

## Purchasing Division

300 West Third Street  
Oxnard, CA 93030  
(805) 385-7538  
[www.oxnard.org](http://www.oxnard.org)



November 14, 2016

Ladies and Gentlemen:

The City of Oxnard invites proposals from qualified certified public accounting firms for Internal Audit Services.

This request for proposal is made up of the following sections: I. Instructions to Proposers, II. General Terms and Conditions, III. Background, IV. Scope of Services, V. Proposal Requirements, and five (5) attachments which include: 1) Internal Audit Program Charter, 2) Oxnard's new Whistleblower Policy, 3) City Corp, Performing Arts & Convention Center and Golf Program Overviews, 4) a sample of a Professional Services Agreement, and 5) insurance requirements. Proposers will be responsible to carefully examine the requirements contained herein.

Proposals will be received in the City of Oxnard Purchasing Office located at 300 W. Third St., Second Floor, Oxnard, CA 93030 by **4:00 p.m. on December 19, 2016**. A copy of the requirements, specifications and proposal documents may be obtained from the Purchasing Office or may be obtained at the City's website: <http://www.oxnard.org>. The envelope containing your proposal must be sealed and marked "**RFP - Internal Audit Services**". Proposals will not be opened publicly.

If you have any questions, please call (805) 385-7538 or email [patricia.garcia@oxnard.org](mailto:patricia.garcia@oxnard.org).

Sincerely,

A handwritten signature in blue ink that reads "Patricia Garcia".

Patricia Garcia  
Buyer  
City of Oxnard

**CITY OF OXNARD  
FINANCE DEPARTMENT**

**REQUEST FOR PROPOSALS (RFP)**

**FOR**

**INTERNAL AUDIT SERVICES**

**PROPOSALS MAY BE MAILED  
OR DELIVERED IN PERSON  
TO THE PURCHASING OFFICE AT  
300 WEST THIRD ST., SECOND FLOOR, OXNARD, CA 93030**

**PROPOSALS MUST BE RECEIVED BY 4:00 P.M.  
ON THE DATE INDICATED BELOW:**

**DECEMBER 19, 2016**

**CITY OF OXNARD  
REQUEST FOR PROPOSALS  
INTERNAL AUDIT SERVICES**

**Proposed Timeline**

<b>DATE</b>	<b>ACTIVITY</b>
November 14, 2016	Release of Request for Proposal (RFP)
November 28, 2016 at 2:00 p.m.	Conference call for questions on Request for Proposal Dial in #: <u>866-711-1781</u> , enter passcode <u>7962394</u>
December 19, 2016	Submission of the Proposal is due to the City of Oxnard Purchasing Division by <b><u>4:00 p.m.</u></b>
December 19-January 2, 2017	Review of Proposals
January 2-January 16, 2017	Potential Interviews of Finalists
January 17-23, 2017	Staff Completes Tentative Contract
February 7, 2017	Award of Agreement by City Council

**CITY OF OXNARD  
REQUEST FOR PROPOSAL  
INTERNAL AUDIT SERVICES**

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**CITY OF OXNARD  
REQUEST FOR PROPOSAL  
INTERNAL AUDIT SERVICES**

**I. INSTRUCTIONS TO PROPOSERS**

**RECEIPT AND OPENING OF PROPOSALS**

The City of Oxnard invites proposals from qualified firms for Internal Audit Services. Proposals will be received in the Purchasing Office until **4:00 p.m. on Monday, December 19, 2016.**

At the proposer's option, proposals may be submitted via email in .pdf format to [patricia.garcia@oxnard.org](mailto:patricia.garcia@oxnard.org) **OR** an envelope containing one (1) executed original and four (4) signed copies of the Proposal that must be sealed and addressed to: City of Oxnard Purchasing Office, 300 West Third Street, Second Floor, Oxnard, California 93030, Attention: Patricia Garcia, Buyer. The envelope must show the proposer's name and address; and must clearly be labeled "**RFP - Internal Audit Services**".

Proposals will not be opened publicly. Any proposal received after the established closing date and time will not be accepted. Proposal results will be available after proposals have been reviewed.

Proposals may be withdrawn upon written request at any time prior to the established closing date and time. The proposer or the proposer's authorized agent must sign such request.

**EXAMINATION OF REQUIREMENTS**

Each proposer must carefully examine the requirements contained herein. Each proposer shall be thoroughly familiar with all requirements contained herein. The failure or omission to examine any form or document shall in no way relieve a proposer from any obligation in respect to this proposal as submitted. Any misinterpretation of the requirements is solely that of the proposer's.

**QUALIFICATIONS SUBMISSION REQUIREMENTS**

Your response should be submitted in the following manner: (1) Your response to the Request for Proposals should be comprehensive and responsive, to the greatest extent possible, to the RFP, but should not include any information of proposed costs, and (2) you must submit a second sealed envelope containing the relevant cost information, including a not-to-exceed fee for each year of the contract. Responses not submitted in this form will be considered non-responsive.

The proposed costs should be broken out in the same manner as the Scope of Services (i.e., Sections I, II and III). With respect to Section II, proposers should further break out their costs for each subtask (i.e., A.1 Risk Assessment, A.2 Internal Control Review, B. Performance Audit of City Corp, C. Performance Audit of the Performing Arts and Convention Center, D. Review of Overtime Usage and E. Performance Audit of the Golf program).

Additional materials, including detailed resumes and brochures may be submitted as an attached appendix to the proposal. Brochures and marketing materials not directly related to specific experience with the proposed scope of work shall not be submitted as part of this proposal.

In addition, any material that will add to the persuasiveness of your proposal may be included.

If you are not willing to accept the requirements and conditions of this Request for Proposal, identify in your proposal all requirements and conditions you do not accept. Failure to identify any such requirements and conditions will be deemed acceptance of all requirements and conditions.

Your proposal must be signed and dated in ink by the owner, partner, or corporate officer of the company, or by an agent duly authorized to represent the contractor under this proposal. Include the name and position held within contractor's organization.

### **CITY'S SELECTION CRITERIA**

1. Demonstrated ability to perform the scope of work identified in this RFP.
2. Demonstrated technical ability and interpersonal acumen to address the myriad of issues likely to be examined as part of performing Internal Auditing services for the City of Oxnard and to properly interact with all relevant stakeholders.
3. Qualifications and expertise of staff specifically assigned to this project as demonstrated by completing similar work.
4. Cost

### **ADDENDA AND INTERPRETATION**

No interpretation of the meaning of the specifications or other proposal documents will be made to any proposer orally. Proposers are not to contact any individual other than the Buyer. Every request for such interpretation must be in writing and addressed to: Buyer, City of Oxnard, 300 W. Third St., Suite 202, Oxnard, CA 93030 and, to be given consideration, must be received at least seven (7) days prior to the date fixed for the closing of bids. Requests for interpretation may be faxed to the Buyer at 805-385-7495. Any and all such interpretations and any supplemental instructions will be in the form of written addenda which, if issued, will be faxed or e-mailed to all known prospective proposers (at the respective addresses furnished for such purposes), no later than seven (7) calendar days prior to the date fixed for the closing of proposals. Addenda required later than seven (7) calendar days prior to the proposal closing date may cause a postponement in the proposal closing date. Failure of any proposer to receive any such addendum or interpretation shall not relieve such proposer from any obligation under this proposal as submitted. All addenda so issued shall become part of the specifications and contract documents.

## **AWARD OF CONTRACT**

The award of the contract will be made to a responsive and responsible proposer whose proposal best meets the needs of the City. The successful proposer will enter into a contract with the City incorporating all prescribed requirements and conditions of this request for proposal. If the successful proposer refuses or fails to execute the contract, the City may consider the next most qualified proposer. The City shall be the sole judge as to the successful proposer.

The City reserves the right to reject any or all responses to this Request for Proposal (“RFP”) and to waive any informality or irregularity in this RFP or in responses, to negotiate with all qualified sources, or to cancel, in part or in its entirety, this RFP, in the best interest of the City. The City reserves the right to request more information for clarification or due to omission of information. Proposers may be asked to make an oral presentation as part of the evaluation process. This RFP does not commit the City to award a contract, or to procure or contract for services or goods.

Before award, proposers may be required to furnish evidence of capability, equipment, and financial resources to adequately perform the job.

## **PUBLIC RECORDS**

All Proposals submitted in response to this RFP become the property of the City and under the Public Records Act (Government Code section 6250 et. Seq.) are public records, and as such may be subject to public review. However, the Proposals shall not be disclosed until negotiations are complete and recommendation for selection and award is made to the City Council.

If a proposer claims a privilege against public disclosure for trade secret or other proprietary information, such information must be clearly identified in the proposal. Note that under California law, price proposal to a public agency is not a trade secret.

Questions regarding this RFP shall be directed to:

City of Oxnard  
Finance Department  
Attn: Patricia Garcia  
300 West Third Street, Second Floor  
Oxnard, California 93030  
Email questions: [patricia.garcia@oxnard.org](mailto:patricia.garcia@oxnard.org)  
Phone calls will be accepted at (805) 385-7538.

**CITY OF OXNARD  
REQUEST FOR PROPOSAL  
INTERNAL AUDIT SERVICES**

**II. GENERAL TERMS AND CONDITIONS**

- A. The City shall not be liable for any expenses incurred by any proposer prior to issuing the contract.
- B. The selected Firm will be required to sign and be bound by a Professional Consultant Services Agreement (“Agreement”). Proposer must meet all insurance requirements (See Sample Exhibit INS-A).

**CITY OF OXNARD  
REQUEST FOR PROPOSAL  
INTERNAL AUDIT SERVICES**

**III. BACKGROUND**

The City of Oxnard has been working through a substantial period of transformation primarily as a result of changes on the City Council that led to the hiring of a new City Manager in June 2014.

Prior to the arrival of the current City Manager, the District Attorney conducted a highly publicized criminal investigation that culminated in their 2012 report dated April 18, 2012. They found questionable ethical practices, a lack of internal controls and records that were in such poor shape it was difficult to substantiate what happened in some circumstances. No criminal charges were filed by the District Attorney.

Upon the arrival of the new City Manager in June 2014, he almost immediately developed concerns about City practices. He saw examples where staff was not following Council policy, the lack of managerial oversight over certain control activities and the apparent unilateral decisions some managers were making without delegated authority.

As a result, he commissioned, with the City Council approval, a comprehensive organizational assessment that was presented to the Council on March 17, 2015. The follow up Implementation Action Plan (IAP) was presented to the Council on July 21, 2015. The report identified many lapses in systems, policies, managerial oversight and controls and an overall culture that did not appear to value the high professional standards expected of a city. The actions necessary to correct some of the financial management mistakes had a detrimental impact on the City's General Fund financial position. The assessment was not an audit; however, it used many of the tools and criteria that would be found in a typical risk assessment of an organization.

There has been much progress in improving operating practices and addressing many of the concerns found in the original assessment. The IAP actions in the near term have been focused in areas where the City may be violating state and federal law or City Council policy. Current activities are also focused on areas that provide financial risk to the General Fund or City enterprise. The organizational assessment has essentially documented a high-risk environment and the City Manager now has a plan to gradually ameliorate that risk.

A key IAP action item is the creation of an Internal Audit program. The City Council has decided to provide this program through a contract with an outside firm. The Internal Auditor will report to a City Council committee i.e. Fiscal Policy Task Force whose role was recently expanded to include this program. The Internal Auditor is also expected to work closely and gain the cooperation of the City Manager's Office to assist in improving the economy, efficiency and accountability of the City organization, an organization that he manages.

Finally, the City hired new independent auditors to render an opinion on its financial statements and Comprehensive Annual Financial Report for the year ending June 30, 2015. As more

validation of the initial assessment, their single audit and internal control reports identify 111 concerns many of which could be described as internal control issues. This was shared with the City Council on July 19, 2016.

