



Council Agenda Report

From: Deanne Purcell, Interim Administrative Services Director

Subject: Professional Services Agreement with NHA Advisors

Date: March 7, 2017

Facts

1. The City is addressing the unfunded accrued liability (UAL) for employee pensions of over \$33 million and looking for options to pay down the UAL in two phases.
2. The first phase includes review and analysis of the CalPERS data, which involves creating charts and analysis using CalPERS Actuarial Reports.
3. The second phase includes defining the options related to the cost saving measures. One option is setting up an irrevocable trust to pre-fund benefit plan obligations.
4. The City has consulted with NHA Advisors for several years to assist with the complex analysis and review of the unfunded pension liability. No funds were budgeted for the current two-year budget.
5. With the latest CalPERS circular letter, which increased the City's UAL significantly, and is mandating additional payments, the City is now in need of expert advice on scheduling current and future payments, deciding which elements of the UAL are best paid down first, and analyzing options for resolving the CalPERS crisis.
6. The City has consulted with NHA Advisors for many years for general financial assistance, development, utility and general fund financing.

Options

1. Take no action;
2. Approve the agreement for consulting services with NHA Advisors, the City's current financial advisors, in the amount not to exceed \$25,000.
3. Provide alternative direction.

Analysis and Conclusions

NHA Advisors has worked with the City since 1988 on projects ranging from downtown redevelopment, public facilities, water and sewer improvements, roadway/bridge and recreation projects. Over the last twenty-nine years, the staff of NHA Advisors have assisted with the General Obligation Bond election and subsequent bond issues, general fund financing for the City Hall/Library and tax allocation bonds through the redevelopment agency. NHA has assisted in appropriate disclosures for annual financial reporting and continuing disclosures for outstanding obligations requiring annual filing. In addition to the bond transactions, NHA Advisors has assisted the City with development projects, developer negotiations and tax measures to support ongoing services and fund infrastructure improvements.

The City has received a proposal from NHA Advisors to provide pension liability services and general financial assistance. This includes working with a CalPERS actuary, review and analysis of the CalPERS actuarial reports, preparation of charts based off the CalPERS data and providing a detailed presentation of data to City Council related to the CalPERS unfunded pension liability. In addition, NHA Advisors have defined other options to pension cost saving measures, such as setting up a Section 115 Trust as an option to directly paying down the unfunded pension liability to CalPERS. A Section 115 Trust would allow the City to have control over investment strategy and risk tolerance and provide flexibility in the uses and timing of those funds.

In addition to providing pension liability services, NHA Advisors will continue to consult the City staff with 1) **General Financial Assistance** to develop financial models for funding capital needs, assist in appropriate disclosure for annual financial reporting and assist in appropriate continuing disclosure for outstanding obligations requiring annual filing, 2) **Development Finance** that includes review of proposed development plans for public infrastructure requirements and other development finance, 3) **Utility Financing** to review the City's existing bond obligations, calculate feasibility of refinancing any outstanding obligations and develop financing options and 3) **General Fund Financing** to review City's existing general fund obligations, calculate feasibility of refinancing, develop financing options and budget/cash flow analysis, along with providing any other general advice as needed by the City staff.

Fiscal Impact

The proposed budget for the agreement for FY 2016-17 and FY 2017-18 is not to exceed \$25,000 in each budget year. The allocation by funding was formulated using the FY 2015-16 retirement expense and allocation for continuing disclosure preparation services as follows:

Fund	Account	Total
General Fund	1001401-52240	\$ 10,000
Water Fund	6001501-52240	3,700
Sewer Fund	6011502-52240	6,300
Successor Agency	7128240-52240	5,000
Total		\$ 25,000

Recommendation

1. Approve draft Resolution 17-XXX, authorizing a professional services agreement with NHA Advisors for financial advisory services.
2. Approve an appropriation for professional services of \$25,000 for each of the budget years, FY 2016-7 and FY 2017-8.

