

Purchasing Division

300 West Third Street
Oxnard, CA 93030
(805) 385-7538
www.oxnard.org



April 26, 2017

Ladies and Gentlemen:

The City of Oxnard invites proposals from qualified firms for Financial Advisory Services.

This request for proposal is made up of the following sections: Instructions to Proposers, General Terms and Conditions, Background, Scope of Services, Response Requirements, and two (2) attachments which include: City of Oxnard sample of a Consulting Services Agreement, and 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 **5:00 p.m. on May 22, 2017**. 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>. Any inquiries regarding this notice should be directed to Patricia Garcia, Buyer at 805-385-7538 or email patricia.garcia@oxnard.org. The envelope containing your proposal must be sealed and marked "**Financial Advisory Services**". Proposals will not be opened publicly.

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

Sincerely,

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

Patricia Garcia
Buyer
City of Oxnard

**CITY OF OXNARD
FINANCE DEPARTMENT**

REQUEST FOR PROPOSALS (RFP)

FOR

FINANCIAL ADVISORY 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 5:00 P.M.
ON THE DATE INDICATED BELOW:**

MAY 22, 2016

**CITY OF OXNARD
REQUEST FOR PROPOSALS
FINANCIAL ADVISORY SERVICES**

Proposed Timeline

DATE	ACTIVITY
April 26, 2017	Release of Request for Proposal (RFP)
May 11, 2017	Pre-proposal conference call for questions regarding RFQ at 2:00 p.m. Dial in #: 866-711-1781, enter passcode 7962394 followed by the # sign.
May 22, 2017	Submission of the Proposal is due to the City of Oxnard Purchasing Division by <u>5:00 p.m.</u>
May 23-26 , 2017	Review of Proposals
May 29-31, 2017	Interviews and Agreement Development
June 1, 2017	Contract Compliance Review Committee Approval
June 20, 2017	Award of Agreement by City Council

The above dates are tentative and are subject to change as necessary.

**CITY OF OXNARD
REQUEST FOR PROPOSAL
FINANCIAL ADVISORY SERVICES**

	PAGE
INSTRUCTIONS TO PROPOSERS	
RECEIPT AND OPENING OF PROPOSALS	5
EXAMINATION OF REQUIREMENTS	5
PROPOSERS REQUIREMENTS	5
QUALIFICATIONS SUBMISSION REQUIREMENTS	5
ADDENDA AND INTERPRETATION	7
AWARD OF CONTRACT	7
GENERAL TERMS AND CONDITIONS	9
BACKGROUND	10
SCOPE OF SERVICES	11
PROPOSAL REQUIREMENTS	14
 ATTACHMENTS	
SAMPLE CONSULTING SERVICES AGREEMENT	15
INSURANCE REQUIREMENTS (INS-A).....	28

**CITY OF OXNARD
REQUEST FOR PROPOSAL
FINANCIAL ADVISORY SERVICES**

INSTRUCTIONS TO PROPOSERS

RECEIPT AND OPENING OF PROPOSALS

The City of Oxnard invites proposals from qualified firms for Financial Advisory Services. Proposals will be received in the Purchasing Office until **5:00 p.m. on Monday, May 22, 2017.**

At the proposer's option, proposals may be submitted via email in .pdf format to 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 "**Financial Advisory 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.

PROPOSERS REQUIERMENTS

All proposers must meet the following requirements:

- Be registered as a "Municipal Advisor" with the Security Exchange Commission (Sec) per Section 975 of the Title IX of the Dodd-Frank Act.
- Be registered as a "Municipal Advisor" with the Municipal Securities Rulemaking Board (MSRB) as required per MSRB Rule A-12.
- Have a minimum of five (5) years of experience in providing the services requested herein to public agencies in a financial advisory capacity. If the firm has been in business for less than five years, the experience of its principals may be used to meet this requirement. In addition, proposer is required to submit five (5) references for which these services have been performed within the last three (3) years.

QUALIFICATIONS SUBMISSION REQUIREMENTS

The response to this Request for Proposals (RFP) must be concise, well-organized, and demonstrate the firm's understanding of the scope of work. The response shall include the following information: Responses not submitted in this form will be considered non-responsive.

