

RESOLUTION NO. 2966

A RESOLUTION OF THE CITY OF WILSONVILLE AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO APPOINT AUDIT FIRM

WHEREAS, Oregon Revised Statutes 297.425 require annual financial audits of municipalities; and

WHEREAS, the City of Wilsonville has need for the services of a company with particular training, ability, knowledge and experience possessed by a qualified audit firm; and


WHEREAS, the City issue a Request for Proposal for Auditing Services and received two responses; and

WHEREAS, the City has selected a qualified audit firm from among the respondents;

NOW, THEREFORE, THE CITY OF WILSONVILLE RESOLVES AS FOLLOWS:

1. The City Manager or his designee is authorized to enter into a professional services agreement for auditing services for the fiscal years of 2021-22, 2022-23, 2023-24 and as may be extended two additional years.
2. This resolution becomes effective upon adoption.

ADOPTED by the Wilsonville City Council at a regular meeting thereof this 21st day of March 2021, and filed with the Wilsonville City Recorder this date.

DocuSigned by:

8A974AF3ADE042E...
Julie Fitzgerald, Mayor

ATTEST:

DocuSigned by:

E784DE40276B498...
Kimberly Veliz, City Recorder

SUMMARY OF VOTES:

Mayor Fitzgerald	Yes
Council President Akervall	Yes
Councilor Lehan	Yes
Councilor West	Yes
Councilor Linville	Yes

ATTACHMENT:

- A. Professional Service Agreement for Auditing Services

**CITY OF WILSONVILLE
PROFESSIONAL SERVICES AGREEMENT
For Auditing Services**

This Professional Services Agreement (“Agreement”) for the Auditing Services (“Project”) is made and entered into on this _____ day of March 2022 (“Effective Date”) by and between the **City of Wilsonville**, a municipal corporation of the State of Oregon (hereinafter referred to as the “City”), and **Grove, Mueller & Swank, P.C.**, an Oregon professional corporation (hereinafter referred to as “Auditor”).

RECITALS

WHEREAS, the City requires services which Auditor is capable of providing, under terms and conditions hereinafter described; and

WHEREAS, Auditor represents that Auditor is qualified to perform the services described herein on the basis of specialized experience and technical expertise; and

WHEREAS, Auditor is prepared to provide such services as the City does hereinafter require.

NOW, THEREFORE, in consideration of these mutual promises and the terms and conditions set forth herein, the parties agree as follows:

AGREEMENT

Section 1. Contract Documents

This Contract includes and incorporates by reference all of the foregoing recitals and all of the following additional “Contract Documents”: Public Notice; Request for Proposals; Addenda (if any); Auditor’s Proposal; this Contract; Scope of Services included in **Exhibit A**; Billing Rates and Payment Schedule set forth in **Exhibit B**; Tax Identification Number (**Exhibit C**); and the provisions of Oregon Revised Statutes (ORS) Chapters 279B and 279C, as more particularly set forth in this Contract. Auditor must be familiar with all of the foregoing and comply with them. Any conflict or inconsistency between the Contract Documents shall be called to the attention of the City by Auditor before proceeding with affected services. All Contract Documents should be read in concert and Auditor is required to bring any perceived inconsistencies to the attention of the City before executing this Contract. In the event a provision of this Contract conflicts with standards or requirements contained in any of the foregoing Contract Documents, the provision that is more favorable to the City, as determined by the City, will apply.

Section 2. Term

2.1. The term of this Agreement shall be from the Effective Date until all Services required to be performed hereunder are completed and accepted, or no later than December 31,

2024, whichever occurs first, unless earlier terminated in accordance herewith or an extension of time is agreed to, in writing, by the City.

2.2. The City has the option to renew this Contract for up to two (2) additional one (1) year periods.

Section 3. Auditor's Services

3.1. Auditor shall diligently perform the auditing services according to the requirements identified in the Scope of Services for the Project, attached hereto as **Exhibit A** and incorporated by reference herein (the "Services").

3.2. All written documents prepared by Auditor in conjunction with the Services shall bear the signature, stamp, or initials of Auditor's authorized Project Manager.

3.3. Auditor shall maintain the confidentiality of any confidential information that is exempt from disclosure under state or federal law to which Auditor may have access by reason of this Agreement. Auditor warrants that Auditor's employees assigned to work on the Services provided in this Agreement shall be clearly instructed to maintain this confidentiality. All agreements with respect to confidentiality shall survive the termination or expiration of this Agreement.