Attachments

1. Resolution
2. NHA Advisors Professional Services Scope

RESOLUTION No. 17-XXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL PASO DE ROBLES
APPROVING THE PROFESSIONAL SERVICE AGREEMENT WITH NHA ADVISORS FOR
FINANCIAL ADVISORY SERVICES

WHEREAS, The City is addressing the unfunded accrued liability (UAL) for employee pensions of over \$33 million and looking for options to pay down the UAL in two phases; and,

WHEREAS, the first phase includes review and analysis of the CalPERS data, which involves creating charts and analysis using CalPERS Actuarial Reports; and,

WHEREAS, the second phase includes defining the options related to the cost saving measures, one option is setting up an irrevocable trust to pre-fund benefit plan obligations; and,

WHEREAS, The City has consulted with NHA Advisors, to assist with the complex analysis and review of the unfunded pension liability; and,

WHEREAS, The City also consults with NHA Advisors for general financial assistance, development, utility and general fund financing.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EL PASO DE ROBLES
DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. All of the above recitals are true and correct and incorporated herein by reference.

Section 2. The City Council hereby approves the professional service agreement with NHA Advisors for financial advisory services in the amount not to exceed \$25,000.

Section 3. The City Council hereby authorizes the City Attorney and City Manager to make any necessary minor changes in the agreement, consistent with Council overall goals and direction.

Section 3. The City Council hereby approves the budget adjustment request for FY 2016-17 and 2017-18 appropriating \$25,000 each year, allocated as follows: 1001401-52240-\$10,000 from General Fund Reserves, 6001501-52240-\$3,700 from the Water Fund Reserves, 6011502-52240-\$6,300 from the Sewer Fund Reserves and 7128240-52240-\$5,000 from the Successor Agency Fund Reserves.

PASSED AND ADOPTED by the City Council of the City of El Paso de Robles this 7th day of March, 2017, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

Steven W. Martin, Mayor

ATTEST:

Kristen L. Buxkemper, Deputy City Clerk

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE CITY OF EL PASO DE ROBLES
AND
NHA ADVISORS, LLC**

THIS AGREEMENT for consulting services is made by and between the City of El Paso de Robles (the "City") and NHA Advisors, LLC (the "Consultant") (together referred to as the "Parties") as of October 1, 2016 (the "Effective Date").

The City seeks financial advisory services related to general financial matters (general fund budget, pension liabilities, development impact and capital project funding) and requires professional financial advisory services of an independent registered municipal advisor (NHA Advisors, LLC) to assist in the analysis, evaluation, education and funding options to meet cash flow objectives and potential capital projects or improvements.

Section 1 – SERVICES

Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to City the services described in the Scope of Work attached as Exhibit A, and incorporated herein, at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

If City elects a course of action that is independent of or contrary to the advice provided by Consultant, Consultant is not required on that basis to disengage from City.

- 1.1 **Term of Services.** The term of this Agreement shall begin on the Effective Date and shall end on June 30, 2017 or the date of completion specified in Exhibit A, and Consultant shall complete the work described in Exhibit A on or before that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as referenced in Section 8.
- 1.2 **Standard of Performance.** Consultant shall perform all services required pursuant to this Agreement according to the standards observed by a competent practitioner of the profession in which Consultant is engaged.
- 1.3 **Assignment of Personnel.** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.

- 1.4 **Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1.1 above and to satisfy Consultant's obligations hereunder.

Section 2 - COMPENSATION

City hereby agrees to pay Consultant compensation for services performed in Exhibit A (Scope of Services) under the Compensation Schedule (Exhibit B).

City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City in writing, Consultant shall not bill City for duplicate services performed by more than one person.

Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

- 2.1 **Invoices.** Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred prior to the invoice date. Invoices shall contain the following information:

- The beginning and ending dates of the billing period;
- At City's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
- For work performed on an hourly Compensation Schedule, the total number of hours of work performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant performing services hereunder;

- 2.2 In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the

entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment.