#### IV. SCOPE OF SERVICES

The successful firm will be required to provide audit services that include, but are not necessarily limited to the following:

- I. **Internal Auditor Basic Services:** (To commence immediately and accomplished concurrently with the citywide Risk Assessment and any other specific audit activities as outlined below—see Attachment 1 for Internal Audit Program Charter).
  - A. Provide a senior representative to be the named as the City Internal Auditor under the terms of contract, who will:
    1. Respond to phone calls, citizen inquiries and emails to the City Internal Auditor and when appropriate refer to City staff.
    2. Coordinate with City staff to schedule Fiscal Policy Task Force Council Committee Meetings.
    3. Provide regular reports on the status of the risk assessment and other audit activities.
    4. Propose and update the Audit Work Plan at the beginning of each calendar year for the subsequent fiscal year beginning in July; prepare Audit Work Plan based on regular citywide risk assessments and include proposed scope and cost for each recommended audit; present annual Audit Work Plan to City Manager for preliminary review of scope, followed by review by the Fiscal Policy Task Force Council Committee and final presentation to the City Council for approval.
    5. Provide regular status reports, either written or oral, to the Fiscal Policy Task Force; at a minimum provide Quarterly Reports on activities and findings related to audits; may be required to be present at City Council or other meetings upon request.
    6. Conduct follow-up and verification of audit findings pursuant to closing findings as complete.
    7. Provide city staff with tools to track open audit findings and facilitate resolution of findings when complete.
    8. Provide follow-up work for findings associated with annual external financial audits.

B. Administer Oxnard’s new Whistleblower Hotline Policy

1. Manage the City’s new Whistleblower Hotline Policy (see Attachment 2)
2. Create and operate toll free phone hotline, email or mail repository to solicit allegations of misconduct.
3. Perform the duties as outline in the attached Whistleblower Hotline Policy, including but not limited to: reaching out to the complainant to ascertain the nature of the complaint, its merit and relevance to City of Oxnard business; maintaining a database to track complaints and activities leading to resolution of it; prioritizing the complaint consistent with Policy; and, conducting the relevant due diligence leading to appropriate findings and resolution of the complaint.
  - i. Provide periodic reports to the City Council, at least every six months, including a list of the allegations received through. the Hotline, including the priority assigned and the status or disposition of each reported allegation.

**II. City Council Initial Audit Work Plan:**

- A. Conduct a citywide Risk Assessment and Internal Control audit that utilizes the March 17, 2015 report to Council called “Organizational Assessment and Audit of Corporate Support, Accountability and Value Systems— Management Partners and Renne Sloan Holtzman and Sakai, LLP” and the July 19, 2016 Presentation on the Single Audit Report, Internal Control and Compliance Report and Other Communication for FY 2014-15 by Eden Casareno and Associates; as a starting point for completing this section of the scope of work. Any proposal should not be redundant to this study; rather it should be complementary to what the City already knows.
1. Complete a Risk Assessment of the City’s financial operations:
    - a) Review Organizational Assessment mentioned above.
    - b) Review administrative and financial policies, procedures, and practices.
    - c) Examine methods, procedures, and practices used to provide reasonable assurance that City assets are safeguarded and that staff is complying with approved policies, procedures and practices.

- d) Identify the strengths, weaknesses, challenges and key areas of risk.
  - e) Make recommendations for improvement, identify future audit priorities and prepare a preliminary Audit Work Plan in conjunction with the results from reviewing the internal controls mentioned below.
2. Examine the internal controls framework of the City to include:
- a) The City's overall control environment.
    - i) Management's philosophy and operating style regarding integrity and ethical values.
    - ii) Staff's philosophy and operating style regarding integrity and ethical values.
    - iii) The assignment of authority and responsibility for ensuring protection of City assets and policy compliance.
    - iv) Existing policies and procedures.
  - b) The City's ongoing identification and assessment of risk.
    - i) The City's approach to risk identification and risk mitigation (proactive versus reactive).
    - ii) The alignment of the City's objectives with the assessment of risk.
  - c) The City's control activities (for protection of assets and compliance with policies).
    - i) Separation of duties.
    - ii) Authorization and approval.
    - iii) Custodial and security arrangements.
    - iv) Review and reconciliation.
    - v) Variance analysis.
    - vi) Adequate documentation.
    - vii) Physical inventories.
  - d) Senior management, mid-management and supervisory responsiveness to identified problems/weaknesses.
    - i) The timeliness with which internal control deficiencies are identified and communicated.

- ii) Appropriateness of management’s selection of risk response – avoidance, acceptance, reduction, or sharing of an identified risk.
  - e) Perform sampling procedures to test and evaluate one or more areas of the City’s internal controls, taking into account risk, control weaknesses, size, and complexity of operations.
  - f) Make use of and build upon the internal control evaluation work done by the City’s independent CPA firm during that firm’s annual financial statement audit.
  - g) Review any recommendations regarding the internal controls with the appropriate executives, including the Chief Financial Officer and the City Manager.
  - h) Prepare reports which analyze significant risk assessment findings, recommend changes for strengthening internal controls and reducing identified risks.
    - i) Report of the findings that outlines the specific deficiencies in the internal control framework and the possible impact posed (level of risk) due to the identified weaknesses.
    - ii) Report with recommendations that will address the weaknesses identified in the City’s internal control framework.
    - iii) Present draft results of this audit project along with the findings from the Risk Assessment and fold into the preliminary Audit Work Plan to the City Manager with the final report to the Fiscal Policy Task Force Council Committee, including estimated costs by audit project and a recommended future audit approach. This will require eventual ratification by the full City Council.
- B. Conduct comprehensive performance audit of Oxnard’s City Corp program (see attached program description in Attachment 3).
1. This program represents a hybrid structure where City Corp management (City employees) seeks funding independently of the City and its proceeds are accounted for in a City Trust Fund along with a City General Fund subsidy and other City financial support via

contracts with City departments. Payroll for City Corp employees is processed totally independent of the City's systems. City Corp employees are hired outside the City's Human Resources processes. As a result, since City funds support and City employees manage this program, this audit will examine all City Corp practices vis-à-vis City policies and procedures, state or federal guidelines, best management practices and proper internal controls for managing risk.

2. Given the stated program goals, this audit will examine program outcomes and the efficiency and cost-effectiveness of the program.
  3. Given the City's difficult General Fund financial position, the audit will provide recommendations for potential cost savings to the General Fund.
  4. All audit findings will be accompanied with recommendations for improvement.
  5. Preliminary findings and recommendations will be shared with program management, the Chief Financial Officer and City Manager.
  6. The final report will be reported out to the Fiscal Policy Task Force Council Committee and ultimately the full City Council.
- C. Conduct comprehensive performance audit of the Oxnard's Performing Arts and Convention Center (PACC) Program (see Attachment 3 for program description).
1. Again, this program is a hybrid one where City employees provide overall management and supervision and the City provides a sizeable General Fund contribution; however, there is a non-profit organization that provides funding and some direction to the PACC Manager. As a result, due to the intertwining of non-profit and City staffing and funding; this audit will examine program and financial activities of the entire PACC program i.e. for both the non-profit and City. It will use as benchmarks: City policies and procedures, state or federal guidelines, best management practices, general fund subsidies of similar programs/facilities and proper internal controls for managing risk.
  2. Given the overall program goals, this audit will examine program outcomes and the efficiency and cost-effectiveness of the program.
  3. Given the City's difficult General Fund financial position the audit will provide recommendations for potential cost savings to the General Fund.

4. The audit should provide recommendations on budgeting and accounting practices for improvement of financial management and accountability.
  5. All audit findings will be accompanied with recommendations for improvement.
  6. Preliminary findings and recommendations will be shared with program management, the Chief Financial Officer and the City Manager.
  7. The final report will be reported out to the Fiscal Policy Task Force Council Committee and ultimately to the full City Council.
- D. Conduct a comprehensive audit of the City's use and management of overtime in the various programs within departments. Audit will use as benchmarks: City policies and procedures, best management practices, staffing levels, and proper internal controls for managing the cost of overtime. The auditor will evaluate outcomes and efficiencies of the program and recommends ways to improve in these areas.
- E. Conduct a comprehensive performance audit of the City's Golf operation (see attached program description in Attachment 3).
1. The City owns one golf course that has been operated under contract by the same vendor since 1993. The Golf generated revenues do not cover the full direct and indirect costs of operating the golf course facility at River Ridge Golf Club and requires a General Fund subsidy. The FY 16-17 budget is \$5.3 million and the budgeted General Fund subsidy is \$775,858. Given the City's difficult budgetary position, it is interested in options to save money and reduce the subsidy by the City.
  2. Conduct a thorough review of the Golf operations, its contract with the vendor that operates the program and comparing these efforts to generally recognized best management practices. This would be done with the goal of improving the cost effectiveness of the program and reducing the subsidy of the program.
  3. Conduct a thorough review of the City's contract oversight practices and recommend options to improve control and accountability of the Golf operator.

**III. Annual Audit Work Plan: Professional Standards, Implementation and Maintenance:**

- A. Provide resources to conduct specific internal audits effectively and efficiently according to relevant professional standards such as: Generally Accepted Government Auditing Standards (GAGAS) or other professional standards as promulgated by the American Institute of CPA's (AICPA) and/or Institute of Internal Auditors (IIA). The annual Audit Work Plan will be proposed by the internal auditor but selected by the Fiscal Policy Task Force Council Committee and ultimately ratified by the City Council. The related work activities are as follows:
1. Provide an opportunity for feedback and response by departments under audit along with the City Manager's Office.
  2. Provide regular reports on the status of ongoing internal audits to the City Manager and Fiscal Policy and Audit Council Committee.
  3. Provide written reports with results of audits and publish audits to the City Auditor's Web page; based on the audit work performed, written reports and oral PowerPoint presentations must be provided. The presentations shall address the audit findings and conclusions, audit recommendations that will improve the efficiency and effectiveness of the organizations or programs audited, and corrections needed to address any operational deficiencies or non-compliance issues found.
  4. Work with management to implement recommendations.

**V. PROPOSAL REQUIREMENTS**

**A. General Requirements**

Agency and Contact Person:	City of Oxnard Patricia Garcia, Buyer 300 West 3rd St., Suite 202 Oxnard, CA 93030
Telephone:	805-385-7538
E-MAIL address	<a href="mailto:patricia.garcia@oxnard.org">patricia.garcia@oxnard.org</a>

Bidders may only communicate with the Buyer, or in her absence, Mike More, Purchasing Agent. Any other contacts may result in disqualification of bidder's proposal. Any requests for clarification of the proposal requirements should be made by E-MAIL only.

- a. Submission of Technical Proposal. At the proposer's option, proposals may be submitted via email in .pdf format to [patricia.garcia@oxnard.org](mailto:patricia.garcia@oxnard.org) OR one (1)

original and four (4) copies of the Technical Proposal, which **MUST** be received by **December 19, 2016 at 4:00 p.m.** in the Purchasing office for a proposal to be considered. Proposals should be sent to the address as shown on page 1 of this report. No faxes submissions will be accepted.

- b. Submission of Cost Proposal. At the proposer's option, proposals may be submitted via email in .pdf format to [patricia.garcia@oxnard.org](mailto:patricia.garcia@oxnard.org) OR one (1) original and four (4) copies of the Cost Proposal, which **MUST** be received by **December 19, 2016 at 4:00 p.m., under separate cover in a sealed envelope** to be considered. Proposals should be sent to the address as shown on page 1 of this Request for Proposal. No faxes submissions will be accepted. The proposed costs should be broken out in the same manner as the Scope of Services (i.e., Sections I, II and III). With respect to Section II, proposers should further break out their costs for each subtask (i.e., A.1 Risk Assessment, A.2 Internal Control Review, B. Performance Audit of City Corp, C. Performance Audit of the Performing Arts and Convention Center), D. Review of Overtime usage and E. Performance Audit of the Golf operation.

# Attachment No. 1

## **Internal Audit Program Charter**

### **Purpose**

The purpose of the Internal Auditor is to help the City of Oxnard achieve efficient and effective outcomes in the delivery of services to the community. It also assists the City in satisfying a higher level of accountability associated with a public sector agency, thereby assisting the City Council and City Manager in ensuring compliance with state and federal laws, City policy and sound ethical practices.

