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DATE: June 10, 2009

TO: Honorable Mayor and City Councilmembers

FROM: Financial Services Department

SUBJECT: **APPROVAL OF PROFESSIONAL SERVICES AGREEMENTS FOR FINANCIAL ADVISORY SERVICES WITH THE PFM, FCS GROUP, KEYSER MARSTON ASSOCIATES, AND CSG ADVISORS**

### **SYNOPSIS**

Staff recommends that the City Council and Community Development Commission establish a pool of financial advisors, approve five-year professional services agreements with four firms (The PFM Group of Newport Beach, FCS Group of San Francisco, Keyser Marston Associates of San Diego, and CSG Advisors of San Francisco) and authorize the City Manager to execute the agreements.

### **BACKGROUND**

The City of Oceanside and the Oceanside Community Development Commission periodically issue municipal debt instruments to finance the acquisition and construction of real property, facilities, related operating equipment, and other infrastructure improvements. Long-term debt is not used for operating expenditures. While no specific financing need has been identified at this time, future requirements may include Community Facilities and Assessment Districts, Certificates of Participation, Tax Increment Debt, Lease Revenue Bonds, and Mortgage Revenue/Housing Bonds.

The Financial Advisor is a key member of the City's financing team. While the specific scope of services are detailed in the individual contracts, they can generally be summarized as follows: (1) assist on a case-by-case basis for debt financings by providing specialized marketing and technical skills that cannot reasonably be provided by City staff; (2) provide on-going advice and technical assistance on capital planning, policy development, revenue forecasting and evaluation, resource allocation, specialized financial reports, analyses and financial modeling.

### **ANALYSIS**

In March 2009 a Request for Qualifications for Financial Advisor Services was sent to fourteen firms throughout California and resulted in eight responses. Two firms that responded did not meet the minimum RFQ requirements. Staff from Finance, Economic and Community Development, Neighborhood Services/Housing, Treasury and Water Utilities interviewed the remaining six firms on April 6, 2009, and is recommending the

establishment of a pool of four firms to provide both general and specialized financial advisory services.

The PFM Group has served as the City's financial advisor since 1990, assisting the City with the issuance of 23 debt transactions, including lease revenue/certificates of participation, pension obligation bonds, tax allocation bonds, water and sewer revenue bonds, and land-secured debt. In addition, they have assisted with financial modeling/forecasting and planning during the initial phases of several projects. The PFM Group is a full-service firm providing financial advising, strategic consulting, investment consulting, and investment management. The contract will not include investment management or consulting services. Based on the City's positive experience with The PFM Group, along with their wealth of expertise and resources, staff is recommending continuance of a contract with The PFM Group for financial advisory services.

The FCS Group has a long-standing working relationship with the City in the role of a specialized financial advisor for utility finances and rates. They prepared the Water Utilities Financial Plan and the recent Drought Emergency Water Rates. Based on the City's positive experience with FCS Group, along with their experience in utility financing and knowledge of water issues in San Diego County, staff is recommending continuance of a contract with FCS Group for specialized financial advisory services for utility finances and rates.

Keyser Marston Associates is a real estate economic consulting firm that provides a broad range of financial and economic consulting services. KMA has assisted the City and Commission on numerous assignments including developer selection and transaction structuring for the proposed Pier Resort Hotel, tax increment projections for the Downtown Redevelopment Project "Area", economic impact analysis of the proposed Pavilion shopping center, financial analysis of the Shadow Way Housing acquisition and rehabilitation project, and feasibility analyses of alternative build-out scenarios for Oceanside Airport. Based on the City's positive experience with KMA, along with their expertise in redevelopment law as pertains to real estate and housing activities, and familiarity of local and regional market conditions, staff is recommending continuance of a contract with KMA for specialized financial advisory services for redevelopment and housing.

CSG Advisors provides a broad range of financial advisory services, but their area of specialized expertise pertains to public finance, real estate and community development. As such, they will be a valuable asset to the City on complex development projects, real estate-related public assets, and financings for housing and economic development. This firm came highly recommended from municipal references. Staff is recommending a contract with CSG for specialized financial advisory services for redevelopment, economic development, and housing.

**FISCAL IMPACT**

There is no fiscal impact at this time by entering into the professional service agreements for financial advisory services. When specific financings come forward, staff will negotiate the terms for that specific financing and bring the recommendations to Council for approval. The financial advisor will be paid from the bond proceeds upon the successful sale of those bonds. Special projects and analyses will be brought forth to Council for funding on an as-needed basis from departmental operating budgets, developer deposits, or project funds.

**COMMISSION/COMMITTEE REPORT**

Does not apply.

**CITY ATTORNEY’S ANALYSIS**

The referenced documents have been reviewed by the City Attorney and approved as to form.

**RECOMMENDATION**

Staff recommends that the City Council and Community Development Commission establish a pool of financial advisors, approve five-year professional services agreements with four firms (The PFM Group of Newport Beach, FCS Group of San Francisco, Keyser Marston Associates of San Diego, and CSG Advisors of San Francisco) and authorize the City Manager to execute the agreements.

PREPARED BY:

*Teri Ferro*  
\_\_\_\_\_  
Teri Ferro  
Director of Financial Services

SUBMITTED BY:

*Peter A. Weiss*  
\_\_\_\_\_  
Peter A. Weiss  
City Manager

REVIEWED BY:

Michelle Skaggs-Lawrence, Deputy City Manager

Michele Lund, Treasury Manager

Jane McVey, Economic Development and Redevelopment Director

Margery Pierce, Neighborhood Services Director

Lonnie Thibodeaux, Water Utilities Director

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**CITY OF OCEANSIDE**

**PROFESSIONAL SERVICES AGREEMENT**

THIS AGREEMENT is made and entered into this 10<sup>th</sup> day of June 2009, by and between the CITY OF OCEANSIDE, a municipal corporation, and OCEANSIDE COMMUNITY DEVELOPMENT COMMISSION (OCDC), a municipal corporation, hereinafter collectively designated as “CITY”, and The PFM Group, hereinafter designated as “CONSULTANT”.

**RECITALS**

- A. CITY desires to obtain professional financial advisory services from an independent contractor for the City of Oceanside and the Oceanside Community Development Commission.
- B. CONSULTANT has submitted a proposal to provide financial advisory services for the CITY in accordance with the terms set forth in this Agreement.
- C. CITY desires to contract with CONSULTANT as an independent contractor and CONSULTANT desires to provide services to CITY as an independent contractor.
- D. CONSULTANT has demonstrated its competence and professional qualifications necessary for the satisfactory performance of the services designated herein by virtue of its experience, training, education and expertise.

**NOW, THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:**

- 1.0 **SCOPE OF WORK.** The project is more particularly described as follows: assist the CITY on an as-needed basis in connection with any financings or projects that the City may undertake.
- 1.1 **PROFESSIONAL SERVICES PROVIDED BY CONSULTANT.** The professional services to be performed by CONSULTANT shall consist of but not be limited to the following:
  - 1.1.1 **Debt Financing**
    - a. Assist in the formation of the financing team.
    - b. Assist with the risk analysis of various financing structures and strategies.
    - c. Financing structure validation.
    - d. Assist with the preparation of financial documents.
    - e. Assist with Rating Agency package for City presentation.

- f. Assist in negotiations with bond insurers.
- g. Assist in the establishment of selling rules for the syndicate.
- h. Assist with research and analyses for pricing including assessing marketplace timing.
- i. Evaluate finance team performance and bond sale results.
- j. Assess bond market conditions at time of sale of bonds as part of syndicate performance evaluation.

