

CITY OF NEWBERG
AGREEMENT WITH FALCONI CONSULTING SERVICES
TO PROVIDE ENGINEERING ASSESSMENT SERVICES
FOR SAFETY AT STREET INTERSECTIONS
TO THE CITY OF NEWBERG

THIS AGREEMENT is entered into this 28th day of August, 2003 by and between the City of Newberg, a municipal corporation of the State of Oregon, hereinafter called **City**, and

Falconi Consulting Services
P. O. Box 1826
Lake Oswego, OR 97035
Phone: (503) 892-6608
Fax: (503) 892-6626
Email: xfalconi@falconiconsulting.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 an SOQ/RFP method. Two out of three firms responded, and the less expensive firm is selected to provide services related to "Safety at Street Intersections".

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, which requires review and approval from the Oregon Department of Transportation, or on November 28, 2003, whichever date occurs first. This fact notwithstanding, the services of **Consultant** shall be authorized and paid for on a monthly 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 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:

\$12,975.00

The **Consultant** shall not exceed the fee for any task included in the fee proposal amount. If the **Consultant** foresees 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 the attached **EXHIBIT "A"** - 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 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 duly 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 of, or relating to the activities of the **Consultant**, or its officers, employees, subcontractors, or agents under this Agreement.

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 Commercial 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.

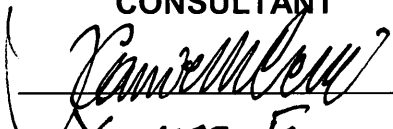
15. **Ownership of Work Product:** All original documents prepared by **Consultant** in performance of this Agreement, including but not limited to original maps, plans, drawing and specifications are the property of **City** unless otherwise agreed in writing. Quality reproducible records copies of final work product, including digital files of text and drawings shall be provided to **City** at the conclusion or termination of this Contract. **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 the City's use of any instruments of professional service for purposes outside the scope of this Contract.

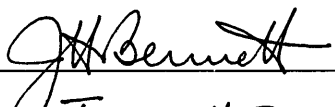
16. **Entire Agreement:** This Agreement constitutes the entire Agreement between the parties and supersedes all prior agreements, written and oral, courses of dealing, or other understanding between the parties. No modification of this Agreement shall be binding unless in writing and signed by both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

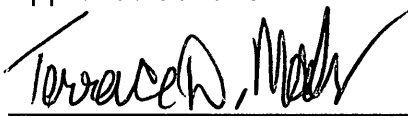
17. **Notification:** All correspondence and notices related to this Agreement shall be directed to the project manager for the party to whom the correspondence or notice is intended. If directed to the **City**: City of Newberg, Attn: Paul Chiu, P.E., Project Manager, P.O. Box 970, Newberg, Oregon 97132. If directed to the **Consultant**: Attn: Xavier Falconi, P.E., Project Manager, at the address listed above. Each party shall be responsible for notifying the other of any changes in project manager designation.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first above mentioned.

CONSULTANT
By: 
Name: XAVIER FALCONI
Title: PRESIDENT
Date: 08/22/03
Division Approval: 

Recommended for Approval By:
 8.27.03
Michael Soderquist, P.E., P.L.S., DEE
Community Development Director

CITY OF NEWBERG
By: 
Name: James H. Bennett
Title: City Manager
Date: 8/28/03

Approved as to form:

Terrence D. Mahr
City Attorney



June 13, 2003

Paul Chiu, PE
City of Newberg
PO Box 970
Newberg, OR 97132

Subject: Proposal for Transportation Engineering Services
Safety at Street Intersections
City of Newberg

Dear Paul,

Per our conversation and the information collected from discussions with ODOT staff, we have prepared this proposal to provide transportation engineering services for the proposed safety evaluation along four intersections on Highway 99-W, in accordance with ODOT guidelines. The preparation of a Safety and Operations Report is required for all four intersections along state highways. This proposal is presented in three sections that include Scope of Services, Schedule and Fee.

