

**CITY OF COSTA MESA  
PROFESSIONAL SERVICES AGREEMENT  
WITH  
FIELDMAN, ROLAPP & ASSOCIATES, INC.**

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into this 15<sup>TH</sup> day of February, 2024 ("Effective Date"), by and between the CITY OF COSTA MESA, a municipal corporation ("City"), and FIELDMAN, ROLAPP & ASSOCIATES, INC., a California corporation ("Consultant").

**RECITALS**

A. City proposes to utilize the services of Consultant as an independent contractor for municipal advisory services, as more fully described herein; and

B. Consultant represents that it has that degree of specialized expertise contemplated within California Government Code section 37103, and holds all necessary licenses to practice and perform the services herein contemplated; and

C. City and Consultant desire to contract for the specific services described in Exhibit "A" and desire to set forth their rights, duties and liabilities in connection with the services to be performed; and

D. City desires continuing disclosure consulting services to be performed in connection with the debt obligations defined in Exhibit "B" attached to this Agreement in order to comply with Rule 15c2-12(b)(5) of the Securities Exchange Act of 1934, as amended, California Senate Bill 1029, Government Code Section 8855(k), and the Marks-Roos Local Bond Pooling Act of 1985, as amended (Section 6584 et seq.), Government Code Section 6599.1(b) or other similar rules; and

E. Consultant is registered as a municipal advisor with both the United States Securities and exchange Commission and the Municipal Securities Rulemaking Board;

F. No official or employee of City has a financial interest, within the provisions of sections 1090-1092 of the California Government Code, in the subject matter of this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions contained herein, the parties hereby agree as follows:

**1.0. SERVICES PROVIDED BY CONSULTANT**

1.1. Scope of Services. Consultant shall provide the professional services described in Consultant's Proposal, attached hereto as Exhibit "A", and incorporated by this reference..

1.2. Professional Practices. All professional services to be provided by Consultant pursuant to this Agreement shall be provided by personnel experienced in their respective fields and in a manner consistent with the standards of care, diligence and skill ordinarily exercised by professional consultants in similar fields and circumstances in accordance with sound professional practices. Consultant also warrants that it is familiar with all laws that may affect its performance of this Agreement and shall advise City of any changes in any laws that may affect

Consultant's performance of this Agreement.

1.3. Performance to Satisfaction of City. Consultant agrees to perform all the work to the complete satisfaction of the City. Evaluations of the work will be done by the City Manager or his or her designee. If the quality of work is not satisfactory, City in its discretion has the right to:

- (a) Meet with Consultant to review the quality of the work and resolve the matters of concern;
- (b) Require Consultant to repeat the work at no additional fee until it is satisfactory; and/or
- (c) Terminate the Agreement as hereinafter set forth.

1.4. Warranty. Consultant warrants that it shall perform the services required by this Agreement in compliance with all applicable Federal and California employment laws, including, but not limited to, those laws related to minimum hours and wages; occupational health and safety; fair employment and employment practices; workers' compensation insurance and safety in employment; and all other Federal, State and local laws and ordinances applicable to the services required under this Agreement. Consultant also warrants that shall comply with all of the representations set forth in Exhibit "D", and incorporated by this reference. Consultant shall indemnify and hold harmless City from and against all claims, demands, payments, suits, actions, proceedings, and judgments of every nature and description including attorneys' fees and costs, presented, brought, or recovered against City for, or on account of any liability under any of the above-mentioned laws or obligations applicable to the Consultant, its employees, and/or authorized subcontractors, which may be incurred by reason of Consultant's performance under this Agreement.

1.5. Non-Discrimination. In performing this Agreement, Consultant shall not engage in, nor permit its agents to engage in, discrimination in employment of persons because of their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military or veteran status, except as permitted pursuant to section 12940 of the Government Code.

1.6. Non-Exclusive Agreement. Consultant acknowledges that City may enter into agreements with other consultants for services similar to the services that are subject to this Agreement or may have its own employees perform services similar to those services contemplated by this Agreement.

1.7. Delegation and Assignment. This is a personal service contract, and the duties set forth herein shall not be delegated or assigned to any person or entity without the prior written consent of City. Consultant may engage a subcontractor(s) as permitted by law and may employ other personnel to perform services contemplated by this Agreement at Consultant's sole cost and expense.

1.8. Confidentiality. Employees of Consultant in the course of their duties may have access to financial, accounting, statistical, and personnel data of private individuals and employees of City. Consultant covenants that all data, documents, discussion, or other information developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Consultant without written authorization by City. City shall grant such authorization if disclosure is required by law. All City data shall be

returned to City upon the termination of this Agreement. Consultant's covenant under this Section shall survive the termination of this Agreement.

## **2.0. COMPENSATION AND BILLING**

2.1. Compensation. Consultant shall be paid in accordance with the fee schedule set forth in Exhibit "C," attached hereto and made a part of this Agreement. Consultant's total compensation shall not exceed One-Hundred Thousand Dollars (\$100,000.00).

2.2. Additional Services. Consultant shall not receive compensation for any services provided outside the scope of services specified in the Consultant's Proposal unless the City Manager or designee, prior to Consultant performing the additional services, approves such additional services in writing. It is specifically understood that oral requests and/or approvals of such additional services or additional compensation shall be barred and are unenforceable.

2.3. Method of Billing. Consultant may submit invoices to the City for approval on a progress basis, but no more often than two times a month. Said invoice shall be based on the total of all Consultant's services which have been completed to City's sole satisfaction. City shall pay Consultant's invoice within forty-five (45) days from the date City receives said invoice. Each invoice shall describe in detail, the services performed, the date of performance, and the associated time for completion. Any additional services approved and performed pursuant to this Agreement shall be designated as "Additional Services" and shall identify the number of the authorized change order, where applicable, on all invoices.

2.4. Records and Audits. Records of Consultant's services relating to this Agreement shall be maintained in accordance with generally recognized accounting principles and shall be made available to City or its Project Manager for inspection and/or audit at mutually convenient times from the Effective Date until three (3) years after termination of this Agreement.

## **3.0. TIME OF PERFORMANCE**

3.1. Commencement and Completion of Work. Unless otherwise agreed to in writing by the parties, the professional services to be performed pursuant to this Agreement shall commence within five (5) days from the Effective Date of this Agreement. Failure to commence work in a timely manner and/or diligently pursue work to completion may be grounds for termination of this Agreement.