#### 1.1.2 Redevelopment

- a. Verify tax increment revenue for the latest fiscal year
- b. Calculate and project tax increment revenue for the next three years
- c. Review and analyze five (5) years of historical assessed value and tax revenue receipts for the Project Area, evaluate the impact of development agreement for Agency financings
- d. Compile and analyze the Project Area's base year assessed value, including adjustments made by the County Auditor-Controller
- e. Complete analysis of the Project Area's redevelopment plan, including number of plan years remaining, and any restrictive covenants
- f. Thorough review of existing pass-thru agreements, disposition and development agreements, and owner participation agreements for the Project Area, including subordination and other restrictive language
- g. Proforma analysis on RDA projects
- h. Redevelopment negotiations with developers or others to meet the goals of the Redevelopment Plan
- i. Develop the 5-Year Implementation Plan and updates to the Plan, and other reports as required by Redevelopment Law
- j. Analyze the potential for new redevelopment project areas
- k. Review, analyze, evaluate, plan and attend meetings regarding new redevelopment legislation or challenges to City processes or calculations

#### 1.1.3 Housing

- a. Assist in identifying policy issues and developing policies related to affordable housing debt financing and administration
- b. Assist City staff in estimating housing set-aside bonding capacity
- c. Advise on low and moderate income housing activities, including analysis of alternative strategies, development of relationships with affordable housing developers, and assist in structuring financing for projects (which may also utilize forms of tax-exempt financing)

#### 1.1.4 Financial Management/Advisory Services

- a. Assist in development of long-term financial plan
- b. Financial modeling
- c. Review and analyze legislation that may have a financial impact on the City

d. Other projects and activities as requested by CITY

2.0 **INDEPENDENT CONTRACTOR.** CONSULTANT'S relationship to the CITY shall be that of an independent contractor. CONSULTANT shall have no authority, express or implied, to act on behalf of the CITY as an agent, or to bind the CITY to any obligation whatsoever, unless specifically authorized in writing by the Finance Director. CONSULTANT shall be solely responsible for the performance of any of its employees, agents or subcontractors under this agreement.

CONSULTANT shall report to the CITY any and all employees, agents and consultants performing work in connection with this project, and all shall be subject to the approval of the CITY.

CONSULTANT is not acting as a fiduciary to the CITY in carrying out the professional services described in Section 1.1 hereof.

3.0 **WORKERS' COMPENSATION.** Pursuant to Labor Code section 1861, the CONSULTANT hereby certifies that the CONSULTANT is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and the CONSULTANT will comply with such provisions and provide certification of such compliance as a part of this Agreement.

4.0 **LIABILITY INSURANCE.**

4.1 CONSULTANT shall, throughout the duration of this Agreement, maintain comprehensive general liability and property damage insurance, or commercial general liability insurance, covering all operations of CONSULTANT, its agents and employees, performed in connection with this Agreement including, but not limited to, premises and automobile.

4.2.1 CONSULTANT shall maintain liability insurance in the following minimum limits:

Comprehensive General Liability Insurance  
(bodily injury and property damage)

Combined Single Limit Per Occurrence	\$ 1,000,000
General Aggregate	\$ 2,000,000*

Commercial General Liability Insurance

(bodily injury and property damage)

General limit per occurrence	\$ 1,000,000
General limit project specific	\$ 2,000,000
<u>Automobile Liability Insurance</u>	\$ 1,000,000

\*General aggregate per year, or part thereof, with respect to losses or other acts or omissions of CONSULTANT under this Agreement.

- 4.2.2 If coverage is provided through a Commercial General Liability Insurance policy, a minimum of 50% of each of the aggregate limits shall remain available at all times. If over 50% of any aggregate limit has been paid or reserved, the CITY may require additional coverage to be purchased by the CONSULTANT to restore the required limits. The CONSULTANT shall also notify the CITY'S Project Manager promptly of all losses or claims over \$25,000 resulting from work performed under this contract, or any loss or claim against the CONSULTANT resulting from any of the CONSULTANT'S work.
- 4.3 Insurance company providing General Liability insurance to the CONSULTANT for the purposes of this Section shall add the City of Oceanside as "additional insured" under the designated insurance policy for all work performed under this Agreement. Insurance coverage provided to the CITY as an additional insured shall be primary insurance and other insurance maintained by the CITY, its officers, agents and employees shall be excess only and not contributing with insurance provided pursuant to this Section.
- 4.4 All insurance companies affording coverage to the CONSULTANT pursuant to this Agreement shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact business of insurance in the state or be rated as A-X or higher by A.M. Best.
- 4.5 All insurance companies affording coverage shall provide thirty (30) days written notice to the CITY should the policy be cancelled before the expiration date. For the purposes of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation.
- 4.6 CONSULTANT shall provide evidence of compliance with the insurance requirements listed above by providing a Certificate of Insurance, in a form satisfactory to the City Attorney, concurrently with the submittal of this Agreement.
- 4.7 CONSULTANT shall provide a substitute Certificate of Insurance no later than

thirty (30) days prior to the policy expiration date; or immediately upon receipt. Failure by the CONSULTANT to provide such a substitution and extend the policy expiration date shall be considered a default by CONSULTANT and may subject the CONSULTANT to a suspension or termination of work under the Agreement.

4.8 Maintenance of insurance by the CONSULTANT as specified in this Agreement shall in no way be interpreted as relieving the CONSULTANT of any responsibility whatsoever and the CONSULTANT may carry, at its own expense, such additional insurance as it deems necessary.

5.0 **PROFESSIONAL ERRORS AND OMISSIONS INSURANCE.** Throughout the duration of this Agreement and four (4) years thereafter, the CONSULTANT shall maintain professional errors and omissions insurance for work performed in connection with this Agreement in the minimum amount of One Million Dollars (\$1,000,000).

CONSULTANT shall provide evidence of compliance with these insurance requirements by providing a Certificate of Insurance.

6.0 **CONSULTANT'S INDEMNIFICATION OF CITY.** CONSULTANT shall indemnify and hold harmless the CITY and its officers, agents and employees against all claims or lawsuits for damages to persons or property arising out of the conduct, negligent acts, errors, omissions or wrongful acts of conduct of the CONSULTANT or its employees, agents, subcontractors or others in connection with the execution of the work covered by this Agreement, except for those claims arising from the willful misconduct, sole negligence or active negligence of the CITY, its officers, agents or employees. CONSULTANT'S indemnification shall include any and all costs, expenses, expert fees, attorneys' fees and liability assessed against or incurred by the CITY, its officers, agents or employees in defending against such claims or lawsuits, whether the same proceed to judgment or not. Further, CONSULTANT, at its own expense, shall, upon written request by the CITY, defend any such suit or action brought against the CITY, its officers, agents or employees resulting or arising from the tortious acts or omissions of the CONSULTANT.

CONSULTANT'S indemnification of CITY shall not be limited by any prior or subsequent declaration by the CONSULTANT

7.0 **COMPENSATION.**

7.1 General financial advisory projects and services will be billed based on an hourly billing rate:

<u>Professional</u>	<u>Hourly Rate</u>
Managing Director	\$310
Senior Managing Consultant	\$260
Consultant	\$200

7.2 A flat-fee schedule for services related to bond issuance varies depending on the nature and complexity of each transaction. CONSULTANT and CITY will negotiate mutually acceptable fees for service.

Par Value	Lease Revenue COPs	Water and Wastewater	Land Secured Debt *	Tax Allocation Bonds	Pension Obligation Bonds	Housing Bonds
\$0-\$10 million	\$20,000-\$30,000	\$20,000-\$30,000	\$20,000-\$30,000	\$25,000-\$35,000	\$25,000-\$35,000	\$25,000-\$35,000
\$10-\$25 million	\$30,000-\$40,000	\$30,000-\$40,000	\$30,000-\$40,000	\$35,000-\$45,000	\$35,000-\$45,000	\$35,000-\$45,000
\$25-\$40 million	\$40,000-\$50,000	\$40,000-\$50,000	\$40,000-\$50,000	\$45,000-\$55,000	\$45,000-\$55,000	\$45,000-\$55,000
*Does not include district formation costs for land-secured financings (ADs & CFDs) which are billed on an hourly basis.						

