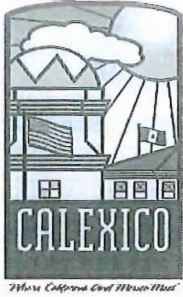


**AGENDA
ITEM**

13



AGENDA STAFF REPORT

DATE: March 2, 2022

TO: Mayor and City Council

APPROVED BY: Miguel Figueroa, City Manager *MF*

PREPARED BY: Sandra Fonseca, Finance Manager *SF*

SUBJECT: Authorize City Manager to Sign Agreement for Municipal Advisory Services with Kosmont & Associates, Inc.

=====

Recommendation:

Authorize City Manager to sign agreement for professional services between the City of Calexico and Kosmont Transactions Services.

Background:

Kosmont Transactions Services, Inc. (KTS) has been providing Municipal Advisory Services as needed to the City of Calexico, which includes analysis, research and recommended action for various City of Calexico municipal bond issues. Kosmont Transactions Services is an Independent Municipal Advisor (IRMA) with the U.S. Securities and Exchange Commission (SEC) and the Municipal Securities Rulemaking Board (MSRB).

Discussion & Analysis:

The current proposal includes assistance to the City on bond analysis, advice regarding outstanding bond issues. Kosmont Transactions Services will also provide assistance to the City's special financing districts, such as the Successor Agency to the City's former Community Redevelopment Agency.

Scope of services by Kosmont Transactions Services will be advisory in nature, evaluation of municipal bonds, analysis of City agreements of bonds, review of financial operations and budgets, etc.

Fiscal Impact:

Compensation for professional Municipal Advisory Services will be based on hours spent at Kosmont Transactions Service billing. Kosmont Transaction Services will start with an initial budget of \$5,000.00. See Attachment A for additional fee schedule.



Coordinated with:

City Manager's Office
Finance Department

Attachment:

- 1) Kosmont Transactions Services Proposal for Needed Municipal Advisory Services
- 2) Attachment A – Kosmont Transactions Services, Inc. 2022 Public Agency Fee Schedule



February 18, 2022

Miguel Figueroa
City Manager
City of Calexico
608 Heber Avenue
Calexico, CA 92231

Re: Proposal for As Needed Municipal Advisory Services

Dear Mr. Figueroa:

Kosmont Transactions Services, Inc. ("Consultant" or "KTS") is pleased to present this proposal to provide Municipal Advisory Services on as needed and ongoing basis to the City of Calexico ("City" or "Client"), potentially including analysis, research and suggested courses of action related to the City's various outstanding municipal bond issues. KTS is an Independent Registered Municipal Advisor ("IRMA") with the U.S. Securities and Exchange Commission ("SEC") and the Municipal Securities Rulemaking Board ("MSRB").

This proposal will serve as an Agreement when executed and returned by Client to KTS.

I. BACKGROUND AND OBJECTIVE

The City has multiple outstanding bond issues that have been issued either by the City, certain special financing districts, or the Successor Agency to the City's former Community Redevelopment Agency. From time to time the City needs assistance, analysis and/or advice regarding its outstanding bond issues from a professional Municipal Advisory regarding the ongoing administration of its various bonds.

II. SCOPE OF SERVICES

Approach to Scope of Services: the prospective assignment and consulting services that KTS will provide will be of a relatively limited scope and duration, and advisory in nature. KTS will be making recommendations only, which advise the City, including its elected officials, appointed officials and staff, which they can accept or reject. None of KTS's staff will act in a capacity as an elected official, nor appointed official, nor as staff, nor as serving in a "designated" position.

The scope of work on under this Agreement will be to provide assistance to City staff, on an as-needed and case-by-case basis, with the management and administration of its various currently outstanding municipal bonds. Activities may include, but not necessarily be limited to, evaluation and analysis of the City's current agreements, required calculations, payment records, timing, cashflows and other aspects of its currently outstanding bonds, as well as review and analysis of financial operations and budgets, capital programs, deferred maintenance needs, utility rate and fee structures, developer engagements

Kosmont Transactions Services, Inc.