- **Cover letter.** The cover letter should be no longer than two pages and signed by an officer of the firm indicating that the proposal is valid for 90 days and that the officer is legally authorized to contractually bind the firm. The cover letter should also summarize the key points of the firm's proposal.
- **Company Information.** The proposal should state the size of the firm and the location of the office from which the work on this engagement is to be performed.
- **Key personnel who will participate on the engagement.** The proposal should provide a brief description of the firm and its relevant experience as financial advisor to municipalities in California. The proposal should describe the qualifications and relevant experience for all personnel and other specialists who will be assigned to this engagement. The description should also include their role and responsibilities including identifying who will be the individual charged with the day-to-day responsibility for this engagement. Provide brief resumes for each emphasizing recent relevant municipal financing experience. (Resumes may be included as an appendix).
- **Firm approach to City objectives.** Briefly describe the firm's approach to this assignment as it relates to the Background (Section I.) and Scope of Services (Section II.).
- **Client References.** For the firm's office that will be assigned responsibility, list the most significant engagements performed in the last two (2) years that are similar to the engagement described in this request for proposal. Indicate the scope of work, date, and the name and telephone number of the principal client contact.
- **Compensation and Fees.** This must include any and all fees that will be required in connection with the scope of work to be provided. The proposal should specify the basis upon which the fees will be calculated and expenses for which reimbursement is expected, whether the City will be charged for travel time, the scope of services to be provided for the quoted fees and any other bond or tax counsel services that are not included in the fee proposal.
- **Firm proposal should not exceed 15 pages (including all items listed above).**

Additional materials, including detailed resumes and relevant brochures may be submitted as an attached, separately bound 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.

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.

ADDENDA AND INTERPRETATION

No interpretation of the meaning of the specifications or other proposal documents will be made to any proposer orally except in connection with the planned conference call. Questions asked and answers given during that call will be summarized in writing and will be available on request from the Buyer two days after the call. Proposers are not to contact any individual other than the Buyer. Every other request for 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.

The term of the AGREEMENT(s) will be for a period of three (3) years with the option to extend the AGREEMENT for two (2) additional one (1) year periods.

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
Phone calls will be accepted at (805) 385-7538.

**CITY OF OXNARD
REQUEST FOR PROPOSAL
FINANCIAL ADVISORY SERVICES**

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
FINANCIAL ADVISORY SERVICES**

BACKGROUND

The City of Oxnard (the City) has a population of about 207,000 and is the 21st largest city in California. Its \$436 million in outstanding debt consists of Revenue Bonds, Lease Revenue Bonds, Certificates of Participation and capitalized leases. The City provides water, wastewater, recycled water, solid waste collection and recycling services. About 70% of its debt is associated with its utility operations.

The City is working through a substantial period of transformation primarily as a result of changes on the City Council that led to the hiring City Manager Greg Nyhoff in June 2014. An organization assessment and findings by a new independent auditor revealed serious problems with financial and human resource functions. Please refer to Management's Discussion and Analysis in the City's Comprehensive Annual Financial Reports for Fiscal years 2015 and 2016 for further information about the administrative and financial issues that affect the City. The City has a prioritized action plan to address its issues.

On November 22, 2016, the bond rating agency, Standard & Poor's (S&P), issued two reports on the City's current and potential credit outlook. The first report rated the City's Wastewater Fund unenhanced debt as "BBB - Negative Credit Watch" because of an initiative that rolled back rates "Measure M"). was approved by voters on November 8, 2016. Subsequently the Negative Credit Watch was replaced by a BBB negative outlook rating. The enhanced rating based on a Union Bank MUFG letter of credit was A+/A-1. Subsequently S&P removed the credit watch, leaving Wastewater Fund bonds at BBB pending the outcome of Measure M litigation.

The second report affected the General Fund. Because the General Fund might assist the Wastewater Fund by providing liquidity to make its annual debt service payment, S&P has placed the General Fund on a "Negative Credit Watch". Subsequently S&P replaced the Negative Credit Watch with a negative outlook.

In addition S&P reduced the Water Fund rating from A+ to A/Stable.

Union Bank/MUFG, provider of three Letters of Credit (LOC) has told the City that the Bank it will end its current relationship with the City. A series of agreements since 2015 have extended the term of the LOC to August 2017.