Section 4. Compensation

4.1. Except as otherwise set forth in this **Section 4**, the City agrees to pay Auditor on a time and materials basis, guaranteed not to exceed THIRTY-EIGHT THOUSAND FIVE HUNDRED DOLLARS (\$38,500) for performance of the Services for the first audit year identified in **Exhibit A** ("Initial Compensation Amount"). For each of the two subsequent audit years identified in **Exhibit A**, the City agrees to pay the Initial Compensation Amount, which may be increased using the Portland-Salem CPI All-Items as of December for the fiscal year under review ("Adjusted Compensation Amount"). The same increase formula will be applied to any option the City may exercise pursuant to **Section 2.2**. Any compensation in excess of the Initial Compensation Amount or the Adjusted Compensation Amount will require an express written Addendum between the City and Auditor, executed in compliance with the provisions in **Section 17**.

4.2. During the course of Auditor's performance, if the City, through its Project Manager, specifically requests Auditor to provide additional services that are beyond the Scope of Services described on **Exhibit A**, Auditor shall provide such additional services and bill the City at the hourly rates outlined on Auditor's Billing Rates and Payment Schedule, as set forth in **Exhibit B**. Any Additional work beyond the Scope of Services, or any compensation above the amount shown in **Subsection 4.1**, requires a written Addendum executed in compliance with the provisions of **Section 17**.

4.3. Unless expressly set forth on Auditor's Billing Rates and Payment Schedule as a reimbursable expense item that is not included in the Compensation Amount of **Subsection 4.1**,

or as an additional charge for which a written Addendum has been approved, in accordance with **Subsection 4.2** and the requirements of **Section 17**, Auditor shall only be entitled to the Compensation Amount specified in **Subsection 4.1**.

4.4. Except for amounts withheld by the City pursuant to this Agreement, Auditor will be paid for Services for which an itemized invoice is received by the City within thirty (30) days of receipt, unless the City disputes such invoice. In that instance, the undisputed portion of the invoice will be paid by the City within the above timeframe. The City will set forth its reasons for the disputed claim amount and make good faith efforts to resolve the invoice dispute with Auditor as promptly as is reasonably possible.

4.5. Auditor's Compensation Amount, Billing Rates, and Payment Schedule are all inclusive and include, but are not limited to, all work-related costs, expenses, salaries or wages, plus fringe benefits and contributions, including payroll taxes, workers compensation insurance, liability insurance, profit, pension benefits and similar contributions and benefits, technology and/or software charges, office expenses, travel expenses, mileage, and all other indirect and overhead charges, including, but not limited to, the recently enacted Oregon Corporate Activity Tax (CAT).

Section 5. City's Rights and Responsibilities

5.1. The City will designate a Project Manager to facilitate day-to-day communication between Consultant and the City, including timely receipt and processing of invoices, requests for information, and general coordination of City staff to support the Project.

5.2. Award of this contract is subject to budget appropriation. Funds are approved for Fiscal Year 2021-22. If not completed within this fiscal year, funds may not be appropriated for the next fiscal year. The City also reserves the right to terminate this contract early, as described in **Section 15**.

Section 6. City's Project Manager

The City's Project Manager is Keith Katko, Finance Director. The City shall give Auditor prompt written notice of any re-designation of its Project Manager.

Section 7. Auditor's Project Manager

Auditor's Project Manager is Ryan Pasquarella. In the event that Auditor's designated Project Manager is changed, Auditor shall give the City prompt written notification of such re-designation. Recognizing the need for consistency and knowledge in the administration of the Project, Auditor's Project Manager will not be changed without the written consent of the City, which consent shall not be unreasonably withheld. In the event the City receives any communication from Auditor that is not from Auditor's designated Project Manager, the City may request verification by Auditor's Project Manager, which verification must be promptly furnished.

Section 8. Project Information

No information, news, or press releases related to the Project, whether made to representatives of newspapers, magazines, or television and radio stations, shall be made without the written authorization of the City's Project Manager.

Section 9. Duty to Inform

If at any time during the performance of this Agreement or any future phase of this Agreement for which Auditor has been retained, Auditor becomes aware of actual or potential problems, faults, or defects in the Project or Scope of Services, or any portion thereof; or of any nonconformance with federal, state, or local laws, rules, or regulations, Auditor shall give prompt written notice thereof to the City's Project Manager.