3.2. Excusable Delays. Neither party shall be responsible for delays or lack of performance resulting from acts beyond the reasonable control of the party or parties. Such acts shall include, but not be limited to, acts of God, fire, strikes, pandemics (excluding COVID-19), material shortages, compliance with laws or regulations, riots, acts of war, or any other conditions beyond the reasonable control of a party (each, a "Force Majeure Event"). If a party experiences a Force Majeure Event, the party shall, within five (5) days of the occurrence of the Force Majeure Event, give written notice to the other party stating the nature of the Force Majeure Event, its anticipated duration and any action being taken to avoid or minimize its effect. Any suspension of performance shall be of no greater scope and of no longer duration than is reasonably required and the party experiencing the Force Majeure Event shall use best efforts without being obligated to incur any material expenditure to remedy its inability to perform; provided, however, if the suspension of performance continues for sixty (60) days after the date of the occurrence and such failure to perform would constitute a material breach of this Agreement in the absence of such Force Majeure Event, the parties shall meet and discuss in good faith any amendments to this Agreement to permit the other party to exercise its rights under this Agreement. If the parties are

not able to agree on such amendments within thirty (30) days and if suspension of performance continues, such other party may terminate this Agreement immediately by written notice to the party experiencing the Force Majeure Event, in which case neither party shall have any liability to the other except for those rights and liabilities that accrued prior to the date of termination.

#### **4.0. TERM AND TERMINATION**

4.1. Term. This Agreement shall commence on the Effective Date and end on February 14, 2025, unless previously terminated as provided herein or as otherwise agreed to in writing by the parties. This Agreement may be extended by two [2] additional one [1] year periods upon mutual written agreement of both parties.

4.2. Notice of Termination. The City reserves and has the right and privilege of canceling, suspending or abandoning the execution of all or any part of the work contemplated by this Agreement, with or without cause, at any time, by providing written notice to Consultant. The termination of this Agreement shall be deemed effective upon receipt of the notice of termination. In the event of such termination, Consultant shall immediately stop rendering services under this Agreement unless directed otherwise by the City.

4.3. Compensation. In the event of termination, City shall pay Consultant for reasonable costs incurred and professional services satisfactorily performed up to and including the date of City's written notice of termination. Compensation for work in progress shall be prorated based on the percentage of work completed as of the effective date of termination in accordance with the fees set forth herein. In ascertaining the professional services actually rendered hereunder up to the effective date of termination of this Agreement, consideration shall be given to both completed work and work in progress, to complete and incomplete drawings, and to other documents pertaining to the services contemplated herein whether delivered to the City or in the possession of the Consultant.

4.4. Documents. In the event of termination of this Agreement, all documents prepared by Consultant in its performance of this Agreement including, but not limited to, finished or unfinished design, development and construction documents, data studies, drawings, maps and reports, shall be delivered to the City within ten (10) days of delivery of termination notice to Consultant, at no cost to City. Any use of uncompleted documents without specific written authorization from Consultant shall be at City's sole risk and without liability or legal expense to Consultant.

#### **5.0. INSURANCE**

5.1. Minimum Scope and Limits of Insurance. Consultant shall obtain, maintain, and keep in full force and effect during the life of this Agreement all of the following minimum scope of insurance coverages with an insurance company admitted to do business in California, rated "A," Class X, or better in the most recent A.M. Best's Rating Guide, and approved by City:

- (a) Commercial general liability, including premises-operations, products/completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury or bodily injury with a policy limit of not less than One Million Dollars (\$1,000,000.00) per occurrence, Two Million Dollars (\$2,000,000.00) general aggregate.
- (b) Business automobile liability for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than One Million Dollars

(\$1,000,000.00) combined single limit per accident for bodily injury and property damage.

- (c) Workers' compensation insurance as required by the State of California. Consultant agrees to waive, and to obtain endorsements from its workers' compensation insurer waiving subrogation rights under its workers' compensation insurance policy against the City, its officers, agents, employees, and volunteers arising from work performed by Consultant for the City and to require each of its subcontractors, if any, to do likewise under their workers' compensation insurance policies.
- (d) Professional errors and omissions ("E&O") liability insurance with policy limits of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate. Architects' and engineers' coverage shall be endorsed to include contractual liability. If the policy is written as a "claims made" policy, the retro date shall be prior to the start of the contract work. Consultant shall obtain and maintain, said E&O liability insurance during the life of this Agreement and for three years after completion of the work hereunder.

5.2. Endorsements. The commercial general liability insurance policy and business automobile liability policy shall contain or be endorsed to contain the following provisions:

- (a) Additional insureds: "The City of Costa Mesa and its elected and appointed boards, officers, officials, agents, employees, and volunteers are additional insureds with respect to: liability arising out of activities performed by or on behalf of the Consultant pursuant to its contract with the City; products and completed operations of the Consultant; premises owned, occupied or used by the Consultant; automobiles owned, leased, hired, or borrowed by the Consultant."
- (b) Notice: "Said policy shall not terminate, be suspended, or voided, nor shall it be cancelled, nor the coverage or limits reduced, until thirty (30) days after written notice is given to City."
- (c) Other insurance: "The Consultant's insurance coverage shall be primary insurance as respects the City of Costa Mesa, its officers, officials, agents, employees, and volunteers. Any other insurance maintained by the City of Costa Mesa shall be excess and not contributing with the insurance provided by this policy."
- (d) Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the City of Costa Mesa, its officers, officials, agents, employees, and volunteers.
- (e) The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

5.3. Deductible or Self Insured Retention. If any of such policies provide for a deductible or self-insured retention to provide such coverage, the amount of such deductible or self-insured retention shall be approved in advance by City. No policy of insurance issued as to which the City

is an additional insured shall contain a provision which requires that no insured except the named insured can satisfy any such deductible or self-insured retention.

5.4. Certificates of Insurance. Consultant shall provide to City certificates of insurance showing the insurance coverages and required endorsements described above, in a form and content approved by City, prior to performing any services under this Agreement.

5.5. Non-Limiting. Nothing in this Section shall be construed as limiting in any way, the indemnification provision contained in this Agreement, or the extent to which Consultant may be held responsible for payments of damages to persons or property. Notwithstanding the foregoing, the maximum aggregate liability of Consultant under any indemnification provision shall be limited to \$50,000, unless arising out of the negligence, recklessness, or willful misconduct of the Consultant, its employees, and/or authorized subcontractors, in the performance of the work undertaken pursuant to this Agreement.

**6.0. GENERAL PROVISIONS**

6.1. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to any matter referenced herein and supersedes any and all other prior writings and oral negotiations. This Agreement may be modified only in writing, and signed by the parties in interest at the time of such modification. The terms of this Agreement shall prevail over any inconsistent provision in any other contract document appurtenant hereto, including exhibits to this Agreement.

6.2. Representatives. The City Manager or his or her designee shall be the representative of City for purposes of this Agreement and may issue all consents, approvals, directives and agreements on behalf of the City, called for by this Agreement, except as otherwise expressly provided in this Agreement.

Consultant shall designate a representative for purposes of this Agreement who shall be authorized to issue all consents, approvals, directives and agreements on behalf of Consultant called for by this Agreement, except as otherwise expressly provided in this Agreement.

6.3. Project Managers. City shall designate a Project Manager to work directly with Consultant in the performance of this Agreement.

