

RESOLUTION NO. 2738

A RESOLUTION OF THE CITY OF WILSONVILLE AUTHORIZING THE CITY MANAGER TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH PFM FINANCIAL ADVISORS, LLC FOR FINANCIAL ADVISOR SERVICES.

WHEREAS, the City has planned and budgeted for services of a financial advisor to develop and assist in implementing the City's strategies to meet its current and long-term financial obligations and capital financing needs and to render assistance in respect to debt transactions; and

WHEREAS, the Professional Services Agreement documents the consultant will be paid on a time and material basis not to exceed FIFTY THOUSAND DOLLARS (\$50,000) on an annual basis beginning March 1, 2019 through the period ending June 30, 2021;

WHEREAS, the City desires to award a Professional Services Agreement contract to PFM Financial Advisors LLC with no substantive changes to the Attachment, Exhibit A-PSA Financial Advisor;

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

1. The City of Wilsonville authorizes the City Manager to enter into and execute, on behalf of the City of Wilsonville, a Professional Services Agreement contract with PFM Financial Advisors LLC, for a not-to-exceed annual amount of \$50,000.
2. This Resolution becomes effective upon adoption.

ADOPTED by the Wilsonville City Council at a regular meeting thereof this 21st day of February, 2019, and filed with the Wilsonville City Recorder this date.


TIM KNAPP, MAYOR

ATTEST:


Kimberly Veliz, City Recorder

SUMMARY OF VOTES:

Mayor Knapp	Yes
Council President Akervall	Yes
Councilor Stevens	Excused
Councilor Lehan	Yes
Councilor West	Yes

Attachments:

A. Exhibit A – PSA Financial Advisor

CITY OF WILSONVILLE ON-CALL PROFESSIONAL SERVICES AGREEMENT

This On-Call Professional Services Agreement (“Agreement”) for the Financial Advisor Project (“Project”) is made and entered into on this _____ day of February 2019 (“Effective Date”) by and between the **City of Wilsonville**, a municipal corporation of the State of Oregon (hereinafter referred to as the “City”), and **PFM Financial Advisors LLC**, a Delaware limited liability company (hereinafter referred to as “Consultant”).

RECITALS

WHEREAS, The City desires to obtain the services of a financial advisor to develop and assist in implementing the City’s strategies to meet its current and long-term financial obligations and capital financing needs, and to render assistance in respect to debt transactions; and

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

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

WHEREAS, Consultant 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. Term

The term of this Agreement shall be from the Effective Date until all services required to be performed hereunder (“Services”) are completed and accepted, or no later than June 30, 2021, whichever occurs first, unless earlier terminated in accordance herewith or an extension of time is agreed to, in writing, by the City.

Section 2. Consultant’s Services

2.1. Consultant shall diligently perform the periodic on-call debt planning, debt policy development, and debt issuance Services according to the requirements identified in the Scope of Services, attached hereto as **Exhibit A** and incorporated by reference herein, for the Project.

2.2. All written documents, drawings, and plans submitted by Consultant in conjunction with the Services shall bear the signature, stamp, or initials of Consultant’s authorized Project Manager. Any documents submitted by Consultant that do not bear the signature, stamp, or initials of Consultant’s authorized Project Manager, will not be relied upon

by the City. Interpretation of plans and answers to questions regarding the Services or Scope of Services given by Consultant's Project Manager may be verbal or in writing, and may be relied upon by the City, whether given verbally or in writing. If requested by the City to be in writing, Consultant's Project Manager will provide such written documentation.

2.3. Consultant will not be deemed to be in default by reason of delays in performance due to reasons beyond Consultant's reasonable control, including but not limited to strikes, lockouts, severe acts of nature, or other unavoidable delays or acts of third parties not under Consultant's direction and control ("Force Majeure"). In the case of the happening of any Force Majeure event, the time for completion of the Services will be extended accordingly and proportionately by the City, in writing. Lack of labor, supplies, materials, or the cost of any of the foregoing shall not be deemed a Force Majeure event.