Section 10. Subcontractors and Assignments

Auditor shall not subcontract with others for any of the Services prescribed herein. Auditor shall not assign any of Auditor's rights acquired hereunder without obtaining prior written approval from the City, which approval may be granted or denied in the City's sole discretion.

Section 11. Auditor Is Independent Contractor

Auditor is an independent contractor for all purposes and shall be entitled to no compensation other than the Compensation Amount provided for under **Section 4** of this Agreement. Auditor will be solely responsible for determining the manner and means of accomplishing the end result of Auditor's Services. The City does not have the right to control or interfere with the manner or method of accomplishing said Services. The City, however, will have the right to specify and control the results of Auditor's Services so such Services meet the requirements of the Project.

Section 12. Auditor Responsibilities

12.1. Auditor must make prompt payment for any claims for labor, materials, or services furnished to Auditor by any person in connection with this Agreement as such claims become due. Auditor shall not permit any liens or claims to be filed or prosecuted against the City on account of any labor or material furnished to or on behalf of Auditor. If Auditor fails, neglects, or refuses to make prompt payment of any such claim, the City may, but shall not be obligated to, pay such claim to the person furnishing the labor, materials, or services and offset the amount of the payment against funds due or to become due to Auditor under this Agreement. The City may also recover any such amounts directly from Auditor.

12.2. Auditor must comply with all applicable Oregon and federal wage and hour laws. Auditor shall make all required workers compensation and medical care payments on time. Auditor shall be fully responsible for payment of all employee withholdings required by law, including but not limited to taxes, including payroll, income, Social Security (FICA), and Medicaid. Auditor shall also be fully responsible for payment of salaries, benefits, taxes, Industrial Accident Fund contributions, and all other charges on account of any employees. Auditor shall

pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. All costs incident to the hiring of assistants or employees shall be Auditor's responsibility. Auditor shall defend, indemnify, and hold the City harmless from claims for payment of all such expenses.

12.3. No person shall be discriminated against by Auditor in the performance of this Agreement on the basis of sex, gender, race, color, creed, religion, marital status, age, disability, sexual orientation, gender identity, or national origin. Any violation of this provision shall be grounds for cancellation, termination, or suspension of the Agreement, in whole or in part, by the City.

12.4. COVID-19 Safety Measures. Auditor must have a written policy in place to comply with all applicable local, state, and federal laws, regulations, and executive orders related to the COVID-19 coronavirus outbreak to ensure the protection of Auditor's employees, City employees, and the public. Auditor must provide its written policy to the City Project Manager at the commencement of the Project. In the event that Auditor is required to stop or delay work due to a COVID-19 related event, Auditor shall not be entitled to any additional payment, remobilization costs, or delay damages.

Section 13. Indemnity

13.1. Indemnification. Auditor acknowledges responsibility for liability arising out of the performance of this Agreement, and shall defend, indemnify, and hold the City harmless from any and all liability, settlements, loss, costs, and expenses in connection with any action, suit, or claim resulting or allegedly resulting from Auditor's negligent acts, omissions, errors, or willful or reckless misconduct pursuant to this Agreement, or from Auditor's failure to perform its responsibilities as set forth in this Agreement. The review, approval, or acceptance by the City, its Project Manager, or any City employee of documents or other work performed, prepared, or submitted by Auditor shall not be considered a negligent act, error, omission, or willful misconduct on the part of the City, and none of the foregoing shall relieve Auditor of its responsibility to perform in full conformity with the City's requirements, as set forth in this Agreement, and to indemnify the City as provided above and to reimburse the City for any and all costs and damages suffered by the City as a result of Auditor's negligent performance of this Agreement, failure of performance hereunder, violation of state or federal laws, or failure to adhere to the standards of performance and care described in **Subsection 13.2**. Auditor shall defend the City (using legal counsel reasonably acceptable to the City) against any claim that alleges negligent acts, omissions, errors, or willful or reckless misconduct by Auditor. As used herein, the term "Auditor" applies to Auditor and its own agents, employees, and suppliers.

