

**REQUEST FOR PROPOSALS  
FOR FINANCIAL ADVISOR SERVICES**

MAY 15, 2000

**CITY OF LENEXA, KANSAS**

12350 West 87th Street Parkway  
Lenexa, Kansas 66215

Issued by: Dennis Howard  
Chief Financial Officer

## TABLE OF CONTENTS

<b><u>PART I</u></b>	<b><u>GENERAL INFORMATION</u></b>	<b><u>PAGE</u></b>
1-1	Definitions	RFP-3
1-2	Purpose	RFP-3
1-3	Proposal Submission and Withdrawal	RFP-3
1-4	Invitation to Propose	RFP-4
1-5	Eligibility	RFP-4
1-6	Contract Awards	RFP-4
1-7	Developments Costs	RFP-5
1-8	Inquiries	RFP-5
1-9	Timetable	RFP-5
1-10	Delays	RFP-6
1-11	Addenda	RFP-6
1-12	Selection Process	RFP-6
1-13	Code of Ethics	RFP-7
1-14	Insurance	RFP-7
1-15	No Collusion	RFP-9
1-16	Appropriations Clause	RFP-9
<b><u>PART II</u></b>	<b><u>STATEMENT OF WORK</u></b>	
2-1	Work Objective	RFP-10
2-2	Scope of Work	RFP-11
2-3	Conflict of Interest	RFP-13
<b><u>PART III</u></b>	<b><u>INSTRUCTIONS FOR PREPARING PROPOSALS</u></b>	
3-1	Rules for Proposals	RFP-14
3-2	Proposal Format	RFP-14
<b><u>Attachment</u></b>	Sample Standard Contract	RFP-20

## GENERAL INFORMATION

### PART I

#### 1-1 DEFINITIONS

For the purposes of this Request for Proposal, "Proposer" shall mean corporations, firms or other entities or persons submitting a response to this Request for Proposal.

#### 1-2 PURPOSE

This Request for Proposals ("RFP") provides standards and guidelines for the submission of proposals for the selection of an independent financial advisor to provide a full range of financial advisory services to the City of Lenexa. The City anticipates issuing a contract for services for a three (3) year period, with an option for the City to extend the contract for up to two (2) additional one-year periods.

#### 1-3 PROPOSAL SUBMISSION AND WITHDRAWAL

The City will receive proposals at the following address:

CITY OF LENEXA  
Attn: City Clerk  
12350 W. 87<sup>th</sup> Street Parkway  
Lenexa, Kansas 66215

To facilitate processing please mark the outside of the envelope as follows: **Financial Advisor Services**. The envelope shall also include the **PROPOSER'S RETURN ADDRESS**.

Proposers shall submit seven (7) copies of the proposal in a sealed, opaque envelope marked as noted above. A Proposer may submit the proposal by personal delivery or by mail, but not by facsimile.

**THE CITY MUST RECEIVE ALL PROPOSALS BY 10:00 A.M. ON JUNE 16, 2000.**

The City cautions Proposers to assure actual delivery of mailed or hand-delivered proposals **directly** to the City Clerk at City Hall, 12350 West 87<sup>th</sup> Street Parkway, Lenexa, Kansas, prior to the submission deadline. Telephone confirmation of timely receipt of the proposal may be made by calling (913) 477-7500 before the deadline. A proposal received by the City after the established deadline will be returned unopened to the Proposer.

Proposers may withdraw their proposals by notifying the City in writing at any time prior to the submission deadline. After the deadline, proposals shall become a record of the City and will not be returned to the Proposers.

Upon opening, proposals are subject to public disclosure consistent with Kansas law. Proposers must invoke the exemptions to disclosure provided by law and must identify in the proposal the data or other materials to be protected and state both the reasons why such exemption from public disclosure is necessary and the legal basis for such exemption.

#### **1-4 INVITATION TO PROPOSE**

The City solicits offers for the services of responsible, qualified Proposers to provide quality financial advisory services.

#### **1-5 ELIGIBILITY**

To be eligible to qualify as the City's contracted financial advisor (the "Financial Advisor"), the following minimum requirements must be met:

- A. The Proposer must be qualified to do business as a financial advisor in the State of Kansas.
- B. All Proposers and the person or persons representing the Proposer who will be providing service to the City must be listed as a financial or investment advisor or a dealer or underwriter in the most recent edition of the Bond Buyer's *Municipal Marketplace* (a/k/a the "Red Book").
- C. Any person or persons representing the Proposer assigned to this engagement must be thoroughly familiar with all aspects of bond financing. Preference will be given to those who can demonstrate successful bond financing experience in Kansas.
- D. The City and the selected Financial Advisor shall agree that, while the subject contract is in effect, the Financial Advisor shall not act as an original underwriter for or participate as an account member in an account originally underwriting any obligations issued by the City and shall not receive compensation from any other person or entity in connection with the City's obligations issued during the term of the contract, except for compensation from conduit borrowers when such compensation is specifically disclosed to and approved by the City. Nothing herein is intended to prevent the Financial Advisor from participating in the secondary market in securities issued by the City.

#### **1-6 CONTRACT AWARDS**

The City anticipates entering into a contract with the Proposer who submits the proposal judged by the City to be most advantageous. The City anticipates awarding one contract but reserves the right to award more than one if in the City's best interest.

The Proposer understands that this RFP does not constitute an offer or a contract with the Proposer. An official contract or agreement is not binding until proposals are reviewed and accepted by appointed staff, approved by the appropriate level of authority within the City and executed by the parties. A Sample Standard Contract is attached to this RFP. The City anticipates that the final contract will be in substantial conformance with the Sample Standard Contract; nevertheless, Proposers are advised that any contract which may result from the RFP may deviate from the Sample Standard Contract.

The City reserves the right to reject all proposals, to abandon the project, or to re-advertise for and solicit other proposals. The City may, in its discretion, waive any informalities and irregularities contained in a proposal or in the manner of its submittal and award a contract thereafter. The City further reserves the right to negotiate any and all terms of the proposal.

### **1-7 DEVELOPMENT COSTS**

Neither the City nor its representatives shall be liable for any expenses incurred in connection with preparing a response to this RFP. Proposers are encouraged to prepare their proposals simply and economically, providing a straightforward and concise description of the Proposer's ability to meet the requirements of the RFP.