2.4. The existence of this Agreement between the City and Consultant shall not be construed as the City's promise or assurance that Consultant will be retained for future services beyond the Scope of Services described herein.

2.5. Consultant shall maintain the confidentiality of any confidential information that is exempt from disclosure under state or federal law to which Consultant may have access by reason of this Agreement. Consultant warrants that Consultant'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 3. Compensation

3.1. Except as otherwise set forth in this **Section 3**, the City agrees to pay Consultant on a time and materials basis, guaranteed not to exceed FIFTY THOUSAND DOLLARS (\$50,000) per year for performance of the Services ("Compensation Amount"). Consultant's unit pricing and rates are set forth on **Exhibit B**, attached hereto and incorporated by reference herein. Any compensation in excess of the Compensation Amount will require an express written Addendum to be executed between the City and Consultant.

3.2. During the course of Consultant's performance, if the City, through its Project Manager, specifically requests Consultant to provide additional services that are beyond the Scope of Services described on **Exhibit A**, Consultant shall provide such additional services and bill the City at the hourly rates outlined on Consultant's Rate Schedule, as set forth in **Exhibit B**. Any Additional work beyond the Scope of Services or any compensation above the amount shown in **Subsection 3.1** requires a written Addendum executed in compliance with the provisions of **Section 15**.

3.3. Except for amounts withheld by the City pursuant to this Agreement, Consultant 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 Consultant as promptly as is reasonably possible.

3.4. The City will be responsible for the direct payment of required fees payable to governmental agencies, including but not limited to plan checking, land use, zoning, and all other similar fees resulting from this Project, that are not specifically covered by **Exhibit A**.

3.5. Consultant's Compensation Amount and Rate 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.

Section 4. City's Rights and Responsibilities

4.1. 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.

Section 5. City's Project Manager

The City's Project Manager is Cathy Rodocker. The City shall give Consultant prompt written notice of any re-designation of its Project Manager.

Section 6. Consultant's Project Manager

Consultant's Project Manager is Duncan Brown. In the event that Consultant's designated Project Manager is changed, Consultant shall give the City prompt written notification of such re-designation. Recognizing the need for consistency and knowledge in the administration of the Project, Consultant'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 Consultant that is not from Consultant's designated Project Manager, the City may request verification by Consultant's Project Manager, which verification must be promptly furnished.

Section 7. Project Information

Except for confidential information designated by the City as information not to be shared, Consultant agrees to share Project information with, and to fully cooperate with, those corporations, firms, contractors, public utilities, governmental entities, and persons involved in or associated with the Project. 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 8. Subcontractors and Assignments

8.1. Consultant shall not subcontract with others for any of the Services prescribed herein. Consultant shall not assign any of Consultant'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.

8.2. The City shall have the right to enter into other agreements for the Project, to be coordinated with this Agreement. Consultant shall cooperate with the City and other firms, engineers or subcontractors on the Project so that all portions of the Project may be completed in the least possible time and within normal working hours. Consultant shall furnish other engineers, subcontractors and affected public utilities, whose designs are fitted into Consultant's design, detail drawings giving full information so that conflicts can be avoided.

8.3. Consultant shall include this Agreement by reference in any subcontract and require subcontractors to perform in strict compliance with this Agreement.

Section 9. Consultant Is Independent Contractor

9.1. Consultant is an independent contractor for all purposes and shall be entitled to no compensation other than the Compensation Amount provided for under **Section 3** of this Agreement. Consultant will be solely responsible for determining the manner and means of accomplishing the end result of Consultant'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 Consultant's Services so such Services meet the requirements of the Project.