13.2. Standard of Care. In the performance of professional services, Auditor agrees to use at least that degree of care and skill exercised under similar circumstances by reputable members of Auditor's profession practicing in the Portland metropolitan area. Auditor will re-perform any Services not meeting this standard without additional compensation. Auditor's re-performance of any Services, even if done at the City's request, shall not be considered as a limitation or waiver by the City of any other remedies or claims it may have arising out of Auditor's failure to perform in accordance with the applicable standard of care of this Agreement and within the prescribed timeframe.

Section 14. Insurance

14.1. Insurance Requirements. Auditor shall maintain insurance coverage acceptable to the City in full force and effect throughout the term of this Agreement. Such insurance shall cover all risks arising directly or indirectly out of Auditor's activities or work hereunder. The amount of insurance carried is in no way a limitation on Auditor's liability hereunder. The policy or policies maintained by Auditor shall provide at least the following minimum limits and coverages at all times during performance under this Agreement:

14.1.1. Commercial General Liability Insurance. Auditor shall obtain, at Auditor's expense, and keep in effect during the term of this Agreement, comprehensive Commercial General Liability Insurance covering Bodily Injury and Property Damage, written on an "occurrence" form policy. This coverage shall include broad form Contractual Liability insurance for the indemnities provided under this Agreement and shall be for the following minimum insurance coverage amounts: The coverage shall be in the amount of **\$2,000,000** for each occurrence and **\$3,000,000** general aggregate and shall include Products-Completed Operations Aggregate in the minimum amount of **\$2,000,000** per occurrence, Fire Damage (any one fire) in the minimum amount of **\$50,000**, and Medical Expense (any one person) in the minimum amount of **\$10,000**. All of the foregoing coverages must be carried and maintained at all times during this Agreement.

14.1.2. Professional Errors and Omissions Coverage. Auditor agrees to carry Professional Errors and Omissions Liability insurance on a policy form appropriate to the professionals providing the Services hereunder with a limit of no less than **\$2,000,000** per claim. Auditor shall maintain this insurance for damages alleged to be as a result of errors, omissions, or negligent acts of Auditor. Such policy shall have a retroactive date effective before the commencement of any work by Auditor on the Services covered by this Agreement, and coverage will remain in force for a period of at least three (3) years after termination of the Agreement.

14.1.3. Business Automobile Liability Insurance. If Auditor will be using a motor vehicle in the performance of the Services herein, Auditor shall provide the City a certificate indicating that Auditor has business automobile liability coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than **\$2,000,000**.

14.1.4. Workers Compensation Insurance. Auditor and all employers providing work, labor, or materials under this Agreement that are subject employers under the Oregon Workers Compensation Law shall comply with ORS 656.017, which requires them to provide workers compensation coverage that satisfies Oregon law for all their subject workers under ORS 656.126. Out-of-state employers must provide Oregon workers compensation coverage for their workers who work at a single location within Oregon for more than thirty (30) days in a calendar year. Auditors who perform work without the assistance or labor of any employee need not obtain such coverage. This shall include

Employer's Liability Insurance with coverage limits of not less than **\$500,000** each accident.

14.1.5. Insurance Carrier Rating. Coverages provided by Auditor must be underwritten by an insurance company deemed acceptable by the City, with an AM Best Rating of A or better. The City reserves the right to reject all or any insurance carrier(s) with a financial rating that is unacceptable to the City.

14.1.6. Additional Insured and Termination Endorsements. The City will be named as an additional insured with respect to Contractor's liabilities hereunder in insurance coverages. Additional Insured coverage under Auditor's Commercial General Liability, Automobile Liability, and Excess Liability Policies, as applicable, will be provided by endorsement. Additional insured coverage shall be for both ongoing operations via ISO Form CG 2010 or its equivalent, and products and completed operations via ISO Form CG 2037 or its equivalent. Coverage shall be Primary and Non-Contributory. Waiver of Subrogation endorsement via ISO Form CG 2404 or its equivalent shall be provided. The following is included as additional insured: "The City of Wilsonville, its elected and appointed officials, officers, agents, employees, and volunteers." An endorsement shall also be provided requiring the insurance carrier to give the City at least thirty (30) days' written notification of any termination or major modification of the insurance policies required hereunder.

