

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement ("Agreement") is entered into effective the 7 day of March 2014 by and between G.W. Wilber, CPA's, PC, an Oregon corporation ("G.W. Wilber"), and the City of Ontario, Oregon, an Oregon local government entity ("City").

RECITALS

WHEREAS, City wishes to engage G.W. Wilber to provide consulting Services ("Services") to City, as specified in each Scope of Work agreed upon by the parties which will be Exhibits to this Agreement; and

WHEREAS, G.W. Wilber wishes to provide the Services under the terms and conditions specified in this Agreement and in each Scope of Work.

NOW, THEREFORE, in consideration of the mutual promises set forth below and these Recitals, City and G.W. Wilber agree as follows:

AGREEMENT

1. G.W. Wilber's Services.

1.1 **Description of Services.** G.W. Wilber shall provide all Services specified in any Scope of Work attached as an Exhibit to this Agreement.

1.1.1 A Scope of Work shall become binding on the date the document is fully executed by G.W. Wilber and City, at which time G.W. Wilber will be obligated to provide the Services as specified in such Scope of Work.

1.2 **Manner of Rendering Services.** G.W. Wilber shall determine the method, details, and means of performing the Services.

1.3 **Direction and Control of Services.** City may not control, direct, or supervise G.W. Wilber's employees.

1.4 **Services for Other Entities.** G.W. Wilber is free to provide Services to other entities or persons during the term of this Agreement.

1.5 **No Authority to Bind or Obligate City.** G.W. Wilber shall have no authority to bind, obligate or commit City by any promise or representation, unless G.W. Wilber has obtained the prior written approval of an authorized representative of City.

1.6 **Compliance With Laws.** G.W. Wilber shall strictly comply with all applicable federal, state, and local civil laws and statutes, ordinances, regulations and codes.

2. **Term and Termination of Agreement.**

2.1 **Term.** The term of this Agreement shall begin on the date set forth above and, shall continue through June 30, 2015 or until earlier terminated by either party in accordance with Section 2.2 of this Agreement.

2.2 **Termination.** This Agreement may be terminated as follows:

2.2.1 **By City With Cause.** "Cause" is defined as a material breach of this Agreement, which must be specified in writing by City and provided to G.W. Wilber not later than the date on which City gives notice of its intent to terminate.

2.2.2 **By City Without Cause.** In the event the City terminates this Agreement without cause, City is obligated to pay G.W. Wilber a termination fee of \$20,500.00 plus any prorated compensation earned under this Agreement during the month in which the termination date is effective. City shall make such payments not later than 10 business days following the effective date of termination.

2.2.3 **By G.W. Wilber.** G.W. Wilber may terminate this Agreement for any reason by giving City not less than ten (10) days' prior written notice of its intent to terminate.

3. **Compensation.**

3.1 **Fees for Services.** City shall pay G.W. Wilber the total sum of \$6,000.00 per month for all Services rendered under this Agreement and any Scope of Work attached hereto. G.W. Wilber shall not be entitled to any other compensation. Said compensation, plus the payment for expenses as provided in Section 3.2 below, shall be the total compensation to G.W. Wilber for all labor, material and deliverables (collectively, "Services") provided under this Agreement; provided, however, that City also is obligated to pay G.W. Wilber the prorated amount of any compensation earned under this Agreement for less than a full month of Services rendered.

3.2 **Expenses.** G.W. Wilber shall invoice City for reasonable expenses that G.W. Wilber incurs related to the provision of Services under this Agreement. G.W. Wilber is responsible for all other expenses incurred in providing the services under this Agreement including, but not limited to, G.W. Wilber's normal and ordinary business expenses such as rent, administrative assistance, general photocopying, postage, vehicle expense, office supplies, or local telephone service. G.W. Wilber must

obtain advance written approval from City any anticipated expense of more than \$100.00 for which G.W. Wilber anticipates invoicing City, unless otherwise outlined in a Scope of Work. City reserves the right to deny reimbursement for any expense that is not reasonable and outside of G.W. Wilber's normal and ordinary business expenses, including an expense of more than \$100.00 which was not first discussed with City. Upon approval of G.W. Wilber's expenses invoice, City shall pay G.W. Wilber by check delivered by regular mail at G.W. Wilber's designated address not later than thirty (30) days from the date of the invoice.

3.3 Invoices. G.W. Wilber shall submit to City an invoice not later than the 5th day of the month following any month in which Services are performed. Each invoice shall include an itemized description of G.W. Wilber's activities. City shall mail to G.W. Wilber a check by regular mail at G.W. Wilber's designated address not later than 30 days after receipt of each G.W. Wilber invoice.

4. Relationship Between the Parties.

4.1 Independent Contractor. G.W. Wilber is an independent contractor and is engaged in an independently established occupation. This Agreement does not create the relationship of employer and employee, a partnership, or a joint venture. None of the benefits provided by City to its employees, if any, (including payment of workers' compensation insurance coverage) shall be provided to G.W. Wilber, or any of G.W. Wilber's employees or subcontractors.