9.2. Other than as set forth above, no subcontracting or assignment of this Agreement is allowed.

Section 10. Consultant Responsibilities

10.1. Consultant must make prompt payment for any claims for labor, materials, or services furnished to Consultant by any person in connection with this Agreement as such claims become due. Consultant 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 Consultant. If Consultant 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 subcontractor furnishing the labor, materials, or services and offset the amount of the payment against funds due or to become due to Consultant under this Agreement. The City may also recover any such amounts directly from Consultant.

10.2. Consultant must comply with all applicable Oregon and federal wage and hour laws, including BOLI wage requirements, if applicable. Consultant shall make all required workers compensation and medical care payments on time. Consultant 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. Consultant shall also be fully

responsible for payment of salaries, benefits, taxes, Industrial Accident Fund contributions, and all other charges on account of any employees. Consultant 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 Consultant's responsibility. Consultant shall defend, indemnify, and hold the City harmless from claims for payment of all such expenses.

10.3. No person shall be discriminated against by Consultant or any subcontractor 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.

10.4. References to "subcontractor" mean a subcontractor at any tier.

Section 11. Indemnity

11.1. Indemnification. Consultant 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 Consultant's negligent acts, omissions, errors, or willful or reckless misconduct pursuant to this Agreement, or from Consultant'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 Consultant 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 Consultant 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 Consultant'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 11.2**. Consultant 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 Consultant. As used herein, the term "Consultant" applies to Consultant and its own agents, employees, and suppliers, and to all of Consultant's subcontractors, including their agents, employees, and suppliers.

11.2. Standard of Care. In the performance of the Services, Consultant agrees to use that degree of care and skill exercised under similar circumstances by reputable members of Consultant's profession practicing in the Portland metropolitan area. Consultant will re-perform any Services not meeting this standard without additional compensation. Consultant'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 Consultant's failure to perform in accordance with the applicable standard of care of this Agreement and within the prescribed timeframe.

Section 12. Insurance

12.1. Insurance Requirements. Consultant 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 Consultant's activities or work hereunder. The amount of insurance carried is in no way a limitation on Consultant's liability hereunder. The policy or policies of insurance maintained by Consultant shall provide at least the following minimum limits and coverages at all times during performance under this Agreement:

12.1.1. Commercial General Liability Insurance. Consultant shall obtain, at Consultant'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.

12.1.2. Professional Errors and Omissions Coverage. Consultant 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. Consultant shall maintain this insurance for damages alleged to be as a result of errors, omissions, or negligent acts of Consultant. Such policy shall have a retroactive date effective before the commencement of any work by Consultant 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 this Agreement.

12.1.3. Business Automobile Liability Insurance. If Consultant will be using a motor vehicle in the performance of the Services herein, Consultant shall provide the City a certificate indicating that Consultant 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**.

12.1.4. Workers Compensation Insurance. Consultant 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. Consultants 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.

12.1.5. Insurance Carrier Rating. Coverages provided by Consultant 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.

12.1.6. Additional Insured and Termination Endorsements. Additional Insured coverage under Consultant'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. Except with regard to professional liability, 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.

12.1.7. Certificates of Insurance. As evidence of the insurance coverage required by this Agreement, Consultant 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. Consultant 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 Consultant 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.

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

Section 13. Early Termination; Default

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

13.1.1. By mutual written consent of the parties;

13.1.2. By the City, for any reason, and within its sole discretion, effective upon delivery of written notice to Consultant by mail or in person; or

13.1.3. By Consultant, effective upon seven (7) days' prior written notice in the event of substantial failure by the City to perform in accordance with the terms through no fault of Consultant, where such default is not cured within the seven (7) day period by the City. Withholding of disputed payment is not a default by the City.

13.2. If the City terminates this Agreement, in whole or in part, due to default or failure of Consultant 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, Consultant shall be liable for all costs and damages incurred by the City as a result of the default by Consultant, 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 Consultant. In the event of a default, the City will provide Consultant with written notice of the default and a period of ten (10) days to cure the default. If Consultant 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.