- 2.3 **Hourly Fees.** Fees for work performed by Consultant on an hourly basis shall not exceed the amounts shown on the compensation schedule attached hereto as Exhibit B.
- 2.4 **Reimbursable Expenses.** Reimbursable expenses are specified below, and shall not exceed \$1,000. Expenses will typically include third-party data collection or services not provided by City. Reimbursable expenses are in addition to the total amount of compensation provided under this Agreement that shall not be exceeded.
- 2.5 **Payment of Taxes.** Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.
- 2.6 **Payment upon Termination.** In the event that the City or Consultant terminates this Agreement pursuant to Section 8, the City shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets to verify costs incurred to that date.
- 2.7 **Authorization to Perform Services.** The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the Contract Administrator.

Section 3 - FACILITIES AND EQUIPMENT

Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. City shall make available to Consultant only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein.

City shall furnish physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Consultant's use while consulting with City employees and reviewing records and the information in possession of the City. The location, quantity, and time of furnishing those facilities shall be in the sole discretion of City. In no event shall City be obligated to furnish any facility that may involve incurring any direct expense, including but not limited to computer, long-distance telephone or other communication charges, vehicles, and reproduction facilities.

Section 4 - INSURANCE REQUIREMENTS

Before beginning any work under this Agreement, Consultant, at its own cost and expense, unless otherwise specified below, shall procure the types and amounts of insurance listed below against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant and its agents, representatives, employees, and subcontractors. Consistent with the following provisions, Consultant shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects, and that such insurance is in effect prior to beginning work to the City. Consultant shall maintain the insurance policies required by this section throughout the term of this Agreement. The cost of such insurance shall be included in the Consultant's bid. Consultant shall not allow any subcontractor to commence work on any subcontract until Consultant has obtained all insurance required herein for the subcontractor(s) and provided evidence that such insurance is in effect to City. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution. Consultant shall maintain all required insurance listed herein for the duration of this Agreement.

4.1 Workers' Compensation. *Consultant is not subject to worker's compensation insurance at this time.* In the event Consultant engages employees subject to the State of California's worker's compensation requirements, the Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than \$1,000,000 per accident. In the alternative, Consultant may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the Contract Administrator. The insurer, if insurance is provided, or the Consultant, if a program of self-insurance is provided, shall waive all rights of subrogation against the City and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

4.2 Commercial General and Automobile Liability Insurance.

4.2.1 General requirements. Consultant, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than \$1,000,000 per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply

separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

4.2.2 Minimum scope of coverage. Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (most recent edition) covering comprehensive General Liability on an "occurrence" basis. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (most recent edition), Code 1 (any auto). No endorsement shall be attached limiting the coverage.

4.2.3 Additional requirements. Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy:

- a. The Insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
- b. City, its officers, officials, employees, and volunteers are to be covered as additional insured as respects: liability arising out of work or operations performed by or on behalf of the Consultant; or automobiles owned, leased, hired, or borrowed by the Consultant
- c. For any claims related to this Agreement or the work hereunder, the Consultant's insurance covered shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
- d. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after 30 days' prior written notice has been provided to the City.

4.3 Professional Liability Insurance.

4.3.1 General requirements. Consultant, at its own cost and expense, shall maintain for the period covered by this Agreement professional liability

insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than \$1,000,000 covering the licensed professionals' errors and omissions. Any deductible or self-insured retention shall not exceed \$250,000 per claim.

4.3.2 Claims-made limitations. The following provisions shall apply if the professional liability coverage is written on a claims-made form:

- a. The retroactive date of the policy must be shown and must be before the date of the Agreement.
- b. Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the Agreement or the work, so long as commercially available at reasonable rates.
- c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant must purchase an extended period coverage for a minimum of five years after completion of work under this Agreement.
- d. A copy of the claim reporting requirements must be submitted to the City for review prior to the commencement of any work under this Agreement.