### **1-8 INQUIRIES**

Interested Proposers with questions about the proposal may contact Chief Financial Officer Dennis Howard, regarding questions about the proposal at City Hall, 12350 West 87<sup>th</sup> Street Parkway, Lenexa, Kansas 66215. All questions or requests for clarification concerning the meaning or interpretation of this RFP must be received in writing by Mr. Howard at least five business days prior to the submittal deadline.

The City may record its responses to inquiries and any supplemental instructions in the form of written addenda. The City may mail written addenda before the date fixed for receiving the proposals. Proposers shall contact the City to ascertain whether any addenda have been issued. Failure to do so could result in an unresponsive proposal. Any oral explanation given to one Proposer before the RFP opening will not be binding on other Proposers.

All Proposers are expected to carefully examine the proposal documents. Any ambiguities or inconsistencies should be brought to the attention of the City through written communication with the City prior to the opening of the proposals.

### **1-9 TIMETABLES**

The City and Proposers shall adhere to the following schedule in all actions concerning this RFP:

- A. On May 15, 2000, the City issues the RFP.
- B. The proposals must be received by the City by 10:00 A.M. on June 16, 2000.
- C. The City's Selection Committee will review and evaluate the proposals in a timely manner and select the most qualified proposals.
- D. The City's Selection Committee may interview selected Proposers at a time and place to be announced.
- E. The City may enter into a contract after obtaining appropriate approvals and conducting negotiations.

### **1-10 DELAYS**

The City may delay scheduled due dates if it is to the advantage of the City to do so. The City will notify known, potential Proposers of all schedule changes by written addenda.

## **1-11 ADDENDA**

If revisions to the RFP become necessary, the City will provide written addenda to all known, potential Proposers. All addenda issued by the City will include a receipt form which must be signed and included with any proposal submitted to the City. If multiple addenda are issued, a separate receipt for each addendum must be included with the proposal when it is submitted to the City.

All Proposers wishing to be notified of any addenda should provide to the City Clerk the Proposer's name, address, telephone number, and if available, facsimile number or e-mail address.

## **1-12 SELECTION PROCESS**

The proposals will be reviewed by a Selection Committee or City Staff. The reviewers will evaluate and rate each proposal utilizing a number of criteria, including but not limited to:

- A. Overall responsiveness and quality of the proposal in clearly stating an understanding of the work to be performed.
- B. Technical ability of the Proposer to perform the required services.
- C. The experience, background and availability of the Primary Contact and his/her prior experience, if any, with the City.
- D. The experience and availability of support staff for the Primary Contact.
- E. The nature and quality of the expertise the Proposer possesses in a full range of financial advisory services.
- F. The experience and reputation of the Proposer as represented in the response and the quality of the references.
- G. Cost of services. Although a significant factor, fees and expenses may not be the dominant factor. Fees and expenses will be a particularly important factor when all other evaluation criteria are relatively equal.

The City will evaluate proposals and will select the Proposer which meets the best interests of the City. The City shall be the sole judge of its own best interests, the proposals, and the resulting negotiated agreement. The City's decisions will be final.

After evaluating the proposals, the City may request additional information. In its discretion, the City may require any Proposer to make an oral presentation of the proposal. These presentations provide an opportunity for the Proposer to clarify the proposal for the City. The City will schedule any such presentations. After completing of the selection process, the reviewers will present a recommendation for approval either by the Governing Body or the City's Finance and Administration Committee.

The City reserves the right to negotiate any and all elements of this proposal, including but not limited to the fee structure and length of the contract, with the company selected as Financial Advisor for the City.

### **1-13 CODE OF ETHICS**

If any Proposer violates or is a party to a violation of the City Ethics Code or any applicable provision under State law, such Proposer may be disqualified from performing the work described in this proposal. A copy of the City Ethics Code is available at the office of the City Clerk, City of Lenexa, 12350 West 87<sup>th</sup> Street Parkway, Lenexa, Kansas 66215.

### **1-14 INSURANCE**

The Proposer, if awarded a contract, during the performance of the services under the contract shall maintain insurance coverage reflecting the minimum amounts and conditions specified herein, and shall provide originals or certified copies of all policies, which shall be written by an insurance company authorized to do business in Kansas. Misrepresentation of any material fact, whether intentional or not, regarding the Proposer's insurance coverage, policies, or capabilities may be grounds for rejection of the proposal and rescission of any awarded contract.

- A. **Worker's Compensation Insurance:** The Proposer shall procure and maintain for the life of this Agreement, workers' compensation insurance covering all employees with limits meeting all applicable state and federal laws. This coverage shall include employer's liability with limits meeting all applicable state and federal laws. This coverage must extend to any subcontractor that does not have its own workers' compensation and employer's liability insurance. The policy must contain a waiver of subrogation in favor of the City of Lenexa, executed by the insurance company. Thirty (30) days notice of cancellation is required and must be provided to the City of Lenexa via Certified Mail, Return Receipt Requested.
- B. **Comprehensive General Liability:** The Proposer shall procure and maintain, for the life of the contract, comprehensive general liability insurance. This coverage shall be on an "occurrence" basis. Coverage shall include premises and operations; independent contractors' products and completed operations and contractual liability with specific reference insurance provisions of the contract. This policy shall provide coverage for death, personal injury or property damage that could arise directly or indirectly from the performance of the contract. The minimum limits of coverage shall be \$500,000 per occurrence, combined single limit for bodily injury liability and property damage liability. Thirty (30) days notice of cancellation is required and must be provided to the City of Lenexa via Certified Mail, Return Receipt Requested.
- C. **Business Automobile Liability:** The Proposer shall procure and maintain, for the life of the contract, business automobile liability insurance. The minimum limits of coverage shall be \$500,000 per occurrence, combined single limit for bodily injury liability and property damage liability. This coverage shall be an "any auto" type policy. Thirty (30) days notice of cancellation is required and must be provided to the City of Lenexa via Certified Mail, Return Receipt Requested.
- D. **Professional Liability:** Unless the Proposer meets the self-insurance requirements described herein, the Proposer shall procure and maintain professional liability Insurance for the life of the contract, plus two (2) years after completion. This insurance shall provide coverage for liability resulting from the contract. The minimum limits of

coverage shall be \$1,000,000 with a deductible not to exceed \$25,000. The deductible will be the responsibility of the insured. Thirty (30) days notice of cancellation is required and must be provided to the City of Lenexa via Certified Mail, Return Receipt Requested. If the Proposer self-insures, the Proposer shall maintain an annual net worth of not less than \$10,000,000 at all times during the life of the contract and shall provide the City with a copy of Proposer's most recent audited financials prior to executing the contract and provide the City with a copy of the Proposer's audited financials for each year the contract is in effect.