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

13.4. Termination under any provision of this section shall not affect any right, obligation, or liability of Consultant or the City that accrued prior to such termination. Consultant shall surrender to the City items of work or portions thereof, referred to in **Section 17**, for which Consultant has received payment or the City has made payment.

Section 14. 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 Consultant. 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 Consultant's control. The City shall not be responsible for Services performed by any subcontractors after notice of suspension is given by the City to Consultant. Should the City suspend, delay, or interrupt the Services and the suspension is not within Consultant's control, then the City shall extend the time of completion by the length of the delay.

Section 15. 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 Consultant. A modification is a written document, contemporaneously executed by the City and Consultant, which increases or decreases the cost to the City over the agreed Compensation Amount in **Section 3** 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 Consultant and the City. In the event Consultant receives any communication of whatsoever nature from the City, which communication Consultant contends gives rise to any modification of this Agreement, Consultant shall, within five (5) days after receipt, make a written request for modification to the City's Project Manager in the form of an Addendum. Consultant's failure to submit such written request for modification in the form of an Addendum shall be the basis for refusal by the City to treat said communication as a basis for modification or to allow such modification. In connection with any modification to this Agreement affecting any change in price, Consultant shall submit a complete breakdown of labor, material, equipment, and other costs. If Consultant 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 be enforceable, the Addendum must describe with particularity the nature of the change, any delay in time the Addendum will cause, or any increase or decrease in the Compensation Amount. The Addendum must be signed and dated by both Consultant and the City before the Addendum may be implemented.

Section 16. Access to Records

The City shall have access, upon request, to such books, documents, receipts, papers, and records of Consultant 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 the Agreement, unless the City specifically requests an extension. This clause shall survive the expiration, completion, or termination of this Agreement.

Section 17. Property of the City

17.1. All documents, reports, and research gathered or prepared by Consultant under this Agreement, including but not limited to spreadsheets, charts, graphs, drawings, modeling, maps, data generation, 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 Consultant as creator of such work shall be conveyed to the City upon request without additional compensation.

17.2. Consultant shall not be held liable for any damage, loss, increased expenses, or otherwise, caused by or attributed to the reuse by the City or its designees of all work performed by Consultant pursuant to this Agreement without the express written permission of Consultant.

Section 18. 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: Cathy Rodocker, Finance Director
 29799 SW Town Center Loop East
 Wilsonville, OR 97070

To Consultant: PFM Financial Advisors, LLC
 Attn: Duncan Brown, Project Manager
 650 NE Holladay St. Suite 1600
 Portland, OR 97232

with copy to: PFM Financial Advisors LLC
 Attn: Managing Director
 650 NE Holladay St. Suite 1600
 Portland, OR 97232

Section 19. Miscellaneous Provisions

19.1. 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 documents, the provisions of this Agreement shall control.

19.2. 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.

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

19.4. Adherence to Law. In the performance of this Agreement, Consultant 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 Consultant 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.

19.5. 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.

19.6. Jurisdiction. Venue for any dispute will be in Clackamas County Circuit Court.

19.7. 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.

19.8. 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.

19.9. 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.

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

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

19.12. 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.

19.13. 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.

19.14. 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.

19.15. 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.”

19.16. 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.

19.17. Interpretation. As a further condition of this Agreement, the City and Consultant 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.

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

19.19. 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.

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

19.21. Registered Municipal Advisor; Required Disclosures. Consultant is a registered municipal advisor with the Securities and Exchange Commission (the “SEC”) and the Municipal Securities Rulemaking Board (the “MSRB”), pursuant to the Securities Exchange Act of 1934 Rule 15Ba1-2. If the City has designated Consultant as its independent registered municipal advisor (“IRMA”) for purposes of SEC Rule 15Ba1-1(d)(3)(vi) (the “IRMA exemption”), then services provided pursuant to such designation shall be the services described in **Exhibit A** hereto, subject to any limitations provided herein. Consultant shall not be responsible for, or have any liability in connection with, verifying that Consultant is independent from any other party seeking to rely on the IRMA exemption (as such independent status is required pursuant to the IRMA exemption, as interpreted from time to time by the SEC). The City acknowledges and agrees that any reference to Consultant, its personnel, and its role as IRMA, including in the written representation of the City required under SEC Rule 15Ba1-1(d)(3)(vi)(B), shall be subject to prior approval by Consultant. The City further agrees not to represent that Consultant is the City’s IRMA with respect to any aspect of a

municipal securities issuance or municipal financial product, outside of the Scope of Services, without Consultant’s prior written consent.