7.3 Expenses will be capped at \$2,500 per transaction, and will include items such as travel, parking, meals, postage, express mail delivery services, telephone, photocopying, outside graphic fees, etc. Out-of-pocket expenses will be on an actual cost basis and appropriate documentation and third party receipts will be provided.

8.0 **TERM OF AGREEMENT.** CONSULTANT has been retained as one of four firms to provide financial advisory services to the CITY for five years from the date of this agreement.

9.0 **TERMINATION OF AGREEMENT.** The CITY may terminate this Agreement for any reason by providing thirty (30) days written notice to the CONSULTANT.

10.0 **ENTIRE AGREEMENT.** This Agreement comprises the entire integrated understanding between CITY and CONSULTANT concerning the work to be performed for this project and supersedes all prior negotiations, representations or agreements.

11.0 **INTERPRETATION OF THE AGREEMENT.** The interpretation, validity and enforcement of the Agreement shall be governed by and construed under the laws

of the State of California. The Agreement does not limit any other rights or remedies available to CITY.

The CONSULTANT shall be responsible for complying with all local, state and federal laws whether or not said laws are expressly stated or referred to herein.

Should any provision herein be found or deemed to be invalid, the Agreement shall be construed as not containing such provision, and all other provisions, which are otherwise lawful, shall remain in full force and effect, and to this end the provisions of this Agreement are severable.

12.0 **AGREEMENT MODIFICATION.** This Agreement may not be modified orally or in any manner other than by an Agreement in writing, signed by the parties hereto.

13.0 **NOTICES.** All notices, demands, requests, consents or other communications which this Agreement contemplates or authorizes, or requires or permits either party to give to the other, shall be in writing and shall be personally delivered or mailed to the respective party as follows:

**TO CITY:**  
City of Oceanside  
Finance Director  
300 North Coast Highway  
Oceanside, CA 92054

**TO CONSULTANT:**  
The PFM Group  
Keith D. Curry, Managing Director  
660 Newport Center Drive, Suite 710  
Newport Beach, CA 92660

Either party may change its address by notice to the other party as provided herein.

Communications shall be deemed to have been given and received on the first to occur:

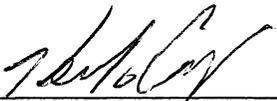
- a. Actual receipt at the offices of the party to whom the communication is to be sent, as designated above, or
- b. Three (3) working days following the deposit in the United States mail of registered or certified mail, postage prepaid, return receipt requested, addressed to the offices of the party to whom the communication is to be sent, as designated above.

14.0 **SIGNATURES.** The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the CONSULTANT and the CITY.

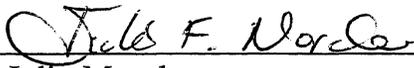
**IN WITNESS WHEREOF** the parties hereto for themselves, their heirs, executors, administrators, successors and assigns do hereby agree to the full performance of the covenants herein contained and have caused this Professional Services Agreement to be executed by setting hereunto their signatures:

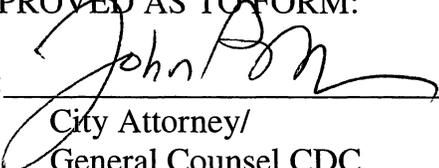
THE PFM GROUP

CITY OF OCEANSIDE

By:   
\_\_\_\_\_  
Keith D. Curry  
Managing Director

By: \_\_\_\_\_  
Peter Weiss, City Manager/  
Executive Director CDC

By:   
\_\_\_\_\_  
Julio Morales  
Sr. Managing Consultant

APPROVED AS TO FORM:  
By:   
\_\_\_\_\_  
City Attorney/  
General Counsel CDC

**NOTARY ACKNOWLEDGMENTS OF CONSULTANT MUST BE ATTACHED.**

**ACKNOWLEDGMENT**

State of California  
County of Orange )

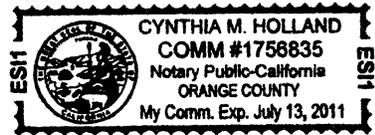
On Wednesday, April 29, 2009 before me, Cynthia M. Holland, Notary Public  
(insert name and title of the officer)

personally appeared -----Keith D. Curry-----,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in  
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the  
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing  
paragraph is true and correct.

WITNESS my hand and official seal.

Signature *Cynthia M. Holland* (Seal)



# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

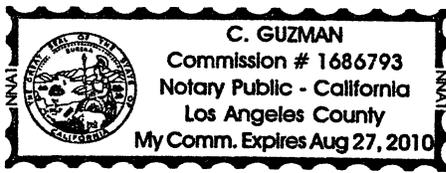
County of Los Angeles } ss.

On May 01, 09, before me, C. GUZMAN, Notary Public,  
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Julio Morales,  
Name(s) of Signer(s)

personally known to me

proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



Place Notary Seal Above

WITNESS my hand and official seal

*[Signature]*  
 Signature of Notary Public

## OPTIONAL

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

### Description of Attached Document

Title or Type of Document: Professional Services Agreement

Document Date: May 01, 2009 Number of Pages: 8

Signer(s) Other Than Named Above: \_\_\_\_\_

### Capacity(ies) Claimed by Signer(s)

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

**RIGHT THUMBPRINT OF SIGNER**  
 Top of thumb here

Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

**RIGHT THUMBPRINT OF SIGNER**  
 Top of thumb here

Signer Is Representing: \_\_\_\_\_

## CITY OF OCEANSIDE

### PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into this 10<sup>th</sup> day of June 2009, by and between the CITY OF OCEANSIDE, a municipal corporation, and OCEANSIDE COMMUNITY DEVELOPMENT COMMISSION (OCDC), a municipal corporation, hereinafter collectively designated as "CITY", and Financial Consulting Solutions Group, Inc. hereinafter designated as "CONSULTANT".

#### RECITALS

- A. CITY desires to obtain professional financial advisory services from an independent contractor for the City of Oceanside and the Oceanside Community Development Commission.
- B. CONSULTANT has submitted a proposal to provide financial advisory services for the CITY in accordance with the terms set forth in this Agreement.
- C. CITY desires to contract with CONSULTANT as an independent contractor and CONSULTANT desires to provide services to CITY as an independent contractor.
- D. CONSULTANT has demonstrated its competence and professional qualifications necessary for the satisfactory performance of the services designated herein by virtue of its experience, training, education and expertise.

#### **NOW, THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:**

- 1.0 **SCOPE OF WORK.** The project is more particularly described as follows: assist the CITY on an as-needed basis in connection with any financings or projects that the City may undertake.
- 1.1 **PROFESSIONAL SERVICES PROVIDED BY CONSULTANT.** The professional services to be performed by CONSULTANT shall consist of but not be limited to the following:
  - 1.1.1 **Water Utilities**
    - a. Review funding for long-range capital requirements and explore alternative financing sources and scenarios in selecting optimal financing strategy
    - b. Review current charges including capacity charges and proposed charges to ensure recovery of actual costs associated with services provided
    - c. Perform water and wastewater rate analysis and financial modeling

1.1.2 Financial Management/Advisory Services

- a. Compile feasibility analyses based on market conditions and assumptions provided by the CITY's financing team
- b. Review and analyze legislation that may have a financial impact on the City
- c. Other projects and activities as requested by CITY

2.0 **INDEPENDENT CONTRACTOR.** CONSULTANT'S relationship to the CITY shall be that of an independent contractor. CONSULTANT shall have no authority, express or implied, to act on behalf of the CITY as an agent, or to bind the CITY to any obligation whatsoever, unless specifically authorized in writing by the Finance Director. CONSULTANT shall be solely responsible for the performance of any of its employees, agents or subcontractors under this agreement.

