



Municipalities in the SEC's Crosshairs:

Disclosure Responsibilities and Best Practices in an Era of Heightened Scrutiny

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March 7, 2023

SEC Settlement and Order

- August 2017 Beaumont Financing Authority enters into settlement agreement with the SEC in which the BFA neither admits nor denies the allegations.
- Under the terms of the settlement, the BFA did not pay any financial penalties but agreed to a number of undertakings, including the establishment of written policies and procedures and periodic training regarding all aspects of municipal securities disclosures and the accounting of bond proceeds and record keeping.
- As part of the settlement, the BFA consented to the entry of an Order by the SEC to cease and desist from committing or causing any future violations of Section 17(a)(2) and 17(a)(3) of the Securities Act. (See [Attachment A](#) hereto)

Independent Consultant

- Under the terms of the settlement, the BFA also had to retain an independent consultant (law firm of Bradley Arant Boult Cummings LLP), to conduct a review of the BFA's policies and procedures as they relate to all aspects of municipal securities disclosures, the accounting of bond proceeds and record keeping.
- The independent consultant submitted a written report of its findings to the BFA which based on the independent consultants' reports, the City adopted updated Disclosure Procedures which apply to the BFA, the City and all CFDs (see [Attachment B](#) hereto) and an Amended and restated Policies and Procedures Manual related to tracking the use of Bond Proceeds (see [Attachment C](#) hereto).

Public Statements by Beaumont

- Generally, no requirement to speak.
- When a municipality elects to “speak to the market,” it must be accurate and complete.
- Examples of public statements:
 - Preliminary official statements and official statements;
 - Continuing disclosure filings;
 - CAFRs;
 - Press releases and public statements by officials, such as State of the City addresses.

Indirect Regulation by the SEC

- Municipal issuers are subject to the SEC's antifraud rules even though they do not have to register securities and are exempt from the SEC's periodic reporting requirements.
- "When a municipal issuer releases information to the public that is reasonably expected to reach investors and the trading markets, such disclosure is subject to the antifraud provisions." (SEC 2012 Report on Municipal Issuers)
- "The fact that [statements] are not published for purposes of informing the securities markets does not alter the mandate that they not violate antifraud proscriptions." (March 1994 Statement of the Commission Regarding Disclosure Obligations of Municipal Securities and Others)

Securities Violations Under Rule 10b-5

- **Rule 10b-5:** It shall be unlawful for any person . . . to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, in connection with the purchase or sale of any security.
- Intentional or reckless act is required.
- Under **Section 17(a)** of the Securities Act, the SEC can charge securities fraud under a negligence standard (“knew or should have known”).

Rule 15c-12 – Continuing Disclosure

- “A Participating Underwriter shall not purchase or sell municipal securities in connection with an Offering unless the Participating Underwriter has reasonably determined that an issuer of municipal securities . . . has undertaken . . . In a written agreement or contract for the benefit of holders of such securities, to provide [annual reports and material event notices] . . . Either directly or indirectly through an indenture trustee or a designated agent.”
- The annual report must contain financial information and operating data, but underwriters may also impose other disclosure requirements on an issuer.

Material Event Notices – Within 10 Days

- Nine Events that Require Notification (including delinquencies, unscheduled draws, bankruptcy and ratings changes).
- Seven Events that Require Notification *if Material* (including certain adverse tax opinions, modifications to the rights of the holders of the securities, substitution of security and non-payment related defaults).
- Post-Issuance Disclosure must be filed and on EMMA and fully linked to all related bond issuances.

Recent Amendment to Rule 15c2-12 added two material events:

- Incurrence of a “financial obligation” of the obligated party, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a “financial obligation” of the obligated party, any of which affect bondholders, if material.

NOTE: modifying or amending an existing financial obligation can also trigger a notice obligation

- Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a “financial obligation” of the obligated party, any of which reflect financial difficulties.

What is a “Financial Obligation”?

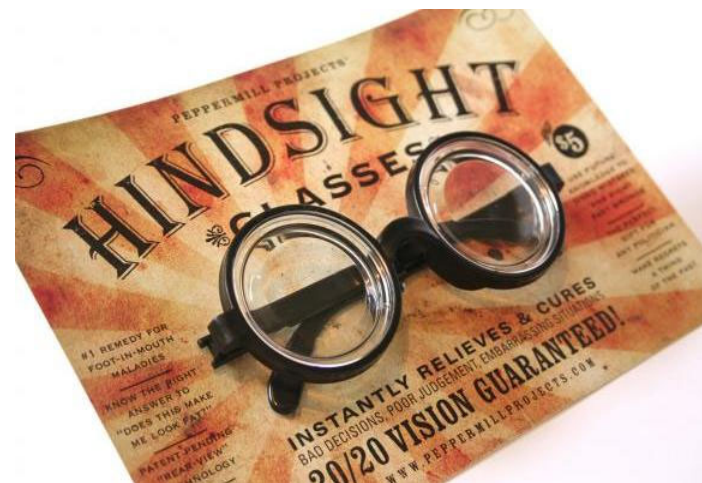
- The term “financial obligation” means a:
 - A) debt obligation;
 - (B) derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or
 - (C) guarantee of (A) or (B)
- (The term “financial obligation” does NOT include municipal securities as to which a final official statement has been provided to the Municipal Securities Rulemaking Board consistent with Rule 15c2-12
- A “debt obligation” is a vehicle to borrow money, even if not “debt” under California law
- A copier lease with Ricoh might be a “debt obligation,” but may not be “material”
- An instrument may not be a guarantee for California law purposes, but may be a guarantee for purposes of disclosure to investors

Appropriate Disclosure of Noncompliance

- Any instances of *material* noncompliance with continuing disclosure obligations must be disclosed in the official statements for a period of five years following the noncompliance.
- Beaumont recent compliance representations in offering documentation disclose the known instances of prior non-compliance as required by the regulation.