4.4 All Policies Requirements.

4.4.1 Acceptability of insurers. All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A:VII.

4.4.2 Verification of coverage. Prior to beginning any work under this Agreement, Consultant shall furnish City with complete copies of all policies delivered to Consultant by the insurer, including complete copies of all endorsements attached to those policies. All copies of policies and endorsements shall show the signature of a person authorized by that insurer to bind coverage on its behalf. If the City does not receive the required insurance documents prior to the Consultant beginning work, it shall not waive the Consultant's obligation to provide them. The City reserves the right to require complete copies of all required insurance policies at any time.

4.4.3 Deductibles and Self-Insured Retentions. Consultant shall disclose to and obtain the written approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, employees, and volunteers; or the Consultant shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

4.4.4 Wasting Policies. No policy required by this Section 4 shall include a “wasting” policy limit (i.e. limit that is eroded by the cost of defense).

4.4.5 Waiver of Subrogation. Consultant hereby agrees to waive subrogation which any insurer or contractor may require from vendor by virtue of the payment of any loss. Consultant agrees to obtain any endorsements that may be necessary to affect this waiver of subrogation.

The Workers’ Compensation policy shall be endorsed with a waiver of subrogation in favor of the entity for all work performed by the consultant, its employees, agents, and subcontractors.

4.4.6 Subcontractors. Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

4.5 Remedies. In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Consultant’s breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or
- Terminate this Agreement

Section 5 - CONSULTANT'S RESPONSIBILITIES AND INDEMNIFICATION

Fiduciary Duty - Consultant is registered as a Municipal Advisor with the SEC and Municipal Securities Rulemaking Board ("MSRB"). As such, Consultant has a Fiduciary duty to City and must provide both a Duty of Care and a Duty of Loyalty that entails the following.

Duty of Care:

- Exercise due care in performing its municipal advisory activities;
- Possess the degree of knowledge and expertise needed to provide City with informed advice;
- Make a reasonable inquiry as to the facts that are relevant to City's determination as to whether to proceed with a course of action or that form the basis for any advice provided to City; and
- Undertake a reasonable investigation to determine that Consultant is not forming any recommendation on materially inaccurate or incomplete information; Consultant must have a reasonable basis for:
 - any advice provided to or on behalf of City;
 - any representations made in a certificate that it signs that will be reasonably foreseeably relied upon by City, any other party involved in the municipal securities transaction or municipal financial product, or investors in City securities; and
 - any information provided to City or other parties involved in the municipal securities transaction in connection with the preparation of an official statement.

Duty of Loyalty:

Consultant must deal honestly and with the utmost good faith with City and act in City's best interests without regard to the financial or other interests of Consultant. Consultant will eliminate or provide full and fair disclosure (included herein) to Issuer about each material conflict of interest (as applicable). Consultant will not engage in municipal advisory activities with City as a municipal entity, if it cannot manage or mitigate its conflicts in a manner that will permit it to act in City's best interests.

Consultant shall indemnify, defend with counsel acceptable to City, and hold harmless City and its officers, officials, employees, agents and volunteers from and against any and all liability, loss, damage, claims, expenses, and costs (including without limitation, attorney's fees and costs and fees of litigation) (collectively, "Liability") of every nature arising out of or in connection with Consultant's performance of the Services or its failure to comply with any of its obligations contained in this Agreement, except such Liability caused by the sole negligence or willful misconduct of City.

The Consultant's obligation to defend and indemnify shall not be excused because of the Consultant's inability to evaluate Liability or because the Consultant evaluates Liability and

determines that the Consultant is not liable to the claimant. The Consultant must respond within 30 days, to the tender of any claim for defense and indemnity by the City, unless this time has been extended by the City. If the Consultant fails to accept or reject a tender of defense and indemnity within 30 days, in addition to any other remedy authorized by law, so much of the money due the Consultant under and by virtue of this Agreement as shall reasonably be considered necessary by the City, may be retained by the City until disposition has been made of the claim or suit for damages, or until the Consultant accepts or rejects the tender of defense, whichever occurs first.