CONSULTANT shall report to the CITY any and all employees, agents and consultants performing work in connection with this project, and all shall be subject to the approval of the CITY.

CONSULTANT is not acting as a fiduciary to the CITY in carrying out the professional services described in Section 1.1 hereof.

3.0 **WORKERS' COMPENSATION.** Pursuant to Labor Code section 1861, the CONSULTANT hereby certifies that the CONSULTANT is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and the CONSULTANT will comply with such provisions and provide certification of such compliance as a part of this Agreement.

4.0 **LIABILITY INSURANCE.**

4.1 CONSULTANT shall, throughout the duration of this Agreement, maintain comprehensive general liability and property damage insurance, or commercial general liability insurance, covering all operations of CONSULTANT, its agents and employees, performed in connection with this Agreement including, but not limited to, premises and automobile.

4.2.1 CONSULTANT shall maintain liability insurance in the following minimum limits:

Comprehensive General Liability Insurance  
(bodily injury and property damage)

Combined Single Limit Per Occurrence	\$ 1,000,000
General Aggregate	\$ 2,000,000*

Commercial General Liability Insurance  
(bodily injury and property damage)

General limit per occurrence	\$ 1,000,000
General limit project specific	\$ 2,000,000

<u>Automobile Liability Insurance</u>	\$ 1,000,000
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\*General aggregate per year, or part thereof, with respect to losses or other acts or omissions of CONSULTANT under this Agreement.

- 4.2.2 If coverage is provided through a Commercial General Liability Insurance policy, a minimum of 50% of each of the aggregate limits shall remain available at all times. If over 50% of any aggregate limit has been paid or reserved, the CITY may require additional coverage to be purchased by the CONSULTANT to restore the required limits. The CONSULTANT shall also notify the CITY'S Project Manager promptly of all losses or claims over \$25,000 resulting from work performed under this contract, or any loss or claim against the CONSULTANT resulting from any of the CONSULTANT'S work.
- 4.3 Insurance company providing General Liability insurance to the CONSULTANT for the purposes of this Section shall add the City of Oceanside as "additional insured" under the designated insurance policy for all work performed under this Agreement. Insurance coverage provided to the CITY as an additional insured shall be primary insurance and other insurance maintained by the CITY, its officers, agents and employees shall be excess only and not contributing with insurance provided pursuant to this Section.
- 4.4 All insurance companies affording coverage to the CONSULTANT pursuant to this Agreement shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact business of insurance in the state or be rated as A-X or higher by A.M. Best.
- 4.5 All insurance companies affording coverage shall provide thirty (30) days written notice to the CITY should the policy be cancelled before the expiration date. For the purposes of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation.
- 4.6 CONSULTANT shall provide evidence of compliance with the insurance requirements listed above by providing a Certificate of Insurance, in a form

satisfactory to the City Attorney, concurrently with the submittal of this Agreement.

- 4.7 CONSULTANT shall provide a substitute Certificate of Insurance no later than thirty (30) days prior to the policy expiration date; or immediately upon receipt. Failure by the CONSULTANT to provide such a substitution and extend the policy expiration date shall be considered a default by CONSULTANT and may subject the CONSULTANT to a suspension or termination of work under the Agreement.
- 4.8 Maintenance of insurance by the CONSULTANT as specified in this Agreement shall in no way be interpreted as relieving the CONSULTANT of any responsibility whatsoever and the CONSULTANT may carry, at its own expense, such additional insurance as it deems necessary.
- 5.0 **PROFESSIONAL ERRORS AND OMISSIONS INSURANCE.** Throughout the duration of this Agreement and four (4) years thereafter, the CONSULTANT shall maintain professional errors and omissions insurance for work performed in connection with this Agreement in the minimum amount of One Million Dollars (\$1,000,000).

CONSULTANT shall provide evidence of compliance with these insurance requirements by providing a Certificate of Insurance.

- 6.0 **CONSULTANT'S INDEMNIFICATION OF CITY.** CONSULTANT shall indemnify and hold harmless the CITY and its officers, agents and employees against all claims or lawsuits for damages to persons or property arising out of negligent acts, errors, omissions or wrongful acts of conduct of the CONSULTANT or its employees, agents, subcontractors or others in connection with the execution of the work covered by this Agreement, except for those claims arising from the willful misconduct, sole negligence or active negligence of the CITY, its officers, agents or employees. CONSULTANT'S indemnification shall include any and all costs, expenses, expert fees, attorneys' fees and liability assessed against or incurred by the CITY, its officers, agents or employees in defending against such claims or lawsuits, whether the same proceed to judgment or not. Further, CONSULTANT, at its own expense, shall, upon written request by the CITY, defend any such suit or action brought against the CITY, its officers, agents or employees resulting or arising from the tortious acts or omissions of the CONSULTANT.

CONSULTANT'S indemnification of CITY shall not be limited by any prior or subsequent declaration by the CONSULTANT

7.0 **COMPENSATION.**

7.1 Financial advisory projects and services will be billed based on an hourly billing rate:

<u>Professional</u>	<u>Hourly Rate*</u>
Principal	\$240
Senior Project Manager	\$200
Project Manager	\$185
Project Consultant	\$160
Analyst	\$140

<u>Administrative &amp; Technical Support</u>	<u>Hourly Rate*</u>
Public Relations	\$125
Technical Writer/Graphic Artist	\$100
Administrative Support	\$ 70

\*Hourly rates may be adjusted annually on January 1 with CITY approval

CONSULTANT will be paid by CITY on a time and material basis in accordance with the standard billing rates shown in Section 7.1. Payment to CONSULTANT shall be made monthly within 30 days of receipt and approval of CONSULTANT's invoice.

7.2 Expenses for air travel, ground travel including rental cars and/or mileage (at actual expense) and lodging will be charged at cost plus 5%. Other expenses will not be directly charged. For any client-requested extraordinary expenses, specific terms will be established prior to expenditure and billing. When applicable, subconsultants will be charged on an actual cost basis. Appropriate documentation and third party receipts will be provided for all expenses.

8.0 **TERM OF AGREEMENT.** CONSULTANT has been retained as one of four firms to provide financial advisory services to the CITY for five years from the date of this agreement.

9.0 **TERMINATION OF AGREEMENT.** The CITY may terminate this Agreement for any reason by providing thirty (30) days written notice to the CONSULTANT. This contract may be terminated by the CITY by giving CONSULTANT written notice of such termination no fewer than fifteen (15) days in advance of the effective date of said termination. CONSULTANT shall be entitled to terminate this agreement only in the case of a material breach by the CITY, and upon failure of the CITY to remedy said breach within fifteen (15) days of said notice. In the event that the contract is terminated before completion, CONSULTANT shall be

paid for the services to date.

10.0 **ENTIRE AGREEMENT.** This Agreement comprises the entire integrated understanding between CITY and CONSULTANT concerning the work to be performed for this project and supersedes all prior negotiations, representations or agreements.

11.0 **INTERPRETATION OF THE AGREEMENT.** The interpretation, validity and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. The Agreement does not limit any other rights or remedies available to CITY.

The CONSULTANT shall be responsible for complying with all local, state and federal laws whether or not said laws are expressly stated or referred to herein.

Should any provision herein be found or deemed to be invalid, the Agreement shall be construed as not containing such provision, and all other provisions, which are otherwise lawful, shall remain in full force and effect, and to this end the provisions of this Agreement are severable.

12.0 **AGREEMENT MODIFICATION.** This Agreement may not be modified orally or in any manner other than by an Agreement in writing, signed by the parties hereto.

