

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT FOR PROFESSIONAL SERVICES ("Agreement") is entered into between the City of Bainbridge Island, a Washington State municipal corporation ("City"), and Financial Consulting Solutions Group, INC., d/b/a FCS Group, a Washington State corporation ("Consultant").

WHEREAS, the City needs professional services in connection with a Water and Sewer Utility Rate Study; and

WHEREAS, the Consultant has the expertise and experience to provide said services and is willing to do so in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, conditions, promises, and agreements set forth herein, it is agreed by and between the City and the Consultant as follows:

1. SERVICES BY CONSULTANT

The Consultant shall provide the professional services as defined in this Agreement and as necessary to accomplish the scope of services attached hereto as Attachment A and incorporated herein by this reference as if set forth in full. The Consultant shall furnish all services, labor, and related equipment to conduct and complete the work, except as specifically noted otherwise in this Agreement.

2. TERM AND TERMINATION OF AGREEMENT

A. This Agreement shall become effective upon execution by both parties and shall continue in full force and effect until December 31, 2018, unless sooner terminated by either party as provided below.

B. This Agreement may be terminated by either party without cause upon thirty (30) days' written notice to the other party. In the event of termination, all finished or unfinished documents, reports, or other material or work of the Consultant pursuant to this Agreement shall be submitted to the City, and the Consultant shall be entitled to just and equitable compensation at the rate set forth in Section 3 for any satisfactory work completed prior to the date of termination.

3. PAYMENT

A. The City shall pay the Consultant for such services: (check one)

☒ Hourly, plus actual expenses, in accordance with Attachment A, but not more than a total of Eighty-Two Thousand Nine-Hundred and Sixty Dollars (\$82,960);

☐ Fixed Sum: a total amount of \$_____;

☐ Other: \$_____, for all services performed and incurred under this Agreement, to be billed monthly in equal amounts.

B. The Consultant shall submit, in a format acceptable to the City, monthly invoices for services performed in a previous calendar month. Each project and each task within a project shall be the subject of a separate invoice. The Consultant shall maintain time and expense records and provide them to the City upon request.

C. The City shall pay all invoices by mailing a City check within sixty (60) days of receipt of a proper invoice from the Consultant.

D. If the services rendered do not meet the requirements of this Agreement, the Consultant shall correct or modify the work to comply with this Agreement. The City may withhold payment for such work until it meets the requirements of this Agreement.

4. INSPECTION AND AUDIT

The Consultant shall maintain all books, records, documents, and other evidence pertaining to the costs and expenses allowable under this Agreement in accordance with generally accepted accounting practices. All such books and records required to be maintained by this Agreement shall be subject to inspection and audit by representatives of the City and/or the Washington State Auditor at all reasonable times, and the Consultant shall afford the proper facilities for such inspection and audit. Representatives of the City and/or the Washington State Auditor may copy such books, accounts, and records if necessary to conduct or document an audit. The Consultant shall preserve and make available all such books of account and records for a period of three (3) years after final payment under this Agreement. In the event that any audit or inspection identifies any discrepancy in such financial records, the Consultant shall provide the City with appropriate clarification and/or financial adjustments within thirty (30) calendar days of notification of the discrepancy.

5. INDEPENDENT CONTRACTOR

A. The Consultant and the City understand and expressly agree that the Consultant is an independent contractor in the performance of each and every part of this Agreement. The Consultant expressly represents, warrants, and agrees that the Consultant's status as an independent contractor in the performance of the work and services required under this Agreement is consistent with and meets the six-part independent contractor test set forth in RCW 51.08.195. The Consultant, as an independent contractor, assumes the entire responsibility for carrying out and accomplishing the services required under this Agreement. The Consultant shall make no claim of City employment nor shall the Consultant claim any related employment benefits, social security, and/or retirement benefits.

B. The Consultant shall be solely responsible for paying all taxes, deductions, and assessments, including but not limited to federal income tax, FICA, social security tax, assessments for unemployment and industrial injury, and other deductions from income which may be required by law or assessed against either party as a result of this Agreement. In the event the City is assessed a tax or assessment as a result of this Agreement, the Consultant shall pay the same before it becomes due.

C. The City may, during the term of this Agreement, engage other independent contractors to perform the same or similar work that the Consultant performs hereunder.

D. The Consultant shall obtain a business license and, if applicable, pay business and occupation taxes pursuant to Title 5 of the Bainbridge Island Municipal Code.