In the event that subcontractors used by the Proposer do not have insurance, or do not meet the insurance limits, Proposer shall indemnify and hold harmless the City for any claim in excess of the subcontractor's insurance coverage, arising out of negligent acts, errors or omissions of the subcontractor.

Proposer shall not commence work under the contract until all insurance required as stated herein has been obtained and such insurance has been approved by the City.

### **INDEMNIFICATION/HOLD HARMLESS AGREEMENT**

Proposer shall, in addition to any other obligation to indemnify the City of Lenexa and to the fullest extent permitted by law, protect, defend, indemnify and hold harmless the City of Lenexa, its agents, elected officials and employees from and against all claims, actions, liabilities, losses (including economic losses) and costs arising out of any actual or alleged (a) bodily injury, sickness, disease or death, or injury to or destruction of tangible property, including the loss of use resulting therefrom, or any other damage or loss arising out of or resulting in whole or in part from any actual or alleged act or omission of the Proposer, any subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable in the performance of the work; (b) violation of law, statute, ordinance, governmental administrative order, rule regulation, or infringement of patent rights by Proposer in the performance of the work; or (c) liens, claims or actions made by the Proposer or any subcontractor under workers compensation acts; disability benefit acts, other employee benefit acts or any statutory bar.

The indemnification obligations hereunder shall not be limited by any limitation on the amount, type of damages, compensation or benefits payable by or for the Proposer or any subcontractor under worker's compensation acts; disability benefit acts, other employee benefit acts or any statutory bar. All expenses, including attorney's fees, incurred by the City of Lenexa in enforcing this provision shall be borne by the Proposer.

**1-15            NO COLLUSION**

By submitting a proposal in response to this RFP, the Proposer certifies the Proposer has not divulged to, discussed or compared the proposal with other Proposers and has not colluded with any other Proposers or competitive parties. Also, Proposer certifies, and in the case of a joint competitive proposal each party thereto certifies as to its own organization, that in connection with the competitive proposal:

- A. All prices and/or cost data submitted have been arrived at independently, without consultation, communication, or agreement for the purpose of restricting competition as to any matter relating to such prices and/or cost data with any other Proposer or with any competitor.
- B. No prices and/or cost data quoted in the proposal has been knowingly disclosed by the Proposer, and will not knowingly be disclosed by the Proposer, to any competitor prior to the scheduled opening.
- C. No attempt has been made or will be made by the Proposer to induce any other person or company to submit or not to submit a competitive proposal.
- D. The only person(s) or principal(s) interested in the proposal is/are named therein, and no person other than those named has/have any interest in the proposal or in the agreement to be entered into.
- E. No person or agency has been employed or retained to solicit or secure the agreement for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or established commercial agencies maintained by the purchaser for the purpose of doing business.

**1-16            APPROPRIATIONS CLAUSE**

The City is subject to the Cash Basis Law. Accordingly, execution and continuation of the contract is contingent upon annual appropriation of funds by its legislative body in an amount sufficient to allow performance in accordance with the terms and conditions of the contract. The City shall, upon receipt of notice by its Finance department or other appropriate authority that sufficient funds are not available to continue full and faithful performance of the contract, provide prompt written notice to the Proposer of such event, and effective thirty (30) days after giving such notice or upon the expiration of the period of time for which funds were appropriated, whichever comes first, be thereafter released of all further obligations in any way related to the contract.

## STATEMENT OF WORK

### PART II

#### 2-1 WORK OBJECTIVE

The City of Lenexa is seeking proposals to retain the services of an experienced financial advisor qualified to do business in the State of Kansas. The Financial Advisor will be responsible for advising the City and providing certain services as described herein including, but not limited to, the City's debt financing, revenue sources, capital improvement plan, investments and legislation impacting the City's finances.

#### BACKGROUND

Lenexa is a middle to upper income suburb of approximately 42,000 persons located in Johnson County, Kansas, approximately 12 miles from downtown Kansas City. Lenexa was platted in 1869 and became a City of the first class in 1980. The City encompasses approximately 31 square miles of land.

The City utilizes a Council-Administrator form of government. Eight Council Members are elected, two from each ward, on a non-partisan basis for two-year staggered terms. The Mayor is elected at large on a non-partisan basis and serves a four-year term. Collectively, the Council Members and the Mayor comprise the Governing Body. The Governing Body appoints a City Administrator, who is the Chief Administrative Officer of the City and is responsible for the management of all City employees and for administering all affairs of the City. The City provides a full range of municipal services, including police, fire, parks and recreation, public works, planning and development, legal and general administrative services.

The estimated revenues for all budgeted funds for the City for 1999 is \$41,381,986 and for 2000 is \$47,035,420. Major revenue sources for the year 2000 revenue sources are sales/use tax comprising 33% of the total estimated revenues, and property taxes at 33%. The City also implemented in 1999 an excise tax which is projected to account for 6% of total revenues in 2000.

Lenexa has experienced significant growth in the past few decades. The City's total assessed value of taxable property for 1999 is \$688,226,580. Nearly 2,800 new businesses have located in the City in the last 10 years and the City is the home to over 50 Fortune 500 companies. In 1999 the City issued \$133 million in residential and commercial building permits and the value of single-family permits doubled from \$36 million in 1998 to \$70 million in 1999. Yet, 55% of the City remains undeveloped.