The Question of Materiality

- The materiality standard remains opaque, but it is clear that the SEC staff's bar for materiality is very low.
- Materiality is defined as:
 - a substantial likelihood that a reasonable investor would consider it important investment decision; or
 - viewed by a reasonable investor as having significantly altered the “total mix” of available information.
- In practice, SEC staff takes a subjective, hindsight view of materiality.



Reliance on Professional Services

- Issuers and principals are ultimately accountable for the accuracy of statements of fact about the issuer and cannot delegate this responsibility.
- In the event of a misstatement, reliance on advice of professionals will only serve as a defense under limited circumstances.
- *Presence of counsel* does not equate to *advice of counsel* (a defense requiring a privilege waiver):
SEC generally requires a direct request for advice on a particular disclosure topic.

Key Elements of Beaumont's Disclosure Policy

- Formal, written disclosure policy adopted on March 6, 2018;
- Establishes process and governing principles for ensuring accuracy of disclosures;
- Requires the hiring of outside disclosure counsel in connection with any public offering.

Key Elements of Beaumont's Disclosure Policy

- Periodic training is to be coordinated by the City Manager and the City Attorney with the assistance of disclosure counsel;
- Policy contains details on annual continuing disclosure requirements and timing for filing: (1) financial data; (2) operating data; (3) audited financial statements (or CAFRs); and (4) material event notices;
- City Finance Director responsible for preparing and filing annual reports and material event notices.

SEC Enforcement Actions

- Municipalities Securities and Public Pensions Unit
- MCDC – SEC expects nearly strict liability for compliance. Recent cases have sought:
 - Financial penalties;
 - Individual accountability (control person liability);
 - Parallel criminal charges;
 - Admission of wrongdoing;
 - Public statements outside of offering materials or continuing disclosures.

SEC Investigations – An Inside Look

- An investigation is NOT a litigation;
- SEC has active whistleblower program that pays bounties;
- Broad document subpoenas;
- Team of lawyers and accountants with no automatic protections offered by a court;
- No designated timeline or budget;
- Personal subpoenas issued to officials and staff;
- Cooperation and credibility are paramount.

SEC Settlements

- Terms of settlement may take numerous forms:
 - Generally “neither admit nor deny” but may require an admission;
 - Cease and Desist Order;
 - Financial penalty and/or disgorgement;
 - Industry bar for individuals;
 - Compliance undertakings (including consultants and monitors);
 - Cooperation against others under investigation;
 - Future disclosure obligations.



Privilege Issues – A Daily Concern

- Maintaining privilege can be highly inconvenient on a day-to-day basis;
- Investment bankers and developers frequently destroy privilege protections;
- Consultants and financial advisors destroy privilege;
 - Unless deemed a “necessary party” to the legal advice;
- Costly to review documents involving lawyers to determine privilege exemptions;
- Remember to discuss insurance coverage for investigations during the renewal process.

QUESTIONS?

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ATTACHMENT A

AUGUST 23, 2017 SEC SETTLEMENT ORDER



OFFICE OF
THE SECRETARY

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
100 F Street, N.E.
Washington, D.C. 20549

AUG 23 2017

Re: In the Matter of Beaumont Financing Authority

Please find enclosed the settled Order issued by the Securities and Exchange Commission in the above-referenced matter. The sanctions imposed by the Order shall be effective immediately unless otherwise indicated in the order.

If you have any questions or wish to discuss any aspect of the proceedings, you may communicate with the Division of Enforcement attorney appearing on the Service List attached to the enclosed Order.

A handwritten signature in blue ink that reads "Brent J. Fields".

Brent J. Fields
Secretary

Enclosure

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10406 / August 23, 2017

ADMINISTRATIVE PROCEEDING
File No. 3-18132

In the Matter of

**BEAUMONT FINANCING
AUTHORITY,**

Respondent.

**ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 8A OF THE SECURITIES ACT
OF 1933, MAKING FINDINGS, AND
IMPOSING REMEDIAL SANCTIONS
AND A CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”), against the Beaumont Financing Authority (“BFA” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent’s Offer, the Commission finds¹ that:

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Summary

1. This matter involves material misstatements and omissions by the BFA in the sale of municipal securities. Between 2003 and 2013, the BFA issued approximately \$260 million in municipal bonds in 24 separate offerings. In connection with each of those offerings, a community facilities district established by the City of Beaumont, California (“the District”), in its capacity as an obligated person with respect to the bonds, entered into a continuing disclosure agreement (“CDA”) for the benefit of investors in the BFA’s municipal securities, including annual reports containing financial information and operating data relating to the bonds being offered. From the period of at least 2004 through April 2013, the District regularly failed to comply with its CDAs.

2. In 2012 and 2013, the BFA issued approximately \$32.26 million of revenue bonds in five separate offerings. In each of those offerings, the BFA falsely stated in its official statements that, except in one instance several years earlier, the District had complied with its CDAs.

3. As a result of the conduct described herein, the BFA violated Sections 17(a)(2) and (a)(3) of the Securities Act.

Respondent

4. **Beaumont Financing Authority** is a joint exercise of powers authority formed by the City of Beaumont, California (“Beaumont”) under the California Joint Exercise of Powers Act. Among other things, the BFA issues bonds to public investors to provide funds for the acquisition of local obligations issued by the District. The District receives the proceeds from the BFA bond sales for the acquisition and construction of public facilities permitted under state law. The BFA bonds that are sold to public investors are secured by the revenues from the repayment of the District local obligations and certain other specified sources of repayment. The Mayor of Beaumont serves, *ex officio*, as Chairperson of the BFA and the City Manager of Beaumont also is the BFA’s Executive Director. Beaumont performs general administrative and support functions for the BFA.

Other Relevant Entities

5. **Beaumont** is a city in Riverside County, California. It has a population of approximately 40,000 residents and is managed by an elected five-member City Council. The City Council also serves as the governing board (“Board”) of the BFA. Beaumont governs and administers the District.