Mailing Address: 1601 N Sepulveda Blvd, #382
Manhattan Beach, CA 90266

(424) 297-1070
www.KosmontTransactions.com

Physical Address: 1230 Rosecrans Ave, #630
Manhattan Beach, CA 90266



and proposals pending or contemplated, and other areas of the City's financial operations that may or may be related to, or lead to the issuance of, municipal securities, and as may be requested by the City from time to time.

III. SCHEDULE AND REQUIRED DATA

Consultant is prepared to commence work immediately upon receipt of an executed Agreement..

IV. COMPENSATION

Compensation for professional Municipal Advisory services will be based on hours spent at KTS's billing rates as shown on Attachment A with an initial budget of \$5,000. Future increases in budget will require approval by Client in advance. Budget may be increased by Client at any time.

Full payment must be received by Consultant before any final written summary or report of KTS's findings is released to Client, if any.

Consultant is prepared to commence work upon receipt of executed Agreement.

Consultant anticipates a single consolidated round of Client comments and revisions on draft work product before KTS provides a final version of work product. If necessary, additional rounds of comments and revisions can be accommodated on an hourly basis.

Consultant's attendance or participation at any publicly noticed meeting, whether such participation is in person, digital, video and/or telephonic (e.g., City Council, Planning Commission, Public Agency Board, other), as requested by Client and will be billed at the professional services (hourly) fees as shown on Attachment A.

Services will be invoiced monthly at Consultant's standard billing rates, as shown on Attachment A. In addition to professional services (hourly) fees, invoices will include reimbursement for out-of-pocket expenses such as travel and mileage (provided that there shall be no overnight travel without the Client's prior approval and that mileage shall be reimbursed at the current IRS mileage reimbursement rate), professional printing, conference calls, and delivery charges for messenger and overnight packages at actual cost. Unless otherwise agreed to in advance, out-of-area travel, if any, requires advance funding of flights and hotel accommodations.

Consultant will also include in each invoice an administrative services fee to cover in-house copy, fax, telephone and postage costs equal to four percent (4.0%) of Consultant's monthly professional service fees incurred. Any unpaid invoices after 30 days shall accrue interest at the rate of 10% per annum.

For the convenience of KTS's clients, we offer a secure credit card payment service. The credit card payment link is: <https://kosmont.paidvet.com> and there are two ways to make a secure credit card payment:

1. Fill in the "**Make a Payment**" form when you go to the link (<https://kosmont.paidvet.com>), or
2. Call KTS accounting desk (Ms. Charo Martinez; (424) 297-1072) to make a credit card payment



DISCLOSURE: Compensation for possible future transaction-based brokerage services.

The following is being provided solely as an advance disclosure of real estate brokerage services and potential compensation for such services. This disclosure is not intended to commit the Client.

When assignments involve real estate/property brokerage services, such transaction-based services are typically provided by Kosmont Real Estate Services, Inc. doing business as Kosmont Realty ("KR"). KR is licensed by the State of California Department of Real Estate (License# 02058445). Compensation to KR is typically paid through commissions for property sale transactions, lease transactions and success/broker fees. KR also provides Broker Opinions of Value ("BOV") services on a fixed fee basis.

IV. DISCLOSURES RELATED TO THE INDEPENDENT REGISTER MUNICIPAL ADVISORY RELATIONSHIP BETWEEN KTS AND THE CITY

Duties and Responsibilities of KTS

As an IRMA, KTS has a duty of care and loyalty to the City and has a fiduciary obligation to provide advice and conduct municipal advisory activities in a manner that is in the City's best interests, not ours or those of any other party.

Disclosure of Material Conflicts

KTS is not aware of any conflicts that currently exist or that may come to exist by engaging in municipal advisory activities with the City.

Disclosure of Legal or Disciplinary Events

Neither KTS, its principles nor its Municipal Advisor Professionals assigned to the City have ever been the subject of any legal or disciplinary actions or events that may be material to the City's evaluation of KTS or the integrity of our management or personnel.

Termination of IRMA Relationship

Each of the City and KTS is free to terminate this IRMA relationship at any time by giving notice to the other party. While the City may ultimately undertake the issuance of municipal securities, such event will not necessarily trigger an automatic termination of the IRMA relationship that KTS has with the City. It is presently anticipated that KTS will continue to perform municipal advisory activities for the City at the City's pleasure and on an ongoing basis.