### **How To Prioritize The Work**

The Internal Auditor is ultimately hired by and report to the Oxnard City Council through their Fiscal Policy and Audit Council Committee. However, they work closely with the City Manager and department heads to improve the operating results and practices of the City because without them the City cannot experience the benefits of this program. The Internal Auditor does this without impairing their independence as auditors.

The criteria used to determine Internal Audit work activities include such things as:

- Level of concern by the City Council or City Manager
- Relative risk or exposure
- Significant independence from City internal controls
- Significant internal or external environmental changes
- Service management problems
- Quality of internal controls
- Risk of losing outside funding
- Historical problems or concerns
- Size of programs or budgets
- Potential for benefit that crosses City departments

One criterion that is not used for determining work activities is using “the politics of the day” to pursue other agendas that do not further the Internal Audit mission state above.

The Internal Auditor uses the above criteria and proposes an Annual Audit Work Plan to the Fiscal Policy and Audit Council Committee after conferring with the City Manager. The Annual Audit Work Plan is then forwarded to the full City Council for review and approval. The City then chooses and budgets for the appropriate reviews for the subsequent year. On occasion there may be exceptions or special reviews conducted due to exigent circumstances. If so, the decision-making will follow this same process.

### **How To Accomplish The Work**

The Internal Auditor will use generally accepted governmental auditing standards (“Yellow Book”) as the benchmark for conducting their work. The Internal Auditor will strive to be timely and relevant to City decision-making.

The type of work product will be dependent on a particular project's objectives and the needs of the City Council and City Manager. The results are communicated in a variety of ways, such as: written reports, briefings to the City Council and City Manager, testimony in public and through consulting or training of City staff.

The written reports will be determined by the objectives of the project; however, it will always cover the objectives of the work, the scope and methodology of the audit or review, the results of the work and when appropriate recommendations.

The City will make sure relevant records, systems, facilities and staff are available to satisfy the objectives of the annual Audit Work Plan and each respective audit. The Internal Auditor will solicit input from the City Manager's Office before finalizing audit findings and recommendation. The Internal Auditor will also provide appropriate training and other assistance to staff in order to understand their findings and to effectuate their recommendations; to the extent it does not impair their independence. At the end of the day, the goal of improving the operating practices and outcomes of City activities must be shared by the City Council, Internal Auditor and City Manager.

# Attachment No. 2



**CITY COUNCIL  
AGENDA REPORT**

**TYPE OF ITEM: Report**

**AGENDA ITEM NO.: N-1**

**DATE:** April 5, 2016  
**TO:** City Council  
**FROM:** Stephen Fischer, Interim City Attorney  
**SUBJECT:** Whistleblower Policy  
**CONTACT:** Stephen Fischer, City Attorney  
Stephen.Fischer@oxnard.org, 385-7483

**RECOMMENDATION**

That City Council adopt a resolution establishing a Whistleblower Hotline Policy.

**DISCUSSION**

On December 1, 2015, the City Council held a study session to discuss a whistleblower policy and directed staff to bring back a policy that delegates review of reports of fraud, waste and abuse to a neutral third party. The proposed policy (Attachment A) delegates the task of reviewing whistleblower reports to the Internal Auditor, a function for which proposals from auditing firms have been solicited and are currently under review by the Fiscal Policy Taskforce. Such reports would be confidentially received through a hotline that would go directly to the neutral third party. As part of the review process, reports would be assigned a rating of “low,” “medium,” or “high” to prioritize response efforts.

The proposed policy is based on the City of Sacramento’s whistleblower hotline program, which presents the process in a straightforward, easy to understand manner. Consistent with California Government Code Section 53087.6, the proposed policy provides that the Internal Auditor respond to reports of fraud, waste and abuse. The Internal Auditor would refer any calls not related to fraud, waste or abuse (such as personnel issues or operational/service complaints) to appropriate City departments for review and possible investigation. Finally, the policy requires periodic reports (every six months) to the Council on statistical information, including quantity and types of calls received and report status or disposition. A sample periodic report from the City of Sacramento is provided as Attachment 2.

*Implementation*

As stated previously, proposals for Internal Auditor services are currently being reviewed by the Fiscal Policy Taskforce, who will bring to Council a recommendation in the near future. Hotline operation vendor services would be procured in preparation for policy implementation. Once the Internal Auditor and Hotline operation vendor contracts are in place, the Internal Auditor and hotline operator will work with staff to develop the intake log and intake form, as well as assign the website and phone number for the intake of whistleblower reports.

**FINANCIAL IMPACT**

The approved FY 15/16 budget includes \$100,000 for the internal audit program Phase I. The cost estimate for a hotline operation vendor is approximately \$10,000 annually and can be absorbed within the approved \$100,000 allocation currently in the FY 15/16 budget. There is no additional impact to the General Fund at this time. An annual appropriation will need to be evaluated each fiscal year, depending on the performance audits selected each year.

**ATTACHMENTS**

- Attachment 1: Resolution adopting Proposed Whistleblower Hotline Policy
- Attachment 2: City of Sacramento Whistleblower Hotline Activity Report of 8/6/2015

CITY COUNCIL OF THE CITY OF OXNARD

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OXNARD  
ADOPTING A WHISTLEBLOWER HOTLINE POLICY

WHEREAS, California Government Code Section 53087.6 authorizes the City Council to approve establishing a whistleblower hotline to provide a confidential way for the public to report fraud, waste and abuse; and

WHEREAS, the City Council intends to award a contract for Internal Auditor services, which services shall include the review and investigation of reports of fraud, waste and abuse, as well as a contract for the operation of a Whistleblower Hotline for the intake of such reports; and

WHEREAS, the City Council wishes to establish a policy regarding the operation of the Whistleblower Hotline and the review and processing of reports submitted through the Hotline and through other channels.

NOW, THEREFORE, the City Council of the City of Oxnard resolves that the Whistleblower Hotline Policy attached hereto as Exhibit "A" is hereby adopted.

PASSED AND ADOPTED THIS 5<sup>th</sup> day of April, 2016, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

\_\_\_\_\_  
Tim Flynn, Mayor

ATTEST:

\_\_\_\_\_  
Daniel Martinez, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Stephen M. Fischer, Interim City Attorney

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## EXHIBIT "A"

### City of Oxnard Whistleblower Hotline Policy

#### WHISTLEBLOWER PROTECTION

The City will take all appropriate steps to thoroughly evaluate any allegations of improper governmental action that are brought to its attention. No City official or employee shall take retaliatory action against any employee or member of the public who, based on a good faith belief, has made a complaint or allegation concerning improper governmental action. Any individual who files a complaint may elect to have their identity kept confidential to the extent permitted by law unless the employee waives confidentiality in writing. The City shall establish a Whistleblower Hotline in order to receive and investigate allegations of possible City Fraud, Waste, and Abuse. This policy reflects the City's ongoing commitment to support open, ethical, accountable, and transparent local government.

#### Purpose

It is the purpose of this policy to 1) encourage employees and members of the public to report information concerning any allegedly improper governmental action or subsequent retaliation by the City's officers or employees by providing them protection against retaliation, and 2) reinforce the expected values and behaviors of City officials and employees because of their role as guardians of the public trust and resources.

#### Procedures

The following procedures aim to ensure accountability by creating a consistent and logical method for receiving and tracking allegations received through the Whistleblower Hotline. These procedures describe how the Internal Auditor and others involved in the reporting process will handle these allegations. Additionally, the procedures lay out a risk-based approach for using the Internal Auditor's limited resources to investigate the allegations that could place the City of Oxnard at the greatest risk.

#### Receiving Allegations

City staff or members of the public may submit allegations by either calling the Whistleblower Hotline's toll-free number, 1-\*\*\*-\*\*\*-\*\*\*\*, or by completing the online form located at [https://www.\\*\\*\\*\\*\\*](https://www.*****). In addition, individuals may also submit allegations directly to the Internal Auditor. Any individual who files a complaint may elect to have their identity kept confidential. The individual's identity will be kept confidential to the extent permitted by law unless the individual waives confidentiality in writing. Information can be submitted in person, over the phone, by voicemail, by e-mail, or by mail. The following provides the general procedure for receiving allegations.

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### ***In-Person or Phoned-In Allegations***

Persons responsible for intake of allegations should adhere to the following procedures:

1. Ask about the subject of the allegation to ensure that the complainant is reporting to the correct entity. Determine if the allegation is about a City Department, Employee, Vendor, or Contractor; or if the complaint would fall under another jurisdiction.
  - If the allegation is not related to City government (for example, it is about a State or County Employee), refer the complainant to other relevant reporting options. See Reporting Options table. Enter the information in the Intake Log with a note about which entity the complainant was referred to.
2. If the allegation is about a City Department, Employee, Vendor, or Contractor, start a conversation with the complainant about the allegation.
3. After obtaining a basic understanding of the allegation, if the complainant had not already provided his or her name, ask for their name and contact information. Discuss the complainant's preference about remaining anonymous. Note this information on the Intake Form. Persons receiving allegations may enter notes on paper or directly into the electronic form.
4. After gathering this information, continue the conversation about the allegation. Ask the questions from the Intake Form, if appropriate. However, use your discretion to ask additional questions. The form's questions are meant to be used as a tool to aid the conversation and to solicit possible additional evidence.
5. After completing the conversation, enter/review Intake Form notes and save the file on the Investigations database.
6. Log the allegation information on the Intake Log.
7. Discuss the allegation with appropriate Internal Auditor Staff. Depending on the severity of the allegations, this discussion might need to occur immediately. See Allegations section below. For less serious allegations, discussions of many allegations may take place during periodic whistleblower hotline meetings.

### ***Voicemail Allegations***

1. Listen to the voicemail.
2. Log the allegation information on the Intake Log.
3. Complete the Intake Form.
4. If necessary and contact information is available, seek additional information by using any contact information that the complainant provided.
5. If contact is made, update the Intake Form to reflect additional information.
6. Discuss the allegation with appropriate Internal Auditor Staff. Depending on the severity of the allegations, this discussion might need to occur immediately. See Allegations section below. For less serious allegations, discussions of many allegations may take place during periodic whistleblower hotline meetings.

### ***E-mailed or Mailed-In Allegations***

1. Read the e-mail or letter.
2. Log the allegation information on the Intake Log.
3. Complete the Intake Form.
4. If necessary and contact information is available, seek additional information by using any contact information that the complainant provided.

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5. If contact is made, update the Intake Form to reflect additional information.
6. Discuss the allegation with appropriate Internal Auditor Staff. Depending on the severity of the allegations, this discussion might need to occur immediately. See Allegations section below. For less serious allegations, discussions of many allegations may take place during periodic whistleblower hotline meetings.

#### ***Screening for Merit and Relevance***

The Whistleblower Hotline is open to the public at large. As such, it welcomes an expansive range of complaints. Therefore, it is important to consider, during the interview process, how the allegation may relate to waste, fraud, or abuse by the City or its Employees. To do this, intake staff should think broadly about how the provided statements could tie into a related matter. Allegations, from a cursory review, could appear to lack in merit or relevance due to a myriad of reasons. However, upon a thorough and professional evaluation, they may point to an issue that puts the City at risk, which merits further investigation. However, cases that lack merit and relevance, as determined by insubstantial statements, should be documented and closed as 'Dismissed: Does Not Appear to Have Merit' in the Whistleblower Intake Log in order to preserve Internal Auditor resources. Taking these necessary steps protects the integrity of the Whistleblower Hotline and efficiently preserves public resources for matters that have merit and relevance.