Consultant shall designate a Project Manager who shall represent it and be its agent in all consultations with City during the term of this Agreement. Consultant or its Project Manager shall attend and assist in all coordination meetings called by City.

6.4. Notices. Any notices, documents, correspondence or other communications concerning this Agreement or the work hereunder may be provided by personal delivery or mail and shall be addressed as set forth below. Such communication shall be deemed served or delivered: (a) at the time of delivery if such communication is sent by personal delivery, and (b) 48 hours after deposit in the U.S. Mail as reflected by the official U.S. postmark if such communication is sent through regular United States mail.

IF TO CONSULTANT:

Fieldman, Rolapp & Associates, Inc.  
19900 MacArthur Blvd, Suite 1100

IF TO CITY:

City of Costa Mesa  
77 Fair Drive

Irvine, CA 92612  
Tel: 949-660-7300  
Attn: Anna Sarabian

Costa Mesa, CA 92626  
Tel: (714) 754- 4885  
Attn: Cathleen Serrano

Courtesy copy to:

City of Costa Mesa  
77 Fair Drive  
Costa Mesa, CA 92626  
Attn: Finance Dept. | Purchasing

6.5. Drug-Free Workplace Policy. Consultant shall provide a drug-free workplace by complying with all provisions set forth in City's Council Policy 100-5, attached hereto as Exhibit "E" and incorporated herein. Consultant's failure to conform to the requirements set forth in Council Policy 100-5 shall constitute a material breach of this Agreement and shall be cause for immediate termination of this Agreement by City.

6.6. Attorneys' Fees. In the event that litigation is brought by any party in connection with this Agreement, the prevailing party shall be entitled to recover from the opposing party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the exercise of any of its rights or remedies hereunder or the enforcement of any of the terms, conditions, or provisions hereof.

6.7. Governing Law. This Agreement shall be governed by and construed under the laws of the State of California without giving effect to that body of laws pertaining to conflict of laws. In the event of any legal action to enforce or interpret this Agreement, the parties hereto agree that the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California.

6.8. Assignment. Consultant shall not voluntarily or by operation of law assign, transfer, sublet or encumber all or any part of Consultant's interest in this Agreement without City's prior written consent. Any attempted assignment, transfer, subletting or encumbrance shall be void and shall constitute a breach of this Agreement and cause for termination of this Agreement. Regardless of City's consent, no subletting or assignment shall release Consultant of Consultant's obligation to perform all other obligations to be performed by Consultant hereunder for the term of this Agreement.

6.9. Indemnification and Hold Harmless. Consultant agrees to defend, indemnify, hold free and harmless the City, its elected officials, officers, agents and employees, at Consultant's sole expense, from and against any and all claims, actions, suits or other legal proceedings brought against the City, its elected officials, officers, agents and employees arising out of the negligence, recklessness, or willful misconduct of the Consultant, its employees, and/or authorized subcontractors, in the performance of the work undertaken pursuant to this Agreement. The defense obligation provided for hereunder shall apply without any advance showing of negligence or wrongdoing by the Consultant, its employees, and/or authorized subcontractors, but shall be required whenever any claim, action, complaint, or suit asserts as its basis the negligence, errors, omissions or misconduct of the Consultant, its employees, and/or authorized subcontractors, and/or whenever any claim, action, complaint or suit asserts liability against the City, its elected officials, officers, agents and employees based upon negligence, recklessness, or willful misconduct in the work performed by the Consultant, its employees, and/or authorized subcontractors under this Agreement, whether or not the Consultant, its employees,

and/or authorized subcontractors are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, the Consultant shall not be liable for the defense or indemnification of the City for claims, actions, complaints or suits arising out of the sole active negligence, recklessness or willful misconduct of the City. In no event shall the cost to defend charged to Consultant exceed Consultant's proportionate percentage of fault. However, notwithstanding the previous sentence, in the event one or more defendants is unable to pay its share of defense costs due to bankruptcy or dissolution of the business, Consultant shall meet and confer with other parties regarding unpaid defense costs. This provision shall supersede and replace all other indemnity provisions contained either in the City's specifications or Consultant's Proposal, which shall be of no force and effect.

6.10. Independent Contractor. Consultant is and shall be acting at all times as an independent contractor and not as an employee of City. Consultant shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise act on behalf of City as an agent. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of City. Consultant shall secure, at its sole expense, and be responsible for any and all payment of Income Tax, Social Security, State Disability Insurance Compensation, Unemployment Compensation, and other payroll deductions for Consultant and its officers, agents, and employees, and all business licenses, if any are required, in connection with the services to be performed hereunder. Consultant shall indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship of Consultant created by this Agreement. Consultant further agrees to indemnify and hold City harmless from any failure of Consultant to comply with the applicable worker's compensation laws. City shall have the right to offset against the amount of any fees due to Consultant under this Agreement any amount due to City from Consultant as a result of Consultant's failure to promptly pay to City any reimbursement or indemnification arising under this paragraph.

6.11 Conflicts with Independent Contractor. Contractor/consultant's duties and services under this Agreement shall not include preparing or assisting the public entity with any portion of the public entity's preparation of a request for proposals, request for qualifications, or any other solicitation regarding a subsequent or additional contract with the public entity. The public entity entering into this Agreement shall at all times retain responsibility for public contracting, including with respect to any subsequent phase of this project. Contractor/consultant's participation in the planning, discussions, or drawing of project plans or specifications shall be limited to conceptual, preliminary, or initial plans or specifications. Contractor/consultant shall cooperate with the public entity to ensure that all bidders for a subsequent contract on any subsequent phase of this project have access to the same information, including all conceptual, preliminary, or initial plans or specifications prepared by contractor pursuant to this Agreement.

6.12. PERS Eligibility Indemnification. In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement claims or 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 the 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.

Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing service under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in PERS as an employee of City and entitlement to any contribution to be paid by City for employer contribution and/or employee contributions for PERS benefits.

6.13. Cooperation. In the event any claim or action is brought against City relating to Consultant's performance or services rendered under this Agreement, Consultant shall render any reasonable assistance and cooperation which City might require.

6.14. Ownership of Documents. All findings, reports, documents, information and data including, but not limited to, computer tapes or discs, files and tapes furnished or prepared by Consultant or any of its subcontractors in the course of performance of this Agreement, shall be and remain the sole property of City. Consultant agrees that any such documents or information shall not be made available to any individual or organization without the prior consent of City. Any use of such documents for other projects not contemplated by this Agreement, and any use of incomplete documents, shall be at the sole risk of City and without liability or legal exposure to Consultant. City shall indemnify and hold harmless Consultant from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from City's use of such documents for other projects not contemplated by this Agreement or use of incomplete documents furnished by Consultant. Consultant shall deliver to City any findings, reports, documents, information, data, in any form, including but not limited to, computer tapes, discs, files audio tapes or any other Project related items as requested by City or its authorized representative, at no additional cost to the City.