14.1.7. Certificates of Insurance. As evidence of the insurance coverage required by this Agreement, Auditor shall furnish a Certificate of Insurance to the City. This Agreement shall not be effective until the required certificates and the Additional Insured Endorsements have been received and approved by the City. Auditor agrees that it will not terminate or change its coverage during the term of this Agreement without giving the City at least thirty (30) days' prior advance notice and Auditor will obtain an endorsement from its insurance carrier, in favor of the City, requiring the carrier to notify the City of any termination or change in insurance coverage, as provided above.

14.2. Primary Coverage. The coverage provided by these policies shall be primary, and any other insurance carried by the City is excess. Auditor shall be responsible for any deductible amounts payable under all policies of insurance. If insurance policies are "Claims Made" policies, Auditor will be required to maintain such policies in full force and effect throughout any warranty period.

Section 15. Early Termination; Default

15.1. This Agreement may be terminated prior to the expiration of the agreed upon terms:

15.1.1. By mutual written consent of the parties; or

15.1.2. By the City or the Auditor, for any reason, and within the sole discretion of either, effective upon delivery of written notice to the other party by mail or in person.

15.2. If the City terminates this Agreement, in whole or in part, due to default or failure of Auditor to perform Services in accordance with the Agreement, the City may procure, upon reasonable terms and in a reasonable manner, services similar to those so terminated. In addition to any other remedies the City may have, both at law and in equity, for breach of contract, Auditor shall be liable for all costs and damages incurred by the City as a result of the default by Auditor, including, but not limited to all costs incurred by the City in procuring services from others as needed to complete this Agreement. This Agreement shall be in full force to the extent not terminated by written notice from the City to Auditor. In the event of a default, the City will provide Auditor with written notice of the default and a period of ten (10) days to cure the default. If Auditor notifies the City that it wishes to cure the default but cannot, in good faith, do so within the ten (10) day cure period provided, then the City may elect, in its sole discretion, to extend the cure period to an agreed upon time period, or the City may elect to terminate this Agreement and seek remedies for the default, as provided above.

15.3. If the City terminates this Agreement for its own convenience not due to any default by Auditor, payment of Auditor shall be prorated to, and include, the day of termination and shall be in full satisfaction of all claims by Auditor against the City under this Agreement.

15.4. The City's withholding of a disputed portion of payment to Auditor is not grounds for default by the City.

15.5. Termination under any provision of this Section shall not affect any right, obligation, or liability of Auditor or the City that accrued prior to such termination. Auditor shall surrender to the City items of work or portions thereof, referred to in **Section 19**, for which Auditor has received payment or the City has made payment.

Section 16. Suspension of Services

The City may suspend, delay, or interrupt all or any part of the Services for such time as the City deems appropriate for its own convenience by giving written notice thereof to Auditor. An adjustment in the time of performance or method of compensation shall be allowed as a result of such delay or suspension unless the reason for the delay is within Auditor's control. The City shall not be responsible for Services performed by any subcontractors after notice of suspension is given by the City to Auditor. Should the City suspend, delay, or interrupt the Services and the suspension is not within Auditor's control, then the City shall extend the time of completion by the length of the delay.

Section 17. Modification/Addendum

Any modification of the provisions of this Agreement shall not be enforceable unless reduced to writing and signed by both the City and Auditor. A modification is a written document, contemporaneously executed by the City and Auditor, which increases or decreases the cost to the City over the agreed Compensation Amount in **Section 4** of this Agreement, or changes or modifies the Scope of Services or the time for performance. No modification shall be binding or effective until executed, in writing, by both Auditor and the City. If Auditor incurs additional

costs or devotes additional time on Project tasks, the City shall be responsible for payment of only those additional costs for which it has agreed to pay under a signed Addendum to this Agreement.

Section 18. Access to Records

The City shall have access, upon request, to such books, documents, receipts, papers, and records of Auditor as are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts during the term of this Agreement and for a period of four (4) years after termination of this Agreement, unless the City specifically requests an extension. This clause shall survive the expiration, completion, or termination of this Agreement.

Section 19. Property of the City

All documents, reports, and research gathered or prepared by Auditor under this Agreement, including but not limited to reports, drawings, spreadsheets, charts, graphs, papers, diaries, and inspection reports, shall be the exclusive property of the City and shall be delivered to the City prior to final payment. Any statutory or common law rights to such property held by Auditor as creator of such work shall be conveyed to the City upon request without additional compensation.