4.2 Responsibility for Wages, Taxes, Workers' Compensation Coverage, Etc. G.W. Wilber shall be responsible for providing any salary or other benefits or payments due to its employees and subcontractors, if any. Additionally, G.W. Wilber shall be solely responsible for making all necessary and appropriate tax, social security, employment and workers' compensation and other withholding deductions and payments for G.W. Wilber, and any of G.W. Wilber's employees and/or subcontractors. G.W. Wilber also shall be solely responsible for providing any necessary and appropriate workers' compensation insurance coverage for G.W. Wilber employees and subcontractors. G.W. Wilber shall indemnify City and hold it harmless from paying such costs or taxes.

4.3 Tools and Equipment. G.W. Wilber is responsible for providing the principle tools, equipment and supplies for performance of the Services under this Agreement.

4.4 Permits and Licenses. G.W. Wilber shall, at G.W. Wilber's expense, obtain and maintain all permits, licenses, certifications and registrations necessary to perform the Services under this Agreement.

5. No Conflict of Interest. During the Term of this Agreement, G.W. Wilber will not accept work, enter into a contract, or accept an obligation from any third party, inconsistent or incompatible with G.W. Wilber's obligations, or the scope of Services rendered for City under this Agreement. G.W. Wilber warrants that there is no other contract or duty on its part inconsistent with this Agreement.

6. Return of Property and Documents. G.W. Wilber agrees that all hard and electronic originals and copies of records, reports, documents, lists, drawings, memoranda, notes, proposals, contracts and other documentation related to the business of City or to the rendering of G.W. Wilber's Services, or containing any information described in Section 9 below belong to City and shall be returned to City immediately upon expiration of the Term or upon the termination of this Agreement, or at anytime upon the written request of City.

7. Insurance and Risk of Loss. G.W. Wilber shall maintain insurance policies (including, without limitation, liability insurance and any required workers' compensation insurance) sufficient to protect G.W. Wilber's business as required by local, state and federal law, and as necessary to protect against all applicable risks. G.W. Wilber shall provide City with certificates of insurance and other supporting materials as City may request to evidence G.W. Wilber's continuing compliance with these obligations.

8. Confidential Information.

8.1 "Confidential Information" Defined. In the course of performing the services for City, G.W. Wilber may acquire knowledge (both orally and in writing) regarding confidential and/or proprietary information concerning City and its employees, council members, contractors and vendors, including non-public financial information; information about costs and pricing structure; plans for future developments; programs; business plans or strategies; and other information of a similar nature which is not generally known to or accessible by members of the public and which is not generally subject to a public records request under applicable Oregon law (collectively, "Confidential Information.")

8.2 Non Use and Non Disclosure. G.W. Wilber agrees that during the term of this Agreement and thereafter, it (a) will keep secret and retain in confidence all Confidential Information, (b) not disclose Confidential Information to anyone except employees of City or City's council members authorized to receive it, and third parties to whom such disclosure is specifically authorized, and (3) not use any Confidential Information for any purpose other than performance of services under this Agreement without prior written permission from an authorized representative of City.

8.3 Application. G.W. Wilber's confidentiality obligations as set forth in Section 9 will not apply to any information or any portion thereof which (i) is or becomes publicly available by other than a breach of this

Agreement (including, without limitation, any information filed with any governmental agency and available to the public); (ii) is disclosed to G.W. Wilber by a third party that is legally entitled to disclose such information; (iii) G.W. Wilber demonstrates through documented records that the information was known by it prior to its receipt from City; (iv) is developed by G.W. Wilber independently of any disclosures made by City of such information, as demonstrated by G.W. Wilber's documented records; or (v) is required to be disclosed by subpoena, court order, or other legal or regulatory requirement (including a public records request), provided that G.W. Wilber provides prompt notice to City of such a request for disclosure and cooperates with City in any legal challenge to such disclosure.

9. Notices to the Parties. Notices required by this Agreement shall be in writing. Notices may be served by certified or registered mail, postage paid with return receipt requested; by private courier, prepaid; or in person. Mailed notices shall be deemed delivered three (3) days after mailing, properly addressed. Couriered notices shall be deemed delivered on the date that the courier represents that delivery has been made. In person delivery shall be effective when accomplished. Unless a party changes its address by giving notice to the other party as provided herein, notices shall be delivered to the parties at the following addresses:

G.W. Wilber: George W. Wilber, CPA, CFF
77 West Adams Street
Burns, Oregon 97720

City: LeRoy Cammack
Mayor
City of Ontario
444 SW 4th Street
Ontario, OR 97914

10. Assignment and Subcontracting.

10.1 Assignment. G.W. Wilber agrees it may not assign this Agreement in whole or in part without the prior written consent of City.

10.2 Subcontracting. G.W. Wilber agrees that it may not subcontract this Agreement in whole or in part.

11. Dispute Resolution.

11.1 Method of Resolution. G.W. Wilber and City agree that any claim, controversy or dispute arising out of or in connection with this Agreement or an attached Scope of Work shall be resolved as follows:

11.2 Mediation. G.W. Wilber and City agree that the first step toward resolution shall be mandatory, non-binding mediation in Ontario, Oregon with a neutral, third party mediator mutually selected by the parties. G.W. Wilber and City agree to share equally the costs of mediation, including the mediator's time and expenses (and excluding any attorney fees or other costs incurred by either party).