This change in the Union Bank/MUFG relationship could have negative financial consequences. If the City cannot put a replacement LOC in place the City would have to issue fixed rated debt to retire the variable rate debt, increasing costs. Loss of the LOC or a ratings downgrade could also cause the Royal Bank of Canada (RBC), the City's swap provider to terminate the swap triggering a termination fee.

In the future the City will have to make major infrastructure investments to replace and rehabilitate its wastewater treatment facilities, water treatment and distribution infrastructure and solid waste and recycling operations. It may also issue land secured debt to build infrastructure for an expected 25% increase in population.

SCOPE OF SERVICES

The City's financial advisor has traditionally advised the City in structuring the issuance and sale of bonds, notes, and other securities as well as providing assistance and analyses for various projects, including negotiating financing terms, drafting documents, and advising on legislation, regulations or other procedures. Because the City has experienced significant turnover in management positions and does not currently have a well-developed debt management and issuance program it seeks a responsive and proactive financial advisory firm that will act as an extension of staff when needed. The successful firm will work with the CFO to structure external contractual services to handle critical work related to ongoing disclosure, compliance and debt administration.

In addition, under this agreement the City's FA will be responsible for providing a broad platform of services that will result in improvements in its compliance with SEC and CDIAC disclosure laws and regulations, better long range financial planning and a robust investor relations program in addition to traditional FA responsibilities.

Financial Advisor tasks and responsibilities.

- A. Advise and assist the City in the development, structure and timing of the issuance of bonds in accordance with applicable laws, customs, and practices governing such issuance.
- B. Advise and assist the City in considering and structuring various modes of financing, including but not limited to refundings, taxable bonds, credit-enhancement, leased equipment financings, general obligation bonds, pension obligation bonds, redevelopment bonds, and lease revenue bonds/certificates of participation that maximize the resources available to produce a financially sound and cost-effective transaction.
- C. Advise on the amount, timing, and nature of borrowings, as well as the credit structure, maturity schedule, call provisions and other matters which may assist the City in obtaining the lowest practical interest cost and the widest competition for purchase of its bonds, as needed.
- D. Advise on the merits of competitive, negotiated or private placement of debt.
- E. Analyze and make recommendations relating to various financing options so as to secure the lowest practical interest rate; enhance the marketability of the bonds; achieve the widest competition for bond purchase to include retail, institutional, and other investor classes; and achieve optimal leverage of City resources, while maintaining a prudent level of risk, through debt obligations. Identify the advantages and disadvantages of any recommendations.
- F. Assist in the preparation of the preliminary and final official statements, notices of sale (competitive offerings), other appropriate information to prospective bond and note investors, and any materials required to facilitate the sale of the bonds.
- G. Assist in the preparation and review of legal and financing documents in coordination with City Attorney, bond counsel, underwriter's counsel (if any), disclosure counsel, City Staff, and other relevant parties. These documents shall include regulations, rules, proposed legislation, and other documents relating to the City's financing programs.
- H. Assist in preparing and presenting timely and adequate information on proposed financings

and the City's finances and operations to the bond rating agencies and institutions providing credit enhancement.

- I. Evaluate the terms and recommendation of acceptance, rejection or renegotiation with respect to sale bids or final pricing as applicable. This includes confirmation of competitive bids, and verification reports in the case of refundings.
- J. Advise on such matters as bond registration, printing, and other matters related to the settlement and delivery of the bonds or notes, as required.
- K. Assist with preparation of RFP/Q's and evaluation of proposals for the procurement of:
 - Credit enhancements, including LOCs and bond insurance
 - Investment banking services
 - Financial printing
 - Competitive offerings
 - Paying Agent or Trustee
 - Escrow Agent, if required
 - Verification Agent, if required
 - Any other agents or consultants as required by the City
- L. In the case of competitive offerings, assume responsibility for the following:
 - Preparation and advertisement of Notice of Sale
 - Preparation of Bid Form
 - Advice as to manner of bid procedures
 - Management of competitive bidding procedures
 - Analyze the bids and identify the most favorable bid
- M. Attend (in person or by telephone, as required) meetings related to debt offerings and participation in the deliberations at such meetings, including:
 - Preparation of Official Statement with the entire working group
 - Due diligence
 - Rating agency presentations
 - Investors' presentation
 - Acquiring Insurance
 - Pricing
 - Closing
- N. Provide ongoing financial advisory services as necessary, including:
 - Review financial issues with the rating agencies (and arrange and support calls and meetings) relating to specific debt issues and to periodic updates.
 - Evaluate unsolicited financial proposals received by the City, including, but not limited to refundings and alternate forms of financing vehicles like risk management products.
 - Provide advice on investor relations and assistance in preparation of related presentation materials.
- O. Advise and assist the City in structuring short-term financing programs including tax revenue anticipation notes, lines of credit, letters of credit, commercial paper programs, or other financings, as required.
- P. Assist the City in drafting and preparing Continuing Disclosure documents for the investor community.