With respect to third party claims against the Consultant, the Consultant waives any and all rights of any type to express or implied indemnity against the Indemnitees.

Notwithstanding the forgoing, to the extent this Agreement is a "construction contract" as defined by California Civil Code Section 2782, as may be amended from time to time, such duties of consultant to indemnify shall not apply when to do so would be prohibited by California Civil Code Section 2782.

In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Federal Regulations. Under the Municipal Securities Rulemaking Board (the "MSRB") regulations that became effective on July 1, 2014, municipal advisors are required to disclose certain conflicts of interest to their clients. In accordance with those proposed regulations we make the following disclosures:

- Consultant is not aware of any actual or potential conflicts of interest that might impair our ability either to render unbiased and competent advice to the City or to fulfill our fiduciary duty to the City
- Consultant has no affiliate that provides any advice, service, or product to or on behalf of the City
- Consultant has not made any payments either directly or indirectly to obtain or retain business with the City
- The only compensation Consultant will receive in connection with the Exhibit A (Scope of Services) is identified in Exhibit B (Compensation Schedule) agreed to herein by the City. Consultant has not and will not receive any payments from third parties in connection with this engagement

- Consultant has not and will not enter into any fee-splitting arrangements with any provider of investments or services to the City
- Consultant is not aware of any conflicts of interest that may arise from the City's payment of the municipal advisory fee for the activities to be performed pursuant to this engagement
- To the best of its knowledge, none of Consultant's other engagements or relationships will impair Consultant's ability either to render unbiased and competent advice to the City or to fulfill Consultant's fiduciary duty to the City
- Consultant is not aware of any legal or disciplinary event that is material to the City's evaluation of Consultant or the integrity of its management or advisory personnel

No legal or disciplinary event has been disclosed by Consultant to the Securities and Exchange Commission as may be required under applicable rules or regulations

Section 6 - STATUS OF CONSULTANT

- 6.1 **Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City. City shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3; however, otherwise City shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.
- 6.2 **Consultant Not an Agent.** Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

Section 7 - LEGAL REQUIREMENTS

- 7.1 **Governing Law.** The laws of the State of California shall govern this Agreement.

- 7.2 **Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.
- 7.3 **Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.
- 7.4 **Licenses and Permits.** Consultant represents and warrants to City that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Consultant represents and warrants to City that Consultant and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid Business Licenses from City.
- 7.5 **Legal Events and Disciplinary History.** Consultant does not have any legal events and disciplinary history on its Form MA and Form MA-I, which includes information about any criminal actions, regulatory actions, investigations, terminations, judgments, liens, civil judicial actions, customer complaints, arbitrations and civil litigation. City may electronically access Consultant's most recent Form MA and each most recent Form MA-I filed with the Commission at the following website:
www.sec.gov/edgar/searchedgar/companysearch.html
- There have been no material changes to a legal or disciplinary event disclosure on any Form MA or Form MA-I filed with the SEC.
- 7.6 **Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

Consultant shall include the provisions of this Subsection in any subcontract approved by the Contract Administrator or this Agreement.

Section 8 - TERMINATION AND MODIFICATION

- 8.1 **Termination.** City may cancel this Agreement at any time and without cause upon written notification to Consultant.

Consultant may cancel this Agreement upon 45 days' written notice to City and shall include in such notice the reasons for cancellation.

In the event of termination, Consultant shall be entitled to compensation for services performed to the effective date of termination; City, however, may condition payment of such compensation upon Consultant delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the City in connection with this Agreement.

- 8.2 **Extension.** City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein. Consultant understands and agrees that, if City grants such an extension, City shall have no obligation to provide Consultant with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the Contract Administrator, City shall have no obligation to reimburse Consultant for any otherwise reimbursable expenses incurred during the extension period.