MSRB Rules require that municipal advisors make written disclosures to their clients of all material conflicts of interest, certain legal or disciplinary events, and certain regulatory requirements. Such disclosures are provided in Consultant’s Disclosure Statement delivered to the City with this Agreement.

19.22. Information To Be Furnished to Consultant. All information, data, reports, and records in the possession of the City or any third party necessary for carrying out any services to be performed under this Agreement (“Data”) shall be furnished to Consultant, and the City shall, and shall cause its agent(s) to, cooperate with Consultant in its conduct of reasonable due diligence in performing the Services, including with respect to the facts that are necessary in its recommendation(s) to the City in connection with a municipal securities transaction or municipal financial product and/or relevant to the City’s determination whether to proceed with a course of action. To the extent the City requests that Consultant provide advice with regard to any recommendation made by a third party, the City will provide to Consultant written direction to do so as well as any Data it has received from such third party relating to its recommendation. The City acknowledges and agrees that while Consultant is relying on the Data in connection with its provision of the Services under this Agreement, Consultant makes no representation with respect to, and shall not be responsible for, the accuracy, adequacy, or completeness of such Data.

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

CONSULTANT:

CITY:

PFM FINANCIAL ADVISORS LLC

CITY OF WILSONVILLE

By: _____

By: _____

Print Name: _____

Print Name: _____

As Its: _____

As Its: _____

Employer I.D. No. 81-1642787

APPROVED AS TO FORM:

Amanda Guile-Hinman, Asst. City Attorney
City of Wilsonville, Oregon

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EXHIBIT A SCOPE OF SERVICES

1. General, ongoing services relative to the periodic updates, financial planning, credit ratings, and policy development, subject to fees set forth in Exhibit B, Section 1. Upon request of the City:

- Provide general advice, input, and planning as may be requested from time to time by the City.
- Evaluate the City's capital financing plans and needs, and the City's financial resources, relative to any proposed financing.
- Provide analysis of financing options, identify risks, and advise on the feasibility of financing plans.
- Periodically review outstanding obligations for the City for potential consolidation or refinancing opportunities that may benefit the City.
- Advise the City of changes in state or federal law that may be relevant to the City's future financing plans.
- If requested, serve as the City's IRMA in connection with the "Municipal Advisor Rule," and review proposals/analysis provided by underwriters, banks, and other third parties.
- Attend meetings with City's staff, consultants, and other professionals and the City.

2. Services related to debt transactions (including short-term financings, notes, loans, letters of credit, line of credit, and bonds) subject to transaction fees as set forth in Exhibit B, Section 2. Upon request of the City or as required to complete the financing transaction:

- Develop, or review, a financing plan in concert with City's staff which would include recommendations as to the timing and number of series of bonds to be issued.
- Assist the City by recommending the best method of sale, either as a negotiated sale, direct (bank) placement, or a competitive sale. In a competitive sale or direct placement, make recommendation as to the determination of the best bid. In the event of a negotiated sale, assist in the solicitation, review, and evaluation of any investment banking proposals, and provide advice and information necessary to aid in such policy selection.
- Advise as to the various financing alternatives available to the City.
- Develop alternatives related to debt transaction, including evaluation of revenues available, maturity schedule, and cash flow requirements.
- If appropriate, develop credit rating presentation(s) and coordinate with the City the presentation(s) to credit rating agencies.
- For a negotiated sale, review underwriter's proposals and provide analysis of same to the City.

