mirror the City's existing budget, accounting, and fund balance policies. Design model to perform a 5-year revenue requirement analysis to provide a total revenue requirement and a separate annual cash flow and/or debt service coverage test for revenue sufficiency.
 4. Develop a recommended fee structure. The City's final service charge approach will reflect a combination of the above elements and policy established at the funding options workshop.

5. Develop system development charges (SDCs) using defensible cost bases for the reimbursement and improvement fee components. Determine a cost recovery structure that equitably charges new customers.
6. Define types of credits for transportation improvements within the service charge structure outlined above. Prepare and present a credit policy issue paper to the Transportation Task Force. A key element in this policy will be to determine whether the credit system should be available for those who simply comply with on-site requirements, or only to those who invest beyond existing development requirements.
7. Define the credit approach toward SDC improvement fees for the City.
8. Determine as appropriate to the revenue program and the selected rate structure, if additional data by the City will be necessary to support the more equitable forms of a transportation utility service charge, especially for commercial properties. City staff may need to develop specific information for its customers that will correlate with the City's existing or future utility billing system.

B. Legal Analysis

1. Participate in one (1) meeting with the City Attorney to get information and direction on legal questions, such as the validity and defensibility of a transportation utility fee, and the fee structure(s) being considered.

C. Public Participation

1. Conduct a "Funding Options Workshop"

This workshop will provide background information on the following issues:

- The range of realistic funding options available to the City's transportation program;
 - The utility service charge concept;
 - Options for the City's transportation service "rate philosophy";
 - What (if any) types of exemptions and credits are appropriate to study;
 - What is a probable funding mix for the City transportation program;
 - Types of alternative fee structures in terms of application, equity and implementation issues.
2. Participate in one (1) Council workshop / meeting to review and present findings and get direction, as needed, from Council.

E. Documentation

1. Evaluate and possibly recommend the use of two ordinances for legally establishing the transportation utility. The initial ordinance will form the utility. A second ordinance (or resolution) will establish the rates for the utility. The ordinance(s) will also include any secondary funding sources such as system development charges.

2. Prepare and assist the City in adopting by ordinance the specific rate structure selected by the City. The ordinance shall include provisions for administrative appeals to the fee, the methods for calculating a system development charge charge, and other secondary sources deemed appropriate by the City.

FINANCIAL CONSULTING SOLUTIONS GROUP, INC.

2001 FEE SCHEDULE

LABOR

Name	Title	Billing Rate
David Findlay	Principal	\$150
John Ghilarducci	Project Manager	\$135
	Consultant	\$ 95
T. Bollinger/D. Harmon	Clerical / Support	\$ 50

EXPENSES

Travel expenses will not be charged. Other direct expenses will be billed at the invoiced or billed cost to FCS Group, plus five-percent markup, except that the following items will be billed at the following cost bases without additional mark-up:

Expense Item	Cost Basis
Computer	\$10.00 per hour
Reproduction	\$0.10 per copy
Binding	3.00 per book
Communications	Actual cost
FAX Communications	\$3.00 per transmittal, any length
Cellular Phone Calls	\$1.00 per call
Computer Projection Equipment	\$100 per meeting

**City of Newberg, Oregon
Transportation Utility Formation
Project Budget**

Date: 10-Aug-01

	Billing Rate -->	Project Principal <i>Findlay</i> \$150	Project Manager <i>Ghilarducci</i> \$135	Staff Consultant \$95	Clerical \$50	FCSG Hours	Estimated FCSG Budget
DIRECT LABOR							
A. Financial Analysis							
1 Kickoff Meeting		1	6	4	0	11	\$1,340
2 Analyze Fee Structures		1	8	2	0	11	\$1,420
3 Revenue Requirements		2	4	32	0	38	\$3,880
4 Develop Fee Structure		0	4	16	0	20	\$2,060
5 Develop SDC		1	4	30	0	35	\$3,540
6 Define Rate Credits		1	6	4	0	11	\$1,340
7 Define SDC Credits		1	2	8	0	11	\$1,180
8 Determine Additional Needs		0	4	0	0	4	\$540
subtotal		7	38	96	0	141	\$15,300
B. Legal Analysis							
1 One Legal Meeting		1	6	4	0	11	\$1,340
subtotal		1	6	4	0	11	\$1,340
C. Public Participation							
1 Funding Options Workshop		4	12	16	2	34	\$3,840
2 One Council Meeting		2	6	2	2	12	\$1,400
subtotal		6	18	18	4	46	\$5,240
E. Documentation							
1 Evaluate Ordinances		0	2	0	0	2	\$270
2 Draft Ordinances		1	12	4	1	18	\$2,200
subtotal		1	14	4	1	20	\$2,470
TOTAL LABOR BUDGET		15	76	122	5	218	24,350

TOTAL PROJECT BUDGET	
Labor	\$24,350
Expenses	610
Total Estimated Budget	\$24,960