

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement ("Agreement") is entered into effective the 1st day of July, 2016 by and between Oster Professional Group CPA's, LLP, an Oregon limited liability partnership ("OPG"), and the City of Ontario, Oregon, an Oregon local government entity ("City").

RECITALS

WHEREAS, City wishes to engage OPG 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, OPG 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 OPG agree as follows:

AGREEMENT

1. OPG's Services.

1.1 **Description of Services.** OPG shall provide all Services specified in any Scope of Work attached as an Appendix to this Agreement.

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

1.2 **Manner of Rendering Services.** OPG 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 OPG's employees.

1.4 **Services for Other Entities.** OPG 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.** OPG shall have no authority to bind, obligate or commit City by any promise or representation, unless OPG has obtained the prior written approval of an authorized representative of City.

1.6 **Compliance with Laws.** OPG 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, 2021, 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. The City may terminate this Agreement with cause upon giving written notice to OPG specifying the nature of the cause and giving OPG 14 days to cure. "Cause" is defined as a material breach of this Agreement, which must be specified in writing by City and provided to OPG not later than the date on which City gives notice of its intent to terminate.

2.2.2 By Either Party Without Cause. Either party may terminate this Agreement for any reason upon giving at least 60 days written notice in advance.

3. Compensation.

3.1 **Fees for Services.** City shall pay OPG in accordance with the terms outlined in Exhibit A to any Scope of Work attached to this Agreement. OPG 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 OPG for all labor, material and deliverables (collectively, "Services") provided under this Agreement; provided, however, that City also is obligated to pay OPG the prorated amount of any compensation earned under this Agreement for less than a full month of Services rendered.

3.2 **Expenses.** OPG shall invoice City for reasonable expenses that OPG incurs related to the provision of Services under this Agreement. OPG is responsible for all other expenses incurred in providing the services under this Agreement including, but not limited to, OPG's normal and ordinary business expenses such as rent, administrative assistance, general photocopying, postage, vehicle expense, office supplies, or local telephone service. OPG must obtain advance written approval from City any anticipated expense of more than \$100.00 for which OPG 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 OPG's normal and ordinary business expenses, including an expense of more than \$100.00 which was not first approved by City. Upon approval of OPG's expenses invoice, City shall pay OPG by check, delivered by regular mail at OPG's designated address, not later than thirty (30) days from the date of the invoice.

3.3 **Invoices.** OPG shall submit to City an invoice not later than the 10th day of the month following any month in which Services are performed. Each invoice shall include an itemized description of OPG's activities. City shall mail to OPG a check by regular mail at OPG's designated address not later than 30 days after receipt of each OPG invoice.

4. **Relationship Between the Parties.**

4.1 **Independent Contractor.** OPG 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 OPG, or any of OPG's employees or subcontractors.

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

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

4.4 **Permits and Licenses.** OPG shall, at OPG'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, OPG will not accept work, enter into a contract, or accept an obligation from any third party, inconsistent or incompatible with OPG's obligations, or the scope of Services rendered for City under this Agreement. OPG warrants that there is no other contract or duty on its part inconsistent with this Agreement.

6. **Return of Property and Documents.** OPG 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 OPG'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. OPG shall maintain insurance policies (including, without limitation, liability insurance and any required workers' compensation insurance) sufficient to protect OPG's business as required by local, state and federal law, and as necessary to protect against all applicable risks. OPG shall provide City with certificates of insurance and other supporting materials as City may request to evidence OPG's continuing compliance with these obligations.

8. Confidential Information.

8.1 "Confidential Information" Defined. In the course of performing the services for City, OPG 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. OPG 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. OPG'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 OPG by a third party that is legally entitled to disclose such information; (iii) OPG demonstrates through documented records that the information was known by it prior to its receipt from City; (iv) is developed by OPG independently of any disclosures made by City of such information, as demonstrated by OPG'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 OPG 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:

OPG: Kari J. Ott, CPA
77 West Adams Street
Burns, Oregon 97720

City: City Manager
City of Ontario
444 SW 4th Street
Ontario, OR 97914

10. Assignment and Subcontracting.

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

10.2 Subcontracting. OPG agrees that it may not subcontract this Agreement in whole or in part.

11. Dispute Resolution.

11.1 Method of Resolution. OPG 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. OPG 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. OPG 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, OPG 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 OPG 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.

OSTER PROFESSIONAL GROUP, CPA's, LLP

CITY OF ONTARIO, OREGON



Kari J. Ott, CPA



Ronald Verini, Mayor

2016 – 2021 SCOPE OF WORK

Appendix to Oster Professional Group, CPA's – City of Ontario Professional Services Agreement

A. GENERAL. Oster Professional Group, CPA's (OPG) and the City of Ontario (City) agree that OPG will provide the following Services under the terms and conditions of the attached Professional Services Agreement ("Agreement") between OPG and City.