V. OTHER PROVISIONS

A. Termination. Client or Consultant shall have the right to terminate this Agreement at any time upon written notification to the other party. Payment for fees accrued through the date of termination shall be remitted in full.

B. Arbitration. Any controversy or claim arising out of or in relation to this Agreement, or the making, performance, interpretation or breach thereof, shall be settled by arbitration at JAMS in Los Angeles, California. Each of the parties to such arbitration proceeding shall be entitled to take up to five

depositions with document requests. The provisions of Section 1283.05 (except subdivision (e) thereof) of the California Code of Civil Procedure are incorporated by reference herein, except to the extent they conflict with this Agreement, in which case this Agreement is controlling. If the matter is heard by only one arbitrator, such arbitrator shall be a member of the State Bar of California or a retired judge. If the matter is heard by an arbitration panel, at least one member of such panel shall be a member of the State Bar of California or a retired judge. The arbitrator or arbitrators shall decide all questions of law, and all mixed questions of law and fact, in accordance with the substantive law of the State of California to the end that all rights and defenses which either party may have asserted in a court of competent jurisdiction shall be fully available to such party in the arbitration proceeding contemplated hereby. The arbitrator and arbitrators shall set forth and deliver their findings of fact and conclusions of law with the delivery of the arbitration award. Judgment upon the award rendered shall be final and non-appealable and may be entered in any court having jurisdiction.

C. Attorneys' Fees. In the event of any legal action, arbitration, or proceeding arising out of an alleged breach of this Agreement, the party prevailing in such legal action, arbitration, or proceeding shall be entitled to recover reasonable attorneys' fees, expenses and costs, as well as all actual attorneys' fees, expenses and cost incurred in enforcing any judgment entered.

D. Authority. Each of the parties executing this Agreement warrants that persons duly authorized to bind each such party to its terms execute this Agreement.

E. Further Actions. The parties agree to execute such additional documents and take such further actions as may be necessary to carry out the provisions and intent of this Agreement.

F. Assignment. Neither this Agreement nor any of the rights or obligations hereunder may be assigned by either party without the prior written consent of the other party.

G. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

H. Entire Agreement; Amendments and Waivers. This Agreement contains the entire agreement between the parties relating to the transactions contemplated hereby and any and all prior discussions, negotiations, commitments and understanding, whether written or oral, related hereto are superseded hereby. No addition or modification of any term or provision of this Agreement shall be effective unless set forth in writing signed by both parties. No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other provision hereof (whether or not similar), nor shall such waiver constitute a continuing waiver of such provisions unless otherwise expressly provided. Each party to this Agreement has participated in its drafting and, therefore, ambiguities in this Agreement will not be construed against any party to this Agreement.

I. Severability. If any term or provision of this Agreement shall be deemed invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and in force to the fullest extent permitted by law.

J. Notices. All notices, requests, demands and other communications which may be required under this Agreement shall be in writing and shall be deemed to have been received when transmitted; if personally delivered, if transmitted by telecopier, electronic or digital transmission method, upon

transmission; if sent by next day delivery to a domestic address by a recognized overnight delivery service (e.g., Federal Express), the day after it is sent; and if sent by certified or registered mail, return receipt requested, upon receipt. In each case, notice shall be sent to the principal place of business of the respective party. Either party may change its address by giving written notice thereof to the other in accordance with the provisions of this paragraph.

K. Titles and Captions. Titles and captions contained in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision herein.

L. Governing Law. The statutory, administrative and judicial law of the State of California (without reference to choice of law provisions of California law) shall govern the execution and performance of this Agreement.

M. Confidentiality. Each of the parties agrees not to disclose this Agreement or any information concerning this Agreement to any persons or entities, other than to their attorneys and accountants, or as otherwise may be required by law.

N. Counterparts. This Agreement may be executed in one or more counterparts, each of which constitutes an original, and all of which together constitute one and the same instrument. The signature of any person on a telecopy of this Agreement, or any notice, action or consent taken pursuant to this Agreement shall have the same full force and effect as such person's original signature.