11.3 Arbitration. In the event mediation is not successful, G.W. Wilber and City agree to resolve the issue through expedited mandatory arbitration in Ontario, Oregon with a mutually selected arbitrator. The arbitration shall be conducted in accordance with ORS 36.600 to 36.740 ("Oregon Arbitration Act" or its successor). Notice of demand for arbitration shall be filed in writing with the other party and with the Arbitration Service of Portland, Inc. Each party shall be entitled to discovery as provided for in the Oregon Arbitration Act. A single arbitrator shall conduct the arbitration proceedings in private, and to the extent necessary to enforce any award, the arbitration proceedings and results shall be confidential. The parties agree that the decision of the arbitrator shall be final and binding, and that judgment thereon may be entered in any court having jurisdiction. In reaching a decision, the arbitrator shall have no authority to change or modify this Agreement. The parties shall share equally the costs of arbitration, including fees resulting from the arbitrator's review of any pre and post hearing motions, briefs or other documents or pleadings. The prevailing party, as determined by the Arbitrator, shall be entitled to an award of reasonable attorney fees.

12. Waiver of Breach. The waiver by either party of any breach by the other party of any provision of this Agreement shall not operate or be construed as a waiver by the non breaching party of any subsequent breach by the other party.

13. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to its conflict of laws provision.

14. Severability. In the event that any section or provision of this Agreement shall be held to be illegal or unenforceable, such section or provision shall be severed from this Agreement and the entire Agreement shall not fail as a result, but shall otherwise remain in full force and effect.

15. Amendment. This Agreement may be canceled, modified, or amended only by an instrument in writing and executed both by G.W. Wilber and City.

16. Entire Agreement. This Agreement, including any and all exhibits, sets forth the entire understanding of the parties with respect to the subject matter of this Agreement, and supersedes any and all prior discussions, understandings and agreements, whether written or oral, between the parties with respect to the subject matter of this Agreement; provided, however, nothing in this provision is


intended to render moot or void any and all Scope of Work agreements attached to this Agreement as an Exhibit and all such agreements remain in full force and effect.

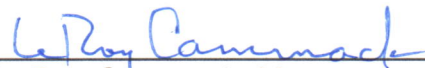
17. Authority. The undersigned represent that they are authorized to execute this Agreement on behalf of their respective principals.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

**G.W. WILBER, CERTIFIED PUBLIC
ACCOUNTANTS, PC**

CITY OF ONTARIO, OREGON

For 
George W. Wilber, CPA, CFF


LeRoy Cammack, Mayor

Scope of Work

Exhibit to G.W. Wilber – City of Ontario Professional Services Agreement

G.W. Wilber and City agree that for the period specified above, G.W. Wilber will provide the following Services under the terms and conditions of the attached Professional Services Agreement.

ONE TIME PROCEDURE

- Prepare an internal control matrix for the finance department and recommend any changes deemed necessary to have a proper internal control structure.
- Provide names of potential candidates to City for City's new financial statement auditor.

MONTHLY CYCLE

- Review accuracy of general ledger accounting, accounts payable processing, accounts receivable processing and payroll processing.
- Reconcile or monitor reconciliation of all General Ledger and bank accounts.
- Provide monthly budget to actual reports and other financial reports to the City Council, City Manager and department heads.
- Provide timely and accurate monthly variance reports for City staff, to be provided by the 15th day of each month for the preceding month.

QUARTERLY CYCLE

- Prepare and file quarterly payroll reports.
- Provide grant administration as needed.
- Monitor capital asset listing including construction in progress.
- Provide quarterly reports to the City's Budget Committee.

ANNUAL CYCLE

- Prepare and file annual payroll reports and W-2s.
- Prepare or monitor preparation of all working papers required for the annual financial statement audit.
- Monitor year end closing of the books.
- Gather information from appropriate City personnel to assist in preparation of the draft 2014-2015 and 2015-2016 budgets and submit to the City Manager not later than March 14 annually.
- Provide requested on-site assistance during the annual financial statement audit.

AS NEEDED

- Timely respond to City Council inquiries for specified information.
- Participate by telephone in City staff meetings upon reasonable advance notice by City for the purpose of responding to requests for information or receiving information as necessary.

- Perform other services as reasonably requested by City that are consistent with overall services to be performed by G.W. Wilber under the terms and conditions of the attached Professional Services Agreement.
- Provide information related to recommended procedural changes to correct deficiencies identified in G.W. Wilber's interim audit report dated February 6, 2014.
- Provide requested on-site assistance during various audits.

ATTENDANCE AT CITY MEETINGS

- Attend all regularly scheduled City Council work sessions and meetings; special Council meetings as necessary upon reasonable advance notice; all Budget Committee meetings; one meeting of the Aquatic Center Ad Hoc Committee; and other selected committee meetings as mutually deemed necessary by G.W. Wilber and the City Manager for purpose of providing any requested information.