#### **Allegations**

The Intake Log and Intake Form requires Internal Auditor staff conducting the intake to rate the priority of the complaint using "low," "medium," and "high." This method is to help the Internal Auditor prioritize its investigations by targeting overall risk to the City of Oxnard. Any allegations that are rated "medium" or "high" should be presented to the City's Internal Auditor or relevant Internal Auditor staff as soon as practicable. Those rated "low" can be discussed during periodic hotline discussions. The following provides guidance about rating allegations:

##### ***High Priority***

Reasons why allegations may be considered high priority include a safety concern, losses to the City of Oxnard for more or equal to \$75,000, criminal activity resulting in a loss of at least \$400, high-level involvement, collusion of multiple wrongdoers, a major department-wide issue, or need for immediate action to stop a potential major issue. High-priority items should be discussed immediately. In addition, addressing these items could take priority over other investigations and audits – at the Internal Auditor's discretion.

##### ***Medium Priority***

Allegations in this category could include a loss to the City of Oxnard for more or equal to \$25,000, abuse of authority, medium to low-level employee involvement, minor department-wide issues, or patterns of small problems that could become serious in the aggregate.

##### ***Low Priority***

Allegations in this category could include a loss to the City of less than \$25,000, isolated instances of time abuse, wasteful practices that would lead to limited gains in efficiencies if corrected, or allegations

that lack credibility and evidence. The Internal Auditor would aim to investigate items in this list, but may not do so because of limited resources or if the complaint is insubstantial due to a lack of sufficient information to warrant an investigation. However, if the same or similar issues were reported multiple times, low priority items may become more of a priority.

### **Allegations Covered By the Internal Auditor**

The hotline is designed to promote good government by providing City employees and members of the public with a way to report allegations of fraud, waste, and abuse.

In 2009, State Law went into effect that enabled local government auditors to establish whistleblower hotlines and to provide whistleblower protections. Local auditors are authorized under California Government Code Section 53087.6 to create whistleblower hotlines with the approval of their respective legislative bodies.

The California Government Code defines "fraud, waste, or abuse" in this context as an activity by a local government or employee "that is in violation of any local, state, or federal law or regulation relating to corruption, malfeasance, bribery, theft of government property, fraudulent claims, fraud, coercion, conversion, malicious prosecution, misuse of government property, or willful omission to perform duty, is economically wasteful, or involves gross misconduct."

The following further defines fraud, waste, and abuse:

**Fraud** -- The Association of Certified Fraud Examiners defines occupational fraud as "the use of one's occupation for personal enrichment through the deliberate misuse or misapplication of the employing organization's resources or assets."

Some examples of possible fraud include theft of City funds or property, accepting or soliciting a bribe or kickback, falsifying payroll information, falsifying financial records to hide theft, submitting a false voucher, or using city property for non-City business.

**Waste** -- Waste can be intentional or unintentional and can involve unnecessary or extravagant City expenditures or misuse of City resources.

**Abuse** -- This is the use of an employee's position in the City to obtain personal gain for that employee or for someone else like a family member or friend.

The above definitions are meant to provide guidance, and are not meant to cover all types of allegations that will be investigated.

### **Additional Definitions**

**Employee** means anyone employed by the City, whether in a permanent or temporary position, including full-time, part-time and intermittent workers. It also includes volunteers and members of appointed boards or commissions, whether or not paid.

**Good faith belief** means an honest and reasonable belief based on personal knowledge.

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**Improper governmental action** means any activity by a local agency or employee that is undertaken in the performance of the employee's official duties, including activities deemed to be outside the scope of his or her employment, that is in violation of any local, state, or federal law or regulation relating to corruption, malfeasance, bribery, theft of government property, fraudulent claims, fraud, coercion, conversion, malicious prosecution, misuse of government property, or willful omission to perform duty, is economically wasteful, or involves gross misconduct.

**Retaliatory action** means any adverse change in an employee's employment status or the terms and conditions of employment resulting from an employee's complaint or allegation of an improper governmental action based on good faith belief.

### **Allegations Covered by Other City Offices**

Some allegations are more appropriately investigated by other City Departments. The intent of establishing a whistleblower hotline is not to replace or limit other reporting options. Specifically, many Human Resources related issues should still be reported to the appropriate Human Resources staff. For example, labor grievances, discrimination allegations, and workers' compensation claims should be reported under the City's current procedures. Also, some callers may want to report legal issues to the City Attorney's Office, or code enforcement issues to the Development Services Department. As appropriate, the Internal Auditor will refer reporters to other City departments. However, it may also be appropriate for Internal Auditor staff to gather initial information in these areas to better understand the issues involved.

#### ***Internal Referrals Reporting Options:***

Human Resources Department for workers' compensation information, union grievance procedures, and environmental health and safety programs like OSHA and DOT compliance:

805-385-7590

<http://hr.cityofoxnard.org/11>

Financial Resources - Risk Management for liability claims:

805-385-7475

<http://finance.cityofoxnard.org/8/>

City Attorney:

805-385-7483

<http://cityattorney.cityofoxnard.org/1>

Code Compliance Division for neighborhood code, housing and dangerous buildings, business compliance, landscape requirements, rental house standards, and anti-graffiti:

805-385-7940

<http://developmentservices.cityofoxnard.org/Uploads/code/>

Police for non-emergencies:

805-385-7600

<https://www.oxnardpd.org/>

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**Reporting Options for Allegations Covered by Non-City Agencies**

<b>Jurisdiction</b>	<b>Organization</b>	<b>Reporting</b>	<b>Methods</b>
<b>County of Ventura</b>	County Auditor- Controller	Audit Fraud Hotline	805-644-6019  Audit Fraud Hotline/ County of Ventura/ 800 South Victoria/ Ventura, CA 93009-1540
<b>State of California</b>	Bureau of State Audits	Whistleblower Hotline	800-952-5665  Investigations/ Bureau of State Audits/ 555 Capitol Mall, Suite 300/ Oxnard, CA 95814 <a href="http://www.bsa.ca.gov/hotline/filecomp">http://www.bsa.ca.gov/hotline/filecomp</a>
<b>Consumer Complaints Against a Business</b>	California Office of the Attorney General	Comment/ Complaint Form	<a href="https://oag.ca.gov/contact/consumer-complaint-against-business-or-company">https://oag.ca.gov/contact/consumer-complaint-against-business-or-company</a>
<b>Consumer Complaints Against a Business</b>	Better Business Bureau	Complaints	<a href="https://www.bbb.org/consumer-complaints/file-a-complaint/get-started">https://www.bbb.org/consumer-complaints/file-a-complaint/get-started</a>
<b>California Attorneys</b>	State Bar of California <a href="http://www.calbar.ca.gov/Attorneys/LawyerRegulation/FilingaComplaint.aspx">http://www.calbar.ca.gov/Attorneys/LawyerRegulation/FilingaComplaint.aspx</a>	Complaints	800-843-9053
<b>California Judges</b>	Commission on Judicial Performance	Complaints	415-557-1200  <a href="http://cjp.ca.gov/file_a_complaint.htm">http://cjp.ca.gov/file_a_complaint.htm</a>

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### Special Circumstances

1. The Internal Auditor may receive allegations about elected officials. As the Internal Auditor does not generally have the authority to audit the City Council without their request to be audited, allegations involving these officials shall be discussed with the Internal Auditor immediately. The Internal Auditor and other City officials, if necessary, will discuss how to evaluate these types of allegations.
2. Additionally, allegations may be received about members of the Internal Auditor's staff. If such allegations occur, those receiving the allegations should report them to the Internal Auditor immediately. The Internal Auditor and any other Internal Auditor staff who become aware of the complaint will evaluate the allegation, possibly with the advice of other City staff and officials, to determine if an investigation shall be conducted by the City or by an outside entity. The Internal Auditor's staff is expected to keep the allegation confidential and not inform the individual who is the subject of the allegation. If the complaint is about the designated Internal Auditor, the individual receiving the allegation should discuss it with another staff member and possibly seek guidance from City staff or officials to determine how to proceed.

### Periodic Reporting

The Internal Auditor shall, at least every six months, report to the City Council on the allegations received through the Whistleblower Hotline, including the priority assigned and the status or disposition of each reported allegation.

### Contact Information for the Internal Auditor Appointed by the Oxnard City Council:

[name]  
[address]  
[phone]  
  
[website]

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Meeting Date: 8/6/2015  
Report Type: Staff/Discussion  
Report ID: 2015-00687

City of **04**  
**SACRAMENTO**  
**Budget and Audit  
Committee Report**  
915 I Street, 1<sup>st</sup> Floor  
[www.CityofSacramento.org](http://www.CityofSacramento.org)

**Title:** City Auditor's Whistleblower Hotline Activity Report

**Location:** Citywide

**Recommendation:** Pass a Motion 1) accepting the City Auditor's Whistleblower Hotline Activity Report; and 2) forwarding to City Council for approval.

**Contact:** Jorge Oseguera, City Auditor, (916) 808-7270, Office of the City Auditor

**Presenter:** Jorge Oseguera, City Auditor, (916) 808-7270, Office of the City Auditor

**Department:** Mayor/Council

**Division:** Office of the City Auditor

**Dept ID:** 01001201

**Attachments:**

1-Description/Analysis

2-City Auditor's Whistleblower Hotline Activity Report (Nov to May 2015)

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**City Attorney Review**

Approved as to Form  
Sandra Talbott  
7/29/2015 1:30:26 PM

**Approvals/Acknowledgements**

Department Director or Designee: Jorge Oseguera - 7/28/2015 3:29:25 PM

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James Sanchez, City Attorney

Shirley Concolino, City Clerk  
**John F. Shirey, City Manager**

Russell Fehr, City Treasurer <sup>1 of 11</sup>

**Description/Analysis**

**Issue Detail:** According to the City Council Rules of Procedures, the Budget and Audit Committee shall receive, review, and forward to the council as appropriate, reports, recommendations, and updates from the city auditor. This report documents the City Auditor's Whistleblower Hotline related activity for the Nov 2014 to May 2015 period.

**Policy Considerations:** The City Auditor's presentation of the *City Auditor's Whistleblower Hotline Activity Report* is consistent with the Mayor and City Council's intent to have an independent audit function for the City of Sacramento.

**Economic Impacts:** *None*

**Environmental Considerations:** *None*

**Sustainability:** *None*

**Commission/Committee Action:** *None*

**Rationale for Recommendation:** This staff report provides the Budget and Audit Committee with information that may be used to meet its responsibility to provide oversight and supervision of the City Auditor.

**Financial Considerations:** The costs of the *City Auditor's Whistleblower Hotline Activity Report* were funded out of the Office of the City Auditor Budget.

**Local Business Enterprise (LBE):** No goods or services are being purchased as a result of this report.

Report #  
2015-05

# City Auditor's Whistleblower Hotline Activity Report (Nov 2014– May 2015)



Jorge Oseguera  
City Auditor

Nicholas Cline  
Senior Auditor

Lynn Bashaw  
Senior Auditor

Farishta Ahrary  
Auditor



Office of the City Auditor  
August, 2015

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## Whistleblower Program Background

### To Contact the City's Whistleblower Hotline

City staff or members of the public may submit allegations by either calling the Whistleblower Hotline's toll-free number 1-888-245-8859 or by completing the online form located at <https://www.reportlineweb.com/cityofsacramento>. In addition, individuals may also submit allegations directly to the City Auditor or any Auditor Office staff member. Any individual who files a complaint may elect to have their identity kept confidential. The individual's identity will be kept confidential to the extent permitted by law unless the individual waives confidentiality in writing. Information can be submitted in person, over the phone, by voicemail, by e-mail, or by mail.

Sacramento Office of the City Auditor  
915 "I" Street  
Historic City Hall, 2<sup>nd</sup> floor  
Sacramento, CA 95814

Office of the City Auditor Website: <http://www.cityofsacramento.org/auditor/>

### Auditor's role and responsibilities

The City Auditor is the City's independent auditor who reports directly to the Mayor and City Council. Council approves the Auditor's annual audit plan and has historically added audits to the plan when needed.

California Government Code Section 53087.6 allows local governments to create whistleblower hotlines. State law sets the requirements for establishing and running a whistleblower hotline, but local auditors have discretion in how to operate their programs.