- Q. Assist the City when necessary in the negotiation and preparation of any agreements between the City and other jurisdictions participating in any financing program.
- R. As necessary, resolve issues regarding the sale and issuance of bonds that are raised by prospective purchasers, rating agencies, or public officials.
- S. As requested, prepare and maintain projected debt service, debt outstanding and other schedules related to City debt for use in the City budgeting processes and official statements.
- T. Provide other technical assistance on debt financings, bond ratings and financing alternatives as requested by the City.
- U. Prepare a comprehensive “Final Pricing Book” for the financing transaction.

**Expanded Financial Advisor Responsibilities
SEC and CDIAC compliance**

- A. Provide advice and assistance to help the City implement the provisions of SB 1029 and CDIAC’s related transparency regulations.
- B. Provide advice and assistance in development of a disclosure policy and related procedures. Participate in the disclosure process in compliance with the policy and procedures adopted by the City Council.
- C. Brief City staff on SEC Rule 15c2-12 disclosure requirements and assure that disclosure policies and procedures conform to SEC requirements
- D. Coordinate compliance work with the City Attorney’s office and attorneys providing Bond and Disclosure Counsel services.

Investor Relations Program

- A. Provide advice and assistance in the planning, design and implementation of a robust investor relations program consistent with GFOA’s Best Practice – Maintaining an investor relations program.
- B. Analyze the risks and barriers the City faces in issuing debt at reasonable cost to prioritize the investor relations effort.
- C. Participate in investor relations related activity planning and execution, coordinated with attorneys when necessary.

Rate swaps and Letters of Credit

- A. Rapidly assess technical issues presented by the variable rate debt, letters of credit and interest rate swaps, analyze and present options and analyze related risks.

- B. Contact Union Bank/MUFG, RBC and potential replacement LOC providers to assure a professional, well controlled process for working through the issues facing the City while building confidence among capital market participants.
- C. Help City staff initiate and complete critical steps to resolve issues.
- D. Work with, City staff and counsel to provide briefings and presentations for the City Manager, City Attorney and City Council that are consistent and credible.

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	patricia.garcia@oxnard.org

Bidders may only communicate with the Buyer. 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 Proposal. At the proposer's option, proposals may be submitted via email in .pdf format to patricia.garcia@oxnard.org OR one (1) original and four (4) copies of the Technical Proposal, which **MUST** be received by **May 22, 2017 at 5:00 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.

Attachment No. 1

(Sample Consulting Services Agreement)

(SAMPLE)

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.

IN WITNESS WHEREOF, the parties hereto have executed the Agreement on the date first written above.

CITY OF OXNARD

CONSULTANT

Jim Throop, Purchasing Agent

[Consultant]

APPROVED AS TO FORM:

APPROVED AS TO INSURANCE:

Stephen M. Fischer, Interim 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. 2

(Insurance Requirements)

**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)			
PRODUCER		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	COMPANIES AFFORDING INSURANCE COVERAGE			
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	GENERAL LIABILITY [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	AUTOMOBILE LIABILITY [x] ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS HIRED AUTOS NON-OWNED AUTOS GARAGE LIABILITY				COMBINED SINGLE LIMIT \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE \$
A	EXCESS LIABILITY UMBRELLA FORM OTHER THAN UMBRELLA FORM				EACH OCCURRENCE \$ AGGREGATE \$
A	WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY				STATUTORY LIMITS EACH ACCIDENT \$1,000,000 DISEASE-POLICY LIMIT \$1,000,000 DISEASE-EACH EMPLOYEE \$1,000,000
A	OTHER 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					
CERTIFICATE HOLDER City of Oxnard Attn: Risk Manager Reference No. _____ 300 W. Third Street, Suite 302 Oxnard CA 93030			CANCELLATION 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		