6.15. Public Records Act Disclosure. Consultant has been advised and is aware that this Agreement and all reports, documents, information and data, including, but not limited to, computer tapes, discs or files furnished or prepared by Consultant, or any of its subcontractors, pursuant to this Agreement and provided to City may be subject to public disclosure as required by the California Public Records Act (California Government Code section 6250 *et seq.*). Exceptions to public disclosure may be those documents or information that qualify as trade secrets, as that term is defined in the California Government Code section 6254.7, and of which Consultant informs City of such trade secret. The City will endeavor to maintain as confidential all information obtained by it that is designated as a trade secret. The City shall not, in any way, be liable or responsible for the disclosure of any trade secret including, without limitation, those records so marked if disclosure is deemed to be required by law or by order of the Court.

6.16. Conflict of Interest. Consultant and its officers, employees, associates and subconsultants, if any, will comply with all conflict of interest statutes of the State of California applicable to Consultant's services under this agreement, including, but not limited to, the Political Reform Act (Government Code sections 81000, *et seq.*) and Government Code section 1090. During the term of this Agreement, Consultant and its officers, employees, associates and subconsultants shall not, without the prior written approval of the City Representative, perform work for another person or entity for whom Consultant is not currently performing work that would require Consultant or one of its officers, employees, associates or subconsultants to abstain from a decision under this Agreement pursuant to a conflict of interest statute.

6.17. Responsibility for Errors. Consultant shall be responsible for its work and results under this Agreement. Consultant, when requested, shall furnish clarification and/or explanation as may be required by the City's representative, regarding any services rendered under this

Agreement at no additional cost to City. In the event that an error or omission attributable to Consultant occurs, then Consultant shall, at no cost to City, provide all necessary design drawings, estimates and other Consultant professional services necessary to rectify and correct the matter to the sole satisfaction of City and to participate in any meeting required with regard to the correction.

6.18. Prohibited Employment. Consultant will not employ any regular employee of City while this Agreement is in effect.

6.19. Order of Precedence. In the event of an inconsistency in this Agreement and any of the attached Exhibits, the terms set forth in this Agreement shall prevail. If, and to the extent this Agreement incorporates by reference any provision of any document, such provision shall be deemed a part of this Agreement. Nevertheless, if there is any conflict among the terms and conditions of this Agreement and those of any such provision or provisions so incorporated by reference, this Agreement shall govern over the document referenced.

6.20. Costs. Each party shall bear its own costs and fees incurred in the preparation and negotiation of this Agreement and in the performance of its obligations hereunder except as expressly provided herein.

6.21. Binding Effect. This Agreement binds and benefits the parties and their respective permitted successors and assigns.

6.22. No Third Party Beneficiary Rights. This Agreement is entered into for the sole benefit of City and Consultant and no other parties are intended to be direct or incidental beneficiaries of this Agreement and no third party shall have any right in, under or to this Agreement.

6.23. Headings. Paragraphs and subparagraph headings contained in this Agreement are included solely for convenience and are not intended to modify, explain or to be a full or accurate description of the content thereof and shall not in any way affect the meaning or interpretation of this Agreement.

6.24. Construction. The parties have participated jointly in the negotiation and drafting of this Agreement and have had an adequate opportunity to review each and every provision of the Agreement and submit the same to counsel or other consultants for review and comment. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by the parties and in accordance with its fair meaning. There shall be no presumption or burden of proof favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

6.25. Amendments. Only a writing executed by the parties hereto or their respective successors and assigns may amend this Agreement.

6.26. Waiver. The delay or failure of either party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

6.27. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance. Notwithstanding the foregoing, if the value of this Agreement, based upon the substantial benefit of the bargain for any party, is materially impaired, which determination made by the presiding court or arbitrator of competent jurisdiction shall be binding, then both parties agree to substitute such provision(s) through good faith negotiations.

6.28. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one agreement.

6.29. Corporate Authority. The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by doing so the parties hereto are formally bound to the provisions of this Agreement.

**[Signatures appear on following page.]**


IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their respective authorized officers, as of the date first above written.

**CONSULTANT**

  
\_\_\_\_\_  
Anna Sarabian  
Principal

Date: 5/7/2024

**CITY OF COSTA MESA**

for   
\_\_\_\_\_  
Carol Molina  
Finance Director

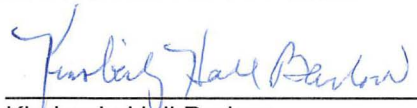
Date: 5/28/2024

**ATTEST:**

  
\_\_\_\_\_  
Brenda Green  
City Clerk



**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Kimberly Hall Barlow  
City Attorney

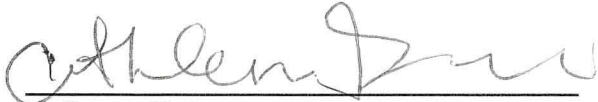
Date: 6/4/24

**APPROVED AS TO INSURANCE:**

  
\_\_\_\_\_  
Ruth Wang  
Risk Management

Date: 5/30/24

APPROVED AS TO CONTENT:



Cathleen Serrano  
Project Manager

Date:

5/29/24

CITY OF COSTA MESA:



Lori Ann Farrell Harrison  
City Manager

Date:

8/12/24

**EXHIBIT A**  
**CONSULTANT'S PROPOSAL**

**EXHIBIT A  
TO  
PROFESSIONAL SERVICES AGREEMENT FOR MUNICIPAL ADVISOR  
AND CONTINUING DISCLOSURE CONSULTANT  
BY AND BETWEEN  
THE CITY OF COSTA MESA  
AND  
FIELDMAN, ROLAPP & ASSOCIATES, INC. AND D/B/A APPLIED BEST PRACTICES**

***Scope of Services***

**A. General Services.**

The Consultant shall perform all the duties and services specifically set forth herein and shall provide such other services as it deems necessary or advisable, or are reasonable and necessary to accomplish the intent of this Agreement in a manner consistent with the standards and practice of professional financial advisors prevailing at the time such services are rendered to the City.

The City may, with the concurrence of Consultant, expand this Agreement to include any additional services not specifically identified within the terms of this Agreement. Any additional services may be described in an addendum to this Exhibit A and are subject to fees described in Exhibit C to this Agreement.

**B. Transaction Services.**

The Consultant shall assume primary responsibility for assisting the City in coordinating the planning and execution of each debt issue relating to the Project. Insofar as the Consultant is providing Services which are rendered only to the City, the overall coordination of the financing shall be such as to minimize the costs of the transaction coincident with maximizing the City's financing flexibility and capital market access. The Consultant's proposed debt issuance Services may include the following:

- Analyze Financing Alternatives
- Develop the Financing Schedule
- Monitor the Transaction Process
- Review the Official Statement, both preliminary and final
- Procure and Coordinate Additional Service Providers
- Provide Financial Advice to the City Related to Financing Documents
- Compute Sizing and Design Structure of the Debt Issue
- Plan and Schedule Rating Agency Presentation
- Conduct Credit Enhancement Procurement and Evaluation
- Conduct Market Analysis and Evaluate Timing of Market Entry
- Recommend Award of Debt Issuance
- Provide Pre-Closing and Closing Assistance

Specifically, Consultant will:

1. Analyze Financing Alternatives.

At the onset of the financing transaction process for the Project, the Consultant shall review the City's financing needs and in conjunction with the City's management, will provide an analysis of the financing alternatives of the City in implementing the Project and its proposed form or forms of financing.