The following includes key points of the Government Code section and how it pertains to the City of Sacramento:

- The City Auditor shall obtain approval from City Council before establishing a whistleblower hotline. This approval was obtained from the Sacramento City Council in March 2012.
- The hotline is used to receive calls from people who have information regarding fraud, waste, or abuse.
- The City Auditor may refer calls received on the hotline to the appropriate government authority for review and investigation.
- During the initial review of calls received, the City Auditor (or the appropriate government authority to whom the call is referred) shall hold in confidence information disclosed through the hotline. This includes the identities of the callers disclosing information and the people identified by the callers.
- Upon receiving specific information that an employee has engaged in an improper government activity, the City Auditor may conduct an investigative audit.

- The identity of the people providing information that initiated the investigative audit shall not be disclosed without their written permission, unless the disclosures are to law enforcement agencies that are conducting criminal investigations.
- The investigative audit shall be kept confidential except to issue a report of an investigation that had been substantiated or to release findings from completed investigations that are deemed necessary to serve the interests of the public.
- The identities of individuals reporting the improper government activities and the subject employees investigated shall be kept confidential.
- However, the City Auditor may provide a substantiated audit report and other information (including subject employee identities) to appointing authorities for disciplinary purposes.

### **Whistleblower procedures target high-risk tips**

Due to the limited number of staff members in the Office of the City Auditor and the Office's chief responsibility to conduct performance audits in accordance with the Council-approved Audit Plan, conducting full investigations of all tips is not feasible. Instead, the City Auditor has adopted a risk-based approach to investigate whistleblower tips.

As part of the program's intake process, we rank tips by risk and focus investigative efforts on those that represent the greatest risk to the City. The following shows how we generally classify types of tips based on risk:

#### **High Priority**

Some reasons why allegations may be considered high priority are that they could include a safety concern, loss<sup>1</sup> to the City of more than \$75,000, criminal activity resulting in a loss of at least \$400, high-level involvement, collusion of multiple wrongdoers, major department-wide issue, or need for immediate action to stop a potential major issue. Addressing these items could take priority over other investigations and audits – at the City Auditor's discretion.

#### **Medium Priority**

Allegations in this category could include a loss to the City of more than \$25,000, abuse of authority, medium-to low-level employee involvement, minor department-wide issues, or patterns of small problems that could become serious when summed. Some medium-priority items could be referred to a department for their review.

#### **Low Priority**

Allegations in this category could include a loss to the City of less than \$25,000, isolated instances of time abuse, wasteful practices that would lead to limited gains in efficiencies if corrected, or allegations that lack credibility and evidence. The office would aim to investigate items in this list, but may not do so because of limited resources. However, if the same or similar issues were reported multiple times – low-priority items may become more of a priority. Additionally, some low-priority tips could be referred to a department for their review.

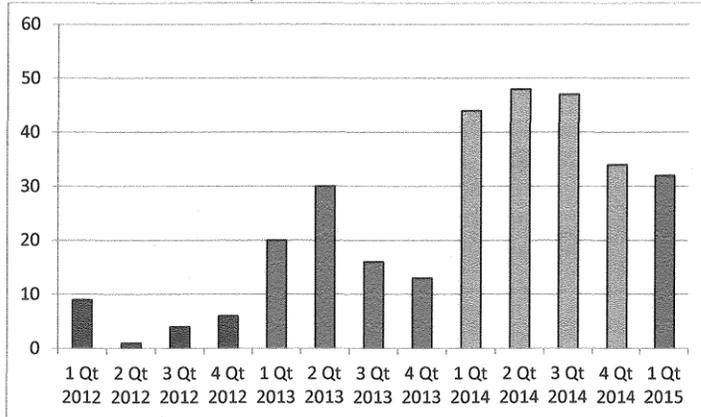
<sup>1</sup> Loss could entail actual or potential loss of money, waste, or inefficiencies.

## Status of Investigations

**The number of tips received by the City Auditor have been growing steadily**

Use of the City Auditor's Whistleblower Hotline has shown significant growth. In 2012, we received 20 tips, in 2013, we received 79 tips, and in 2014 we received 173 tips. The table below shows the number of tips received per quarter since the program's inception.

**Exhibit 1: Whistleblower Tips Received Per Quarter**



We will continue to monitor call volume and report on the call activity.

### **Over 80 percent of tips received have been processed and closed**

As previously noted, the City Council directed the City Auditor in March 2012 to establish a Whistleblower Hotline Program. The following shows the top ten types of allegations reported as of May 2015.

**Exhibit 2: Top Ten Types of Allegations Reported as of May 2015**

Primary Type of Allegation	Count of Case #	Percent
Unrelated to the City	38	10%
Case Canceled	37	10%
Employee Relations	34	9%
Violate Policy	25	7%
Abuse of Position or Authority	25	7%
Violate Local/State/Fed Law	19	5%
Wasteful Practice	17	4%
Misuse City Property	17	4%
City Repair information/311	16	4%
Watering/311	14	4%

The following exhibit provides information about cases that we closed since our last semiannual whistleblower hotline activity report. A summary of the investigation results are included for tips that were substantiated.

**Exhibit 3: Seventy-seven tips were closed of which Four Tips Were Substantiated**

Case #	Primary Type of Allegation	Priority	Result
3	Miscategorized Expenses	Medium	Unsubstantiated: Per Investigation <b>Substantiated and Referred:</b> We received a complaint alleging the Fire Department 1) inappropriately used City resources to develop a hardbound training manual (Engine Manual) and 2) it was unclear if the City was being fully reimbursed for the sales of the books. Based on the information we reviewed 1) we were not able to substantiate allegations related to inappropriate use of City resources and 2) we were able to substantiate the claim that the Department may not have been fully reimbursed for the sales of the books. We made recommendations to improve recordkeeping.
109	City Resources For Other Job	Low	<b>Substantiated &amp; Referred:</b> We received an allegation regarding inappropriate employment practices by the City's Utility Department. The alleged inappropriate practices included concerns about nepotism. Based on the information provided by staff, there may be over 40 individuals working in the Utilities Department that meet the department's definition of a relative. A few of these individuals appear to create a direct conflict of interest. Although most of these relationships do not create a direct supervisory conflict of interest, employing this many employees with relatives across the department exposes the City to potential inappropriate favoritism, or the appearance of inappropriate favoritism. As a result, we recommended the City should implement a Citywide nepotism policy. Doing so will help prevent conflicts of interest and deter nepotism-based favoritism by those who make decisions and/or take actions related to hiring, employment, job assignment, promotion or discipline.
125	Hiring Irregularities	Low	Resolved prior to investigation
134	Employee Relations	Low	Unsubstantiated
167	Hiring Irregularities	Low	Test Case
189	Test Case	Case	Test Case
256	Violate Policy	Low	Unsubstantiated
298	Overcharging City	Low	Unsubstantiated
299	Time Abuse	Low	Referred To Department
300	Watering/311	Low	Unsubstantiated
301	Hiring Irregularities	Low	Investigated & Referred: Fire Department
302	Theft of goods/services	Low	Unrelated to the City
303	City Repair information/311	Low	Referred to 311
304	Case Canceled	Canceled	Canceled

305	Hiring Irregularities	Low	Unsubstantiated: No Investigation Warranted
306	Case Canceled	Canceled	Canceled
307	Wasteful Practice	Low	Unsubstantiated
308	City Repair information/311	Low	Referred to 311
309	City Repair information/311	Low	Unsubstantiated: No Investigation Warranted
310	Employee Relations	Low	Unsubstantiated: No Investigation Warranted
311	Violate Local/State/Fed Law	Low	Referred To Department
312	Case Canceled	Canceled	Canceled
313	Abuse of Position or Authority	Low	Unsubstantiated: No Investigation Warranted
314	Abuse of Position or Authority	Low	Unsubstantiated: No Investigation Warranted
315	Violate Local/State/Fed Law	Low	Unsubstantiated: No Investigation Warranted
316	Abuse of Position or Authority	Low	Unsubstantiated: No Investigation Warranted
317	Information Request	Low	Unsubstantiated: Per Investigation
319	Case Canceled	Canceled	Canceled
320	Violate Local/State/Fed Law	Low	Investigated & Referred: 311
			<b>Substantiated and Referred:</b> We received an allegation that significant lead hazards were identified at the James G. Mangan Rifle and Pistol Range (Gun Range) located in Mangan Park. Our investigation confirmed this allegation and revealed additional issues with the Gun Range facility and users. Given the importance of these issues, we immediately brought this to the attention of the Department of Parks and Recreation, City Manager's Office, Department of General Services, and City Attorney's Office.
321	Improper Controls	High	
322	Violate Local/State/Fed Law	Low	Non-City complaint
323	Wasteful Practice	Low	Unsubstantiated: No Investigation Warranted
324	Case Canceled	Canceled	Canceled
325	Unrelated to the City	Low	Investigated & Referred: Parks & Recreation Department
326	Violate Policy	Low	Unsubstantiated: No Investigation Warranted
327	Abuse of Position or Authority	Low	Unsubstantiated: No Investigation Warranted
328	Violate Policy	Low	Unsubstantiated: Not enough information provided
329	City Resources For Other Job	Low	Unsubstantiated: Not enough information provided
330	Wasteful Practice	Low	Unsubstantiated: Per Investigation
			<b>Substantiated &amp; Referred:</b> We received an allegation that a marked Utilities Vehicle frequently uses the fire department's emergency parking spot in front of a coffee shop so that the employee can quickly pickup their coffee. The employee assigned to the vehicle admitted to the alleged activity and acknowledged that parking in the fire lane was inappropriate behavior. The employee committed to stop the behavior. This case and supporting information were referred to the Utilities Department for further consideration.
331	Abuse of Position or Authority	Low	
332	Time Abuse	Low	Unsubstantiated: Per Investigation
333	Contract Issue	Low	Unsubstantiated: Per Investigation

334	City Property Issues/311	Low	Investigated & Referred: Parks & Recreation Department
335	Unprofessionalism by City Employee	Low	Unsubstantiated: Per Investigation
338	Time Abuse	Low	Unsubstantiated: Per Investigation
339	Housing/311	Low	Investigated & Referred: Community Development Department
340	Case Canceled	NA	Canceled
341	Case Canceled	NA	Canceled
342	Insufficient action by City	Low	Investigated & Referred: Police Department
344	Case Canceled	NA	Canceled
346	Case Canceled	Canceled	Canceled
347	Case Canceled	Canceled	Canceled
348	Unrelated to the City	Low	Unrelated to the City
349	Unrelated to the City	Low	Unrelated to the City
350	Housing/311	Low	Investigated & Referred: 311
351	Theft of goods/services	Low	Unsubstantiated: Per Investigation
353	Case Canceled	NA	Canceled
354	Unrelated to the City	Low	Unrelated to the City
358	Watering/311	Low	Unsubstantiated: No Investigation Warranted
359	Case Canceled	NA	Canceled
361	Insufficient action by City	Low	Unsubstantiated: No Investigation Warranted
362	City Property Issues/311	Low	Investigated & Referred: 311
363	Case Canceled	NA	Canceled
364	Violate Policy	Low	Investigated & Referred: Utilities Department
365	City Property Issues/311	Low	Investigated & Referred: 311
366	Case Canceled	NA	Canceled
367	Unrelated to the City	Low	Unrelated to the City
368	Housing/311	Low	Unsubstantiated: No Investigation Warranted
369	Case Canceled	NA	Canceled
370	Unrelated to the City	Low	Unrelated to the City
371	Unrelated to the City	Low	Unrelated to the City
372	Violate Policy	Low	Unsubstantiated: No Investigation Warranted
373	Violate Policy	Low	Unsubstantiated: Not enough information provided
375	Case Canceled	NA	Canceled
376	Unrelated to the City	Low	Unrelated to the City
380	Unrelated to the City	Low	Unrelated to the City
381	Wasteful Practice	Low	Unsubstantiated: No Investigation Warranted

**Further Consideration**

During the last Activity Report presented to the City Council, the Council committed to revisit the potential expansion of the Auditor’s Office to accommodate call volume and workload. As previously mentioned, the reception of the Whistleblower Hotline has been positive both internally and in the

media. Call volume has increased significantly and therefore has resulted in greater workload. Given the growth of the program, we request the Council consider adding to the City Auditor's Office 1 FTE that would be dedicated to primarily handle and investigate whistleblower tips. Doing so would help us better manage and respond to whistleblower tips as well as complete our normally scheduled performance audit reports in a more timely manner. Estimated costs for this position would likely be in line with the current Senior Auditor classification which has a salary range of \$58,567 to \$87,851.