O. Disclaimer. Consultant's financial analysis activities and work product, which may include but is not limited to pro forma analysis and tax projections, are projections only. Actual results may differ materially from those expressed in the analysis performed by Consultant due to the integrity of data received, market conditions, economic events and conditions, and a variety of factors that could materially affect the data and conclusions. Client's reliance on Consultant's analysis must consider the foregoing.

Consultant services outlined and described herein are advisory services only. Any decisions or actions taken or not taken by Client and affiliates, are deemed to be based on Client's understanding and by execution of this Agreement, acknowledgement that Consultant's services are advisory only and as such, cannot be relied on as to the results, performance and conclusions of any investment or project that Client may or may not undertake as related to the services provided including any verbal or written communications by and between the Client and Consultant.

Client acknowledges that Consultant's use of work product is limited to the purposes contemplated within this Agreement. Consultant makes no representation of the work product's application to, or suitability for use in, circumstances not contemplated by the scope of work under this Agreement.

P. Limitation of Damages. In the event Consultant is found liable for any violation of duty, whether in tort or in contract, damages shall be limited to the amount Consultant has received from Client.

Q. Force Majeure. Consultant shall not be liable for failure or delay in performance of its obligations under this Agreement arising out of or caused, directly or indirectly, by significant circumstances beyond



its reasonable control, including, without limitation: epidemic; acts of God; earthquakes; fires; floods; wars; civil or military disturbances; acts of terrorism; sabotage; strikes; riots; wide-spread power failures and wide-spread internet failure. Contractual performance and deadline(s) shall be extended for a period equal to the time lost by reason of the delay.

R. Expiration of Proposal for Services. If this Agreement is not fully executed by the parties within thirty (30) days from the date of this letter, this proposal shall expire.

S. Not an agreement for Legal Services or Legal Advice. This Agreement does not constitute an agreement for the performance of legal services or the provision of legal advice, or legal opinion. Client should seek independent legal counsel on matters for which Client is seeking legal advice.

VI. ACCEPTANCE AND AUTHORIZATION

If this Agreement is acceptable to Client, please execute two copies of the Agreement and return both originals to KTS. Upon receipt of both signed contracts, we will return one fully executed original for your files. KTS will commence work upon receipt of executed Agreement.

Read, understood, and agreed to this

____ Day of _____ 2022

City of Calexico

Kosmont Transactions Services, Inc.

By: _____
(Signature)

By: _____
(Signature)

Name: _____
(Print Name)

Name: Larry J. Kosmont, CRE®

Its: _____
(Title)

Its: President



ATTACHMENT A

**Kosmont Transactions Services, Inc.
2022 Public Agency Fee Schedule**

Professional Services

President & CEO	\$395.00/hour
Senior Vice President / Senior Advisor	\$325.00/hour
Vice President	\$225.00/hour
Senior Project Analyst	\$195.00/hour
Project Analyst / Project Research	\$165.00/hour
Assistant Project Analyst / Assistant Project Manager	\$125.00/hour
Project Promotion/Graphics/GIS Mapping Services	\$ 95.00/hour
Clerical Support	\$ 70.00/hour

• **Additional Expenses**

In addition to professional services (labor fees):

- 1) An **administrative fee** for in-house copy, fax, phone, postage costs, digital/technological support and related administrative expenses will be charged, which will be computed at four percent (4.0 %) of monthly KTS's professional service fees incurred; **plus**
- 2) **Out-of-pocket expenditures**, such as travel and mileage, professional printing, and delivery charges for messenger and overnight packages will be charged at cost.
- 3) If Kosmont retains **Third Party Vendor(s)** for Client (with Client's advance approval), fees and cost will be billed to Client at 1.1X (times) fees and costs.
- 4) Consultant's **attendance or participation at any public meeting**, whether such participation is in person, digital, video and/or telephonic (e.g., *City Council, Planning Commission, Public Agency Board, other*) requested by Client and are beyond those specifically identified in the Scope of Work will be billed at the professional services (hourly) fees as shown on this Attachment A.

• **Charges for Court/Deposition/Expert Witness-Related Appearances**

Court-related (non-preparation) activities, such as court appearances, depositions, mediation, arbitration, dispute resolution and other expert witness activities, will be charged at a court rate of 1.5 times scheduled rates, with a 4-hour minimum.

Rates shall remain in effect until December 31, 2022.