The City has historically been a regular issuer of general obligation and industrial revenue bond debt. The City's outstanding general obligation debt as of July 1, 2000, is \$44,430,000. The City's general obligation debt is rated Aa2 by Moody's and AA by Standard & Poor's. The City has issued industrial revenue bonds for the benefit of seven profit or not-for-profit entities in the last three years and has granted a partial tax abatement to only one of the industrial revenue bond applicants. Other than industrial revenue bonds, the City has traditionally not issued other types of revenue bonds; however, the City may consider the issuance of sales tax or other revenue bonds in the future. The City has also issued tax increment bonds and may consider the issuance of such bonds in the future.

## 2-2 SCOPE OF WORK

The Financial Advisor shall work with the Chief Financial Officer, the City Administrator, the City Attorney, other City staff and the City's Bond Counsel in advising the City and the City Council on municipal finance matters as described herein.

- A. Governmental Bond Issues** - Except for new issue general obligation debt, the Financial Advisor shall provide the services listed below in connection with all sales tax revenue bonds, utility revenue bonds, tax increment bonds, certificates of participation, lease agreements or any other type of obligation in which the proceeds of such obligation will be used to pay the cost of governmental projects (as opposed to conduit financing for private entities) and any obligation issued to refund such obligations (collectively, referred to herein as "Governmental Bond Issues"). The City does not anticipate involving the Financial Advisor in the issuance of general obligation debt, except for refundings of general obligation debt, unless requested by the City.
1. Provide advice regarding the planning and development of Governmental Bond Issues, including providing an analysis of the most cost effective financing method to accomplish the City's goals, taking into consideration revenue sources and projections, credit rating impact, credit enhancements, arbitrage consequences, draw schedules, outstanding obligations, future bonding needs, administrative demands on the City's staff and available alternative methods.
  2. Prepare (or, if circumstances require, cause an outside consultant to prepare) and review any feasibility studies or redevelopment plans prepared in connection with Governmental Bond Issues and in consultation with the City's staff, Bond Counsel, accountants, architects, engineers or other consultants.
  3. Provide ongoing advice on the appropriateness of refunding and/or restructuring any and all outstanding Governmental Bond Issues and outstanding general obligation bonds, including preparing all necessary numbers analysis and escrow structures, preparing or reviewing, if prepared by another party, any required securities orders for escrows, reviewing accountant's verifications, preparing timetables for required activities to complete the refunding/restructuring, assisting the City with the acquisition of any required escrowed securities at the least cost, and assist the City's staff and Bond Counsel with all documents prepared in connection with the refunding/restructuring.
  4. Provide advice and assistance in connection with the marketing and sale of all Governmental Bond Issues including providing an analysis of market conditions that might normally be expected to influence interest in purchasing or the interest rate on the Governmental Bond Issue; providing recommendations with respect to the use of a competitive versus negotiated sale process; reviewing the City's distribution list for prospective purchasers of Governmental Bond Issues for competitive sales and providing recommendations with respect to other potential purchasers; assisting in the preparation of the official statement and other sale materials, providing, on an ongoing basis, advice to the City regarding the use of internet sale and disclosure possibilities; coordinating, when deemed advisable by the City, the use of credit enhancements and preparing all information necessary to provide to bond insurers or other providers of credit enhancements; providing assistance in receiving and opening bids at public sales and evaluating bids or responses for public and negotiated sales; participating in the pricing process for negotiated sales and advising the City as to the appropriateness of accepting or requiring repricing of issues; preparing a calendar of activities for each issue; preparing a debt service schedule for each issue and, if applicable, a schedule of

combined debt service on outstanding issues; preparing the closing memorandum including detailed wire instructions and instructions as to the disposition of issue proceeds; preparing a memorandum to the Governing Body prior to its acceptance of a bid analyzing the bid vis a vis the market and comparable financings and verifying the accuracy of the bids; and, if requested by the City, preparing any credit rating applications or presentations.

5. Prepare, when needed, requests for proposals for underwriters, accountants, trustees, escrow securities providers, printers or other services necessary in connection with the issuance of Governmental Bond Issues and assist the City's staff and Bond Counsel in analyzing responses to such requests.

**B. Conduit Bond Issues** -The Financial Advisor shall provide the services listed below in connection with all industrial revenue, tax increment or any other type of obligation in which the proceeds of such obligation will be used for the benefit of a private party and any obligation issued to refund such obligations (collectively, referred to herein as "Conduit Bond Issues").

1. Review applications for Conduit Bond Issues and attend Finance Team meetings with applicants for Conduit Bond Issues to discuss structure of the proposed issue, conformance of the proposed issue with City policies and credit worthiness of proposed transaction.
2. Prepare, if required, a cost benefit analysis in connection with the Conduit Bond Issues and in consultation with the City's staff, Bond Counsel, and the conduit applicant and prepare a memorandum to the Governing Body in advance of its consideration of the cost benefit analysis describing the results of the analysis.
3. Schedule and attend with City staff and Bond Counsel any due diligence meetings or tours of the applicant's existing business operations.
4. Prepare an analysis of the overall credit supporting each Conduit Bond Issue, including a description of the structure of the transaction, a brief description of the business and financial history of the conduit applicant and any unusual credit risks in the proposed Conduit Bond Issue, and provide a memorandum to the Governing Body prior to its approval of a resolution of intent to issue bonds for such issue describing the analysis and recommending approval or disapproval of the issue as structured.
5. Prepare or, if circumstances require an outside consultant to prepare, review the preparation of any feasibility studies or redevelopment plans prepared in connection with Conduit Bond Issues.
6. Review transaction documents as needed to be able to confirm that the structure described in the analysis submitted to the Governing Body remains in place.

**C. Other Financial Programs** -The Financial Advisor shall provide ongoing advice to the City, working with the Chief Financial Officer, to develop and maintain a coordinated approach to the overall requirements of the City's financing programs including the services listed below.

1. Provide assistance with the preparation and review of the City's Capital Improvement Plan. (The City will be primarily responsible for the preparation of this Plan.)
2. Provide advice with respect to the City's investment options, strategies and the administration of the investment of bond proceeds, and all idle and active funds.
3. Provide advice and assistance in preparing of any programs for excise taxes or impact fees including providing ongoing advice as to both common and innovative practices in Kansas and other jurisdictions regarding the use of such programs.

4. Provide information and advice as to any proposed or pending federal or Kansas legislation that may affect the City's financial programs.