13.0 **NOTICES.** All notices, demands, requests, consents or other communications which this Agreement contemplates or authorizes, or requires or permits either party to give to the other, shall be in writing and shall be personally delivered or mailed to the respective party as follows:

**TO CITY:**  
City of Oceanside  
Finance Director  
300 North Coast Highway  
Oceanside, CA 92054

**TO CONSULTANT:**  
Robert Grantham  
FCS Group  
7525 166<sup>th</sup> Ave NE, Suite D-215  
Redmond, WA 98052

Either party may change its address by notice to the other party as provided herein.

Communications shall be deemed to have been given and received on the first to occur:

- a. Actual receipt at the offices of the party to whom the communication is to be sent, as designated above, or

- b. Three (3) working days following the deposit in the United States mail of registered or certified mail, postage prepaid, return receipt requested, addressed to the offices of the party to whom the communication is to be sent, as designated above.

14.0 **SIGNATURES.** The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the CONSULTANT and the CITY.

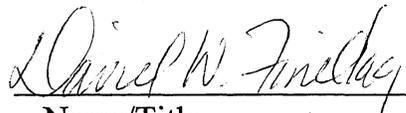
**IN WITNESS WHEREOF** the parties hereto for themselves, their heirs, executors, administrators, successors and assigns do hereby agree to the full performance of the covenants herein contained and have caused this Professional Services Agreement to be executed by setting hereunto their signatures:

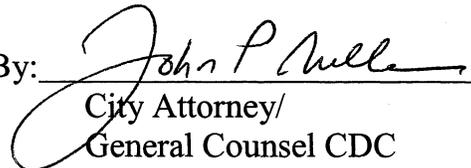
FCS GROUP

CITY OF OCEANSIDE

By:   
Name/Title *Edward Sebray, Principal*

By: \_\_\_\_\_  
Peter Weiss, City Manager/  
Executive Director CDC

By:   
Name/Title *David W. Finley*  
*Principal*

APPROVED AS TO FORM:  
By:   
City Attorney/  
General Counsel CDC

**NOTARY ACKNOWLEDGMENTS OF CONSULTANT MUST BE ATTACHED.**

CITY OF OCEANSIDE  
PROFESSIONAL SERVICES AGREEMENT

State of: Washington

County: King

The foregoing instrument was acknowledged before me this 4<sup>th</sup> day of May, 2009,

By Edward Cebron and David Findlay

Personally know or  Produced \_\_\_\_\_ as identification.



[Handwritten Signature]  
Notary Public

**CITY OF OCEANSIDE**

**PROFESSIONAL SERVICES AGREEMENT**

THIS AGREEMENT is made and entered into this 10<sup>th</sup> day of June 2009, by and between the CITY OF OCEANSIDE, a municipal corporation, and OCEANSIDE COMMUNITY DEVELOPMENT COMMISSION (OCDC), a municipal corporation, hereinafter collectively designated as “CITY”, and Keyser Marston Associates, Inc., hereinafter designated as “CONSULTANT”.

**RECITALS**

- A. CITY desires to obtain professional financial advisory services from an independent contractor for the City of Oceanside and the Oceanside Community Development Commission.
- B. CONSULTANT has submitted a proposal to provide financial advisory services for the CITY in accordance with the terms set forth in this Agreement.
- C. CITY desires to contract with CONSULTANT as an independent contractor and CONSULTANT desires to provide services to CITY as an independent contractor.
- D. CONSULTANT has demonstrated its competence and professional qualifications necessary for the satisfactory performance of the services designated herein by virtue of its experience, training, education and expertise.

**NOW, THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:**

- 1.0 **SCOPE OF WORK.** The project is more particularly described as follows: assist the CITY on an as-needed basis in connection with any financings or projects that the City may undertake.
- 1.1 **PROFESSIONAL SERVICES PROVIDED BY CONSULTANT.** The professional services to be performed by CONSULTANT shall consist of but not be limited to the following:
  - 1.1.1 **Redevelopment**
    - a. Verify tax increment revenue for the latest fiscal year
    - b. Calculate and project tax increment revenue for the next three years
    - c. Review and analyze five (5) years of historical assessed value and tax revenue receipts for the Project Area, evaluate the impact of development agreement for Agency financings
    - d. Compile and analyze the Project Area’s base year assessed value, including

- adjustments made by the County Auditor-Controller
- e. Complete analysis of the Project Area's redevelopment plan, including number of plan years remaining, and any restrictive covenants
  - f. Thorough review of existing pass-through agreements, disposition and development agreements, and owner participation agreements for the Project Area, including subordination and other restrictive language
  - g. Proforma analysis on RDA projects
  - h. Redevelopment negotiations with developers or others to meet the goals of the Redevelopment Plan
  - i. Develop the 5-Year Implementation Plan and updates to the Plan, and other reports as required by Redevelopment law
  - j. Analyze the potential for new redevelopment project areas
  - k. Review, analyze, evaluate, plan and attend meetings regarding new redevelopment legislation or challenges to City processes or calculations

#### 1.1.2 Housing

- a. Assist in identifying policy issues and developing policies related to affordable housing debt financing and administration
- b. Assist City staff in estimating housing set-aside bonding capacity
- c. Advise on low and moderate income housing activities, including analysis of alternative strategies, development of relationships with affordable housing developers, and assist in structuring financing for projects (which may also utilize forms of tax-exempt financing)

#### 1.1.3 Financial Management/Advisory Service

- a. Compile feasibility analyses based on market conditions and assumptions provided by the CITY's financing team
- b. Review and analyze legislation that may have a financial impact on the City
- c. Other projects and activities as requested by CITY

2.0 **INDEPENDENT CONTRACTOR.** CONSULTANT'S relationship to the CITY shall be that of an independent contractor. CONSULTANT shall have no authority, express or implied, to act on behalf of the CITY as an agent, or to bind the CITY to any obligation whatsoever, unless specifically authorized in writing by the Finance Director. CONSULTANT shall be solely responsible for the performance of any of its employees, agents or subcontractors under this agreement.

CONSULTANT shall report to the CITY any and all employees, agents and consultants performing work in connection with this project, and all shall be subject to the approval of the CITY.

CONSULTANT is not acting as a fiduciary to the CITY in carrying out the professional services described in Section 1.1 hereof.

3.0 **WORKERS' COMPENSATION.** Pursuant to Labor Code section 1861, the CONSULTANT hereby certifies that the CONSULTANT is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and the CONSULTANT will comply with such provisions and provide certification of such compliance as a part of this Agreement.

4.0 **LIABILITY INSURANCE.**

4.1 CONSULTANT shall, throughout the duration of this Agreement, maintain comprehensive general liability and property damage insurance, or commercial general liability insurance, covering all operations of CONSULTANT, its agents and employees, performed in connection with this Agreement including, but not limited to, premises and automobile.

4.2.1 CONSULTANT shall maintain liability insurance in the following minimum limits:

Comprehensive General Liability Insurance  
(bodily injury and property damage)

Combined Single Limit Per Occurrence	\$ 1,000,000
General Aggregate	\$ 2,000,000*

-OR-

Commercial General Liability Insurance  
(bodily injury and property damage)

General limit per occurrence	\$ 1,000,000
General limit project specific	\$ 2,000,000

-AND-

<u>Automobile Liability Insurance</u>	\$ 1,000,000
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\*General aggregate per year, or part thereof, with respect to losses or other acts or omissions of CONSULTANT under this Agreement.

4.2.2 If coverage is provided through a Commercial General Liability Insurance policy, a minimum of 50% of each of the aggregate limits shall remain available at all times. If over 50% of any aggregate limit has been paid or reserved, the CITY

may require additional coverage to be purchases by the CONSULTANT to restore the required limits. The CONSULTANT shall also notify the CITY'S Project Manager promptly of all losses or claims over \$25,000 resulting from work performed under this contract, or any loss or claim against the CONSULTANT resulting from any of the CONSULTANT'S work.