# Attachment No. 3

## **City Corp Program Overview**

The City Corp program is a unique and popular program with a focus on the personal development of juveniles and young adults with an emphasis on the at-risk population. This is done by providing paid job opportunities with a community-based focus e.g. wetland restoration, community gardening, “town-keeping” activities, various maintenance activities on behalf of some City departments, etc.

This program has evolved over time where the program management has always been accomplished through the use of City staff. However, the actual program participants are hired outside the City Human Resources (HR) processes. Some of these youth likely could not pass some of the HR review standards. The former HR Director completed a review of the employment practices of City Corp and converted many of the City Corp employees to Limited Benefit Employee (LBE) City employee status. However, the City is now unwinding this LBE designation across the City and converting this staff to full-time, seasonal-temporary or part-time status with the appropriate changes in benefits. City Corp has approximately 300 employees that flow through their payroll system on an annual basis.

The City Corp program operates in a semi-autonomous nature. This model is a carryover practice from when the program was an independently funded jobs program. Besides hiring the youth outside the HR systems and procedures, the program uses an outside payroll firm. A trust fund is used as a clearing account for program revenues and expenditures; thus, there is limited budget review and control by the Finance Department and the City Manager’s Office. The City Corp program contracts for work for its youth with various outside agencies and with City departments.

The City Corp FY 2016-17 Budget includes approximately \$189,049 directly from the General Fund, \$550,000 from the City “Measure O” funds (a supplemental general-purpose sales tax with a sunset date of 2028) and \$842,292 is with local school districts.

Given the size of the City’s investment in this program, its semi-autonomous operating practices, and the additional scrutiny on the use of scarce City resources, Oxnard is interested in a review of this program.

Questions the City would like to address include: what is the City getting for these resources; what are the program outcomes; what options are available to reduce reliance on General Fund or Measure O resources; are there appropriate risk management or internal controls; and, are there other observations and recommendations?

## **Performing Arts and Convention Center (PACC) Program Overview**

The PACC was built in 1968 and is owned by the City. As one of the larger theaters in western Ventura County, the Oxnard Performing Arts & Convention Center provides outstanding entertainment opportunities to Ventura County residents and visitors. Consisting of 1,604 seats, the theater provides a convenient location for numerous cultural, educational, and entertainment opportunities. A combination of distinctive features makes the Oxnard Performing Arts &

Convention Center the ideal complex for business meetings, trade shows, seminars and many other events. With its spacious theater and eight additional meeting rooms, the Oxnard Performing Arts & Convention Center can easily handle the needs of any group up to 3,500 to 4,000 persons. The network of enclosed patios provides the perfect setting for private community events, including weddings, receptions, banquets and more. Free parking for approximately 500 vehicles is available immediately adjacent to the Oxnard Performing Arts & Convention Center. The program is funded and operated through a unique hybrid structure of City employees and resources and a 501(c) 3 non-profit corporation. The program manager is a City employee reporting to the City Manager's Office; yet, she also acts as the Executive Director of the PACC non-profit. There are two Council members on the PACC non-profit Board of Directors.

The FY 2016-17 Budget totals almost \$1.7 million, which is subsidized by the City's General Fund by \$866,000 while the balance of the funding comes from the non-profit. Managing and operating the PACC is accomplished with only 3 City employees while the balance (approximately 40-50 employees) are non-profit employees. Non-profit employees are responsible for maintaining the PACC facility. Payroll for the non-profit employees is conducted outside the City.

Given the City's difficult General Fund financial situation, additional questions and emphasis have been placed on the large City General Fund subsidy i.e. what it is getting for that subsidy, the overall cost effectiveness of the program and what options are available to reduce reliance on the General Fund. Yet, due to this hybrid approach that has evolved over time, there is a lack of centralized financial and cost accounting information for management to contain costs, conduct business decisions and provide basic information to the City Manager's Office. Given the non-profit's activities are inextricably tied to the City activities this proposed review should include examination of the non-profit books and activities.

Additionally, due to City financial pressures, there appears to be a need to discuss the balancing of a typical non-profit charitable mission vs. the growing emphasis in the City for cost control and containment. For example, Oxnard non-profits heavily book favorable dates at the PACC at equally favorable rates; thus reducing the capacity of the PACC to generate income via other commercial parties. This directly affects the General Fund subsidy. With this added emphasis on cost control, the auditors should examine best management practices for this program e.g. the use of volunteers to complete some of the PACC work, streamlined and business focused operations (while still maintaining the beneficial relationship with the non-profit), cost effective facilities management and other operating improvements.

### **Golf Program Overview**

The City has contracted with High Tides and Green Grass Inc. to operate, maintain and manage the River Ridge Golf Club since 1993. The current contract expires June 30, 2019. The Club is located at 2401 Vineyard Ave in Oxnard. It has 2 eighteen-hole golf courses, the clubhouse, driving range, learning center and related facilities.

The current budget FY 16-17 is \$5,276,741 with budgeted General Fund subsidy of \$775,858. Subsidies from the last two years are as follows; FY 2014-15 actual is \$3,675,004; FY 2015-16 budgeted at 1,066,328. The City's bonds that funded the construction of the facility were recently paid off on June 1, 2016. The Golf program still has an outstanding loan of \$1.4 million with the Water Fund. The primary sources of revenues for the program are: green fees, golf cart rentals, the driving range, merchandise sales, snack bars and banquets.

### **Overtime Overview**

The City's general fund overtime budget decreased in FY 15-16, to approximately \$4.8 million from approximately \$5.5 million in FY 14-15 (not including benefits). The auditors should look to the City's policies and procedures, best management practices, staffing levels, and proper internal controls for managing the cost of overtime.

# Attachment No. 4

## AGREEMENT FOR CONSULTING SERVICES

THIS AGREEMENT FOR CONSULTING SERVICES (“Agreement”) is made and entered into in the County of Ventura, State of California, this [Day] day of [Month], 20[Year], by and between the City of Oxnard, a municipal corporation (“City”), and [Name of Consultant] (“Consultant”). City and Consultant are sometimes individually referred to as “Party” and collectively as “Parties.”

WHEREAS, City desires to hire Consultant to perform certain consulting services specified herein; and

WHEREAS, Consultant represents that Consultant and/or Consultant’s personnel have the qualifications and experience to properly perform such services.

NOW, THEREFORE, City and Consultant hereby agree as follows:

1. Scope of Services

Consultant shall furnish City with professional consulting services as more particularly set forth in **Exhibit A** attached hereto and incorporated by this reference in full herein (the “Services”).

2. Method of Performing Services

Subject to the terms and conditions of this Agreement, Consultant may determine the method, details, and means of performing the Services.

3. Standard of Performance

Consultant agrees to undertake and complete the Services to conclusion, using that standard of care, skill, and diligence normally provided by a professional person in performance of similar consulting services.

4. Nonexclusive Services

This Agreement shall not be interpreted to prevent or preclude Consultant from rendering any services for Consultant’s own account or to any other person or entity as Consultant in its sole discretion shall determine. Consultant agrees that performing such services will not materially interfere with the Services to be performed for the City.

5. Coordination of Services

The Services shall be coordinated with [Insert position title] (“Manager”), subject to the direction of the City Manager or Department Manager.

6. Place of Work

Consultant shall perform the Services provided for in this Agreement at any place or location and at such times as the Consultant shall determine.

7. Correction of Errors

Consultant agrees to correct, at its expense, all errors which may be disclosed during review of the Services. Should Consultant fail to make such correction in a reasonably timely manner, such correction shall be made by City, and the cost thereof shall be paid by Consultant.

8. Time for Performance

The Services performed under this Agreement shall be completed during the term of this Agreement [pursuant to the schedule provided in **Exhibit B** attached hereto and incorporated by this reference in full herein]. (\*\*INCLUDE THE PREVIOUS CLAUSE WITHIN THE BRACKETS IF THE SERVICES ARE TO BE PERFORMED PURSUANT TO A SCHEDULE. OTHERWISE, DELETE THE CLAUSE, RENUMBER THE EXHIBIT C REFERENCE IN SECTION 14 TO EXHIBIT B, REMOVE EXHIBIT B COVERSHEET AND RENUMBER EXHIBIT C COVERSHEET TO EXHIBIT B. DELETE THESE INSTRUCTIONS PRIOR TO COMPLETION OF THE AGREEMENT.\*\*). City agrees to amend the performance termination date whenever Consultant is delayed by action or inaction of City and Consultant promptly notifies Manager of such delays.

9. Principal in Charge

Consultant hereby designates [Enter name of Principle-in-Charge] as its principal-in-charge and person responsible for necessary coordination with Manager.

10. Permits, Licenses, Certificates

Consultant, at Consultant's sole expense, shall obtain and maintain during the term of this Agreement, all permits, licenses, and certificates required in connection with the performance of the Services, including a City business tax certificate.

11. City's Responsibility

City shall cooperate with Consultant as may be reasonably necessary for Consultant to perform the Services. Manager agrees to provide direction to Consultant as requested regarding particular project requirements.

12. Term of Agreement

This Agreement shall begin on [Start Date], and expire on [End Date].

### 13. Termination

a. This Agreement may be terminated by City without cause if Manager notifies Consultant, in writing, of Manager's desire to terminate the Agreement. Such termination shall be effective ten (10) calendar days from the date of delivery or mailing of such notice. City agrees to pay Consultant in full for all amounts due Consultant as of the effective date of termination, including any expenditures incurred on City's behalf, whether for the employment of third parties or otherwise.

b. This Agreement may be terminated by Consultant without cause if Consultant notifies Manager, in writing, of Consultant's desire to terminate the Agreement. Such termination shall be effective ten (10) calendar days from the date of delivery or mailing of such notice and only if all assignments accepted by Consultant have been completed prior to the date of termination.

### 14. Compensation

a. City agrees to pay Consultant in an amount not to exceed \$[Amount] for the Services at rates provided in **Exhibit C** attached hereto and incorporated by this reference in full herein.

b. The acceptance by Consultant of the final payment made under this Agreement shall constitute a release of City from all claims and liabilities for compensation to Consultant for anything completed, finished or relating to the Services.

c. Consultant agrees that payment by City shall not constitute nor be deemed a release of the responsibility and liability of Consultant or its employees, subcontractors, agents and subconsultants for the accuracy and competency of the information provided and/or the Services performed hereunder, nor shall such payment be deemed to be an assumption of responsibility or liability by City for any defect or error in the Services performed by Consultant, its employees, subcontractors, agents and subconsultants.

d. Consultant shall provide Manager with a completed Request for Taxpayer Identification Number and Certification, as issued by the Internal Revenue Service.

e. If any sales tax is due for the Services performed by Consultant or materials or products provided to City by Consultant, Consultant shall pay the sales tax. City shall not reimburse Consultant for sales taxes paid by Consultant.

### 15. Method of Payment

a. City agrees to pay Consultant monthly upon satisfactory completion of the Services and upon submission by Consultant of an invoice delineating the Services performed, in a form satisfactory to Manager. The invoice shall identify the Services by project as specified by Manager.

b. Consultant agrees to maintain current monthly records, books, documents, papers, accounts and other evidence pertaining to the Services performed and costs incurred. Such items shall be adequate to reflect the time involved and cost of performing the Services. Consultant shall provide Manager with copies of payroll distribution, receipted bills and other documents requested for justification of the invoice.