B. TERM AND TERMINATION. This Scope of Work is effective for five years beginning July 1, 2016 through June 30, 2021, unless otherwise terminated or modified in accordance with Section 2.2 of the Agreement.

C. SERVICES.

1. General Management. For the purposes of managing the Services to be rendered, an OPG representative will maintain a physical presence at City's main office during regular business hours when City offices are open unless otherwise agreed by City and OPG.

2. Offer of Employment.

- OPG will offer employment to the individuals who currently are employed by City in the following positions:
 - Accounts Payable Clerk
 - Accounts Receivable Clerk
 - Utility Billing Clerk

* If any of the above individuals decline an offer of employment from OPG, OPG will recruit to fill such position(s) externally.

The job functions for which each of the above positions is responsible will continue to be performed for City as part of this Scope of Work. In addition to the job functions for each of the positions above, OPG will be responsible for the setup and employee changes within the Springbrook software in coordination with the City's Human Resources Department.

3. 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.

4. Quarterly Cycle.

- Prepare and file quarterly payroll reports.
- Provide grant administration as needed.
- Monitor capital asset listing, including construction in progress.

5. 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 Department Heads and staff necessary to prepare the annual budgets to be approved by the City Manager.
- Provide on-site assistance during the annual financial statement audit.

6. As Needed.

- Timely respond to Council inquiries for specified information.
- Participate by telephone or in person in city staff meetings upon reasonable advance notice by City for the purpose of providing specified information or receiving information as necessary.
- Perform other services as reasonably requested by City that are consistent with overall services to be performed by OPG under the terms and conditions of the attached Professional Services Agreement.
- Provide on-site assistance during audits, including other specific audits related to payroll, grants, etc.
- Monitor budget to actual data.
- Monitor the City's compliance with its Financial Policies Manual.
- Recommend changes to the City's financial policies and procedures as needed, and implement approved changes.
- Notify both the City Manager and City Council of short-term and long-term budget trends, potential shortfalls, and any financial irregularities of which OPG becomes aware.
- Provide information to assist the City in implementing long or short term budgetary goals.

7. Meetings.

- Attend all regularly scheduled City Council work sessions and meetings; special Council meetings as necessary upon reasonable advance notice; all Budget Committee meetings; and other selected committee meetings as mutually deemed necessary by OPG and the City Manager for purpose of providing any requested information.
- Provide recording staff for Budget Committee meetings, transcribe and maintain Budget Committee meeting minutes, and timely submit to City.

8. Payroll.

- Prepare monthly payroll including ACH upload and checks.
- Prepare payments for payroll liabilities.
- Upload payroll data to PERS.
- Reconcile PERS data with payroll system.

9. Month End Closing, Journal Entries.

- Prepare Journal Entries as needed; Journal Entries will be approved by City Manager.
- Prepare month end closing entries.
- Provide bank administration as necessary.
- Process month end cash receipts.

10. Other Items.

- Provide backup for the front desk position, to include coverage of morning and afternoon breaks, the lunch hour, and vacation and/or sick day absences.
- Generate reports as scheduled.

EXHIBIT A to 2016 – 2012 SCOPE OF WORK

COMPENSATION AND PAYMENT

A. COMPENSATION

1. Base Compensation. City shall pay to OPG as compensation for services performed under this Scope of Work the total annual sum of \$276,000.00 for each year in the five-year contract period.

1.1 Cost of Living Increases. Beginning with the second year of the five-year contract period, the Base Compensation shall be adjusted to reflect the U.S. Bureau of Labor Statistics Consumer Price Index Inflation rate up to a maximum annual increase of three (3) percent.

2. Expenses. Expenses shall be paid in accordance with Section 3.2 of the Agreement.

3. Unforeseen Circumstances. The Base Compensation reflects the cost of Services provided under this Scope of Work based on reasonable expectations for labor and materials. Any additional expenses including wages caused by Unforeseen Circumstances will be billed to City for reimbursement. For purposes of this Scope of Work, "Unforeseen Circumstances" is defined as a work stoppage or slow down, a natural disaster, an act of war or terrorism, or a utility failure.

B. PAYMENT

1. Monthly Payments. City shall pay OPG one-twelfth (1/12) of the Base Fee (\$23,000) per month on the 15th day of the month that Services are provided. Provided, however, that this monthly payment may proportionately increase to the extent City and OPG agree that the Base Compensation shall increase during the Term of the Scope of Services.

2. Other Compensation. All other Compensation, including Expenses, is due and payable within 30 days of receipt of OPG's invoice.

3. Interest. City shall pay interest at an annual rate of 9% on payments not paid and received within 30 days of the due date, with interest calculated from the date payment is due.