6. **Beaumont Community Facilities District 93-1** is a community facilities district formed by Beaumont for the purpose of financing and refinancing the acquisition or construction of public facilities, which includes the public infrastructure of real estate developments. The District issues local obligations secured and paid by special taxes levied on homes within the boundaries of the district. From approximately 1995 to 2015, the Beaumont City Manager

managed the operations of the District. Among other things, this involved reviewing, signing, and filing documents on behalf of the District, including CDAs and continuing disclosure reports.

7. **Alan Charles Kapanicas**, age 65, is a resident of Palm Desert, California. From approximately 1995 to 2015, Kapanicas was both the Executive Director of the BFA and City Manager of Beaumont. As such, Kapanicas was involved in nearly every aspect of the management of the BFA and the District.

The District Agreements to Provide Annual Disclosures in Connection with BFA Municipal Bond Offerings

8. Between 2003 and 2013, the BFA issued approximately \$260 million in municipal bonds in 24 separate offerings. In connection with each of those offerings, the District, in its capacity as an obligated person with respect to the bonds, executed a CDA pursuant to Rule 15c2-12 under the Securities Exchange Act of 1934 (“Exchange Act”), in which it agreed to publicly file annual reports containing specified financial information and operating data, as well as notices of certain enumerated events pertaining to the bonds at issue. Among other things, the CDAs required that such annual reports contain special tax delinquency data, the status of facilities being constructed with bond proceeds, the balances of various funds that could be drawn upon to pay bondholders in the event of insufficient special tax collections, and Beaumont’s audited financial statements. The CDAs also identified the filing deadlines for the annual reports and notices, as well as the repositories where the required information was required to be posted.

9. In his capacity as City Manager, Kapanicas approved and signed all 24 CDAs on behalf of the District. He also was responsible for drafting, signing off on, and filing the District’s annual reports and notices that were required by the CDAs.

10. In December of 2011, while reviewing a preliminary official statement for a 2011 bond offering by the BFA, a credit analyst at a large institutional investor requested that the District revise the terms of a draft CDA for those bonds. The revisions included changing the due date for the District’s required annual reports and including information about various fund balances in the District’s annual reports that served as sources of potential repayment of, and security for, the BFA’s bonds. Kapanicas and the BFA knew about and approved the specific changes. The District also included the revised due date and additional fund balances in the CDAs that it entered into in connection with the BFA’s 2012 and 2013 offerings.

The District Repeatedly Failed to Comply with its Continuing Disclosure Agreements

11. From the period of at least 2004 through April 2013, the District regularly failed to comply with its CDAs. It filed its annual reports late virtually every year during this period, including by as many as 117 days. Moreover, the annual reports that it filed consistently omitted information required by its CDAs. Two required components of the annual reports were a description of the status of facilities being constructed with bond proceeds and Beaumont’s audited financial statements. The District, however, never included these items in its annual reports. It also failed to include complete special tax delinquency data and reserve fund balances for several

years. Other required disclosures missing in certain annual reports included cash flow management fund balances, rate stabilization fund balances, residual fund balances, and special escrow fund balances. The cash flow management, rate stabilization, and residual funds served as additional sources of repayment and security for the BFA's bonds.

The BFA Falsely Stated in Five Official Statements that the District had Complied with its Prior Continuing Disclosure Agreements

12. In 2012 and 2013, the BFA issued approximately \$32.26 million of revenue bonds in five separate offerings. The official statements for each of these five offerings included a section titled "Continuing Disclosure," which represented that an annual report due November 1, 2002 was filed on December 21, 2002, but the District had not otherwise failed to meet its continuing disclosure requirement under Rule 15c2-12. These representations were false. As noted above, the District repeatedly failed to comply with its prior CDAs. It regularly filed annual reports late, and those reports did not contain several pieces of financial information and operating data required by those prior CDAs.

13. For each of these five offerings, the BFA delegated to its Executive Director responsibility for carrying out the bond issuances, and for reviewing and approving the content of all draft and final official statements. Kapanicas also signed the final official statements on behalf of the BFA after the BFA's Board approved the documents for dissemination to the investing public.

14. The reality of the District's history of compliance with its prior CDAs was very different from this representation to investors. Reasonable investors would have wanted to know about the District's many disclosure failures from 2004 through 2013 and would have viewed the omitted information as significantly altering the total mix of information made available in making a trading decision. The BFA's failure to disclose the District's true record of compliance with its past CDAs made the BFA's bonds appear more attractive to investors than they actually were. The BFA also misled these investors regarding the likelihood that the District would timely comply with its CDAs in the future.

15. The BFA failed to exercise reasonable care. Its Executive Director repeatedly reviewed, approved, and signed materially misleading official statements. As City Manager, Kapanicas had previously reviewed and signed all of the District's prior CDAs and he also subsequently prepared and filed the deficient and late annual reports. He repeatedly either failed to read and understand the District's CDAs or disregarded their requirements. He also repeatedly failed to read and confirm that the statements in the BFA's 2012 and 2013 official statements concerning the District's compliance with past CDAs were accurate and complete, or ignored the fact that the statements were false.

16. Despite seeking and receiving hundreds of millions of dollars in financing from municipal securities investors between 2003 and 2013, the BFA and the District did not have any formal written policies or procedures for the preparation of accurate, complete and timely official statements or post-issuance continuing disclosures. The BFA and the District also did not clearly delineate the responsibilities of officers, staff, professional services providers, and contractors.

Instead, each relied almost exclusively on Kapanicas to manage their bond issuances and to make post-issuance disclosures without any significant governance, oversight or supervision. The BFA and the District also failed to properly account for the spending of bond proceeds and to maintain appropriate records of bond transactions, which hindered the BFA's and the District's ability to make and ensure timely, accurate and complete pre- and post-issuance disclosures.