- 4.3 Insurance company providing General Liability insurance to the CONSULTANT for the purposes of this Section shall add the City of Oceanside as "additional insured" under the designated insurance policy for all work performed under this Agreement. Insurance coverage provided to the CITY as an additional insured shall be primary insurance and other insurance maintained by the CITY, its officers, agents and employees shall be excess only and not contributing with insurance provided pursuant to this Section.
- 4.4 All insurance companies affording coverage to the CONSULTANT pursuant to this Agreement shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact business of insurance in the state or be rated as A-X or higher by A.M. Best.
- 4.5 All insurance companies affording coverage shall provide thirty (30) days written notice to the CITY should the policy be cancelled before the expiration date. For the purposes of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation.
- 4.6 CONSULTANT shall provide evidence of compliance with the insurance requirements listed above by providing a Certificate of Insurance, in a form satisfactory to the City Attorney, concurrently with the submittal of this Agreement.
- 4.7 CONSULTANT shall provide a substitute Certificate of Insurance no later than thirty (30) days prior to the policy expiration date; or immediately upon receipt. Failure by the CONSULTANT to provide such a substitution and extend the policy expiration date shall be considered a default by CONSULTANT and may subject the CONSULTANT to a suspension or termination of work under the Agreement.
- 4.8 Maintenance of insurance by the CONSULTANT as specified in this Agreement shall in no way be interpreted as relieving the CONSULTANT of any responsibility whatsoever and the CONSULTANT may carry, at its own expense, such additional insurance as it deems necessary.
- 5.0 **PROFESSIONAL ERRORS AND OMISSIONS INSURANCE.** Throughout the duration of this Agreement and four (4) years thereafter, the CONSULTANT shall maintain professional errors and omissions insurance for work performed in

connection with this Agreement in the minimum amount of One Million Dollars (\$1,000,000).

CONSULTANT shall provide evidence of compliance with these insurance requirements by providing a Certificate of Insurance.

6.0 **CONSULTANT'S INDEMNIFICATION OF CITY.** CONSULTANT shall indemnify and hold harmless the CITY and its officers, agents and employees against all claims or lawsuits for damages to persons or property arising out of the conduct, negligent acts, errors, omissions or wrongful acts of conduct of the CONSULTANT or its employees, agents, subcontractors or others in connection with the execution of the work covered by this Agreement, except for those claims arising from the willful misconduct, sole negligence or active negligence of the CITY, its officers, agents or employees. CONSULTANT'S indemnification shall include any and all costs, expenses, expert fees, attorneys' fees and liability assessed against or incurred by the CITY, its officers, agents or employees in defending against such claims or lawsuits, whether the same proceed to judgment or not. Further, CONSULTANT, at its own expense, shall, upon written request by the CITY, defend any such suit or action brought against the CITY, its officers, agents or employees resulting or arising from the tortious acts or omissions of the CONSULTANT.

CONSULTANT'S indemnification of CITY shall not be limited by any prior or subsequent declaration by the CONSULTANT.

7.0 **COMPENSATION.**

7.1 Financial advisory projects and services will be billed based on an hourly billing rate:

<u>Professional</u>	<u>Hourly Rate</u>
Managing Principals	\$280.00
Senior Principals	\$270.00
Principals	\$250.00
Managers	\$225.00
Senior Associates	\$187.50
Associates	\$167.50
Senior Analysts	\$150.00
Analysts	\$130.00
Technical Staff	\$ 95.00
Administrative Staff	\$ 80.00

7.2 Directly related job expenses not included in the above rates are: auto mileage, air

fares, hotels and motels, meals, car rentals, taxies, telephone calls, delivery, electronic data processing, graphics and printing. Directly related job expenses will be billed at actual cost, and appropriate documentation and third party receipts will be provided for all expenses.

- 8.0 **TERM OF AGREEMENT.** CONSULTANT has been retained as one of four firms to provide financial advisory services to the CITY for five years from the date of this agreement.
- 9.0 **TERMINATION OF AGREEMENT.** The CITY may terminate this Agreement for any reason by providing thirty (30) days written notice to the CONSULTANT.
- 10.0 **ENTIRE AGREEMENT.** This Agreement comprises the entire integrated understanding between CITY and CONSULTANT concerning the work to be performed for this project and supersedes all prior negotiations, representations or agreements.
- 11.0 **INTERPRETATION OF THE AGREEMENT.** The interpretation, validity and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. The Agreement does not limit any other rights or remedies available to CITY.

The CONSULTANT shall be responsible for complying with all local, state and federal laws whether or not said laws are expressly stated or referred to herein.

Should any provision herein be found or deemed to be invalid, the Agreement shall be construed as not containing such provision, and all other provisions, which are otherwise lawful, shall remain in full force and effect, and to this end the provisions of this Agreement are severable.

- 12.0 **AGREEMENT MODIFICATION.** This Agreement may not be modified orally or in any manner other than by an Agreement in writing, signed by the parties hereto.
- 13.0 **NOTICES.** All notices, demands, requests, consents or other communications which this Agreement contemplates or authorizes, or requires or permits either party to give to the other, shall be in writing and shall be personally delivered or mailed to the respective party as follows:

**TO CITY:**  
City of Oceanside  
Finance Director  
300 North Coast Highway  
Oceanside, CA 92054

**TO CONSULTANT:**  
Keyser Marston Associates, Inc.  
Paul C. Marra, Senior Principal  
1660 Hotel Circle North, Suite 716  
San Diego, CA 92108

Either party may change its address by notice to the other party as provided herein.

Communications shall be deemed to have been given and received on the first to occur:

- a. Actual receipt at the offices of the party to whom the communication is to be sent, as designated above, or
- b. Three (3) working days following the deposit in the United States mail of registered or certified mail, postage prepaid, return receipt requested, addressed to the offices of the party to whom the communication is to be sent, as designated above.

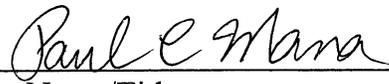
14.0 **SIGNATURES.** The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the CONSULTANT and the CITY.

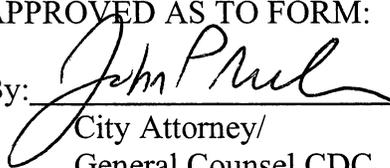
**IN WITNESS WHEREOF** the parties hereto for themselves, their heirs, executors, administrators, successors and assigns do hereby agree to the full performance of the covenants herein contained and have caused this Professional Services Agreement to be executed by setting hereunto their signatures:

KEYSER MARSTON ASSOCIATES, INC.      CITY OF OCEANSIDE

By:   
 Name/Title GERALD M. TRIMBLE  
 MANAGER AND PRINCIPAL

By: \_\_\_\_\_  
 Peter Weiss, City Manager/  
 Executive Director CDC

By:   
 Name/Title  
 Paul C. Marra  
 Vice President

APPROVED AS TO FORM:  
 By:   
 City Attorney/  
 General Counsel CDC

**NOTARY ACKNOWLEDGMENTS OF CONSULTANT MUST BE ATTACHED.**

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California

County of SAN DIEGO

On 4/29/2009 before me, DORIS KUGLER, NOTARY PUBLIC  
Date Here Insert Name and Title of the Officer

personally appeared SEAROLD M. TRIMBLE & PAUL C. MARCA  
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Handwritten Signature]  
Signature of Notary Public



Place Notary Seal Above

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**Description of Attached Document**

Title or Type of Document: City of Oceanside - Professional Services Agreement

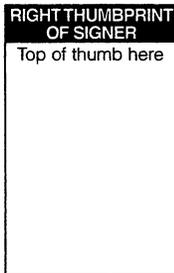
Document Date: 4/29/2009 Number of Pages: 7 + CA Notary ACK

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_

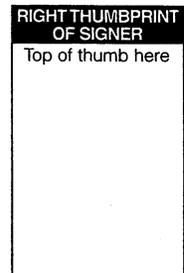
- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_

+ certificate of liability ins.