**D. Additional Services** - In addition to those services set forth herein, the Financial Advisor shall provide all services customarily provided by financial advisors in Kansas (unless such service is specifically excluded or limited by this RRP) and shall provide the following additional services:

1. With reasonable notice, attend all meetings of the Governing Body or City staff which the Mayor, Council or City staff deem necessary, and attend all Governing Body meetings for which the Financial Advisor has prepared a memorandum or analysis for consideration.
2. Other services as reasonably requested by the City.

**E. Non-Exclusive Services** - Although the City's Financial Advisor will be given the majority of the City's business outlined in this Scope of Services, this agreement does not preclude the City from retaining other financial advisors from time to time as the City, in its sole discretion, decides. This appointment is non-exclusive and further, the successful Financial Advisor agrees to work with and coordinate efforts with (if requested by the City) any other financial advisor retained by the City.

## **2-3 CONFLICT OF INTEREST**

The Proposer shall provide an affirmative statement that retention as Financial Advisor to the City will not result in any conflict of interest or potential conflict with the City or others potentially affected in the City's financing. If any conflict or potential conflict exists, the Financial Advisor shall specify the party with which such conflict may exist, the nature of the potential conflict and any proposed resolution of such conflict.

## INSTRUCTIONS FOR PREPARING PROPOSALS

### PART III

#### 3-1 RULES FOR PROPOSALS

The proposal must name all persons or entities interested in the proposal as principals. The proposal must declare that it is made without collusion with any other person or entity submitting a proposal pursuant to this RFP.

#### 3-2 PROPOSAL FORMAT

Proposers shall prepare their proposals using the following format:

- A. **Letter of Transmittal** - This letter will summarize in a brief and concise manner, the Proposer's understanding of the scope of work and make a positive commitment to timely perform the work. The letter must name all of the persons authorized to make representations for the Proposer, including the titles, addresses, and telephone numbers of such persons. An authorized agent of the Proposer must sign the Letter of Transmittal indicating the agent's title or authority.
- B. **Statement of Addendum** - Statement acknowledging receipt of each addendum issued by the City.
- C. **Qualifications and Experience**
  - 1. Provide a description of the Proposer's general capabilities, including information relating to total size and staffing, research capability, professional staff and clerical.
  - 2. Identify the person who will be primarily responsible for providing service to the City (the "Primary Contact") and specify that person's office location and a listing of other staff who will participate in the day-to-day provision of services. Please provide a brief resume for each person. Describe the anticipated division of duties among all persons listed, identifying both the type of work such person is anticipated to perform and the percent of the total work expected to be performed by that person in connection with the City's services.
  - 3. Identify the Proposer's engagements as financial advisor in Kansas in connection with tax-exempt and taxable financing within the last five years. A response to this section should include information which is representative of the type of bonds and which reflect the variety of bond issues in which the Proposer has been involved. Provide an example of a recent official statement (or other offering material) for a Governmental Bond Issue (other than a new money general obligation issue), which the Proposer actively participated in preparing. When providing an answer to the questions contained in this section please include the following information:
    - (a) Type of issue (industrial revenue, utility revenue, general obligation refunding, etc.);

- (b) Size of issue;
  - (c) Governmental unit issuing bonds;
  - (d) For negotiated sales only, whether the Proposer was also the underwriter of the issue; and
  - (e) Which person was primarily responsible for the financial advisory work on the issue.
4. Of the jurisdictions listed in paragraph 3 list the jurisdictions for which the Primary Contact identified acts as the Primary Contact.
  5. Identify the Proposer's engagements as financial advisor in Kansas in connection with providing cost benefit analyses in connection with property tax abatements and feasibility studies in connection with tax increment redevelopment plans or other municipal projects within the last five years. Include a copy of a recent analysis and/or feasibility study prepared by the Proposer. If the Proposer has not performed these services in the past, please indicate how you would arrange for these services. When providing an answer to the questions contained in this section please include the following information:
    - (a) Type of analysis/study performed;
    - (b) Description of the issue or project for which the analysis/study was prepared;
    - (c) Size of issue or project;
    - (d) Governmental unit for whom the analysis/study was prepared; and
    - (e) Which person was primarily responsible for the preparation of the analysis/study.
  6. Identify the Proposer's engagements as financial advisor in Kansas in connection with providing a credit analysis for Conduit Bond Issues within the last five years. Include a copy of a recent analysis prepared by the Proposer. If the Proposer has not performed this service in the past, please indicate how you would arrange for this service. When providing an answer to the questions contained in this section please include the following information:
    - (a) Description of the issue or project for which the analysis was prepared;
    - (b) Size of issue or project;
    - (c) Governmental unit for whom the analysis was prepared; and
    - (d) Which person was primarily responsible for the preparation of the analysis/study.
  7. Identify the Proposer's engagements as financial advisor in Kansas in connection with providing assistance with excise tax or impact fee programs, capital improvement plans, investments of public funds (including bond funds) or other financial programs of the local governmental unit. If the Proposer has not performed these services in the past, please indicate how you would arrange for these services. When providing an answer to the questions contained in this section please include the following information:
    - (a) Description of the program;
    - (b) Type of assistance;
    - (c) Governmental unit for whom service was performed; and
    - (d) Which person was primarily responsible for assisting with the program.
  8. If the Proposer intends to use the services of any other organization to perform any of the services identified in this RFP, then you must submit the above information for each and

every such organization or person, as applicable, with and as a part of the proposal. Each such informational sheet shall identify, at the top of the front page, the role of the organization or person. Also, include a brief statement as to the need for and benefit to the City of using these additional or specialized services.