Legal Discussion

17. Section 17(a)(2) of the Securities Act makes it unlawful "in the offer or sale of any securities ... directly or indirectly ... to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading." 15 U.S.C. § 77q(a)(2). Section 17(a)(3) of the Securities Act makes it unlawful "in the offer or sale of any securities ... directly or indirectly ... to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser." 15 U.S.C. § 77q(a)(3). Negligence is sufficient to establish violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act. *See Aaron v. SEC*, 446 U.S. 680, 696-97 (1980). A misrepresentation or omission is material if there is a substantial likelihood that a reasonable investor would consider it important in making an investment decision. *See Basic Inc. v. Levinson*, 485 U.S. 224, 231-32 (1988).

18. Exchange Act Rule 15c2-12 was adopted in an effort to improve the quality and timeliness of disclosures to investors in municipal securities. In recognition of the fact that the disclosure of sound financial information is critical to the integrity of not just the primary market, but also the secondary markets for municipal securities, Rule 15c2-12 requires an underwriter to obtain a written agreement, for the benefit of the holders of the securities, in which the issuer or obligated person undertakes, among other things, to annually provide certain financial information and event notices to the Municipal Securities Rulemaking Board. *See* 17 C.F.R. § 240.15c2-12(b)(5)(i); Municipal Securities Disclosure, Exchange Act Release No. 34961, 59 Fed. Reg. 59590, 59592 (Nov. 17, 1994) ("1994 Amendments Adopting Release"); and Amendment to Municipal Securities Disclosure, Exchange Act Release No. 59062, 73 Fed. Reg. 76103 (Dec. 15, 2008).

19. In addition, it is important for investors and the market to know the scope of any ongoing disclosure undertakings, and the type of information provided. *See* 1994 Amendments Adopting Release, at 59594. Rule 15c2-12 therefore requires that undertakings provided pursuant to Rule 15c2-12 be described in the final official statement. Moreover, critical to any evaluation of an undertaking to make disclosures is the likelihood that the issuer or obligated person will abide by the undertaking. *See id.* Therefore, Rule 15c2-12(f)(3) requires that a final official statement set forth any instances in the previous five years in which an issuer of municipal securities, or obligated person, failed to comply in all material respects with any previous continuing disclosure undertakings. The requirements of Rule 15c2-12 allow underwriters, investors, and others to assess the reliability of the disclosure representations. *See id.* at 59595.

20. As a result of the conduct described above, the BFA violated Sections 17(a)(2) and (3) of the Securities Act.

Undertakings

Respondent undertakes to:

21. Within 180 days of this Order, establish appropriate and comprehensive written policies and procedures and periodic training regarding all aspects of the BFA's municipal securities disclosures, including formal policies and procedures to be followed for the preparation, review and approval of official statements and continuing disclosures, and the designation of an individual officer of Respondent responsible for ensuring compliance by Respondent with such policies and procedures and responsible for implementing and maintaining a record (including attendance) of such training.

22. Within 180 days of this Order, establish appropriate and comprehensive written policies and procedures and periodic training regarding the accounting of bond proceeds and recordkeeping, and the designation of an individual officer of Respondent responsible for ensuring compliance by Respondent with such policies and procedures and responsible for implementing and maintaining a record (including attendance) of such training.

23. Within 180 days of this Order, ensure that the District complies with all existing continuing disclosure undertakings, including updating past delinquent filings if the District is not currently in compliance with its CDAs.

24. Retain an independent consultant (the "Independent Consultant"), not unacceptable to the Commission staff, to conduct a review of BFA's policies and procedures as they relate to all aspects of the BFA's municipal securities disclosures, the accounting of bond proceeds and recordkeeping. The Independent Consultant shall not have provided consulting, legal, auditing or other professional services to, nor had any affiliation with, the BFA during the two years prior to the institution of these proceedings.

25. Require the Independent Consultant to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with the BFA, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the Independent Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Independent Consultant in performance of his/her duties under this Order shall not, without prior written consent of the Division of Enforcement, enter into any employment, consultant, attorney-client, auditing or other professional relationship with the BFA, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement. The agreement will also provide that, within 180 days of the institution of these proceedings, the Independent Consultant shall submit a written report of its findings to the BFA, which shall include the Independent Consultant's recommendations for changes in or improvements to the BFA's policies and procedures.

26. Adopt all recommendations contained in the Independent Consultant's report within 90 days of the date of that report, provided, however, that within 30 days of the report, the BFA shall advise in writing the Independent Consultant and the Commission staff of any recommendations that the BFA considers to be unduly burdensome, impractical or inappropriate. With respect to any such recommendation, the BFA need not adopt that recommendation at that time but shall propose in writing an alternative policy, procedures or system designed to achieve the same objective or purpose. As to any recommendation on which the BFA and the Independent Consultant do not agree, the BFA and the Independent Consultant shall attempt in good faith to reach an agreement within 60 days after the date of the Report. Within 15 days after the conclusion of the discussion and evaluation by the BFA and the Independent Consultant, the BFA shall require the Independent Consultant inform the BFA and the Commission staff in writing of the Independent Consultant's final determination concerning any recommendation that the BFA considers to be unduly burdensome, impractical, or inappropriate. Within 10 days of this written communication from the Independent Consultant, the BFA may seek approval from the Commission staff to not adopt recommendations that the BFA can demonstrate to be unduly burdensome, impractical, or inappropriate. Should the Commission staff agree that any proposed recommendations are unduly burdensome, impractical, or inappropriate, the BFA shall not be required to abide by, adopt, or implement those recommendations.

27. Disclose in a clear and conspicuous fashion the terms of this settlement in any final official statement for an offering by Respondent within five years of the institution of these proceedings.

28. Certify, in writing, compliance with the undertakings set forth above in paragraphs 21-27. The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and the BFA agrees to provide such evidence. The certification and supporting material shall be submitted to LeeAnn G. Gaunt, Chief, Public Finance Abuse Unit, with a copy to the Office of Chief Counsel of the Division of Enforcement, no later than sixty (60) days from the date of the completion of the undertakings.

