

**AGREEMENT FOR PROFESSIONAL SERVICES BETWEEN
THE CITY OF COSTA MESA
AND
ASSOCIATION OF CALIFORNIA CITIES - ORANGE COUNTY (ACCOC)**

THIS AGREEMENT is made this 5th day of December, 2018 by and between Association of California Cities – Orange County (hereinafter referred to as ("ACCOC")) and the City of Costa Mesa (hereinafter referred to as "City").

RECITALS

The following recitals are a substantive part of this Agreement:

The City is a member of ACCOC, a 501(c)(3) corporation providing services to its Member Cities in Orange County, California.

The City is currently operating with an Acting City Manager and soon will be undertaking a recruitment for a new City Manager.

The City has requested that ACCOC provide support services to it as a member of ACCOC. Specifically, the City has requested that ACCOC provide the following services through an employee of the ACCOC (hereinafter referred to as "Consultant") as agreed between the parties:

Provision of a training session for new council members about their role as city council members, agendas, preparing for and participating in council meetings, general government code and land use information, and tips on working with staff on policy matters.

Provision of assistance to the City Council to help recruit, interview and select a new city manager.

Assist in facilitating a council retreat and priority setting session.

The Parties hereto agree that Consultant's services shall be provided to City as a member service within the scope of its existing membership and payment of dues and no additional compensation shall be paid to ACCOC or the Consultant for the services.

The Parties understand that Consultants' services are offered to the City based on the Consultant's availability and capacity, and that in some cases other ACC-OC organizational needs may limit Consultant's capacity.

The Parties understand and acknowledge that neither the Consultant nor ACCOC will be an employee of the City. In no event shall Consultant provide services to City in excess of 960 hours under this Agreement.

Consultant is qualified by virtue of experience, training, education and expertise to accomplish these services.

ACCOC is an independent non-profit business providing consulting services of the type required by this Agreement and that it has taken all steps necessary to obtain all necessary licenses and permits, including a business license, relating to the operation of its business.

IT IS AGREED AS FOLLOWS:

1. Term of Agreement

This Agreement shall cover services rendered from December 5, 2018 to February 28, 2019, unless earlier terminated as provided herein. The parties, may, at their joint option, renew the agreement for an additional three (3) month term.

All services shall be performed in accordance with generally accepted professional practices and principles of the ACCOC and to the satisfaction of the City.

2. Scope of Work

Consultant will perform the following services:

Provision of a training session for new council members about their role as city council members, agendas, preparing for and participating in council meetings, general government code and land use information, and tips on working with staff on policy matters.;

Provision of assistance to the City Council to help recruit, interview and select a new city manager;

Assist in facilitating a council retreat and priority setting session; and

Other tasks as are assigned and agreed upon by the parties and consistent with those member services offered by ACC-OC.

With regard to the services to be performed by Consultant, all professional services 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.

The Consultant shall not perform any duties of the City Manager or Assistant City Manager, but shall advise the City's Acting/Interim City Manager. The Consultant shall not take direction from the Mayor or City Council, nor shall the Consultant direct City staff. The Consultant shall use his own experience, expertise, and judgment to assist the City as provided herein. The Consultant's schedule and the location of the services to be provided shall be as determined by ACCOC and the Consultant. City agrees to provide a space for training to be conducted by Consultant at City's expense if requested.

3. Compensation and Payment

The Parties agree that Costa Mesa is a member of ACCOC and pays dues to support its operations. No additional compensation shall be paid by the City to ACCOC for the services of Consultant. Consultant shall be paid solely by ACCOC and no additional compensation shall be paid to Consultant by ACCOC in connection with the services to be provided to City.

ACCOC shall be responsible for all expenses incurred by it in the performance of services pursuant to this Agreement, including but not limited to office expenses, insurance, automobile, travel, and any other expense incurred relating to this Agreement. There shall be no additional compensation for expenses unless pre-approved by the City.

It shall be the responsibility of the ACCOC to regularly advise the City of the progress of the work.

4. Subcontracting

ACCOC shall not subcontract work under this Agreement without the express written consent of the City. It is mutually understood and acknowledged that the City is entering into this Agreement with ACCOC for the Consultant's services in specific reliance on its professional qualifications and as a dues-paying member.

5. Accounting Records

ACCOC shall maintain accounting records and other evidence pertaining to the hours worked by Consultant on behalf of ACCOC for services under this Agreement, which records and documents shall be kept available at the ACCOC's office during the term of this Agreement and thereafter for three years from the date of termination.

6. Termination

This contract may be terminated by either party at any time with or without cause.