9. Identify at least three (3) Kansas governmental clients the City may contact as references with respect to the Primary Contact's work performance. For each reference include name, title, address, and phone number.
10. Provide a statement of the Proposer's local availability and degree of accessibility to the City. If the Proposer is not located in Johnson County give specifics as to how the requisite accessibility will be provided and charged to the City.
11. Discuss the Proposer's views as to the relative roles and responsibilities of financial advisor and underwriter. If the Proposer is not registered as a broker-dealer, discuss the impact, if any, on the SEC's recent revocation of its 1985 no action letter relating to Dominion Resources, Inc., on the Proposer's ability to assist the City with the negotiation or placement of bond issues.
12. Describe any litigation or SEC or MSRB investigations or enforcement actions in the last five years involving or related to any bonds or other obligations in which your company acted as financial advisor. If such instances exist, please provide a detailed description of the nature and outcome of each.
13. Describe your philosophy and practice in working with City staff and Bond Counsel and how you view the division of responsibility and work on a variety of municipal finance operations.
14. If the Proposer has provided unique or innovation solutions or approaches for any local governmental units in connection with any of the services listed under Section 2-2 "Scope of Services," provide a brief description of the solutions or approaches.
15. Provide any other information (in as brief a format as possible) which is relevant to the City's consideration of the proposal.

**D. Fees and Expenses**

1. Please furnish a proposed fee schedule for the types of issues and the principal amounts listed below. As stated previously, the City does not expect to involve the Financial Advisor in general obligation issues (except refundings of general obligation issues); however, the Proposer should include fee information about general obligation issues in the event the City elects to involve the Financial Advisor in such issues.

a.	General Obligation Bonds	<u>Principal Amount</u> Under \$500,000 \$500,000 to \$1,000,000 \$1,000,000 to \$2,000,000 \$2,000,000 to \$3,000,000 \$3,000,000 to \$4,000,000 \$4,000,000 to \$5,000,000 Over \$5,000,000
b.	Utility or Sales Tax Revenue Bonds	<u>Principal Amount</u> Under \$500,000 \$500,000 to \$1,000,000 \$1,000,000 to \$2,000,000 \$2,000,000 to \$3,000,000 \$3,000,000 to \$4,000,000 \$4,000,000 to \$5,000,000 Over \$5,000,000
c.	Tax Increment Bonds	<u>Principal Amount</u> Under \$500,000 \$500,000 to \$1,000,000 \$1,000,000 to \$2,000,000 \$2,000,000 to \$3,000,000 \$3,000,000 to \$4,000,000 \$4,000,000 to \$5,000,000 Over \$5,000,000
d.	Leases and Certificates of Participation	<u>Principal Amount</u> Under \$500,000 \$500,000 to \$1,000,000 \$1,000,000 to \$2,000,000 \$2,000,000 to \$3,000,000 \$3,000,000 to \$4,000,000 \$4,000,000 to \$5,000,000 Over \$5,000,000

e.	Temporary Notes	<u>Principal Amount</u> Per \$1,000
f.	Industrial Revenue Bonds	<u>Principal Amount</u> Under \$1,000,000 \$1,000,000 to \$5,000,000 \$5,000,000 to \$10,000,000 Over \$10,000,000

2. Consulting services, such as those described in Section 2-2 "Scope of Services" may be requested in situations that do not involve a debt issue. If you intend to bill for such services, please provide a proposed billing method and amount (such as hourly billing rates, transactional rates, etc.) and indicate which services under Section 2-2 "Scope of Services" you propose to bill using this billing method(s).
3. Indicate the Proposer's policy regarding out-of-pocket and or indirect cost expenses including, but not limited to, travel, lodging, faxes, telephone calls, deliveries, etc.; if you propose reimbursement from the City, please itemize the types of expense and basis of billing for each.

**E. Scope of Work** - This section of the proposal should explain the Scope of Work as understood by the Proposer and detail any exception, qualifications or additions. Explain the Proposer's approach, activities, work products, plan of financing and terms of contract and compensation.

**F. Availability** - Indicate current and anticipated workloads and availability for other activities. Identify the extent and nature of any anticipated outside support.

**G. Other**

1. Provide evidence of current levels of insurance in the areas of Workers' Compensation and Professional Liability. If self-insured for Professional Liability, provide the most recent audited financials.
2. Provide a statement of the Proposer's financial stability, including information as to current or prior bankruptcy proceedings.
3. Provide a summary of any litigation filed against the Proposer in the past five years which is related to the services that Proposer provides in the regular course of business. The summary shall state the nature of the litigation, a brief description of the case, the outcome or projected outcome, and the monetary amount involved.
4. Identify the type of business entity involved (e.g., sole proprietorship, corporation, etc.). Identify whether the business entity is incorporated in Kansas, another state or a foreign country.
5. If Proposer is a corporation, provide certification from the Kansas Secretary of State verifying Proposer's corporate status and good standing, and in the case of out-of-state corporations, evidence of authority to do business in the State of Kansas.
6. In the case of a sole proprietorship or partnership, provide Social Security numbers for all owners or partners.
7. Provide the Federal Employer ID number of the Proposer.

**H. Additional Data** - Any additional information which the Proposer considers pertinent for consideration should be included in a separate section of the proposal. The City solicits a

statement about why the Proposer feels its approach would be the most cost effective to the City.

# **SAMPLE STANDARD CONTRACT**

**(For informational purposes only)**

**AGREEMENT FOR PROFESSIONAL SERVICES**

**AGREEMENT NO.**

THIS AGREEMENT made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2000 (the "Agreement"), by and between the City of Lenexa, a municipal corporation of the State of Kansas, hereinafter referred to as CITY, and \_\_\_\_\_ hereinafter referred to as CONSULTANT:

WHEREAS, the CITY requires certain professional services in connection with financial advisor services ("Services"); and,

WHEREAS, the CONSULTANT represents that it is capable and prepared to provide such Services:

NOW THEREFORE, in consideration of the promises contained herein, the parties hereto agree as follows:

**ARTICLE 1 - EFFECTIVE DATE**

The effective date of this Agreement shall be \_\_\_\_\_ 2000 through \_\_\_\_\_, 2003.

**ARTICLE 2 - SERVICE TO BE PERFORMED BY CONSULTANT**

The CONSULTANT shall perform the Services specifically stated in the Scope of Work and as may be specifically designated and additionally authorized by the CITY. Such additional authorizations will be in the form of a Work Order. Each Work Order will set forth a specific Scope of Services, amount of compensation and completion date and shall be approved by resolution of the City Council.

**ARTICLE 3 - COMPENSATION**

The CITY shall pay CONSULTANT in accordance with Attachment A, Fee Schedule, which is attached hereto and incorporated by reference as part of this Agreement.