29. For good cause shown, the Commission staff may extend any of the procedural dates relating to these undertakings. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered the last day.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent BFA's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 8A of the Securities Act, Respondent BFA cease and desist from committing or causing any violations and any future violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act.

B. Respondent BFA shall comply with the undertakings enumerated in paragraphs 21 – 29 of Section III, above.

By the Commission.

Brent J. Fields
Secretary


By: Jill M. Peterson
Assistant Secretary

Service List

Rule 141 of the Commission's Rules of Practice provides that the Secretary, or another duly authorized officer of the Commission, shall serve a copy of the Order Instituting Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), on the Respondent and its legal agent.

The attached Order has been sent to the following parties and other persons entitled to notice:

Honorable Brenda P. Murray
Chief Administrative Law Judge
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-2557

Steven Varholik, Esq.
San Francisco Regional Office
Securities and Exchange Commission
44 Montgomery Street, Suite 2800
San Francisco, CA 94104-4802

CERTIFIED MAIL

Beaumont Financing Authority
c/o Kathleen M. Marcus, Esq.
Stradling Yocca Carlson & Rauth, PC
660 Newport Center Drive, Suite 1600
Newport Beach, CA 92660-6422

CERTIFIED MAIL

Kathleen M. Marcus, Esq.
Stradling Yocca Carlson & Rauth, PC
660 Newport Center Drive, Suite 1600
Newport Beach, CA 92660-6422
(Counsel for Beaumont Financing Authority)

ATTACHMENT B

**AMENDED AND RESTATED DISCLOSURE PROCEDURES
FOR CITY OF BEAUMONT**

CITY OF BEAUMONT
AMENDED AND RESTATED DISCLOSURE PROCEDURES
APPLICABLE TO EACH OF
CITY OF BEAUMONT
BEAUMONT FINANCING AUTHORITY
COMMUNITY FACILITIES DISTRICT NO. 93-1
AND
ANY ADDITIONAL COMMUNITY FACILITIES DISTRICT APPROVED BY THE
CITY OF BEAUMONT

PURPOSE

The purpose of these Amended and Restated Disclosure Procedures (the “Procedures”) is to memorialize and communicate key principles and procedures in connection with obligations, including notes, bonds and certificates of participation, issued by the City of Beaumont (the “City”), and to memorialize and communicate key principles and procedures in connection with obligations issued by the Beaumont Financing Authority (“BFA”), the Community Facilities District No. 93-1 (the “District”) or any other community facilities district (each, an “Additional District”) subsequently authorized or approved by the City. Because the governing body of BFA and its officers/staff are the same as the City, and because the governing body of the District and its staff are the same as the City, all references in these Procedures to “City” shall also refer to BFA in the case of land assessment/tax-backed securities that secure payment of obligations issued by BFA, and the District (and any Additional District) in the case of Mello-Roos bonds and other land assessment/tax-backed securities issued by the District (or such Additional District).

In 2017, the BFA consented to a Cease and Desist Order with the U.S. Securities and Exchange Commission (the “SEC Order”) related to certain past disclosure decisions. These Procedures are intended, in part, to ensure that City officials and staff remain in full compliance with the obligations under past or future bond documents and with the SEC Order.

DISTRIBUTION

The Procedures shall be provided to all members of the Beaumont City Council, the City Manager, all members of the City’s Finance Department, the City Attorney and any other member of the City staff involved in the City’s disclosure obligations.

BACKGROUND

From time to time, the City issues certificates of participation, revenue bonds, notes or other obligations, the District or any Additional District may issue Mello-Roos bonds or other land assessment/tax-backed securities, and the BFA may issue obligations in various forms, including among others debt secured by and payable from debt obligations issued by the District or any Additional District (collectively, “Obligations”), in order to fund or refund capital investments, new development within the City, other long-term programs and working capital needs. In offering Obligations to the public, and at

other times when the City, BFA, the District or any Additional District, as the case may be, makes certain reports, the City, BFA, the District and any Additional District, as the case may be, must comply with the Anti-Fraud Rules of federal securities laws even though material portions of official statements are written by developers, their counsel and other market participants. Although BFA is essentially a conduit issuer and its official statements primarily related to housing development disclosure versus disclosure regarding the City, BFA nevertheless has responsibility for compliance with the Anti-Fraud Rules. The same holds true for securities issued directly by the District or any Additional District. As used herein, “Anti-Fraud Rules” refers to Section 17 of the Securities Act of 1933 and Section 10(b) of the Securities and Exchange Act of 1934, and regulations adopted by the Securities and Exchange Commission under those Acts, particularly Rule 10b-5 under the 1934 Act.

At their core, these rules require all material information relating to the offered Obligations be provided to potential investors. The information provided to potential investors must not contain any material misstatements, and the City must not omit material information which would be necessary to provide to investors a complete and transparent description of the Obligations and the City’s financial condition. In the context of the sale of securities, a fact is considered to be material if there is a substantial likelihood that a reasonable investor would consider it to be important in determining whether or not to purchase the securities being offered.

When the City issues Obligations, two central disclosure documents are prepared: (1) a preliminary official statement (“POS”); and (2) a final official statement (“OS”, and collectively with the POS, “Official Statement”). The Official Statement generally consists of (i) the forepart (which describes the specific transaction including maturity dates, interest rates, redemption provisions, the specific type of financing, the leased premises (in certificate of participation financings) and other matters particular to the financing, including, depending on the type of financing, the City’s or enterprise’s financial condition, the development within the community facilities district, the developer and its development and financing plan, and (ii) various other appendices, including the City’s audited financial report (for City general fund or enterprise fund financings), form of the proposed legal opinion, and form of continuing disclosure undertaking. Investors use the Official Statement as one of their primary resources for making informed investment decisions regarding the City’s Obligations.