SCOPE OF SERVICES

Falconi Consulting Services (FCS) will carry out the following services in conjunction with this project:

Task 1 – Data Collection and Assembly

- a) Coordinate the collection of existing traffic data, including AM and PM peak hours, from ODOT at the following intersections: 1) Highway 99-W at Villa Road; 2) Highway 99-W at Springbrook Road; 3) Highway 99-W at Main Street; and 4) Highway 99-W at College Street. Perform a field review to identify existing roadways, traffic control and intersection adjacent land use characteristics. The cost for traffic counts, if needed, is not included in the FCS fee for this project.
- b) Collect at a minimum a three-year accident history at each of the four intersections from ODOT and the City of Newberg.

Note: The Consultant may reasonably rely on the accuracy and completeness of the documents furnished by the Client or others, provided that the Consultant will advise the Client of any inconsistencies, errors, or omissions that the Consultant becomes aware of that may adversely affect the Consultant's performance.

EXHIBIT "A"

Task 2 – Analysis of Existing Conditions

- a) Perform field observation during the AM and PM peak hours. The results of this field observation will be used in making recommendations on potential mitigation measures. Existing levels of service will be evaluated at the intersections identified in Task 1 of this scope of work.
- b) Access management issues will also be evaluated to determine any possible conflicts with the operation of the signals at the intersections analyzed as part of this project.
- c) Evaluate existing bicycle and pedestrian facilities in the project vicinity.
- d) Collect and review traffic citation data, complaints, enforcement observations, highway signage, roadway configuration, traffic signal spacing and timing.

Task 3 – Analysis of Crash History

- a) Based on information provided by ODOT and the City of Newberg, an engineering study of the crash experience at each of the four intersections will be conducted.
- b) The study will identify the relative crash problem of each of the project intersections based on nearby intersections of similar volume, geometry, and traffic control.
- c) For purposes of this study, target crashes are right angle crashes where the driver of one of the vehicles disregarded the traffic control device.
- d) As per ODOT Guidelines, target crashes coded to driver attention may also be included in the study.

Task 4 – Analysis of Crash Potential

- a) Collect documentation supporting the potential for target crashes. Include this documentation in the report.
- b) Traffic citation data, complaints, enforcement observations, speed data, traffic volumes and grades, traffic signal spacing, and other relevant data may support crash potential.
- c) Review potential mitigation measures that may have been in place or roadway improvements that are anticipated to be constructed at each of the four intersections. Appropriate documentation on the review of this information will be submitted as part of this report.

Task 5 – Documentation/Report

A Safety and Operations Report will be prepared based on the information collected and according to ODOT requirements for each of the four intersections identified in Task 1 of this Scope of Work. The Report will describe the foregoing analysis, as well as key findings, conclusions and recommendations. FCS will coordinate with the City to address compliance of public information requirements. Only one copy of this document for each of the four intersections will be submitted as part of this scope of work.

Note: Any reuse of any documents prepared by FCS by the Client or others on extensions of the project, or on any other project, or any modification of such documents, without written verification or adaptation by FCS for the specific purpose intended shall be at the Client's sole risk and without liability or legal exposure to the Consultant.

EXHIBIT "A"

Task 6 – Meetings

FCS will not attend any meetings as part of this scope of work. However, FCS can attend additional meetings not identified above on a time and materials basis.

PROJECT SCHEDULE

FCS is prepared to begin work on this project immediately. The analysis and draft report can be completed in approximately three weeks, after receipt of Notice to Proceed. However, this work is contingent on receiving the traffic accident data and other relevant information from ODOT, the City of Newberg, and other sources within the first week of the project schedule.

PROJECT FEE

FCS will provide the transportation engineering services outlined in Tasks 1-5 for the lump sum fee of **\$12,975.00**. Please let me know if you have any questions on this scope of services. Thank you for the opportunity to submit this proposal.

Sincerely,

A handwritten signature in black ink, appearing to read "Xavier R. Falconi". The signature is fluid and cursive, with a large initial "X" and "F".

Xavier R. Falconi, PE

CITY OF NEWBERG
PROFESSIONAL SERVICES AGREEMENT AMENDMENT NO. 1
October 23, 2003

Project: Engineering Assessment Services for Safety at Street Intersections

Consultant: Falconi Consulting Services

Summary of Proposed Changes:

1. Work Involved:

See attached Exhibit A.