In the event of termination of this Agreement, all documents prepared by Consultant in its performance of this Agreement including, but not limited to, reports, summaries, notes, charts, agreements, correspondence, strategy analyses, etc. shall be the sole property of the City and shall be delivered to the City within ten (10) days of delivery of termination notice to ACCOC, at no cost to the City. Any use of uncompleted documents without specific written authorization from Consultant or ACCOC shall be at the City's sole risk and without liability or legal expense to ACCOC or Consultant.

7. Indemnification

ACCOC agrees to indemnify the City, its officers, employees and agents against, and will hold and save each of them harmless from, any and all actions, claims, damages to persons or property, penalties, obligations or liabilities that may be asserted or claimed by any person, firm, entity, corporation, political subdivision or other organization arising out of the negligent acts or intentional tortious acts, errors or omissions of Consultant.

Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, ACCOC 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 the City, including but not limited to eligibility to enroll in PERS as an employee of the City and entitlement to any contribution to be paid by the City for employer contribution and/or employee contributions for PERS benefits.

8. Insurance

ACCOC shall maintain existing insurance policies throughout the term of this Agreement, and request that City be added as an additional insured. ACCOC shall maintain workers' compensation insurance required by law covering Consultant and its other employees.

9. Enforcement of Agreement

In the event that legal action is commenced to enforce or declare the rights created under this Agreement, the prevailing party shall be entitled to an award of costs and reasonable attorney's fees in the amount to be determined by the court.

10. Independent Contractor

ACCOC and the Consultant are and shall at all times remain as to the City wholly independent contractors. Neither the City nor any of its agents shall have control over the conduct of the ACCOC or the Consultant. It is understood that Consultant will use his independent judgment as to the methods, means, timing and location of performing the services required by this Agreement but the desired results will be as determined by City and shall be provided by the reasonable deadlines or within the time periods required by the City. The Consultant shall not at any time or in any manner represent that it in any manner is an agent or employee of the City.

11. Other Employment

The City acknowledges that ACCOC and Consultant may be engaged in consulting work for other members or clients as long as consulting work does not create any actual conflict of interest with the services provided to the City pursuant to this Agreement.

12. Taxes.

ACCOC and the Consultant agree to pay all required taxes on amounts paid to the Consultant by ACCOC under this Agreement, and to indemnify and hold the City harmless from any and all taxes, assessments, penalties, and interest asserted against the City by reason of the independent contractor relationship created by this Agreement.

13. Modification

This Agreement may be modified only by subsequent mutual written agreement executed by ACCOC and the City.

14. Assignability

ACCOC shall not assign or transfer interest in this Agreement.

15. Entire Agreement of the Parties

This Agreement supersedes any and all other agreements, either oral or in writing, between the Parties hereto with respect to the specific member services to be provided to City by ACCOC pursuant to this Agreement only, and contains all the covenants and agreements between the parties with respect such services in any manner whatsoever. Each Party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement or amendment hereto shall be effective unless executed in writing and signed by both Parties.

16. Authority to Execute and Notices.

The persons executing this Agreement on behalf of the parties warrant that they are duly authorized to execute this Agreement. Any notices, documents, correspondence or other communications concerning this Agreement or the work hereunder may be provided by personal delivery, facsimile or mail and shall be addressed as set forth below.

Executive Director
Association of California Cities – Orange County
500 South Main, No. 410
Orange, CA 92868

City Manager
City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626

17. Partial Invalidity

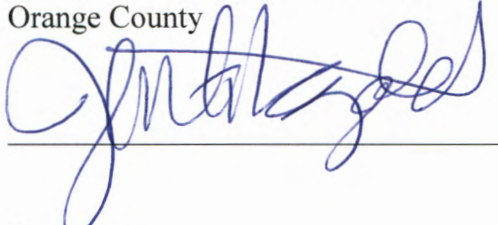
Should any provision of this Agreement be found invalid or unenforceable, the decision shall affect only the provision interpreted, and all remaining provisions shall be severable and enforceable.

18. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of California.

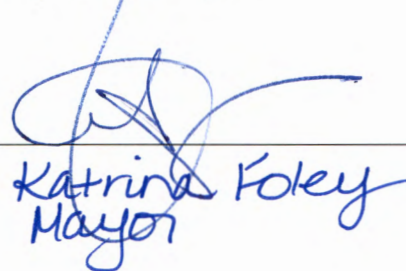
These parties have executed this Agreement on the day and year shown above, in Orange County, California.

Association of California Cities -
Orange County

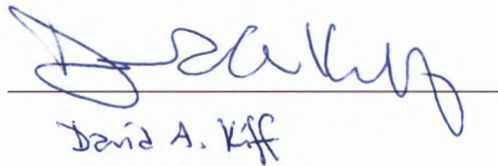


Consultant

City of Costa Mesa



Katrina Foley
Mayor



David A. Kiff