6. NONDISCRIMINATION AND COMPLIANCE WITH LAWS

A. The Consultant agrees not to discriminate against any employee or applicant for employment or any other person in the performance of this Agreement because of race, creed, color, national origin, marital status, sex, sexual orientation, age, disability, or other circumstance prohibited by federal, state, or local law or ordinance, except for a bona fide occupational qualification.

B. The Consultant shall comply with all federal, state, and local laws and ordinances applicable to the work to be done under this Agreement.

C. Violation of this Section 6 shall be a material breach of this Agreement and grounds for cancellation, termination, or suspension by the City, in whole or in part, and may result in ineligibility for further work for the City.

7. OWNERSHIP OF WORK PRODUCT

All data, materials, reports, memoranda, and other documents developed under this Agreement, whether finished or not, shall become the property of the City and shall be forwarded to the City in hard copy and in digital format that is compatible with the City's computer software programs.

8. GENERAL ADMINISTRATION AND MANAGEMENT

The City Manager of the City, or designee, shall be the City's representative, and shall oversee and approve all services to be performed, coordinate all communications, and review and approve all invoices, under this Agreement.

9. HOLD HARMLESS AND INDEMNIFICATION

A. The Consultant shall defend, indemnify, and hold the City, its officers, officials, employees, and volunteers harmless from any and all claims, injuries, damages, losses, or suits including attorney fees, arising out of or resulting from the acts, errors, or omissions of the Consultant in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

B. Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Consultant and the City, its officers, officials, employees, and volunteers, the Consultant's liability, including the duty and cost to defend hereunder, shall be only to the extent of the Consultant's negligence. It is further specifically and expressly understood that the indemnification provided

herein constitutes the Consultant's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

C. The City's inspection or acceptance of any of the Consultant's work when completed shall not be grounds to void, nullify, and/or invalidate any of these covenants of indemnification.

D. Nothing contained in this Agreement shall be construed to create a liability or a right of indemnification in any third party.

10. INSURANCE

The Consultant shall maintain insurance as follows:

- ☒ Commercial General Liability as described in Attachment B.
- ☒ Professional Liability as described in Attachment B.
- ☒ Automobile Liability as described in Attachment B.
- ☒ Workers' Compensation as described in Attachment B.
- ☐ None.

11. SUBLETTING OR ASSIGNING CONTRACT

This Agreement, or any interest herein or claim hereunder, shall not be assigned or transferred in whole or in part by the Consultant to any other person or entity without the prior written consent of the City. In the event that such prior written consent to an assignment is granted, then the assignee shall assume all duties, obligations, and liabilities of the Consultant as stated herein.

12. EXTENT OF AGREEMENT/MODIFICATION

This Agreement, together with attachments or addenda, represents the entire and integrated Agreement between the parties and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended, modified, or added to only by written instrument properly signed by both parties.

13. SEVERABILITY

A. If a court of competent jurisdiction holds any part, term, or provision of this Agreement to be illegal or invalid, in whole or in part, the validity of the remaining provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.

B. If any provision of this Agreement is in direct conflict with any statutory provision of the State of Washington, that provision which may conflict shall be deemed inoperative and null and void insofar as it may conflict, and shall be deemed modified to conform to such statutory provision.

14. FAIR MEANING

The terms of this Agreement shall be given their fair meaning and shall not be construed in favor of or against either party hereto because of authorship. This Agreement shall be deemed to have been drafted by both of the parties.

15. NONWAIVER

A waiver by either party hereto of a breach by the other party hereto of any covenant or condition of this Agreement shall not impair the right of the party not in default to avail itself of any subsequent breach thereof. Leniency, delay, or failure of either party to insist upon strict performance of any agreement, covenant, or condition of this Agreement, or to exercise any right herein given in any one or more instances, shall not be construed as a waiver or relinquishment of any such agreement, covenant, condition, or right.

16. NOTICES

Unless stated otherwise herein, all notices and demands shall be in writing and sent or hand-delivered to the parties at their addresses as follows:

To the City: City of Bainbridge Island
 280 Madison Avenue North
 Bainbridge Island, WA 98110
 Attention: City Manager

To the Consultant: FCS Group
 Redmond Town Center
 7525 166th Ave. NE, Ste. D-215
 Redmond, WA 98052

or to such addresses as the parties may hereafter designate in writing. Notices and/or demands shall be sent by registered or certified mail, postage prepaid, or hand-delivered. Such notices shall be deemed effective when mailed or hand-delivered at the addresses specified above.