Unless previously determined, Consultant shall recommend the method of sale of debt and outline the steps required to achieve efficient market access.

2. Develop the Financing Timetable.

The Consultant shall take the lead role in preparing a schedule and detailed description of the interconnected responsibilities of each team member and update this schedule, with refinements, as necessary, as the work progresses.

3. Monitor the Transaction Process.

The Consultant shall have primary responsibility for the successful implementation of the financing strategy and timetable that is adopted for each debt issue relating to the Project. The Consultant shall coordinate (and assist, where appropriate) in the preparation of the legal and disclosure documents and shall monitor the progress of all activities leading to the sale of debt. The Consultant shall prepare the timetables and work schedules necessary to achieve this end in a timely, efficient and cost-effective manner and will coordinate and monitor the activities of all parties engaged in the financing transaction.

4. Review the Official Statement.

The Consultant shall review the official statement for each debt issue relating to the Project to insure that the City's official statement is compiled in a manner consistent with industry standards. Consultant does not undertake any responsibility to review disclosure documents on behalf of owners or beneficial owners of bonds or debt which may arise from the Consultant's work hereunder.

5. Procure and Coordinate Additional Service Providers.

The Consultant may act as City's representative in procuring the services of financial printers for the official statement and related documents, and for the printing of any securities. In addition, the Consultant may act as the City's representative in procuring the services of trustees, paying agents, fiscal agents, feasibility consultants, redevelopment consultants, or escrow verification agents or other professionals, if the City directs.

6. Provide Financial Advice to the City Relating to Financing Documents.

The Consultant shall assist the managing underwriters, bond counsel and/or other legal advisors in the review of the respective financing resolutions, notices and other legal documents. In this regard, the Consultant shall monitor document preparation for a consistent and accurate presentation of the recommended business terms and financing structure of each debt issue relating to the Project, it being specifically understood however that the Consultant's services shall in no manner be construed as the Consultant engaging in the practice of law.

7. Compute Sizing and Design Structure of Debt Issue.

The Consultant shall work with the City's staff bond counsel and other professionals of the City to design a financing structure for each debt issue relating to the Project that is consistent with the City's objectives, that coordinates each transaction with outstanding issues and that reflects current conditions in the capital markets.

8. Plan and Schedule Rating Agency Presentation.

The Consultant shall develop a plan for presenting the financing program to the rating agencies. The Consultant shall schedule rating agency visits, if appropriate, to assure the appropriate and most knowledgeable rating agency personnel are available for the presentation and will develop presentation materials and assist the City officials in preparing for the presentations.

9. Conduct Credit Enhancement Evaluation and Procurement.

Upon the City's direction, the Consultant will initiate discussions with bond insurers, letter of credit providers and vendors of other forms of credit enhancements to determine the availability of and cost benefit of securing financing credit support.

10. Conduct Market Analysis and Evaluate Timing of Market Entry.

The Consultant shall provide summaries of current municipal market conditions, trends in the market and how these may favorably or unfavorably affect the City's proposed financing.

a. Competitive Sales.

For all types of competitive sale of debt, the Consultant shall undertake such activities as are generally required for sale of securities by competitive bid including, but not limited to the following:

- Review and comment on terms of Notice of Sale Inviting Bids
- Provide advice on debt sale scheduling
- Provide advice on the use of electronic bidding systems
- Contact potential bidders
- Coordinate bid opening with the City officials

- Verify bids received and make recommendations for acceptance
- Provide confirmation of issue sizing, based upon actual bids received, where appropriate
- Coordinate closing arrangements with the successful bidder(s)

b. Negotiated Sales.

In the case of a negotiated sale of debt, the Consultant shall perform an evaluation of market conditions preceding the negotiation of the terms of the sale of debt and will assist the City with the negotiation of final issue structure, interest rates, interest cost, reoffering terms and gross underwriting spread and provide a recommendation on acceptance or rejection of the offer to purchase the debt. This assistance and evaluation will focus on the following areas as determinants of interest cost:

- Size of financing
- Sources and uses of funds
- Terms and maturities of the debt issue
- Review of the rating in pricing of the debt issue
- Investment of debt issue proceeds
- Distribution mix among institutional and retail purchasers
- Interest rate, reoffering terms and underwriting discount with comparable issues
- Redemption provisions

c. Private or Direct Placement

In the case of a private placement or direct placement of debt with a commercial bank or other similar institution, the Consultant will provide assistance and advice to the City in negotiating the terms of the debt, including the size, structure, interest rates, prepayment terms and compensation to lender, if any. The Consultant will provide a recommendation on the acceptance or rejection of the terms of the placement. The Consultant cannot provide a specific list of potential lenders and cannot serve as placement agent for the financing, but can assist the City with implementing a financing with a lender or lenders selected by the City without advice from the Consultant.

11. Recommend Award of Debt Issuance.

Based upon activities outlined in Task 10(a), 10(b) and 10(c) above, the Consultant will recommend accepting or rejecting offers to purchase the debt issue. If the City elects to award the debt issue, the Consultant will instruct all parties and help facilitate the actions required to formally consummate the award.

12. Provide Pre-Closing and Closing Activities.

The Consultant shall assist in arranging for the closing of each financing. The Consultant shall assist counsel in assuming responsibility for such arrangements as they are required, including arranging for or monitoring the progress of bond printing, qualification of issues for book-entry status, signing and final delivery of the securities and settlement of the costs of issuance.

**C. Additional Services.**

The City may request that Consultant provide additional services beyond the scope of those referenced above such as, among others, assistance with soliciting letters or lines of credit, obtaining a new or affirming existing rating(s), providing assistance with research of financial and legal matters, and other ad-hoc financial advisory services.

**D. Continuing Disclosure Consulting Services.**

1. Annual Report - General Obligation Bonds, Certificates of Participation and Revenue Bonds.

The Consultant shall assume primary responsibility for assisting the City in connection with the preparation and filing of continuing disclosure annual reports, reporting of significant event notices and any other applicable disclosure notices for the City in connection with its General Obligation Bonds, Certificates of Participation and Revenue Bonds Disclosure Obligations. Such services shall include, but not limited to:

- Determine the required categories of information and provide a template of tables to complete, list of data to provide and/or questions to be answered in preparation of the continuing disclosure annual report;
- Coordinate and order from outside vendors specific data not accessible to the City, if necessary;
- Determine if previous continuing disclosure filings and material event notices have been disseminated and filed through the Municipal Securities Rulemaking Board's Electronic Municipal Market Access Dataport (herein, "EMMA");
- Review and supplement any information, in addition to the information required by a continuing disclosure undertaking, which might be necessary;
- Assist the officers or employees of the City designated with responsibility for continuing disclosure to assemble information necessary for the annual report;
- Format or assist in formatting such material into a final form for the continuing disclosure annual reports any other applicable disclosure notices; and
- Submit the continuing disclosure annual report through EMMA and provide a certificate of such submission(s) to the City.