**CITY OF OCEANSIDE**

**PROFESSIONAL SERVICES AGREEMENT**

THIS AGREEMENT is made and entered into this 10<sup>th</sup> day of June 2009, by and between the CITY OF OCEANSIDE, a municipal corporation, and OCEANSIDE COMMUNITY DEVELOPMENT COMMISSION (OCDC), a municipal corporation, hereinafter collectively designated as "CITY", and CSG Advisors, hereinafter designated as "CONSULTANT".

**RECITALS**

- A. CITY desires to obtain professional financial advisory services from an independent contractor for the City of Oceanside and the Oceanside Community Development Commission.
- B. CONSULTANT has submitted a proposal to provide financial advisory services for the CITY in accordance with the terms set forth in this Agreement.
- C. CITY desires to contract with CONSULTANT as an independent contractor and CONSULTANT desires to provide services to CITY as an independent contractor.
- D. CONSULTANT has demonstrated its competence and professional qualifications necessary for the satisfactory performance of the services designated herein by virtue of its experience, training, education and expertise.

**NOW, THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:**

- 1.0 **SCOPE OF WORK.** The project is more particularly described as follows: assist the CITY on an as-needed basis in connection with any financings or projects that the City may undertake.
- 1.1 **PROFESSIONAL SERVICES PROVIDED BY CONSULTANT.** The professional services to be performed by CONSULTANT shall consist of but not be limited to the following:
  - 1.1.1 **Debt Financing**
    - a. Assist in the formation of the financing team.
    - b. Assist with the risk analysis of various financing structures and strategies.
    - c. Financing structure validation.
    - d. Assist with the preparation of financial documents.
    - e. Assist with Rating Agency package for City presentation.
    - f. Assist in negotiations with bond insurers.

- g. Assist in the establishment of selling rules for the syndicate.
- h. Assist with research and analyses for pricing including assessing marketplace timing.
- i. Evaluate finance team performance and bond sale results.
- j. Assess bond market conditions at time of sale of bonds as part of syndicate performance evaluation.

#### 1.1.2 Redevelopment

- a. Verify tax increment revenue for the latest fiscal year
- b. Calculate and project tax increment revenue for the next three years
- c. Review and analyze five (5) years of historical assessed value and tax revenue receipts for the Project Area, evaluate the impact of development agreement for Agency financings
- d. Compile and analyze the Project Area's base year assessed value, including adjustments made by the County Auditor-Controller
- e. Complete analysis of the Project Area's redevelopment plan, including number of plan years remaining, and any restrictive covenants
- f. Thorough review of existing pass-through agreements, disposition and development agreements, and owner participation agreements for the Project Area, including subordination and other restrictive language
- g. Proforma analysis on RDA projects
- h. Redevelopment negotiations with developers or others to meet the goals of the Redevelopment Plan
- i. Develop the 5-Year Implementation Plan and updates to the Plan, and other reports as required by Redevelopment law
- j. Analyze the potential for new redevelopment project areas
- k. Review, analyze, evaluate, plan and attend meetings regarding new redevelopment legislation or challenges to City processes or calculations

#### 1.1.3 Housing

- a. Assist in identifying policy issues and developing policies related to affordable housing debt financing and administration
- b. Assist City staff in estimating housing set-aside bonding capacity
- c. Advise on low and moderate income housing activities, including analysis of alternative strategies, development of relationships with affordable housing developers, and assist in structuring financing for projects (which may also utilize forms of tax-exempt financing)

#### 1.1.4 Financial Management/Advisory Service

- a. Compile feasibility analyses based on market conditions and assumptions provided by the CITY's financing team
- b. Review and analyze legislation that may have a financial impact on the City
- c. Other projects and activities as requested by CITY

2.0 **INDEPENDENT CONTRACTOR.** CONSULTANT'S relationship to the CITY shall be that of an independent contractor. CONSULTANT shall have no authority, express or implied, to act on behalf of the CITY as an agent, or to bind the CITY to any obligation whatsoever, unless specifically authorized in writing by the Finance Director. CONSULTANT shall be solely responsible for the performance of any of its employees, agents or subcontractors under this agreement.

CONSULTANT shall report to the CITY any and all employees, agents and consultants performing work in connection with this project, and all shall be subject to the approval of the CITY.

CONSULTANT is not acting as a fiduciary to the CITY in carrying out the professional services described in Section 1.1 hereof.

3.0 **WORKERS' COMPENSATION.** Pursuant to Labor Code section 1861, the CONSULTANT hereby certifies that the CONSULTANT is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and the CONSULTANT will comply with such provisions and provide certification of such compliance as a part of this Agreement.

4.0 **LIABILITY INSURANCE.**

4.1 CONSULTANT shall, throughout the duration of this Agreement, maintain comprehensive general liability and property damage insurance, or commercial general liability insurance, covering all operations of CONSULTANT, its agents and employees, performed in connection with this Agreement including, but not limited to, premises and automobile.

4.2.1 CONSULTANT shall maintain liability insurance in the following minimum limits:

Comprehensive General Liability Insurance  
(bodily injury and property damage)

Combined Single Limit Per Occurrence	\$ 1,000,000
General Aggregate	\$ 2,000,000*

Commercial General Liability Insurance  
(bodily injury and property damage)

General limit per occurrence	\$ 1,000,000
------------------------------	--------------

General limit project specific \$ 2,000,000

Automobile Liability Insurance \$ 1,000,000

\*General aggregate per year, or part thereof, with respect to losses or other acts or omissions of CONSULTANT under this Agreement.

- 4.2.2 If coverage is provided through a Commercial General Liability Insurance policy, a minimum of 50% of each of the aggregate limits shall remain available at all times. If over 50% of any aggregate limit has been paid or reserved, the CITY may require additional coverage to be purchased by the CONSULTANT to restore the required limits. The CONSULTANT shall also notify the CITY'S Project Manager promptly of all losses or claims over \$25,000 resulting from work performed under this contract, or any loss or claim against the CONSULTANT resulting from any of the CONSULTANT'S work.
- 4.3 Insurance company providing General Liability insurance to the CONSULTANT for the purposes of this Section shall add the City of Oceanside as "additional insured" under the designated insurance policy for all work performed under this Agreement. Insurance coverage provided to the CITY as an additional insured shall be primary insurance and other insurance maintained by the CITY, its officers, agents and employees shall be excess only and not contributing with insurance provided pursuant to this Section.
- 4.4 All insurance companies affording coverage to the CONSULTANT pursuant to this Agreement shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact business of insurance in the state or be rated as A-X or higher by A.M. Best.
- 4.5 All insurance companies affording coverage shall provide thirty (30) days written notice to the CITY should the policy be cancelled before the expiration date. For the purposes of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation.
- 4.6 CONSULTANT shall provide evidence of compliance with the insurance requirements listed above by providing a Certificate of Insurance, in a form satisfactory to the City Attorney, concurrently with the submittal of this Agreement.
- 4.7 CONSULTANT shall provide a substitute Certificate of Insurance no later than thirty (30) days prior to the policy expiration date; or immediately upon receipt. Failure by the CONSULTANT to provide such a substitution and extend the policy expiration date shall be considered a default by CONSULTANT and may subject the CONSULTANT to a suspension or termination of work under the

Agreement.

4.8 Maintenance of insurance by the CONSULTANT as specified in this Agreement shall in no way be interpreted as relieving the CONSULTANT of any responsibility whatsoever and the CONSULTANT may carry, at its own expense, such additional insurance as it deems necessary.