Section 20. Notices

Any notice required or permitted under this Agreement shall be in writing and shall be given when actually delivered in person or forty-eight (48) hours after having been deposited in the United States mail as certified or registered mail, addressed to the addresses set forth below, or to such other address as one party may indicate by written notice to the other party.

To City: City of Wilsonville
 Attn: Keith Katko, Finance Director
 29799 SW Town Center Loop East
 Wilsonville, OR 97070

To Auditor: Grove, Mueller & Swank, P.C.
 Attn: Ryan Pasquarella
 475 Cottage Street NE, Suite 200
 Salem, OR 97301

Section 21. Miscellaneous Provisions

21.1. Integration. This Agreement, including all exhibits attached hereto, contains the entire and integrated agreement between the parties and supersedes all prior written or oral discussions, representations, or agreements. In case of conflict among these or any other documents, the provisions of this Agreement shall control, and the terms most favorable to the City, within the City’s sole discretion, will apply.

21.2. Legal Effect and Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors, and assigns. This Agreement may be enforced by an action at law or in equity.

21.3. No Assignment. Auditor may not assign this Agreement, nor delegate the performance of any obligations hereunder, unless agreed to in advance and in writing by the City.

21.4. Adherence to Law. In the performance of this Agreement, Auditor shall adhere to all applicable federal, state, and local laws (including the Wilsonville Code and Public Works Standards), including but not limited to laws, rules, regulations, and policies concerning employer and employee relationships, workers compensation, and minimum and prevailing wage requirements. Any certificates, licenses, or permits that Auditor is required by law to obtain or maintain in order to perform the Services described on **Exhibit A**, shall be obtained and maintained throughout the term of this Agreement.

21.5. Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Oregon, regardless of any conflicts of laws. All contractual provisions required by ORS Chapters 279A, 279B, 279C, and related Oregon Administrative Rules to be included in public agreements are hereby incorporated by reference and shall become a part of this Agreement as if fully set forth herein.

21.6. Jurisdiction. Jurisdiction and venue for any dispute will be in Clackamas County Circuit Court.

21.7. Legal Action/Attorney Fees. If a suit, action, or other proceeding of any nature whatsoever (including any proceeding under the U.S. Bankruptcy Code) is instituted in connection with any controversy arising out of this Agreement or to interpret or enforce any rights or obligations hereunder, the prevailing party shall be entitled to recover attorney, paralegal, accountant, and other expert fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, as determined by the court or body at trial or on any appeal or review, in addition to all other amounts provided by law. If the City is required to seek legal assistance to enforce any term of this Agreement, such fees shall include all of the above fees, whether or not a proceeding is initiated. Payment of all such fees shall also apply to any administrative proceeding, trial, and/or any appeal or petition for review.

21.8. Nonwaiver. Failure by either party at any time to require performance by the other party of any of the provisions of this Agreement shall in no way affect the party's rights hereunder to enforce the same, nor shall any waiver by the party of the breach hereof be held to be a waiver of any succeeding breach or a waiver of this nonwaiver clause.

21.9. Severability. If any provision of this Agreement is found to be void or unenforceable to any extent, it is the intent of the parties that the rest of the Agreement shall remain in full force and effect, to the greatest extent allowed by law.

21.10. Modification. This Agreement may not be modified except by written instrument executed by Auditor and the City.

21.11. Time of the Essence. Time is expressly made of the essence in the performance of this Agreement.

21.12. Calculation of Time. Except where the reference is to business days, all periods of time referred to herein shall include Saturdays, Sundays, and legal holidays in the State of Oregon, except that if the last day of any period falls on any Saturday, Sunday, or legal holiday observed by the City, the period shall be extended to include the next day which is not a Saturday, Sunday, or legal holiday. Where the reference is to business days, periods of time referred to herein shall exclude Saturdays, Sundays, and legal holidays observed by the City. Whenever a time period is set forth in days in this Agreement, the first day from which the designated period of time begins to run shall not be included.

21.13. Headings. Any titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

21.14. Number, Gender and Captions. In construing this Agreement, it is understood that, if the context so requires, the singular pronoun shall be taken to mean and include the plural, the masculine, the feminine and the neuter, and that, generally, all grammatical changes shall be made, assumed, and implied to individuals and/or corporations and partnerships. All captions and paragraph headings used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Agreement.