*UNDER THIS SERVICE ARRANGEMENT, THE CONSULTANT IS NOT RESPONSIBLE FOR PREPARATION OR CONTENT OF AUDITED FINANCIAL STATEMENTS AND BUDGET REPORTS.*

## 2. Annual Report - Tax Allocation Bonds and Special Tax Bonds.

The Consultant shall assume primary responsibility for assisting the City in connection with the filing of continuing disclosure annual reports, reporting of significant event notices and any other applicable disclosure notices for the City in connection with its Special Tax Bonds and Tax Allocation Bonds Disclosure Obligations. Such services shall include, but not limited to:

- Determine and request from the City the required categories of information and provide a list of data to provide and/or questions to be answered in preparation of the continuing disclosure annual report;
- Determine if previous continuing disclosure filings and material event notices have been disseminated and filed through the Municipal Securities Rulemaking Board's Electronic Municipal Market Access Dataport (herein, "EMMA");
- Assist the officers or employees of the City designated with responsibility for continuing disclosure to assemble information necessary for the annual report;
- Receive from the City and format or assist in formatting such material into a final form for the continuing disclosure annual reports any other applicable disclosure notices; and
- Submit the continuing disclosure annual report through EMMA and provide a certificate of such submission(s) to the City.

*UNDER THIS SERVICE ARRANGEMENT, THE CONSULTANT IS NOT RESPONSIBLE FOR PREPARATION OR CONTENT OF AUDITED FINANCIAL STATEMENTS AND BUDGET REPORTS.*

## 3. Reporting of Significant Event Notices (Rating Changes).

The Consultant will assist the City in connection with the preparation and filing of reporting of significant event notices, including any rating change(s) as necessary in connection with the Securities.

- Consultant shall monitor the market from time-to-time for rating changes pertaining to the Securities and notify the City immediately after its confirmation of rating change(s);
- Upon receipt by the City of such notification, the City shall contact the Consultant and give them authorization to assemble a reporting of significant event notice;
- The Consultant will assist the City in assembling the reporting of significant notice into a final form; and
- Submit or confirm submission of the reporting of significant notices through EMMA and provide a certificate of such submission(s) to the City.

*CONSULTANT WILL USE ITS BEST EFFORTS TO MONITOR THE MARKET FOR RATING CHANGES AFFECTING THE SECURITIES, BUT WILL NOT GIVE ASSURANCE OF ITS ABILITY TO ASCERTAIN ANY RATING CHANGE AND WILL NOT BE HELD LIABLE FOR RATING CHANGES WITH RESPECT TO ANY OF THE DEBT OBLIGATIONS WHICH ARE NOT REPORTED.*

#### 4. Termination of Reporting Obligation.

The Consultant will assist the City in connection with the preparation and filing of termination of reporting obligation notice as necessary in connection with the full redemption of the Securities. Such services shall include, but not limited to:

- Assist in assembling the termination of reporting obligation notice into a final form; and
- Submit or confirm submission of the termination of reporting obligation notice through EMMA and provide a certificate of such submission(s) to the City.

#### 5. Continuing Disclosure Compliance Review Services.

When requested, the Consultant will assist the City with reviewing its compliance with such continuing disclosure obligations it has covenanted with respect to the Securities. Such services shall include, but not be limited to:

- Identify all of the debt issuances of the City (the "Transactions") outstanding during the last five fiscal years (the "Continuing Disclosure Filing Cycles") with continuing disclosure reporting requirements.
- Obtain electronic copies of the Official Statements for all the Transactions.
- Identify and review continuing disclosure requirements and only rating change event notices (including ratings of the City, bond insurers and credit facility providers), for each of the Transactions.
- Research and locate continuing disclosure filings made during Continuing Disclosure Filing Cycles based on the following data sources:
  - a. MSRB - EMMA,
  - b. Bloomberg LP,
  - c. TM3 - Interactive Data.
- For each Transaction, enter information into a worksheet identifying the submittal date of the continuing disclosure filings and the content requirements of the continuing disclosure filings.
- Prepare a report (the "Report"):
- Outline our findings from each worksheet.
- For each rated Transaction, provide a chronological history of all rating changes (including ratings of the City, bond insurers and credit facility providers), whether an event notice was submitted for such rating change and how many days after such event was a notice submitted.
- Provide suggestive make-up filings with regards to continuing disclosure annual reports and/or event notices limited to rating changes (including the City and bond insurer).
- Participate in discussions with the City and others regarding the Report.
- Assist in drafting any required make-up continuing disclosure filings and notices.

## 6. CDIAC Annual Reporting.

(i) ***SB 1029 Annual Debt Transparency Reports (ADTR).*** The Consultant will assist the City in connection with the preparation and filing of CDIAC ADTRs as required by California Senate Bill 1029, Government Code Section 8855(k). Such services shall include, but are not limited to:

- Determine the City's outstanding debt obligations that require an ADTR filing and obtain the respective CDIAC filing ID number and password for each issue;
- Assist the officers or employees of the City designated with responsibility for continuing disclosure to assemble information necessary for the ADTR;
- Review and supplement any information, in addition to the information required by a ADTR, which might be necessary;
- Format or assist in formatting such material into a final form for the ADTR; and
- Submit the ADTR through CDIAC and provide a certificate of such submission(s) to the City by no later than January 31<sup>st</sup> of such year(s) an ADTR filing is required.

(ii) ***Marks-Roos Authority and/or Local Obligor Yearly Fiscal Status Report (YFSR).*** The Consultant will assist the City in connection with the preparation and filing of CDIAC Marks-Roos Authority and/or Local Obligor YFSRs as required by the Marks-Roos Local Bond Pooling Act of 1985, as amended (Section 6584 et seq.), Government Code Section 6599.1(b). Such services shall include, but are not limited to:

- Determine the City's outstanding debt obligations that require a YFSR filing and obtain the respective CDIAC filing ID number and password for each issue;
- Assist the officers or employees of the City designated with responsibility for continuing disclosure to assemble information necessary for the YFSR;
- Review and supplement any information, in addition to the information required by a YFSR, which might be necessary;
- Format or assist in formatting such material into a final form for the YFSR; and
- Submit the YFSR through CDIAC and provide a certificate of such submission(s) to the City by no later than October 30<sup>th</sup> of such year(s) a YFSR filing is required.