5.0 **PROFESSIONAL ERRORS AND OMISSIONS INSURANCE.** Throughout the duration of this Agreement and four (4) years thereafter, the CONSULTANT shall maintain professional errors and omissions insurance for work performed in connection with this Agreement in the minimum amount of One Million Dollars (\$1,000,000).

CONSULTANT shall provide evidence of compliance with these insurance requirements by providing a Certificate of Insurance.

6.0 **CONSULTANT'S INDEMNIFICATION OF CITY.** CONSULTANT shall indemnify and hold harmless the CITY and its officers, agents and employees against all claims or lawsuits for damages to persons or property arising out of the conduct, negligent acts, errors, omissions or wrongful acts of conduct of the CONSULTANT or its employees, agents, subcontractors or others in connection with the execution of the work covered by this Agreement, except for those claims arising from the willful misconduct, sole negligence or active negligence of the CITY, its officers, agents or employees. CONSULTANT'S indemnification shall include any and all costs, expenses, expert fees, attorneys' fees and liability assessed against or incurred by the CITY, its officers, agents or employees in defending against such claims or lawsuits, whether the same proceed to judgment or not. Further, CONSULTANT, at its own expense, shall, upon written request by the CITY, defend any such suit or action brought against the CITY, its officers, agents or employees resulting or arising from the tortious acts or omissions of the CONSULTANT.

CONSULTANT'S indemnification of CITY shall not be limited by any prior or subsequent declaration by the CONSULTANT.

7.0 **COMPENSATION.**

7.1 On a non-contingent basis, financial advisory consulting or additional services on either a negotiated fixed-fee basis or on an hourly basis as follows:

<u>Title</u>	<u>Hourly Rate*</u>
President	\$300
Senior Associates	\$250
Administrative	\$ 70

\*\*Hourly rates may be adjusted January 1, 2010 with CITY approval

7.2 A contingent fixed fee schedule for each series of bonds for the following types of bond financings:

Financing Type	Bond Size	Fees
Tax Allocation Bonds, Lease Revenue Bonds and Certificates of Participation	Under \$10 million	\$20,500
	\$10 million to \$25 million	\$26,500
	\$25 million to \$35 million	\$30,500
	\$35 million to \$50 million	\$35,500
	Above \$50 million	To be negotiated
Multifamily Housing Revenue Bonds	Under \$5 million	\$25,000
	\$5+ million but less than \$10 million	\$30,000
	\$10+ million but less than \$50 million	\$35,000
	\$50 million or above	To be negotiated
	----- If private placement not involving investment banker ----- Unrated financing	Up to \$10,000 additional  \$10,000 additional
Assessment or Community Facility Districts	Formation of new assessment or community facility district (payable at formation)	\$15,000*
	Plus: by issue size (payable at bond closing)	
	Under \$10 million	\$19,500
	\$10 million to \$25 million	\$24,500
	\$25 million to \$35 million	\$28,500
	\$35 million to \$50 million	\$32,500
Above \$50 million	To be negotiated	
	*Assumes formation is completed within one year of initiation of work. Beyond one year, will negotiate additional fees depending on anticipated work effort. This assumes all work to be paid from developer deposit.	
Competitive Sale	Additional \$7,500 if bonds are sold competitively	

7.3 Expenses include transportation, meals, lodging, messenger delivery, long-distance telephone and fax, and document production and reproduction. Out-of-pocket expenses will be on an actual cost basis and appropriate documentation and third party receipts will be provided.

8.0 **TERM OF AGREEMENT.** CONSULTANT has been retained as one of four firms to provide financial advisory services to the CITY for five years from the date of this agreement.

9.0 **TERMINATION OF AGREEMENT.** The CITY may terminate this Agreement for any reason by providing thirty (30) days written notice to the CONSULTANT.

10.0 **ENTIRE AGREEMENT.** This Agreement comprises the entire integrated understanding between CITY and CONSULTANT concerning the work to be performed for this project and supersedes all prior negotiations, representations or agreements.

11.0 **INTERPRETATION OF THE AGREEMENT.** The interpretation, validity and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. The Agreement does not limit any other rights or remedies available to CITY.

The CONSULTANT shall be responsible for complying with all local, state and federal laws whether or not said laws are expressly stated or referred to herein.

Should any provision herein be found or deemed to be invalid, the Agreement shall be construed as not containing such provision, and all other provisions, which are otherwise lawful, shall remain in full force and effect, and to this end the provisions of this Agreement are severable.

12.0 **AGREEMENT MODIFICATION.** This Agreement may not be modified orally or in any manner other than by an Agreement in writing, signed by the parties hereto.

13.0 **NOTICES.** All notices, demands, requests, consents or other communications which this Agreement contemplates or authorizes, or requires or permits either party to give to the other, shall be in writing and shall be personally delivered or mailed to the respective party as follows:

**TO CITY:**  
City of Oceanside  
Finance Director  
300 North Coast Highway  
Oceanside, CA 92054

**TO CONSULTANT:**  
CSG Advisors  
Robert Cornwell, President  
One Post Street, Suite 2130  
San Francisco, CA 94104

Either party may change its address by notice to the other party as provided herein.

Communications shall be deemed to have been given and received on the first to occur:

- a. Actual receipt at the offices of the party to whom the communication is to be sent, as designated above, or

- b. Three (3) working days following the deposit in the United States mail of registered or certified mail, postage prepaid, return receipt requested, addressed to the offices of the party to whom the communication is to be sent, as designated above.

14.0 **SIGNATURES.** The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the CONSULTANT and the CITY.

**IN WITNESS WHEREOF** the parties hereto for themselves, their heirs, executors, administrators, successors and assigns do hereby agree to the full performance of the covenants herein contained and have caused this Professional Services Agreement to be executed by setting hereunto their signatures:

CSG ADVISORS

CITY OF OCEANSIDE

By: Robert Cornwell  
Name/Title      *President*  
*4/28/09*

By: \_\_\_\_\_  
Peter Weiss, City Manager/  
Executive Director CDC

By: \_\_\_\_\_  
Name/Title

APPROVED AS TO FORM:  
By: *John R.*  
City Attorney/  
General Counsel CDC

**NOTARY ACKNOWLEDGMENTS OF CONSULTANT MUST BE ATTACHED.**

# CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of SAN FRANCISCO

On April 28, 2009 before me, Jack Wiggins, Jr., Notary Public  
(Here insert name and title of the officer)

personally appeared ROBERT CORNWELL, PRESIDENT

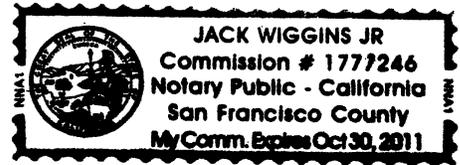
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Jack Wiggins Jr.  
Signature of Notary Public

(Notary Seal)



## ADDITIONAL OPTIONAL INFORMATION

### INSTRUCTIONS FOR COMPLETING THIS FORM

Any acknowledgment completed in California must contain verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a document is to be recorded outside of California. In such instances, any alternative acknowledgment verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. ~~he/she/they~~, is /are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
  - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
  - ❖ Indicate title or type of attached document, number of pages and date.
  - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document

### DESCRIPTION OF THE ATTACHED DOCUMENT

PROFESSIONAL SERVICES AGREEMENT  
(Title or description of attached document)

City of Oceanside - 8 pages  
(Title or description of attached document continued)

Number of Pages 8 Document Date 4/28/09

(Additional information)

### CAPACITY CLAIMED BY THE SIGNER

Individual (s)

Corporate Officer

PRESIDENT  
(Title)

Partner(s)

Attorney-in-Fact

Trustee(s)

Other \_\_\_\_\_