- 8.3 **Amendments.** The parties may amend this Agreement only by a writing signed by all the parties.

- 8.4 **Assignment and Subcontracting.** City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the Contract Administrator. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the Contract Administrator.

- 8.5 **Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the termination of this Agreement.
- 8.6 **Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, City's remedies shall be included, but not be limited to, the following:
- 8.6.1 Immediately terminate the Agreement;
 - 8.6.2 Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement;
 - 8.6.3 Retain a different consultant to complete the work described in Exhibit A not finished by Consultant; or
 - 8.6.4 Charge Consultant the difference between the costs to complete the work described in Exhibit A that is unfinished at the time of breach and the amount that City would have paid Consultant pursuant to Section 2 if Consultant had completed the work.

Section 9 - KEEPING AND STATUS OF RECORDS

Effective July 1, 2014, pursuant to the Securities and Exchange Commission (SEC) record retention regulations, Consultant is required to maintain in writing, all communication and created documents between Consultant and City for 5 years.

If there are any questions regarding the above, please do not hesitate to contact Consultant. If the foregoing terms meet with your approval, please indicate your acceptance by executing both copies of this letter and returning one copy.

Section 10 - MISCELLANEOUS PROVISIONS

- 10.1 **Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

- 10.2 **Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of San Luis Obispo.
- 10.3 **Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 10.4 **No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5 **Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.
- 10.6 **Use of Recycled Products.** Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.
- 10.7 **Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Consultant shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

Consultant hereby warrants that it is not now, nor has it been in the previous 12 months, an employee, agent, appointee, or official of the City. If Consultant was an employee, agent, appointee, or official of the City in the previous twelve months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code § 1090 *et seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse the City for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be

subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, will be disqualified from holding public office in the State of California.

As of the date of the Agreement, there are no actual or potential conflicts of interest that Consultant is aware of that might impair its ability to render unbiased and competent advice or to fulfill its fiduciary duty. If Consultant becomes aware of any potential conflict of interest that arise after this disclosure, Consultant will disclose the detailed information in writing to City in a timely manner.

The fee paid to Consultant increases the cost of investment to City. The increased cost occurs from compensating Consultant for municipal advisory services provided.

Consultant does not act as principal in any of the transaction(s) related to this Agreement.

During the term of the municipal advisory relationship, this agreement will be promptly amended or supplemented to reflect any material changes in or additions to the terms or information within this agreement and the revised writing will be promptly delivered to City.

Consultant does not have any affiliate that provides any advice, service, or product to or on behalf of the City that is directly or indirectly related to the municipal advisory activities to be performed by Consultant.

Consultant has not made any payments directly or indirectly to obtain or retain the City's municipal advisory business.

Consultant has not received any payments from third parties to enlist the Consultant's recommendation to City of its services, any municipal securities transaction or any municipal finance product.

Consultant has not engaged in any fee-splitting arrangements involving Consultant and any provider of investments or services to City.

Consultant does not any conflicts of interest from compensation for municipal advisory activities to be performed, that is contingent on the size or closing of any transactions as to which Consultant is providing advice.

Consultant does not have any other engagements or relationships that might impair the Consultant's ability either to render unbiased and competent advice to or on behalf of City or to fulfill its fiduciary duty to the City, as applicable.

Consultant does not have any legal or disciplinary event that is material to City's evaluation of the municipal advisory or the integrity of its management or advisory personnel.

10.8 Solicitation. Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.

10.9 Contract Administration. This Agreement shall be administered by the City Finance Director ("Contract Administrator"). All correspondence shall be directed to or through the Contract Administrator or his or her designee.

10.10 Notices. Any written notice to Consultant shall be sent to:

Craig Hill, Principal
NHA Advisors, LLC
4040 Civic Center Drive, Suite 200
San Rafael, CA 94903

Any written notice to City shall be sent to:

Deanne Purcell, Interim Administrative Services Director
City of El Paso de Robles
821 Pine Street
Paso Robles, CA 93446

10.11 Integration. This Agreement, including the scope of work attached hereto and incorporated herein as Exhibits A and B represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.