#### 16. Responsibility for Expenses

Except as otherwise expressly provided in this Agreement, City shall not be responsible for expenses incurred by Consultant in performing the Services. All expenses incident to the performance of the Services shall be borne by the Consultant, including, but not limited to rent, vehicle, and travel, entertainment and promotion, general liability and health insurance, workers' compensation insurance, and all compensation and benefits of employees or agents engaged by Consultant. Consultant shall, at its own cost and expense, supply all personal property necessary or appropriate to perform the Services provided for under this Agreement, including, but not limited to any personal property used by employees and agents of Consultant in the performance of such Services.

#### 17. Non-Appropriation of Funds

Payments to be made to Consultant by City for the Services performed within the current fiscal year are within the current fiscal budget and within an available, unexhausted and unencumbered appropriation of City. In the event City does not appropriate sufficient funds for payment of the Services beyond the current fiscal year, this Agreement shall cover payment for the Services only up to the conclusion of the last fiscal year in which City appropriates sufficient funds and shall automatically terminate at the conclusion of such fiscal year.

#### 18. Records

a. Consultant agrees that all final computations, exhibits, files, plans, correspondence, reports, drawings, designs, data and photographs expressly required to be prepared by Consultant as part of the scope of services ("**documents and materials**") shall be the property of City and shall, upon completion of the Services or termination of this Agreement, be delivered to Manager.

b. At City's request, City shall be entitled to immediate possession of, and Consultant shall furnish to Manager within ten (10) calendar days, all of the documents and materials. Consultant may retain copies of these documents and materials.

c. Any substantive modification of the documents and materials by City staff or any use of the completed documents and materials for other City projects, or any use of uncompleted documents and materials, without the written consent of Consultant, shall be at City's sole risk and without liability or legal exposure to Consultant. City agrees to hold Consultant harmless from all damages, claims, expenses and losses arising out of any reuse of the documents and materials for purposes other than those described in this Agreement, unless Consultant consents in writing to such reuse.

## 19. Maintenance and Inspection of Records

Consultant agrees that City or its auditors shall have access to and the right to audit and reproduce any of Consultant's relevant records to ensure that City is receiving the Services to which City is entitled under this Agreement or for other purposes relating to the Agreement. Consultant shall maintain and preserve all such records for a period of at least three (3) years after the expiration of this Agreement, or until an audit has been completed and accepted by City. Consultant agrees to maintain all such records in City or to promptly reimburse City for all reasonable costs incurred in conducting the audit at a location other than in City, including but not limited to expenses for personnel, salaries, private auditor, travel, lodging, meals and overhead.

## 20. Confidentiality of Information

Any documents and materials given to or prepared or assembled by Consultant under this Agreement shall be confidential and shall not be made available to any third person or organization by Consultant without prior written approval of the Manager.

## 21. Indemnity

a. To the fullest extent permitted by law, Consultant shall (1) immediately defend; (2) indemnify; and (3) hold harmless City, its City Council, each member thereof, and its directors, officers, and employees (the "**Indemnified Party**") from and against all liabilities regardless of nature, type, or cause, arising out of or resulting from or in connection with Consultant's performance of this Agreement or Consultant's failure to comply with any of its obligations contained in this Agreement. Liabilities subject to the duties to defend and indemnify include, without limitation, all claims, losses, damages, penalties, fines, and judgments; associated investigation and administrative expenses; defense costs, including but not limited to reasonable attorneys' fees; court costs; and costs of alternative dispute resolution. Consultant's obligation to indemnify applies unless it is adjudicated that any of the liabilities covered by this Section are the result of the sole active negligence or sole willful misconduct of the Indemnified Party. If it is finally adjudicated that liability is caused by the comparative negligence or willful misconduct of the Indemnified Party, Consultant's indemnification obligation shall be reduced in proportion to the established comparative liability of the Indemnified Party.

b. The duty to defend is a separate and distinct obligation from Consultant's duty to indemnify. Consultant shall be obligated to defend, in all legal, equitable, administrative, or special proceedings, with counsel approved by the Indemnified Party immediately upon tender to Consultant of the claim in any form or at any stage of an action or proceeding, whether or not liability is established. An allegation or determination of negligence or willful misconduct by the Indemnified Party shall not relieve Consultant from its separate and distinct obligation to defend the Indemnified Party. The obligation to defend extends through final judgment, including exhaustion of any appeals. The defense obligation includes the obligation to provide independent defense counsel if Consultant asserts that liability is caused in whole or in part by

the negligence or willful misconduct of the Indemnified Party. If it is finally adjudicated that liability was caused by the sole active negligence or sole willful misconduct of the Indemnified Party, Consultant may submit a claim to City for reimbursement of reasonable attorneys' fees and defense costs.

c. The review, acceptance or approval of Consultant's work or work product by the Indemnified Party shall not affect, relieve or reduce Consultant's indemnification or defense obligations. This Section shall survive completion of the Services or termination of this Agreement. The provisions of this Section shall not be restricted by and do not affect the provisions of this Agreement relating to insurance.

## 22. Insurance

a. Consultant shall obtain and maintain during the performance of the Services the insurance coverages as specified in **Exhibit INS-A**, attached hereto and incorporated herein by this reference, issued by a company satisfactory to the Risk Manager, unless the Risk Manager waives, in writing, the requirement that Consultant obtain and maintain such insurance coverages.

b. Consultant shall, prior to performance of the Services, file with the Risk Manager evidence of insurance coverage as specified in **Exhibit INS-A**. Evidence of insurance coverage shall be forwarded to the Risk Manager, addressed as specified in **Exhibit INS-A**.

c. Maintenance of proper insurance coverages by Consultant is a material element of this Agreement. Consultant's failure to maintain or renew insurance coverages or to provide evidence of renewal may be considered as a material breach of this Agreement.

## 23. Independent Contractor

a. City and Consultant agree that in the performance of the Services, Consultant shall be, and is, an independent contractor, and that Consultant and its employees are not employees of City. Consultant has and shall retain the right to exercise full control over the employment, direction, compensation and discharge of all persons assisting Consultant.

b. Consultant shall be solely responsible for, and shall save City harmless from, all matters relating to the payment of Consultant's employees, agents, subcontractors and subconsultants, including compliance with social security requirements, federal and State income tax withholding and all other regulations governing employer-employee relations.

c. Consultant acknowledges that Consultant and Consultant's employees are not entitled to receive from City any of the benefits or rights afforded employees of City, including but not limited to reserve leave, sick leave, vacation leave, holiday leave, compensatory leave, Public Employees Retirement System benefits, or health, life, dental, long-term disability and workers' compensation insurance benefits.

#### 24. Consultant Not Agent

Except as Manager may specify in writing, Consultant, and its agents, employees, subcontractors and subconsultants shall have no authority, expressed or implied, to act on behalf of City in any capacity, as agents or otherwise, or to bind City to any obligation.

#### 25. Conflict of Interest

If, in performing the Services set forth in this Agreement, Consultant makes, or participates in, a “**governmental decision**” as described in Title 2, section 18701(a)(2) of the California Code of Regulations, or performs the same or substantially all the same duties for City that would otherwise be performed by a City employee holding a position specified in City's conflict of interest code, Consultant shall be subject to City's conflict of interest code, the requirements of which include the filing of one or more statements of economic interests disclosing the relevant financial interests of Consultant's personnel providing the Services set forth in this Agreement.

#### 26. Assignability of Agreement

Consultant agrees that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's personnel's unique competence, experience and specialized personal knowledge. Assignments of any or all rights, duties, or obligations of Consultant under this Agreement will be permitted only with the express written consent of Manager, which consent may be withheld for any reason.

#### 27. Successors and Assigns

Consultant and City agree that this Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of Consultant and City.

#### 28. Fair Employment Practices

a. Consultant agrees that all persons employed by Consultant shall be treated equally by Consultant without regard to or because of race, color, religion, ancestry, national origin, disability, sex, marital status, age, or any other status protected by law, and in compliance with all antidiscrimination laws of the United States of America, the State of California, and City.

b. Consultant agrees that, during the performance of this Agreement, Consultant and any other parties with whom Consultant may subcontract shall adhere to equal opportunity employment practices to assure that applicants and employees are treated equally and are not discriminated against because of their race, color, religion, ancestry, national origin, disability, sex, marital status, age, or any other status protected by law.

c. Consultant agrees to state in all of its solicitations or advertisements for applicants for employment that all qualified applicants shall receive consideration for employment without

regard to their race, color, religion, ancestry, national origin, disability, sex, marital status, age, or any other status protected by law.

d. Consultant shall provide City staff with access to and, upon request by Manager, provide copies to Manager of all of Consultant's records pertaining or relating to Consultant's employment practices, to the extent such records are not confidential or privileged under State or federal law.

#### 29. Force Majeure

Consultant and City agree that neither City nor Consultant shall be responsible for delays or failures in performance resulting from acts beyond the control of either party. Such acts shall include, but not be limited to acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations imposed after this Agreement was executed, fire, communication line failures, earthquakes, or other disasters.

#### 30. Time of Essence

Consultant and City agree that time is of the essence in regard to performance of any of the terms and conditions of this Agreement.

#### 31. Covenants and Conditions

Consultant and City agree that each term and each provision of this Agreement to be performed by Consultant shall be construed to be both a covenant and a condition.

#### 32. Governing Law

City and Consultant agree that the construction and interpretation of this Agreement and the rights and duties of City and Consultant hereunder shall be governed by the laws of the State of California.

#### 33. Compliance with Laws

Consultant agrees to comply with all City, State, and federal laws, rules, and regulations, now or hereafter in force, pertaining to the Services performed by Consultant pursuant to this Agreement.

#### 34. Severability

City and Consultant agree that the invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision.

35. Waiver

City and Consultant agree that no waiver of a breach of any provision of this Agreement by either Consultant or City shall constitute a waiver of any other breach of the same provision or any other provision of this Agreement. Failure of either City or Consultant to enforce at any time, or from time to time, any provision of this Agreement, shall not be construed as a waiver of such provision or breach.

36. Counterparts

City and Consultant agree that this Agreement may be executed in two or more counterparts, each of which shall be deemed an original.

37. Arbitration

Consultant and City agree that in the event of any dispute with regard to the provisions of this Agreement, the Services rendered or the amount of Consultant's compensation, the dispute may be submitted to non-binding arbitration upon the mutual agreement of the parties, under such procedures as the parties may agree upon, or, if the parties cannot agree, then under the Rules of the American Arbitration Association.

38. Expenses of Enforcement

Consultant and City agree that the prevailing party's reasonable costs, attorneys' fees (including the reasonable value of the services rendered by the City Attorney Office) and expenses, including investigation fees and expert witness fees, shall be paid by the non-prevailing party in any dispute involving the terms and conditions of this Agreement.

39. Authority to Execute

City acknowledges that the person executing this Agreement has been duly authorized by the City Council to do so on behalf of City.

Consultant acknowledges that the person executing this Agreement has been duly authorized by Consultant to do so on behalf of Consultant.

40. Notices

a. Any notices to Consultant may be delivered personally or by mail addressed to [Enter name of Consultant], [Enter Consultant's address], [Enter City], [Enter State and Zip], Attention: [Enter Principal-in-Charge].

b. Any notices to City may be delivered personally or by mail addressed to City of Oxnard, [Enter Department or Division Name], [Enter Address], Oxnard, California 93030, Attention: [Enter Project Manager].

41. Amendment

City and Consultant agree that the terms and conditions of the Agreement may be reviewed or modified at any time. Any modifications to this Agreement, however, shall be effective only when agreed upon to in writing by both the City representative authorized to do so under the City's purchasing policies and Consultant.

42. Entire Agreement

City and Consultant agree that this Agreement constitutes the entire agreement of the parties regarding the subject matter described herein and supersedes all prior communications, agreements, and promises, either oral or written.