ENGAGEMENT OF OUTSIDE DISCLOSURE COUNSEL

For every Obligation, the City shall engage outside legal counsel with expertise in securities laws for advice with respect to the City’s disclosure obligations and requirements under the federal securities laws (“Disclosure Counsel”). Disclosure Counsel assists the City in preparing the Official Statement, and reviews all new data and updates to the Official Statement. Throughout the process of receiving and incorporating material, Disclosure Counsel provides advice as to standards of materiality and other securities law issues. Disclosure Counsel has a confidential, attorney-client relationship with officials and staff of the City.

Disclosure Counsel provides a negative assurance letter as to the disclosure set forth in the Official Statement for each City Obligation. The letter advises the City and the Obligations underwriters that as a matter of fact and not opinion that no information came to the attention of the attorneys working on the transaction which caused them to believe that Official Statement as of its date and as of the date of their letter (except for any financial, statistical, economic or demographic data or forecasts, charts, tables, graphs, estimates, projections, assumptions or expressions of opinion, and other customary exclusions), contained or contains any untrue statement of a material fact or omitted or omits to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

DISCLOSURE PROCESS

The City Manager shall be primarily responsible for the administration of these Procedures as they pertain to primary market disclosure. The City Manager shall delegate to other officers responsibilities for certain of these functions as the City Manager from time to time determines. As used herein, "Finance Staff" shall mean the City Manager and its delegates.

When the City decides to issue Obligations, the Finance Staff request the involved departments to commence preparation of the portions of the Official Statement for which they are responsible. Finance Staff and the City Attorney are separately responsible for reviewing and preparing or updating certain portions of the Official Statement which are within their particular area of knowledge. Additionally, all participants in the disclosure process are separately responsible for reviewing the entire Official Statement. Disclosure Counsel assists the Finance Staff in determining the materiality of any particular item, and in the development of specific language in the Official Statement. For general fund financings, Disclosure Counsel also assists the City in the development of a "big picture" overview of the City's financial condition, included in the forepart of the Official Statement. This overview highlights particular areas of concern. The Finance Staff schedules one or more meetings or conference calls of the financing team working group (which includes City officials, the City's financial advisor, Disclosure Counsel, bond counsel, the underwriter of the Obligations, and their counsel, and, for land secured financings, the developer, its attorneys and consultants), and new drafts of the Official Statement are circulated and discussed. During this part of the process, there is substantial contact among City staff, other members of the financing team and Disclosure Counsel, to discuss issues which may arise, determine the materiality of particular items and ascertain the prominence in which the items should be disclosed.

Prior to distributing a POS to potential investors, there is a formal meeting which includes City officials involved in the preparation of the POS and the underwriters and their counsel, during which the Official Statement is reviewed in its entirety, page by page or section by section, to obtain final comments and to allow the underwriters to ask questions of the City's senior officials. This is referred to as a "due diligence" meeting.

The City Manager or its delegate (if involved in the due diligence meeting described above and, if applicable, the "page turning" session described below under "LAND ASSESSMENT/TAX-BACKED SECURITIES") is authorized to cause to be "deemed final" by the City or the BFA (or by the District or an Additional District for obligations issued directly to the public market by such entity), as applicable, the Preliminary Official Statement for purposes of Rule 15c2-12 of the Securities Exchange Commission.

Between the POS and final OS, any new changes and developments will have been incorporated into the Official Statement if required by the entity responsible for the applicable portion of the Appendix A. If necessary to reflect developments following publication of the POS or OS, as applicable, supplements will be prepared and published.

In connection with the closing of the transaction, one or more senior City officials execute a certificate stating that the Official Statement, as of the date of each OS and as of the date of closing, does not contain any untrue statement of material fact or omit to state any material fact necessary to make the statements contained in the Official Statement in light of the circumstances under which they were made, not misleading.

The information contained in the Official Statement is primarily developed by Finance Staff, the City Attorney or the developer. In addition, the City's financial adviser participates throughout the process of preparing the Official Statement and developing the structure of the financing.

LAND ASSESSMENT/TAX-BACKED SECURITIES

The following principles apply specifically to land assessment/tax-backed securities that secure payment of obligations issued by BFA, and the District (and any Additional District) in the case of Mello-Roos bonds and other land assessment/tax-backed securities issued by the District (or such Additional District).

Appraiser. Where the financial advisor, developer, Disclosure Counsel (or bond counsel), and/or underwriter determines that an appraisal is required for disclosure, the Official Statement should contain a description of the following:

- How the appraiser was selected (e.g., by RFP or direct selection);
- The basic qualifications of the appraiser; and
- A summary of the primary criteria that resulted in the final appraisal of the relevant property.

The City shall require the appraiser to review such information for accuracy. Further, Disclosure Counsel and/or bond counsel shall discuss and decide whether and to what extent written assurances as to the accuracy of such information may be needed from the appraiser.

Developer Questionnaire. The City shall require the developer to submit and certify as to accuracy and completeness a detailed questionnaire covering the developer and the proposed project (the “Developer Questionnaire”) at the start of each new money financing through Land Assessment/Tax-Backed Securities and for which there will be ongoing vertical development or a significant portion of the project site (e.g., greater than 20%) will be owned by the developer at the time of issuance.

A sample of a Developer Questionnaire is attached hereto as Exhibit A. However, each Developer Questionnaire should be tailored to the specific transaction at hand. The Developer Questionnaire should mirror the type of questionnaires underwriters will require for similar developer-driven financings. Each Developer Questionnaire should cover topics specific to the developer, such as:

- The ownership structure of the developer and all affiliates relevant to the project, including entity type (e.g., corporation, partnership, LLC) and percentage of controlling interests of members/partners/etc.;
- If publicly-traded, instructions or a website link for how investors can access annual and other disclosures on EDGAR;
- General background and experience of the developer and its affiliates, as applicable; and
- A history of previous projects developed by the developer and/or relevant entities with controlling interests, which shall include, without limitation, information concerning material delays in construction, history of defaults, etc.