17. SURVIVAL

Any provision of this Agreement which imposes an obligation after termination or expiration of this Agreement shall survive the term or expiration of this Agreement and shall be binding on the parties to this Agreement.

18. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

19. VENUE

The venue for any action to enforce or interpret this Agreement shall lie in the Superior Court of Washington for Kitsap County, Washington.

20. COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the later of the signature dates included below.

FCS GROUP

CITY OF BAINBRIDGE ISLAND

Date: _____

Date: _____

By: _____

By: _____

Name _____

Douglas Schulze, City Manager

Title _____

Tax I.D. # _____

City Bus. Lic. # _____

ATTACHMENT A

CITY OF BAINBRIDGE ISLAND TASK PLAN – 2018 WATER/SEWER RATE STUDY & SPF UPDATE

The City of Bainbridge Island has requested a review of rates and system participation fees (SPFs) for its water and sewer utilities. We have developed the following task plan to meet the City's needs:

Task 1: Initial Project Meeting

At the beginning of the project, FCS GROUP will attend an initial "kickoff" meeting with the City's project team to establish a mutual understanding of study goals, issues, and concerns. Ideally, this meeting would include representatives from departments that address financial, engineering, customer service, and administrative issues. It will cover the project scope, objectives, deliverables, schedule, and appropriate lines of communication.

Task 2: Data Collection

FCS GROUP will provide a data request outlining key information required to complete the study, working with City staff to resolve questions and obtain additional records as needed. Task 2 includes reviewing and validating data provided for the study, identifying any potential data anomalies that could impact the integrity of the study's findings or resulting recommendations.

Task 3: Water/Sewer SPF Analysis

Task 3 includes an update of system participation fees (SPFs) for the City's water and sewer utilities based on a pro rata share of the cost of each system. By recovering an equitable share of costs from growth, the City can promote equity between existing and future customers and mitigate the burden of capital investment on existing ratepayers. Consistent with industry standards and the parameters outlined in the Revised Code of Washington (RCW), this analysis will consider:

- The cost of existing assets, as documented in the City's fixed asset schedules
- The cost of future capital projects, presented in the City's Water System Plan and General Sewer Plan
- The applicable customer base, expressed in terms of units appropriate to each utility (e.g. meter equivalents for water SPFs, equivalent residential units for sewer SPFs).

FCS GROUP will develop up to three (3) alternatives based on different assumptions and/or methodologies, each of which will define an equitable share of system costs for growth.

Task 4: Water/Sewer Rate Study

Task 4 involves the core analytical elements of a rate study for the City's water and sewer utilities:

- **Revenue Requirement Analysis:** A multi-year financial plan that meets each utility's projected needs. This analysis defines the level of revenue that each utility needs to meet its annual cash flow obligations (e.g. operation and maintenance expenses, principal and interest payments on outstanding debt, capital funding through rates) and comply with any applicable debt covenants (e.g. debt service coverage). It also includes the development of a capital funding strategy to pay for the projects contemplated in the City's water and sewer capital improvement programs. FCS GROUP will develop up to three (3) scenarios based on changes in economic assumptions, growth rates, capital costs, or other factors of interest to the City.
- **Cost-of-Service Analysis:** A two-tiered allocation of the revenue requirement based on a methodology consistent with industry-standard ratemaking principles. This methodology involves (1) allocating costs to functions of service (e.g. customer service, base/peak capacity, fire protection, wastewater strength) and (2) distributing the costs assigned to each service function to customer classes based on their demands. FCS GROUP will also review the City's customer class structure to verify that it appropriately groups customers with similar service characteristics, considering the pros and cons of any potential modifications to the existing structure.
- **Rate Design Analysis:** Development of rate structures (including both fixed and variable charges) that recover the cost allocated to each customer class. FCS GROUP will develop up to three (3) rate alternatives for each utility and will prepare a bill impact analysis and comparative survey for up to ten (10) jurisdictions of interest to the City.

Task 5: Documentation

Task 5 includes the development of a written report documenting the methodology, key assumptions, results, and recommendations for the rate study and SPF update. This report and its technical appendices will serve as supporting documentation for the recommended rates and charges, also providing the City with a foundation for future updates. FCS GROUP will submit a draft version to the City, and will revise it to incorporate input from City staff.