## 7. Additional Services.

The City may, with the concurrence of the Consultant, expand this Agreement to include any additional services not specifically identified within the terms of this Agreement. Any additional services may be described in an addendum to this Exhibit A and are subject to either our hourly or transaction fee schedules provided in Exhibit A.

**EXHIBIT B**  
**TO**  
**PROFESSIONAL SERVICES AGREEMENT FOR MUNICIPAL ADVISOR**  
**AND CONTINUING DISCLOSURE CONSULTANT**  
**BY AND BETWEEN**  
**THE CITY OF COSTA MESA**  
**AND**  
**FIELDMAN, ROLAPP & ASSOCIATES, INC. AND D/B/A APPLIED BEST PRACTICES**

*Definition of Debt Obligations*

The City must inform the Consultant of its intent to include additional Debt Obligations under this Agreement in writing.

<u>Issuance Name</u>	<u>Annual Filing Deadline</u>	<u>Dated Date</u>	<u>Last CUSIP</u>	<u>Date of Last CUSIP</u>
<i>Revenue Bonds</i>				
1. \$29,735,000 COSTA MESA FINANCING AUTHORITY 2017 LEASE REVENUE BONDS	March 15	10/18/2017	221530AW8	10/01/2042

**EXHIBIT C  
TO  
PROFESSIONAL SERVICES AGREEMENT FOR MUNICIPAL ADVISOR  
AND CONTINUING DISCLOSURE CONSULTANT  
BY AND BETWEEN  
THE CITY OF COSTA MESA  
AND  
FIELDMAN, ROLAPP & ASSOCIATES, INC. AND D/B/A APPLIED BEST PRACTICES**

*Compensation and Expenses*

**A. Hourly Compensation**

The table below reflects the rates in effect as of the date of this Proposal. We anticipate that this schedule will be used for all of our general financial advisory services to the City.

<b>SCHEDULE OF FEES</b> Effective January 1, 2024	
<u>Executive Officer</u>	\$415 Per Hour
<u>Principal</u>	\$405 Per Hour
<u>Executive/Senior Vice President</u>	\$394 Per Hour
<u>Vice President</u>	\$336 Per Hour
<u>Assistant Vice President</u>	\$310 Per Hour
<u>Senior Associate</u>	\$279 Per Hour
<u>Associate</u>	\$247 Per Hour
<u>Analyst</u>	\$137 Per Hour
<u>Administrative Assistant</u>	\$100 Per Hour

Hourly Compensation will be billed on a monthly basis and is due thirty (30) days from invoice date. Invoices not paid within sixty (60) days are subject to a two percent (2.00%) late fee for every month payment is late.

**Par Amount:**

\$0 - \$50,000,000  
\$50,000,001 - \$150,000,000  
\$150,000,001 and higher

**Contingent Fee\*:**

\$55,000  
\$65,000  
To be negotiated

*\*The exact fee will be determined based on the following factors:*

- |   |  |
|---|--|
| <ul style="list-style-type: none"> <li>✓ Number of Series of Bonds</li> <li>✓ Whether the Bonds are tax-exempt or taxable, or both</li> <li>✓ Length of maturity</li> </ul> | <ul style="list-style-type: none"> <li>✓ Whether the Bonds are new money or a refunding, or both</li> <li>✓ Rated or Non-Rated</li> <li>✓ Fixed or Variable</li> </ul> |
|---|--|

For transactions that include new money and a refunding, or multiple series of refundings, a fee of not to exceed \$15,000 per series being refunded will be added to the transaction fee above.

Payment of compensation earned by Consultant pursuant to this Section A of Exhibit C of this Agreement shall be contingent on, and payable at the closing of the debt issue(s) undertaken to finance the Project.

## **B. Continuing Disclosure Consulting Services**

For services referenced in Section D(1) and Section D(2) of Exhibit A of this Agreement, the Consultant will be compensated at \$3,000 per year. For each additional Debt Obligation added to Exhibit B of this Agreement, the Consultant will be compensated an additional \$250 per year.

For services referenced in Section D(3) and Section D(4) of Exhibit A of this Agreement, the Consultant will be compensated at \$350 per notice.

For services referenced in Section D(5) of Exhibit A of this Agreement, the Consultant will be compensated at \$2,500 per year.

For services referenced in Section D(6) of Exhibit A of this Agreement, the Consultant will be compensated an initial set-up fee of \$500 and at hourly rates thereafter per CDIAC ID number, per filing.

For services referenced in Section D(7) of Exhibit A of this Agreement, the Consultant will be compensated at hourly rates.

### ***Expenses***

Expenses will be billed for separately and will cover, among other things, financial, demographic and/or tax data from outside vendors, travel, lodging, subsistence, overnight courier, conference call, internet posting, computer, legal review of required closing certificates, etc. and fax transmission charges. Advances made on behalf of the City for costs of preparing, printing or distributing disclosure materials or related matter whether by postal services or electronic means, may also be billed through to the City upon prior authorization.

### ***Limiting Terms and Conditions***

The above compensation is based on completion of work orders within six months of the City's authorization to proceed, and assumes that the City will provide all necessary information in a timely manner.

The fee referenced in Part 1 above, presumes attendance at up to 6 meetings in the City's offices or such other location within a 25-mile radius of the City place of business as the City may designate. Preparation for, and attendance at City Council meetings on any basis other than "by appointment" may be charged at our normal hourly rates referenced in Part 2 above.

***Abandonment***

If, once commenced, the services of the Consultant are terminated prior to completion of our final report for any reason, the Consultant will be compensated for professional services and reimbursed for expenses incurred through the time of receive notification of such termination at the standard hourly rates shown above.

**EXHIBIT D  
TO  
PROFESSIONAL SERVICES AGREEMENT FOR MUNICIPAL ADVISOR  
AND CONTINUING DISCLOSURE CONSULTANT  
BY AND BETWEEN  
THE CITY OF COSTA MESA  
AND  
FIELDMAN, ROLAPP & ASSOCIATES, INC. AND D/B/A APPLIED BEST PRACTICES**

MSRB Rule G-42 requires that municipal advisors provide to their clients disclosures relating to all material conflicts of interest, including certain categories of potential conflicts of interest identified in Rule G-42, if applicable. With respect to all aspects of the relationship between Consultant and the City, Consultant adheres to its fiduciary duty to the City, which includes a duty of loyalty to the City in performing all municipal advisory activities for the City. The duty of loyalty obligates Consultant to deal honestly and with the utmost good faith with the City and to act in the City's best interest without regard to any interest Consultant has or may have. Consultant has a wide range of clients so our success and profitability are not dependent on maximizing short-term revenue generated from individual recommendations to our clients but is instead dependent on long-term profitability based on a foundation of integrity, quality and adherence to our fiduciary duty. Furthermore, Consultant's supervisory structure provides strong safeguards against individual representatives of Consultant violating their duty due to personal interests.