Each Developer Questionnaire should also contain relevant details concerning the development at issue, such as:

- Location;
- Size;
- How long the developer has owned the development site;

- Information concerning environmental diligence, applicable zoning and related issues; and
- Whether the developer or related entities are under investigation or subject of current inquiry by any federal or state regulatory agencies.

The City shall require that each Developer Questionnaire be signed and certified as true and complete by the developer. The City Finance Director shall be responsible for double-checking the receipt of the Developer Questionnaire.

Offering Statements. Offering statements for Land Assessment/Tax-Backed Securities respecting districts under development shall provide the following:

- Total development budget (including public infrastructure improvements and the home developments);
- A listing of sources of funds (e.g., developer equity, line of credit, commercial loan, other equity investor funds); and
- The status of such funding sources (e.g., if a construction loan, the extent to which it has been funded).

If a financing occurs while material portions of the project are under development, the offering statement shall disclose the status of construction and projected costs to complete (whether based on the initial budget or otherwise).

For developments that contain 500 or more units, discussion should occur among bond counsel, Disclosure Counsel, the financial advisor, the underwriter and other relevant participants as to whether a market absorption or feasibility study is needed for the offering statement. The City shall give deference to the determinations of the financial advisor, Disclosure Counsel and bond counsel over recommendation from other participants like the developer and its counsel.

Formal “Page Turning” Session. Prior to the due diligence meeting described under “DISCLOSURE PROCESS” above, there shall be a formal “page turning” session where the special tax consultant, Disclosure Counsel, bond counsel, financial advisor, the developer and its counsel, the City Manager, the City Attorney, any other relevant City officials as identified by the City Manager, review key portions of the preliminary official statement and, to the extent of changes other than those reflecting pricing terms following sale, the final official statement. This type of “page turning” session is a very important element of the disclosure process. The City Finance Director shall be responsible for ensuring that such “page turning” session occurs prior to the Preliminary Official Statement or similar offering statement being made available to investors.

Prior to printing the Official Statement, the City shall require the developer to deliver a “10b5” certificate to the City covering those portions of the Preliminary Official Statement relating to the developer, its project and its financing plans. Additionally, prior to printing the Preliminary Official Statement, the City Manager and its delegates, and Disclosure Counsel or bond counsel, shall have reviewed and agreed upon the form of developer counsel opinion required, if any, and the form of written assurances, if any, from the special tax consultant and financial advisor as to accuracy and completeness of relevant portions of the Preliminary Official Statement in connection with the financing. The City Finance Director shall be responsible for double-checking the receipt of all 10b-5 and related certificates, instruments or opinions required to be delivered by the developer in a land assessment/tax-backed securities offering.

Recordkeeping. BFA, the City, the District or any Additional District, as applicable, shall retain in a central depository for a period of five years from the date of delivery of any series of bonds the following materials:

- The printed copy of the Preliminary Official Statement and final Official Statement (or similar offering documents);
- The executed copies of all opinions, letters or other certifications concerning the accuracy or adequacy of disclosure provided by the developer, developer's counsel, Disclosure Counsel, bond counsel and all other participants in the financing pursuant to these Procedures;
- The Developer Questionnaire, if applicable;
- The bond purchase agreement;
- Copies of any "deemed final" certification provided by an official with the City, BFA, the District or an Additional District, as the case may be, to the underwriter of bonds in accordance paragraph (b)(1) of Rule 15c2-12 of the Securities Exchange Commission; and
- Any written certification or opinions executed by a developer, its counsel, the special tax consultant, financial advisor and any other financing participants outside the City delivered at the time of delivery of the related series of bonds.

It is not necessary that drafts of such instruments be retained; only final copies.

GOVERNING PRINCIPLES FOR CITY OFFICIALS AND STAFF

The following principles govern the work of the respective staffs that contribute information to the Official Statement:

- City staff involved in the disclosure process are responsible for being familiar with federal securities laws as they relate to disclosure.
- City staff involved in the disclosure process should be instructed to err on the side of raising issues when preparing or reviewing information for disclosure. Officials and staff are encouraged to consult with Disclosure Counsel if there are questions regarding whether an issue is material.
- City staff involved in the disclosure process, along with the developer, special tax counsel, the financial advisor and all other participants in preparing portions of an offering statement and that are involved in any meetings where portions of an offering statement are reviewed or discussed should be instructed that general disclosure of a potential risk is no substitute for known facts specific to that risk, and that participants should strive to ensure known facts are disclosed.
- Care should be taken not to shortcut or eliminate any steps outlined in the Procedures on an ad hoc basis. However, the Procedures are not necessarily intended to be a rigid list of procedural requirements, but instead to provide guidelines for disclosure review. If warranted, based on experience during financings or because of additional SEC pronouncements or other reasons, the City should consider revisions to the Procedures.

- The City must make sure that the particular officials involved in the disclosure process are of sufficient seniority such that it is reasonable to believe that, collectively, they are in possession of material information relating to the City and its finances.
- Any concerns regarding the accuracy of an Official Statement should be immediately reported to the City Attorney or the City’s Disclosure Counsel.
- Care should be taken that any information produced and maintained for public consumption, and which may be relied upon by an investor in making an investment decision in the primary or secondary market, does not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements contained therein, in light of the circumstances under which they were made, not misleading.
- Consideration should be made, based on consultation with Disclosure Counsel (or, if there is not Disclosure Counsel, bond counsel) as to whether a public statement by a City official or the response by the City to an investor inquiry (e.g., a question from one of BFA’s investors) may be material enough to merit a voluntary filing on EMMA to ensure that Obligations are trading based on equal access to material information.
- The City Manager shall review these Procedures on an annual or bi-annual basis and may, from time to time, as may be necessary, update these Procedures in consultation with Disclosure Counsel and/or bond counsel.
- The City Finance Director, together with Disclosure Counsel and/or bond counsel, shall review the continuing disclosure section of the preliminary offering statement – particularly that portion describing the five-year compliance history of the District or of any other obligated person under the purview of BFA or the City – before it is finalized and sent to prospective investors.