2. Cost Summary:

Original contract amount:	\$12,975.00
Net change by previous amendments:	\$ 0.00
Previous total:	\$12,975.00
This amendment:	\$ 9,475.00
Amended contract amount:	\$22,450.00

3. Contract Time:

Contract completion is extended an additional two weeks to December 12, 2003.

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

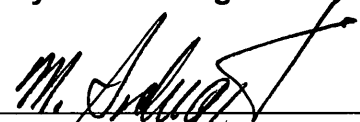
ACCEPTANCE SIGNATURES:

Falconi Consulting Services


Xavier Falconi
President

10/27/03
Date

City of Newberg


Mike Soderquist, PE, PLS, DEE
Community Development Director

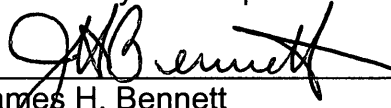

James H. Bennett
City Manager

EXHIBIT A



October 6, 2003

Dan Danicic, PE
City of Newberg
PO Box 970
Newberg, OR 97132

Subject: Scope for Additional Transportation Engineering Services
Safety and Operations Report
City of Newberg

Dear Dan,

Per our conversation and the information collected from discussions with ODOT staff, we have prepared this additional scope of work to provide transportation engineering services for the development of the Safety and Operations Report along the intersections of Main and College Streets at Hancock Street, in accordance with ODOT guidelines. This additional scope of work is presented in three sections that include Scope of Services, Schedule and Fee.

SCOPE OF SERVICES

Falconi Consulting Services (FCS) will carry out the following services in conjunction with this project:

Task 1 – Data Collection and Assembly

- a) Coordinate the collection of existing traffic data, including AM and PM peak hours, from ODOT at the following intersections: 1) Main Street at Hancock Street; and 2) College Street at Hancock Street. Perform a field review to identify existing roadways, traffic control and intersection adjacent land use characteristics. No traffic counts will be conducted as part of this task.
- b) Collect a three-year accident history at each of the two intersections from ODOT and the City of Newberg.

Note: The Consultant may reasonably rely on the accuracy and completeness of the documents furnished by the Client or others, provided that the Consultant will advise the Client of any inconsistencies, errors, or omissions that the Consultant becomes aware of that may adversely affect the Consultant's performance.

Task 2 – Analysis of Existing Conditions

- a) Perform field observation during the AM and PM peak hours. The results of this field observation will be used in making recommendations on potential mitigation measures. Existing levels of service will be evaluated at the intersections identified in Task 1 of this scope of work.
- b) Access management issues will also be evaluated to determine any possible conflicts with the operation of the signals at the intersections analyzed as part of this project.
- c) Evaluate existing bicycle and pedestrian facilities in the project vicinity.
- d) Collect and review traffic citation data, complaints, enforcement observations, highway signage, roadway configuration, traffic signal spacing and timing.
- e) Conduct video surveillance at each of the six intersections for this study. The intersections scheduled for video surveillance are Highway 99-W at Springbrook Road, Highway 99-W at Villa Road, Highway 99-W at Main Street, Highway 99-W at College Street, Main Street at Hancock Street and College Street at Hancock Street. A report on the result of the video surveillance will also be submitted as part of this study.

Task 3 – Analysis of Crash History

- a) Based on information provided by ODOT and the City of Newberg, an engineering study of the crash experience at each of the two intersections will be conducted.
- b) The study will identify the relative crash problem of each of the project intersections based on nearby intersections of similar volume, geometry, and traffic control.

Task 4 – Analysis of Crash Potential

- a) Collect documentation supporting the potential for target crashes. Include this documentation in the report.
- b) Traffic citation data, complaints, enforcement observations, speed data, traffic volumes and grades, traffic signal spacing, and other relevant data may support crash potential.
- c) Review potential mitigation measures that may have been in place or roadway improvements that are anticipated to be constructed at each of the two intersections. Appropriate documentation on the review of this information will be submitted as part of this report.