The City will receive five (5) bound copies, one (1) unbound camera-ready copy, and one (1) electronic copy of the draft and final deliverables. The City has requested to receive the electronic copy of the deliverables in Microsoft Word and Excel formats, as appropriate.

Task 6: Meetings & Public Process

In addition to the kick-off meeting contemplated in Task 1, Task 6 contemplates our attendance and participation in nine (9) onsite meetings:

- Up to three (3) staff review meetings to review draft results

- Up to five (5) public committee/Council meetings to discuss study results and recommendations
- One (1) additional meeting related to the project. This meeting could include an interactive workshop to discuss rate policy objectives in support of the rate-design element of Task 4, or another topic of interest to the City.

We will bill the City for these meetings based on time and materials expended. While we have budgeted these meetings as onsite meetings to be conservative, we could conduct some or all of the staff review meetings as remote conference calls (e.g. RingCentral) to reduce the overall cost. We would propose a similar billing policy for any additional meetings requested by the City, and anticipate that such meetings could cost up to \$2,500 each depending on the number of attendees and level of effort involved (e.g. developing a presentation).

BUDGET

The proposed level of effort to complete the Water/Sewer Rate Study & SPF Update is shown below.

	Estimated Hours				Total	Total Budget
	Principal	Project Manager	Analyst	Admin. Support		
<i>Hourly Billing Rates:</i>	\$260	\$185	\$140	\$85		
PROJECT TASKS						
Task 1: Initial Project Meeting	6	6	6	2	20	\$ 3,680
Task 2: Data Collection	1	4	8		13	2,120
Task 3: Water/Sewer SPF Analysis	8	16	32		56	9,520
Task 4: Water/Sewer Rate Study						
Revenue Requirement Analysis	6	20	40		66	10,860
Cost-of-Service Analysis	6	20	38		64	10,580
Rate Design Analysis	6	16	24		46	7,880
Task 5: Documentation	8	20	40	4	72	11,720
Task 6: Meetings & Public Process	46	58	26		130	26,330
Direct Expenses (Mileage/Ferry, Up to 9 Meetings)						270
TOTAL LEVEL OF EFFORT	87	160	214	6	467	\$ 82,960

ATTACHMENT B

INSURANCE REQUIREMENTS

A. Insurance Term

The Consultant shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

B. No Limitation

The Consultant's maintenance of insurance as required by the Agreement shall not be construed to limit the liability of the Consultant to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

C. Minimum Scope of Insurance

The Consultant shall obtain insurance of the types and coverage described below:

1. Automobile Liability insurance covering all owned, non-owned, hired, and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage.
2. Commercial General Liability insurance shall be at least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop-gap liability, independent contractors, and personal injury and advertising injury. The City shall be named as an additional insured under the Consultant's Commercial General Liability insurance policy with respect to the work performed for the City using an additional insured endorsement at least as broad as ISO CG 20 26.
3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
4. Professional Liability insurance appropriate to the Consultant's profession.

D. Minimum Amounts of Insurance

The Consultant shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
2. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.

3. Professional Liability insurance shall be written with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit, as applicable.

E. Other Insurance Provision

The Consultant's Automobile Liability and Commercial General Liability insurance policies are to contain, or be endorsed to contain, that they shall be primary insurance as respect to the City. Any insurance, self-insurance, or self-insured pool coverage maintained by the City shall be excess of the Consultant's insurance and shall not contribute with it.

F. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

G. Verification of Coverage

Before commencing work and services, the Consultant shall provide to the person identified in Section 8 of the Agreement a Certificate of Insurance evidencing the required insurance. The Consultant shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Consultant before commencement of the work. The City reserves the right to request and receive a certified copy of all required insurance policies.

H. Notice of Cancellation

The Consultant shall provide the City with written notice of any policy cancellation within two business days of their receipt of such notice.

I. Failure to Maintain Insurance

Failure on the part of the Consultant to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five (5) business days' notice to the Consultant to correct the breach, immediately terminate this Agreement or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the sole discretion of the City, offset against funds due the Consultant from the City.

J. City Full Availability of Consultant Limits

If the Consultant maintains higher insurance limits than the minimums shown above, the City shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Consultant, irrespective of whether such limits maintained by the Consultant are greater than those required by this Agreement or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by the Consultant.