**ARTICLE 4 - STANDARD OF CARE**

CONSULTANT shall exercise the same degree of care, skill, and diligence in the performance of the Services as is ordinarily provided by a professional financial advisor under similar circumstances and CONSULTANT shall, at no additional cost to the CITY, re-perform services which fail to satisfy the foregoing standard of care.

**ARTICLE 5 - INDEMNIFICATION**

CONSULTANT shall, in addition to any other obligation to indemnify the CITY and to the fullest extent permitted by law, protect, defend, indemnify and hold harmless the CITY, its agents, elected officials and employees from and against all claims, actions, liabilities, losses (including economic losses) and costs arising out of any actual or alleged: (a) bodily injury, sickness, disease or death, or injury to or destruction of tangible property, including the loss of use resulting therefrom, or any other damage or loss arising out of or resulting in whole or in part from any actual or alleged act or omission of the CONSULTANT, any subcontractor, anyone directly or indirectly employed by any of them, of anyone for whose acts any of them may be liable in the performance of the WORK; (b) violation of law, statute, ordinance, governmental administration order, rule, regulation, or infringement of patent rights by CONSULTANT

in the performance of the Work; or (c) liens, claims or actions made by the CONSULTANT or any subcontractor under workers compensation acts; disability benefit acts, other employee benefit acts or any statutory bar. All expenses, including attorney's fees, incurred by the CITY in enforcing this Agreement shall be borne by the CONSULTANT.

Upon completion of all Services, obligations and duties provided for in this Agreement, or in the event of termination of this Agreement for any reasons, the terms and conditions of this Article shall survive indefinitely.

#### **ARTICLE 6 - INDEPENDENT CONTRACTOR**

CONSULTANT undertakes performance of the Services as an independent contractor and shall be wholly responsible for the methods of performance. The CITY shall have no right to supervise the methods used, but the CITY shall have the right to observe such performance. CONSULTANT shall work closely with the CITY in performing Services under this Agreement.

#### **ARTICLE 7 - COMPLIANCE WITH LAWS**

In performing the Services, CONSULTANT shall comply with applicable regulatory requirements including federal, state, and local laws, rules regulations, orders, codes, criteria and standards.

#### **ARTICLE 8 - INSURANCE**

During the performance of the Services under this Agreement, CONSULTANT shall maintain the following insurance policies, and provide originals or certified copies of all policies, which shall be written by an insurance company authorized to do business in Kansas.

1. Worker's Compensation Insurance: The CONSULTANT shall procure and maintain for the life of this Agreement, workers' compensation insurance covering all employees with limits meeting all applicable state and federal laws. This coverage shall include employer's liability with limits meeting all applicable state and federal laws. This coverage must extend to any subcontractor that does not have its own workers' compensation and employer's liability insurance. The policy must contain a waiver of subrogation in favor of the City of Lenexa, executed by the insurance company. Thirty (30) days notice of cancellation is required and must be provided to the City of Lenexa via Certified Mail, Return Receipt Requested.

2. Comprehensive General Liability: The CONSULTANT shall procure and maintain, for the life of this Agreement, comprehensive general liability insurance. This coverage shall be on an "occurrence" basis. Coverage shall include premises and operations; independent contractors' products and completed operations and contractual liability with specific reference of Article 5 of this Agreement. This policy shall provide coverage for death, personal injury or property damage that could arise directly or indirectly from the performance of this Agreement. The minimum limits of coverage shall be \$500,000 per occurrence, combined single limit for bodily injury liability and property damage liability. Thirty (30) days notice of cancellation is required and must be provided to the City of Lenexa via Certified Mail, Return Receipt Requested.

3. Business Automobile Liability: The CONSULTANT shall procure and maintain, for the life of the Agreement, business automobile liability insurance. The minimum limits of coverage shall be \$500,000 per occurrence, combined single limit for bodily injury liability and property damage liability. This coverage shall be an "any auto" type policy. Thirty (30) days notice of cancellation is required and must be provided to the City of Lenexa via Certified Mail, Return Receipt Requested..

4. Professional Liability: Unless the CONSULTANT meets the self-insurance requirements described herein, the CONSULTANT shall procure and maintain professional liability Insurance for the life of this Contract/Agreement, plus two (2) years after completion. This insurance shall provide coverage for liability resulting from this Contract/Project. The minimum limits of coverage shall be \$1,000,000 with a deductible not to exceed \$25,000. The deductible will be the responsibility of the insured. Thirty (30) days notice of cancellation is required and must be provided to the City of Lenexa via Certified Mail, Return Receipt Requested. If the CONSULTANT self-insures, the CONSULTANT shall maintain an annual net worth of not less than \$10,000,000 at all times during the life of this Contract/Agreement and shall provide the CITY with a copy of CONSULTANT's most recent audited financials prior to executing the Contract/Agreement and provide the CITY with a copy of the CONSULTANT's audited financials for each year the Contract/Agreement is in effect.

In the event that subcontractors used by the CONSULTANT do not have insurance, or do not meet the insurance limits, CONSULTANT shall indemnify and hold harmless the CITY for any claim in excess of the subcontractor's insurance coverage, arising out of negligent acts, errors or omissions of the subcontractors.

CONSULTANT shall not commence work under this Agreement until all insurance required as stated herein has been obtained and such insurance has been approved by the CITY.

#### **ARTICLE 9 - CITY'S RESPONSIBILITIES**

The CITY shall be responsible for all providing all reasonably necessary data that is available in the files of the CITY and for timely responding to the reasonable requests of CONSULTANT.

#### **ARTICLE 10 - TERMINATION OF AGREEMENT**

The obligation to continue Services under this Agreement may be terminated for cause by either party upon seven (7) days' written notice of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.

CITY shall have the right to terminate this Agreement or suspend performance thereof without cause for the CITY's convenience upon thirty (30) days written notice to CONSULTANT, and CONSULTANT shall terminate or suspend performance of Services with sixty (60) days notice to CITY. In the event of termination or suspension for CITY's convenience, CITY shall pay CONSULTANT for all Services performed through the date of notice of termination or suspension.