CITY OF OXNARD

CONSULTANT

\_\_\_\_\_  
Purchasing Agent

\_\_\_\_\_  
[Consultant]

APPROVED AS TO FORM:

APPROVED AS TO INSURANCE:

\_\_\_\_\_  
Stephen M. Fischer, City Attorney

\_\_\_\_\_  
Risk Manager

APPROVED AS TO CONTENT:

APPROVED AS TO AMOUNT:

\_\_\_\_\_  
[Enter Name here], Project Manager

\_\_\_\_\_  
Greg Nyhoff, City Manager

**EXHIBIT A**  
**SCOPE OF SERVICES**

**EXHIBIT B**  
**SCHEDULE OF SERVICES**

**EXHIBIT C**  
**COMPENSATION RATES**

# Attachment No. 5

**INSURANCE REQUIREMENTS FOR CONSULTANTS  
(WITH ERRORS AND OMISSIONS REQUIREMENT)**

1. Consultant shall obtain and maintain during the performance of any services under this Agreement the following insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of services hereunder by Consultant, its agents, representatives, employees or subconsultants.

a. Commercial General Liability Insurance, including Contractual Liability, in an amount not less than \$1,000,000 combined single limit for bodily injury and property damage for each claimant for general liability with coverage equivalent to Insurance Services Office Commercial General Liability Coverage (Occurrence Form CG 0001). If a general aggregate limit is used, that limit shall apply separately to the project or shall be twice the occurrence amount;

b. Business automobile liability insurance in an amount not less than \$1,000,000 combined single limit for bodily injury and property damage for each claimant for automobile liability with coverage equivalent to Insurance Services Office automobile liability coverage (Occurrence Form CA0001) covering Code No. 1, "any auto;"

c. Professional liability/errors and omissions insurance appropriate to Consultant's profession to a minimum coverage of \$1,000,000, with neither Consultant nor listed subconsultants having less than \$500,000 individually. The professional liability/errors and omissions insurance must be project specific with at least a one year extended reporting period, or longer upon request.

d. Workers' compensation insurance in compliance with the laws of the State of California, and employer's liability insurance in an amount not less than \$1,000,000 per claimant.

2. Consultant shall, prior to performance of any services, file with the Risk Manager certificates of insurance with original endorsements effecting coverage required by this Exhibit INS-A. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be on the attached forms or on other forms approved by the Risk Manager. All certificates and endorsements are to be received and approved by the Risk Manager before commencement of services. City reserves the right to require complete certified copies of all required insurance policies at any time. The certificates of insurance and endorsements shall be forwarded to the Risk Manager, addressed as follows:

City of Oxnard  
Risk Manager  
Reference No. \_\_\_\_\_  
300 West Third Street, Suite 302  
Oxnard, California 93030

3. Consultant agrees that all insurance coverages shall be provided by a California admitted insurance carrier with an A.M. Best rating of A:VII or better and shall be endorsed to state that coverage may not be suspended, voided, canceled, or reduced in coverage or limits without 30 days' prior written notice to the Risk Manager. The Risk Manager shall not approve or accept any endorsement if the endorsement contains "best effort" modifiers or if the insurer is relieved from the responsibility to give such notice.

4. Consultant agrees that the commercial general liability and business automobile liability insurance policies shall be endorsed to name City, its City Council, officers, employees, agents and volunteers as additional insureds as respects: liability arising out of activities performed by or on behalf of Consultant; products and completed operations of Consultant; premises owned, occupied or used by Consultant; or automobiles owned, leased, hired or borrowed by Consultant. The coverage shall contain no special limitations on the scope of protection afforded to City, its City Council, officers, employees, agents and volunteers. **The General Liability Special Endorsement Form and Automobile Liability Special Endorsement Form attached to this Exhibit INS-A or substitute forms containing the same information and acceptable to the Risk Manager shall be used to provide the endorsements (ISO form CG 2010 11/85 or if not available, CG 2010 with an edition date prior to 01/04 and CG 2037).**

5. The coverages provided to City shall be primary and not contributing to or in excess of any existing City insurance or self-insurance coverages (**this must be endorsed**). Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City, its City Council, officers, employees and volunteers. The insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

6. The insurer shall declare any deductibles or self-insured retentions to and be approved by the Risk Manager. At the option of the Risk Manager, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its City Council, officers, employees and volunteers, or the Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

7. All insurance standards applicable to Consultant shall also be applicable to Consultant's subconsultants. Consultant agrees to maintain appropriate agreements with subconsultants and to provide proper evidence of coverage upon receipt of a written request from the Risk Manager.

## INSTRUCTION FOR SUBMITTING INSURANCE CERTIFICATES AND ENDORSEMENT FORMS

### *Certificates of Insurance*

The sample accord form on the following page is provided to facilitate your preparation and submission of certificates of insurance. You may use this or any industry form that shows coverage as broad as that shown on the attached sample. **Please note the certificate holder address must be as shown on the attached sample accord form with the contract number and insurance exhibit identification information completed.** Improperly addressed certificates may delay the contract start-up date because the City's practice is to return unidentifiable insurance certificates to the insured for clarification as to the contract number. **Cancellation provisions must be endorsed to the policy. Modifying the certificate does not change coverage or obligate the carrier to provide notice of cancellation.**

### *Endorsement Forms*

Original endorsements are required for commercial general liability and business automobile liability insurance policies and must be attached to the applicable certificate of insurance. City preference is that the Consultant/insurer use the endorsement forms which are attached. Substitute forms will be accepted, however, as long as they include provisions comparable to the sample accord form.

INS-A.doc

# ACORD CERTIFICATE OF INSURANCE

ISSUE DATE (MM/DD/YY)

<b>PRODUCER</b>	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.
CODE                      SUB-CODE	<b>COMPANIES AFFORDING INSURANCE COVERAGE</b>
INSURED	COMPANY LETTER A                      SPECIFY COMPANY NAMES IN THIS SPACE
	COMPANY LETTER B

**COVERAGES**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	<b>GENERAL LIABILITY</b> [x] COMMERCIAL GENERAL LIABILITY    [] CLAIMS MADE [x] OCCUR. [x] OWNER'S & CONTRACTOR'S PROT.				GENERAL AGGREGATE            \$1,000,000 PRODUCTS COMP/OP AGG .    \$1,000,000 PERSONAL & ADV. INJURY       \$1,000,000 EACH OCCURRENCE               \$1,000,000 FIRE DAMAGE (Any one fire)       \$ MED. EXPENSE (Any one person)    \$
A	<b>AUTOMOBILE LIABILITY</b> [x] ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS HIRED AUTOS NON-OWNED AUTOS GARAGE LIABILITY				COMBINED SINGLE                \$1,000,000 LIMIT BODILY INJURY                        \$ (Per person) BODILY INJURY                        \$ (Per accident) PROPERTY DAMAGE                    \$
A	<b>EXCESS LIABILITY</b> UMBRELLA FORM OTHER THAN UMBRELLA FORM				EACH OCCURRENCE                \$  AGGREGATE                            \$
A	<b>WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY</b>				STATUTORY LIMITS EACH ACCIDENT                        \$1,000,000 DISEASE-POLICY LIMIT                \$1,000,000 DISEASE-EACH EMPLOYEE              \$1,000,000
A	<b>OTHER</b> Errors and omissions insurance or malpractice insurance available for the insured's profession				Minimum coverage                    \$1,000,000 Each consultant/ & listed sub-consultant                \$500,000

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/RESTRICTIONS/SPECIAL ITEMS

<b>CERTIFICATE HOLDER</b> City of Oxnard Attn: Risk Manager Reference No. _____ 300 W. Third Street, Suite 302 Oxnard CA 93030	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.  AUTHORIZED REPRESENTATIVE
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**GENERAL LIABILITY SPECIAL ENDORSEMENT FOR THE CITY OF OXNARD (the "City")**

**SUBMIT IN DUPLICATE**

ENDORSEMENT NO. \_\_\_\_\_ ISSUE DATE (MM/DD/YY) \_\_\_\_\_

PRODUCER  
  
Telephone: \_\_\_\_\_

**POLICY INFORMATION:**  
Insurance Company: \_\_\_\_\_  
Policy No.: \_\_\_\_\_  
Policy Period: (from) \_\_\_\_\_ (to) \_\_\_\_\_  
LOSS ADJUSTMENT EXPENSE  Included in Limits  
 In Addition to Limits

NAMED INSURED

Deductible  Self-Insured Retention (check which) of \$ \_\_\_\_\_  
with an Aggregate of \$ \_\_\_\_\_ applies to \_\_\_\_\_  
coverage.  Per Occurrence  Per Claim (which)

**APPLICABILITY.** This insurance pertains to the operations, products and/or tenancy of the named insured under all written agreements and permits in force with the City unless checked here  in which case only the following specific agreements and permits with the City are covered

CITY AGREEMENTS/PERMITS

**TYPE OF INSURANCE**

GENERAL LIABILITY  
 COMMERCIAL GENERAL LIABILITY  Claims Made  
 COMPREHENSIVE GENERAL LIABILITY Retroactive Date \_\_\_\_\_  
 OWNERS & CONTRACTORS PROTECTIVE  Occurrence

**OTHER PROVISIONS**

**COVERAGES**

LIABILITY LIMITS IN THOUSANDS \$	
EACH OCCURRENCE	AGGREGATE

GENERAL  
 PRODUCTS/COMPLETED OPERATIONS  
 PERSONAL & ADVERTISING INJURY  
 FIRE DAMAGE  
 \_\_\_\_\_  
 \_\_\_\_\_

**CLAIMS:** Underwriter's representative for claims pursuant to this insurance.  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: ( ) \_\_\_\_\_

In consideration of the premium charged and notwithstanding any inconsistent statement in the policy to which this endorsement is attached or any endorsement now or hereafter attached thereto, insurance company agrees as follows:

- INSURED.** The City, its officers, agents, employees and volunteers are included as insureds with regard to liability and defense of suits arising from the operations, products and activities performed by or on behalf of the named insured.
- CONTRIBUTION NOT REQUIRED.** As respects: (a) work performed by the named insured for or on behalf of the City; or (b) products sold by the named insured to the City; or (c) premises leased by the named insured from the City, the insurance afforded by this policy shall be primary insurance as respects the City, its officers, agents, employees or volunteers; or stand in an unbroken chain of coverage excess of the named insured's scheduled underlying primary coverage. In either event, any other insurance maintained by the City, its officers, agents, employees or volunteers shall be in excess of this insurance and shall not contribute with it.
- SEVERABILITY OF INTEREST.** This insurance applies separately to each insured against whom claim is made or suit is brought except with respect to the company's limits of liability. The inclusion of any person or organization as an insured shall not affect any right which such person or organization would have as a claimant if not so included.
- CANCELLATION NOTICE.** With respect to the interests of the City, this insurance shall not be canceled, or materially reduced in coverage or limits except after thirty (30) days prior written notice by receipted delivery has been given to the City.
- PROVISIONS REGARDING THE INSURED'S DUTIES.** Any failure to comply with reporting provisions of the policy or breaches or violations of warranties shall not affect coverage provided to the City, its officers, agents, employees or volunteers.
- SCOPE OF COVERAGE.** This policy, if primary, affords coverage at least as broad as:
  - Insurance Services Office Commercial General Liability Coverage, "occurrence" form CG0001; or
  - If excess, affords coverage which is at least as broad as the primary insurance form CG0001.

Except as stated above nothing herein shall be held to waive, alter or extend any of the limits, conditions, agreements or exclusions of the policy to which this endorsement is attached.

**ENDORSEMENT HOLDER**

**CITY OF OXNARD**  
Attn: Risk Manager  
Reference No. \_\_\_\_\_  
**300 W. Third Street, Suite 302**  
**Oxnard, CA 93030**

**AUTHORIZED REPRESENTATIVE**

Broker/Agent  Underwriter  \_\_\_\_\_  
I \_\_\_\_\_ (print/type name), warrant that I have authority to bind the above-mentioned insurance company and by my signature hereon do so bind this company to this endorsement.  
Signature \_\_\_\_\_  
(original signature required)  
Telephone: ( ) \_\_\_\_\_ Date Signed: \_\_\_\_\_