Task 5 – Documentation/Report

This additional work will become part of the Safety and Operations Report that will be prepared based on the information collected and according to ODOT requirements. The Report will describe the foregoing analysis, as well as key findings, conclusions and recommendations for a total of six intersections. FCS will coordinate with the City to address compliance of public information

requirements. Only one copy of the final Report will be submitted as the completion of this project.

Note: Any reuse of any documents prepared by FCS by the Client or others on extensions of the project, or on any other project, or any modification of such documents, without written verification or adaptation by FCS for the specific purpose intended shall be at the Client's sole risk and without liability or legal exposure to the Consultant.

Task 6 – Meetings

FCS will not attend any meetings as part of this scope of work. However, FCS can attend additional meetings not identified above on a time and materials basis.

PROJECT SCHEDULE

FCS is prepared to begin work on this project immediately. The analysis and draft report can be completed in approximately three weeks, after receipt of Notice to Proceed. However, this work is contingent on receiving the traffic accident data and other relevant information from ODOT, the City of Newberg, and other sources within the first week of the project schedule. Due to the additional work the delivery of the final Report will now be on December 12, 2003 instead of the original date of November 28, 2003.

PROJECT FEE

FCS will provide the additional transportation engineering services outlined in Tasks 1-5 for the lump sum fee of **\$9,475.00**. The split of cost among the tasks is as follows:

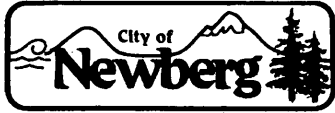
Task 1:	\$1,400.00
Task 2:	\$3,275.00
	\$1,800.00 (Video Surveillance)
Task 3:	\$ 800.00
Task 4:	\$ 800.00
Task 5:	<u>\$1,400.00</u>
Total	\$9,475.00

Please let me know if you have any questions on this scope of services. Thank you for the opportunity to work with the City on this project.

Sincerely,

Xavier R. Falconi, PE

CONTRACT MODIFICATION (CHANGE ORDER)



CITY OF NEWBERG
Community Development Dept.
Engineering Division
414 E. First Street; P.O. Box 970
Newberg, Oregon 97132

Project Name: **Red Light Running
Safety at Street Intersections**
Project No. 02-5110-580
P.O. No. _____

Sheet: 1 of 1
Date: 5-Oct-04
Change Order No.: Two
Consultant: **Falconi Consulting Services**

CITY OF NEWBERG
CITY RECORDER INDEX NO. 2033

CHANGE ORDER SUMMARY

PREVIOUS CHANGE ORDERS
APPROVED BY OWNER

TOTAL

Additions \$	Deductions \$
\$9,475.00	
\$9,475.00	

THIS CHANGE ORDER

NUMBER	APPROVED (date)		
2	8/27/04	\$7,020.00	

Net Change by Change Orders \$16,495.00

ALL OTHER CONTRACT PROVISIONS REMAIN IN FULL FORCE

Contract Amount		Contract Time (Calendar Days)	
Original	\$12,975.00	Original Duration	_____ Days
Prev. Change Orders (Add/Deduct)	\$9,475.00	Previous Change Orders (Add)	_____ Days
This Change Order (Add/Deduct)	\$7,020.00	This Change Order (Add)	_____ Days
Revised Contract Amount	\$29,470.00	Revised Contract Time	45 Days
		Revised Completion Date is:	

The following modifications to the Contract are
hereby ordered:(use additional pages if necessary)

Task 1: Data Collection and Assembly

Task 2: Design, Operations & Maintenance, Public Information Campaign, and Budget

Task 3: Documentation/Report

Task 4: Meetings

Method of
Payment: Lump sum

Purpose of
Change Order: Update the City's Safety and Operation's Report for Red Light Running
Application Submittal to ODOT.

CONSULTANT: Falconi Consulting Services

BY: [Signature] Date: 10/05/04
Authorized Representative

CITY OF NEWBERG
Reviewed by: [Signature] Date: 10/6/04
Project Manager

[Signature] Date: 10/3/04
Daniel Danicic, PE, Public Works Director
Authorized by: [Signature] Date: 10/12/04
James H. Bennett, City Manager