21.15. Good Faith and Reasonableness. The parties intend that the obligations of good faith and fair dealing apply to this Agreement generally and that no negative inferences be drawn by the absence of an explicit obligation to be reasonable in any portion of this Agreement. The obligation to be reasonable shall only be negated if arbitrariness is clearly and explicitly permitted as to the specific item in question, such as in the case of where this Agreement gives the City “sole discretion” or the City is allowed to make a decision in its “sole judgment.”

21.16. Other Necessary Acts. Each party shall execute and deliver to the other all such further instruments and documents as may be reasonably necessary to carry out this Agreement in order to provide and secure to the other parties the full and complete enjoyment of rights and privileges hereunder.

21.17. Interpretation. As a further condition of this Agreement, the City and Auditor acknowledge that this Agreement shall be deemed and construed to have been prepared mutually by each party and it shall be expressly agreed that any uncertainty or ambiguity existing therein shall not be construed against any party. In the event that any party shall take an action, whether judicial or otherwise, to enforce or interpret any of the terms of the Agreement, the prevailing party shall be entitled to recover from the other party all expenses which it may reasonably incur in taking such action, including attorney fees and costs, whether incurred in a court of law or otherwise.

21.18. Entire Agreement. This Agreement and all documents attached to this Agreement represent the entire agreement between the parties.

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

21.20. Authority. Each party signing on behalf of Auditor and the City hereby warrants actual authority to bind their respective party.

The Auditor and the City hereby agree to all provisions of this Agreement.

AUDITOR:

CITY:

GROVE, MUELLER & SWANK, P.C.

CITY OF WILSONVILLE

By: _____

By: _____

Print Name: _____

Print Name: _____

As Its: _____

As Its: _____

Employer I.D. No. _____

APPROVED AS TO FORM:

Ryan Adams, Assistant City Attorney
City of Wilsonville, Oregon

EXHIBIT A

SCOPE OF SERVICES

1. Auditor shall conduct an audit of the accounts and fiscal affairs of the City and the Wilsonville Urban Renewal Agency, for the fiscal year ending June 30, 2022 (and annually thereafter for the next two fiscal years, each ending June 30, 2023 and June 30, 2024). The auditing of the City's financial records and the production of reports regarding the City's financial status shall include the Wilsonville Urban Renewal Agency, which the parties recognize is a separate legal entity from the City of Wilsonville. The Services shall be performed in accordance with:

- a. The *Minimum Standards of Audits of Oregon Municipal Corporations*;
- b. The requirements of Oregon Revised Statutes 297.405 through 297.740, and the regulations promulgated pursuant thereto;
- c. Generally Accepted Accounting Principles;
- d. Generally Accepted Auditing Standards; and,
- e. When required, *Government Auditing Standards* prescribed by the Comptroller General of the United States and Office of Management and Budget Circular A-133, commonly called the "Single Audit."

2. The audit shall be undertaken in order to express an opinion upon the financial statements of the City, and to determine if the City has complied substantially with appropriate legal provisions. The services to be provided are detailed in the Proposal submitted by Auditor.

3. Auditor agrees that the services that Auditor has agreed to perform under the Contract shall be rendered by an auditor admitted to the Municipal Roster. Auditor agrees that all work will be faithfully performed with care and diligence.

4. Should unusual conditions arise or be encountered during the course of the audit whereby the services of Auditor are necessary beyond the extent of the work contemplated, written notification of such unusual conditions shall be delivered to City, who shall instruct Auditor, in writing, concerning such additional services, and a signed copy of each such notification and instruction shall be delivered immediately to the Secretary of State by the party issuing the same.

5. The audit shall be started soon after the Contract is executed, and all Contract work shall be completed and all written reports thereon delivered within a reasonable time, but no later than six (6) months after the close of each fiscal year.

6. Adequate copies of Auditor's reports on financial statements and related reports and opinions required by professional standards shall be delivered to City, and their form and content shall be in accordance with and not less than that required by the *Minimum Standards for Audits of Oregon Municipal Corporations*.

7. City acknowledges that it is responsible for such financial statements as may be necessary to fully disclose and fairly present the results of operations for the year under audit and the financial

condition at the end of that year. Should such financial statements not be prepared and presented within a reasonable period of time, it is understood that Auditor shall prepare them for the City. The cost of preparing such financial statements shall be in addition to the base fee for conducting the audit as set forth below.