Exhibit A Scope of Services

Exhibit B Payment Schedule

10.12 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

The Parties have executed this Agreement as of the Effective Date.

CITY

Deanne Purcell, Interim Administrative Services Director

CONSULTANT

A handwritten signature in blue ink, consisting of the letters "GCH" enclosed within a hand-drawn oval.

Craig Hill, Principal

EXHIBIT A

PROFESSIONAL SERVICES SCOPE

Consultant will work with City staff and other parties to develop funding strategies, options for project finance and other general advice as needed by City staff. The scope of work will generally include the following steps:

General Financial Assistance

- Work with City staff to review and provide advice on operational budgets
- Develop financial models for funding capital needs
- Assist in appropriate disclosure for annual financial reporting
- Assist in appropriate continuing disclosure for outstanding obligations requiring annual filing

Pension/Liability

Phase 1 – Initial Review and Analysis

- Work with CalPERS actuary to obtain annual actuarial reports for City's three main plans: Miscellaneous, Safety Fire, Safety Police
- Review and analyze CalPERS Actuarial Reports; create related charts and analysis to determine trends relating to UAL and Normal Costs
- Cross check CalPERS data with City data (i.e. employee share % discrepancies between two sources)
- Produce analysis and charts for presentation
- Work with City staff to develop City Council presentation
- Assist/Present to City Council
- Conference calls with staff & consultants

Phase 2 – Define Options and Plan

- Develop and analyze various options related to pension cost saving measures
- Assist City staff in analysis of reserve levels to determine prudent set-aside amount
- Conference call with CalPERS to confirm potential savings of direct pay off
- Conference call with PARS representative and review PARS program material and potential benefits
- Analyze and discuss PFM trust option & program
- Work with staff to refine recommended option and develop necessary back up analysis and charts
- Develop City Council presentation
- Draft/Assist on staff report
- Conference calls with staff & consultants

Development Finance

- Review proposed development plans for public infrastructure requirement or other possible financeable components
- Develop initial funding model and tax impact of potential bond financing
- Work with City staff and property owner to understand financial impact of project scoping on future property tax collections
- Develop non-capital (services) funding vehicle if requested by City
- Work with City staff, consultants and property owner to develop funding agreement

Utility Financing

- Review City's existing bond obligations
- Develop financial model addressing coverage requirements and future parity capacity
- Calculate feasibility of refinancing any outstanding obligations
- Develop financing options

General Fund Financing

- Review City's existing general fund obligations
- Calculate feasibility of refinancing any outstanding obligations
- Develop financing options
- Budget and cash flow review and analysis

Presentation to City Council, staff or other stakeholders group (as requested)

- Develop presentation materials or memos detailing financing information
- Present information in any format as determined by City staff

EXHIBIT B

COMPENSATION SCHEDULE

For work described under EXHIBIT A, Consultant will be compensated based on the hourly rate schedule shown below.

Staff Allocation	Hourly Rate
Principal	\$275
Vice President	\$225
Associate	\$175
Analyst	\$125
Administrative	\$ 75

Modification of Compensation Schedule - Upon amendments to Exhibit A (Scope of Services), Consultant will provide a budget or fixed fee (contingent) for identified projects based on discussions with City staff. No compensation modifications will be provided without City consent and acknowledgement.

Out-of-Pocket - All expenses will be billed directly at cost to the City. Expenses will be limited to typical expenses necessary for completion of the services required, for example typical charges will include copying, mailing, shipping, and data purchase (if not provided by others). Travel will not be expensed. The maximum expense total will not exceed \$1,500.

Budget - Proposed budget for the Scope of Services (Exhibit A), without further approval from the City, described above is \$25,000.