Consultant makes the following representations to the City with regard to the Services:

- A. Other than the compensation described in this Agreement, we have no other interest, direct or indirect, that would interfere with or impair in any matter or degree the performance of our obligations. During our work on the Services, we do not intend to acquire or obtain any such interest, direct or indirect. If any such interest is acquired or obtained, we will immediately advise the City.
- B. We have not provided any gift or consideration to any officer, employee or agent of the City to either obtain the Agreement or any assignment from the City, including the Services. Neither our firm, nor its officers or employees will provide any such gift or consideration to any officer, employee or agent of the City to influence decisions with regard the Services or our obligations under the Agreement.
- C. Our compensation for the Services may be contingent on the completion of the Project. While this form of compensation is customary in the market for financial services to municipal entities, this may present conflict of interest as we would have an incentive to recommend to the City the Project even if it is unnecessary or provides insufficient benefit or advise the City to increase the size of the Project. This potential conflict is mitigated by Consultant's fiduciary duty to the City.

## Information Regarding Legal Events and Disciplinary Actions

MSRB Rule G-42 requires that municipal advisors provide their clients disclosures of legal or disciplinary events material to the evaluation of the municipal advisor or the integrity of the municipal advisor's management or advisory personnel. Consultant sets out required disclosures and related information below:

- A. In 2023, the U.S. Securities and Exchange Commission (the "SEC") accepted offers of settlement from Fieldman and a principal (the "Settlement"). Neither the firm nor the principal admitted or denied the findings described in the Settlement. For more information about the Settlement, please review the Regulatory Action Disclosure included in Fieldman's Form MA and Form MA-I for the principal (which is cross-referenced in Form MA). There are no other legal or disciplinary events material to the Client's evaluation of Fieldman or the integrity of Fieldman's management or advisory personnel disclosed, or that should be disclosed, on any Form MA or Form MA-I with the SEC. There has been no other material change or addition to the legal or disciplinary event disclosures on any Form MA or MA-I filed with the SEC.

Fieldman's most recent Form MA and each most recent Form MA-I filed with the SEC are available on the SEC's EDGAR system at <http://www.sec.gov/cgi-bin/browse-edgar?action=getcompany&CIK=0001612429>

## Contents of Client Brochure

The MSRB requires us to provide you with the following information: Consultant is registered as a "Municipal Advisor" pursuant to Section 15B of the Securities Exchange Act and rules and regulations adopted by the SEC and the MSRB.

The MSRB has made available on its website ([www.msrb.org](http://www.msrb.org)) a municipal advisory client brochure that describes the protections that may be provided by MSRB rules and how to file a complaint with the appropriate regulatory authority.

**EXHIBIT B**

**CITY COUNCIL POLICY 100-5**

CITY OF COSTA MESA, CALIFORNIA

COUNCIL POLICY

SUBJECT	POLICY NUMBER	EFFECTIVE DATE	PAGE
DRUG-FREE WORKPLACE	100-5	8-8-89	1 of 3

BACKGROUND

Under the Federal Drug-Free Workplace Act of 1988, passed as part of omnibus drug legislation enacted November 18, 1988, contractors and grantees of Federal funds must certify that they will provide drug-free workplaces. At the present time, the City of Costa Mesa, as a sub-grantee of Federal funds under a variety of programs, is required to abide by this Act. The City Council has expressed its support of the national effort to eradicate drug abuse through the creation of a Substance Abuse Committee, institution of a City-wide D.A.R.E. program in all local schools and other activities in support of a drug-free community. This policy is intended to extend that effort to contractors and grantees of the City of Costa Mesa in the elimination of dangerous drugs in the workplace.

PURPOSE

It is the purpose of this Policy to:

1. Clearly state the City of Costa Mesa's commitment to a drug-free society.
2. Set forth guidelines to ensure that public, private, and nonprofit organizations receiving funds from the City of Costa Mesa share the commitment to a drug-free workplace.

POLICY

The City Manager, under direction by the City Council, shall take the necessary steps to see that the following provisions are included in all contracts and agreements entered into by the City of Costa Mesa involving the disbursement of funds.

1. Contractor or Sub-grantee hereby certifies that it will provide a drug-free workplace by:
  - A. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in Contractor's and/or sub-grantee's workplace, specifically the job site or location included in this contract, and specifying the actions that will be taken against the employees for violation of such prohibition;
  - B. Establishing a Drug-Free Awareness Program to inform employees about:

SUBJECT	POLICY NUMBER	EFFECTIVE DATE	PAGE
DRUG-FREE WORKPLACE	100-5	8-8-89	2 of 3

1. The dangers of drug abuse in the workplace;
  2. Contractor's and/or sub-grantee's policy of maintaining a drug-free workplace;
  3. Any available drug counseling, rehabilitation and employee assistance programs; and
  4. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- C. Making it a requirement that each employee to be engaged in the performance of the contract be given a copy of the statement required by subparagraph A;
- D. Notifying the employee in the statement required by subparagraph 1 A that, as a condition of employment under the contract, the employee will:
1. Abide by the terms of the statement; and
  2. Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- E. Notifying the City of Costa Mesa within ten (10) days after receiving notice under subparagraph 1 D 2 from an employee or otherwise receiving the actual notice of such conviction;
- F. Taking one of the following actions within thirty (30) days of receiving notice under subparagraph 1 D 2 with respect to an employee who is so convicted:
1. Taking appropriate personnel action against such an employee, up to and including termination; or
  2. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health agency, law enforcement, or other appropriate agency;

SUBJECT	POLICY NUMBER	EFFECTIVE DATE	PAGE
DRUG-FREE WORKPLACE	100-5	8-8-89	3 of 3

- G. Making a good faith effort to maintain a drug-free workplace through implementation of subparagraphs 1 A through 1 F, inclusive.
2. Contractor and/or sub-grantee shall be deemed to be in violation of this Policy if the City of Costa Mesa determines that:
    - a. Contractor and/or sub-grantee has made a false certification under paragraph 1 above;
    - b. Contractor and/or sub-grantee has violated the certification by failing to carry out the requirements of subparagraphs 1 A through 1 G above;
    - c. Such number of employees of Contractor and/or sub-grantee have been convicted of violations of criminal drug statutes for violations occurring in the workplace as to indicate that the contractor and/or sub-grantee has failed to make a good faith effort to provide a drug-free workplace.
  3. Should any contractor and/or sub-grantee be deemed to be in violation of this Policy pursuant to the provisions of 2 A, B, and C, a suspension, termination or debarment proceeding subject to applicable Federal, State, and local laws shall be conducted. Upon issuance of any final decision under this section requiring debarment of a contractor and/or sub-grantee, the contractor and/or sub-grantee shall be ineligible for award of any contract, agreement or grant from the City of Costa Mesa for a period specified in the decision, not to exceed five (5) years. Upon issuance of any final decision recommending against debarment of the contractor and/or sub-grantee, the contractor and/or sub-grantee shall be eligible for compensation as provided by law.