8. This Scope of Services includes and incorporates any and all other Services identified in the City's Request for Proposals and Auditor's Proposal in response.

9. The Scope of Services is subject to the following restrictions and assumptions:

- a. City's staff shall reasonably cooperate with Auditor.
- b. The books are closed, balanced, and reconciled by approximately September 15th, and that no unexpected circumstances will be encountered during the audit.
- c. City will prepare all financial schedules that it has traditionally prepared and will prepare the Annual Comprehensive Financial Report (ACFR) and financial report for the Urban Renewal Agency. City shall be responsible for drafting the notes and assembling the statistical section of the ACFR.
- d. City will be responsible for publication of the financial statements.
- e. City shall notify Auditor if federal financial assistance exceeds Seven Hundred and Fifty Thousand Dollars (\$750,000) in any one (1) fiscal year. In the event a Single Audit is required, Auditor shall provide City with an estimate of the audit fee.
- f. City shall make all records of the Wilsonville Urban Renewal Agency available, and the requirements of the Contract upon the City shall apply equally to the Wilsonville Urban Renewal Agency. City shall assure compliance of the Wilsonville Urban Renewal Agency.
- g. If audit or reporting requirements change substantially, the parties will agree to renegotiate reasonable additional fees to allow Auditor to meet professional standards without economic harm or benefit.

EXHIBIT B

BILLING RATES AND PAYMENT SCHEDULE

City hereby affirms that, for the first year of the Contract, proper provision for payment of the fee has been or will be duly made and that funds for the payment thereof are or will be made legally available; however, as to future years, the Contract is subject to appropriation of funds (See **Section 5** above).

A. Amount of Payment

Auditor shall be compensated for all goods, materials, expenses, and services as follows:

For fiscal year 2021-22, for actual time and material incurred, but not to exceed \$38,500.

For fiscal years 2022-23 and 2023-24, for actual time and material incurred for the hourly rates set forth in the Proposal, which may be increased each year over the prior year using the Portland-Salem CPI All-Items as of December for the fiscal year under review. The same increase formula will apply for each renewal period.

For the first Single Audit major program fee, the fixed price of \$7,500; for each additional Single Audit major program fee, the fixed price of \$4,000.

B. Manner of Payment

Payment shall be made to Auditor as follows: monthly, based on the percentage of completion agreed to by the Finance Director and Auditor.

Invoices are payable on delivery, but must be paid within thirty (30) days of the invoice date. A service fee of one and one-half percent (1-1/2%) per month, calculated from the date of the invoice and until the date of payment, will be assessed for payments received by Auditor after thirty (30) days.

C. Invoice Requirement

Invoices shall allocate the auditing cost between Single Audit services and all other auditing costs.

Invoices shall describe the percentage of completion agreed to by the Finance Director and the total billed-to-date. Invoices shall include the total amount invoiced to date by Auditor prior to the current invoice. Auditor shall send invoices to the City's Finance Director.

D. Hourly Rates

The hourly rates of pay by position for the first year under the Contract shall be as follows:

Position	Rate
Shareholders (CPA)	\$280/hour
Managers (CPA)	\$150/hour
Senior Staff (CPA)	\$110/hour
Junior Staff (CPA)	\$ 90/hour
Junior Staff (non-CPA)	\$ 80/hour
Clerks and Typists (non-CPA)	\$ 60/hour

For each subsequent year, the rate may be increased as described in this Exhibit B, Section A, above.

EXHIBIT C

TAX IDENTIFICATION NUMBER

In order for you to receive payment from the City of Wilsonville, you must have either a Tax Identification Number or a Social Security Number. The Internal Revenue Service Code requires a Form 1099 for payments to every person or organization other than a corporation for services performed in the course of trade or business. Further, the law requires the City to withhold twenty percent (20%) on reportable amounts paid to unincorporated persons who have not supplied the City with their correct Tax Identification Number or Social Security Number.

Please complete the following information request form and return it to the City of Wilsonville prior to or along with submittal of the first billing invoice.

Please check the appropriate category:

_____ Corporation _____ Partnership _____ Government
_____ Individual/Proprietor _____ other (explain) _____ Auditor

Tax Identification No. _____

-or-

Social Security No. _____

Print Name: _____

Title: _____

Business Name: _____

Business Address: _____

Business Phone: _____

Date

Authorized Signature (required)