#### **ARTICLE 11 - NONDISCLOSURE OF PROPRIETARY INFORMATION**

CONSULTANT shall consider all information provided by CITY and all reports, studies, calculations, and other documentation resulting from the CONSULTANT's performance of the Services to be proprietary unless such information is available from public sources. CONSULTANT shall not publish or disclose proprietary information for any purpose other than the performance of the Services without the prior written authorization of CITY or in response to legal process.

#### **ARTICLE 12 - UNCONTROLLABLE FORCES**

Neither the CITY nor CONSULTANT shall be considered to be in default of this Agreement if delays in or failure of performance shall be due to Uncontrollable Forces, the effect of which, by the exercise of reasonable diligence, the non-performing party could not avoid. The term "Uncontrollable Forces" shall

mean any event which results in the prevention or delay of performance by a party of its obligations under this Agreement and which is beyond the reasonable control of the non-performing party. It includes, but is not limited to fire, flood, earthquakes, storms, lightning, epidemic, war, riot, civil disturbance, sabotage, and governmental actions.

Neither party shall, however, be excused from performance if nonperformance is due to forces which are preventable, removable, or remediable and which the non-performing party could have, with the exercise of reasonable diligence, prevented, removed, or remedied with reasonable dispatch. The non-performing party shall, within a reasonable time of being prevented or delayed from performance by an uncontrollable force, give written notice to the other party describing the circumstances and uncontrollable forces preventing continued performance of the obligations of this Agreement.

### **ARTICLE 13 - GOVERNING LAW AND VENUE**

This Agreement shall be governed and interpreted by the laws of the State of Kansas.

### **ARTICLE 14 - MISCELLANEOUS**

#### **14.1 Nonwaiver**

A waiver by either CITY or CONSULTANT of any breach of this Agreement shall not be binding upon the waiving party unless such waiver is in writing. In the event of a written waiver, such a waiver shall not affect the waiving party's rights with respect to any other or further breach. The making or acceptance of a payment by either party with knowledge of the existence of a default or breach shall not operate or be construed to operate as a waiver of any subsequent default or breach.

#### **14.2 Severability**

The invalidity, illegality, or unenforceability of any provision of this Agreement, or the occurrence of any event rendering any portion or provision of this Agreement void, shall in no way affect the validity or enforceability of any other portion or provision of the Agreement. Any void provision shall be deemed severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void. The parties further agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.

The provisions of this section shall not prevent the entire Agreement from being void should a provision which is of the essence of the Agreement be determined to be void.

### **ARTICLE 15 - INTEGRATION AND MODIFICATION**

This Agreement is adopted by the CITY and CONSULTANT as a complete and exclusive statement of the terms of the Agreement between the CITY and CONSULTANT. This Agreement supersedes all prior agreements, contracts, proposals, representations, negotiations, letters or other communications between the CITY and CONSULTANT pertaining to the Services, whether written or oral.

The Agreement may not be modified unless such modifications are evidenced in writing signed by both the CITY and CONSULTANT.

The following documents are made an integral part of this Agreement:

- A. Request for Proposal for Financial Advisor Services
- B. Proposal dated May 15, 2000

#### **ARTICLE 16 - SUCCESSORS AND ASSIGNS**

The CITY and CONSULTANT each binds itself and its director, officers, partners, successors, executors, administrators, assigns and legal representatives to the other party to this Agreement and to the partners, successors, executors, administrators, assigns, and legal representatives.

#### **ARTICLE 17 - CONTINGENT FEES**

The CONSULTANT warrants that no person or agency has been employed or retained to solicit or secure this Agreement for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or established commercial agencies maintained by the purchaser for the purpose of doing business.

#### **ARTICLE 18 - TRUTH-IN-NEGOTIATION CERTIFICATE**

Execution of this Agreement by the CONSULTANT shall act as the execution of a truth-in-negotiation certificate certifying that the wage rates and costs used to determine the compensation provided for in this Agreement are accurate, complete and current as of the date of the Agreement and no higher than those charged the CONSULTANTS most favored customer for the same or substantially similar service.

The said rates and cost shall be adjusted to exclude any significant sums should the CITY determine that the rates ad costs were increased due to inaccurate, incomplete or non-current wage rates or due to inaccurate representations of fees paid to outside consultants. The CITY shall exercise its rights under this "Certificate" within one (1) year following payment.

#### **ARTICLE 19 - OWNERSHIP OF DOCUMENTS**

CONSULTANT shall be required to work in harmony with other consultants relative to providing information requested in a timely manner and in the specified form. Any and all documents, records, disks, original drawings, or other information shall become the property of the CITY upon completion for it's use and distribution as may be deemed appropriate by the CITY.

**ARTICLE 20 - NOTICE**

Any notice, demand, communication, or request required or permitted hereunder shall be in writing and delivered in person or sent by certified mail, postage prepaid as follows:

**As To CITY**

City of Lenexa  
12350 West 87<sup>th</sup> Street Parkway  
Lenexa, Kansas 66215

Attention: CITY ATTORNEY

**As to CONSULTANT:**

Notices shall be effective when received at the address specified above. Changes in the respective addresses to which such notice may be directed may be made from time to time by any party by written notice to the other party. Facsimile is acceptable notice effective when received, however, facsimiles received (i.e.; printed) after 5:00 p.m. or on weekends or holidays, will be deemed received on the next business day. The original of the notice must additionally be mailed as required herein.

Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of CONSULTANT and CITY.

**ARTICLE 21 - PROJECT TEAM**

The Project Team shall consist of

\_\_\_\_\_

Project Team members may be changes only with the prior written approval of the City.

**IN WITNESS WHEREOF**, the City of Lenexa, at a regular meeting thereof, by action of the City Council and directing the foregoing be adopted, has caused these presents to be signed by the Mayor, and it's seal to be hereunto affixed, and has executed this contract all as of the day and year first above written.

ATTEST:

\_\_\_\_\_  
Sandra Howell, City Clerk/Admin. Dir.

**CITY OF LENEXA, KANSAS**

By: \_\_\_\_\_  
Joan Bowman  
Mayor

Approved as to Form:

By: \_\_\_\_\_  
Cynthia L. Harmison, City Attorney

Witness:

\_\_\_\_\_

**CONSULTANT**

By: \_\_\_\_\_  
Signature

Name: \_\_\_\_\_

Title: \_\_\_\_\_