- Assist the City in the procurement of other services relating to debt issuance, such as printing, paying agent, registrar, etc.
- Identify key bond covenant features and advise as to the financial consequences of provisions to be included in documents regarding security, creation of reserve funds, flow of funds, redemption provisions, additional parity debt tests, etc.
- Review the terms, conditions, and structure of any proposed debt offering undertaken by the City and provide suggestions, modifications, and enhancements, where appropriate and necessary, to reflect the constraints or current financial policy and fiscal capability.
- Coordinate with the City's staff and other advisors as respects the furnishing of data for offering documents, it being specifically understood that Consultant is not responsible for the inclusion or omission of any material in offering documents.
- Review Preliminary Official Statements and final Official Statements prepared on behalf of the City for use in marketing any bonds and meeting regulatory requirements.
- As applicable, advise the City on the condition of the bond market at the time of sale, including volume, timing considerations, competing offerings, and general economic considerations.
- Assist and advise the City in negotiations with investment banking groups regarding fees, pricing of the bonds, and final terms of any security offering, and make recommendations regarding a proposed offering to obtain the most favorable financial terms based on existing market conditions.
- For any competitive sale of bonds or notes, prepare (or assist in the preparation of) the official notice of sale, recommend sale parameters, take steps necessary to ensure broad market exposure of the issue, through the use of newswire services and official statement distribution, and perform additional steps necessary and customary for competitive bond sales.
- Arrange for the closing of the transaction, including final delivery of the bonds.

In addition to the services identified above, Consultant may also perform special projects as requested by the City. The scope of such project will be identified prior to undertaking the project. Such projects will be subject to fees based upon hourly rates, as set forth in Exhibit B, Section 1.

EXHIBIT B COMPENSATION FOR SERVICES

1. Hourly Project Fees (Non-Transaction Related)

For non-transaction services provided according to the Scope of Services in Exhibit A, Section 1, Consultant will charge hourly fees as follows:

<u>Experience Level</u>	<u>Hourly Rate</u>
Managing Director/Director	\$315
Senior Managing Consultant	\$295
Senior Analyst	\$250
Analyst	\$210
Associate	\$185

In the event the City requests that Consultant perform a significant special project beyond the Scope of Services contained in Exhibit A, Section 1, fees will be negotiated in advance of the project generally based upon the aforementioned hourly rates for the indicated levels of experience or their equivalents. No such fee will be charged to the City without first entering into a written addendum or memorandum documenting the requested services and expected fee. Additionally, in the event a financing is started, but cancelled at the City's request, accrued time will be billed at hourly rates as described above.

For each contract year following the initial contract year (each, individually, a "Subsequent Contract Year"), hourly fee rates shall be calculated by comparing the "All Items Consumer Price Index for All Urban Consumers (CPI-U) for the U.S. City Average" (the "Index") for the end of month immediately preceding the start of the Subsequent Contract Year and the Index on the date one year prior to that end of month. The greater of zero percent and the percentage change in the Index shall be applied to the hourly fee rate schedule above and shall be the hourly fee rates for the applicable Subsequent Contract Year. For example, and for avoidance of doubt, for a Subsequent Contract Year commencing July 1, 2020, the Index in effect on June 30, 2020 will be compared to the Index in effect on June 30, 2019. The percentage change in the Index will then be applied to increase the hourly rates by a similar percentage.

2. Transaction Fees

The compensation schedule for long-term financings will be billed at closing as follows:

<u>Bond Size</u>	<u>Issuance Fee per \$1,000</u>
For financing up to \$20 million	\$1.50 per \$1,000, with a \$20,000 minimum
For financing over \$20 million	\$30,000 plus \$0.75 per \$1,000 over \$20 million

Interim financing or bank placements may be subject to a reduced fee, depending on the time and complexity of the transaction and the specific services provided.