ANNUAL CONTINUING DISCLOSURE REQUIREMENTS

In connection with the issuance of Obligations, the City has entered into a number of contractual agreements (each a “Continuing Disclosure Certificate” and, collectively, “Continuing Disclosure Certificates”) to provide annual reports related to its financial condition (including its audited financial statements) as well as notice of certain events relating to the Obligations specified in the Continuing Disclosure Certificates. Continuing Disclosure Certificates that are entered into in the future should not be “canned” and Disclosure Counsel (or, if there is not Disclosure Counsel, bond counsel or underwriter’s counsel) shall prepare the continuing disclosure agreement based upon the specific transaction at hand.

The City must comply with the specific requirements of each Continuing Disclosure Certificate. The City’s Continuing Disclosure Certificates generally require that the annual reports be filed within a certain number of days after the end of the City’s fiscal year, and event notices are generally required to be filed within 10 days of their occurrence.

Specific events which require material event notices generally consist of the following¹:

¹ The list set forth above is applicable for transactions after December 1, 2010. Continuing disclosure undertakings for transactions prior to that date contained a similar, but less extensive list of material events.

- (a) Any of the following events with respect to the Obligations (in a timely manner not more than ten (10) business days after the event):
1. Principal and interest payment delinquencies;
 2. Unscheduled draws on debt service reserves reflecting financial difficulties;
 3. Unscheduled draws on credit enhancements reflecting financial difficulties;
 4. Substitution of credit or liquidity providers, or their failure to perform;
 5. Issuance by the Internal Revenue Service of proposed or final determination of taxability or of a Notice of Proposed Issue (IRS Form 5701 TEB);
 6. Tender offers;
 7. Defeasances;
 8. Rating changes; or
 9. Bankruptcy, insolvency, receivership or similar event of the obligated person.
- (b) Any of the following events with respect to the particular Obligations, if material:
1. Unless described in paragraph 5(a)(5), adverse tax opinions or other material notices or determinations by the Internal Revenue Service with respect to the tax status of the particular Obligations or other material events affecting the tax status of the Series 2013 Bonds;
 2. Modifications to rights of holders of the particular Obligations;
 3. Optional, unscheduled or contingent calls of the particular Obligations;
 4. Release, substitution, or sale of property securing repayment of the particular Obligations;
 5. Non-payment related defaults;
 6. The consummation of a merger, consolidation, or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms; or
 7. Appointment of a successor or additional trustee or the change of name of a trustee.

The City Finance Director shall be responsible for preparing and filing the annual reports and material event notices required pursuant to the Continuing Disclosure Certificates. Particular care shall be paid to the timely filing of any changes in credit ratings on Obligations (including changes resulting from changes in the credit ratings of insurers of particular Obligations).

Moreover, with regard to the filing of annual financial statements, the City Finance Director and the City Manager (or its delegate) shall maintain calendar reminders for the filing such statements. The City shall consider the use of a dissemination agent or other reminder resources provided by the Municipal Securities Rulemaking Board or similar authorities to assist in the timely filing of materials on EMMA.

The BFA shall have Disclosure Counsel (or, if there is no Disclosure Counsel, bond counsel) to BFA prepare a checklist for the specific items required to be filed on an annual basis (the “Annual Report Checklist”). The Annual Report Checklist should be modified by Disclosure Counsel (or, if there is no Disclosure Counsel, bond counsel) as new issues are sold, and by BFA or its counsel as issues of BFA debt are paid off and no longer outstanding. A separate Annual Report Checklist should be prepared and similarly modified for any District or Additional District obligations hereafter issued.

The City Finance Director, at the time of each annual filing, shall execute the Annual Report Checklist and then delivered it to the City Manager. The City Manager, or its delegate, shall review the filings on EMMA against the Annual Report Checklist as a double-check for compliance accuracy.

Upon the advice of Disclosure Counsel or bond counsel, the BFA may identify a different compliance method if determined to be more effective or feasible than the Annual Report Checklist.

The City Manager (or its delegate) shall double-check the timeliness of filing of audited financial statements and annual reports against the Annual Report Checklist or different compliance method described above.

When a continuing disclosure agreement requires data that does not exist or that the BFA cannot obtain, the City Finance Director will consult with bond counsel and/or Disclosure Counsel on how to report such information.

TRAINING

The City will provide training for the staff involved in the preparation of the Official Statement, which will be coordinated by the City Manager and the City Attorney, with the assistance of Disclosure Counsel. The City Manager shall be primarily responsible for maintaining a record (including attendance) of such training. Training will be provided at least annually or prior to the offering of any new Obligation. The training sessions shall be provided to assist staff members involved in identifying relevant disclosure information to be included in the Official Statement. The training sessions also provide an overview of federal laws relating to disclosure, situations in which disclosure rules apply, the purpose of the Official Statement, a description of previous SEC enforcement actions and a discussion of recent developments in the area of municipal disclosure. Attendees at the training sessions shall be provided the opportunity to ask questions of Disclosure Counsel concerning disclosure obligations and are encouraged to contact Disclosure Counsel at any time if they have questions.

The City Finance Director shall receive training from bond counsel or Disclosure Counsel on the mechanics for making filings on EMMA, as well as the information required to be filed in the District’s (and any Additional District’s) annual reports. This training will take place after the Annual Report Checklist is prepared or more effective or feasible compliance method is established.

CERTIFICATE OF RECEIPT AND UNDERSTANDING

I certify that I have received a copy of the City of Beaumont’s Amended and Restated Disclosure Procedures. I have reviewed and understand its contents and agree to abide by the principles and requirements in the Amended and Restated Disclosure Procedures.

Name: _____

Date: _____

EXHIBIT A

DEVELOPER QUESTIONNAIRE

This questionnaire is intended to provide information that will be used by Disclosure Counsel in connection with the preparation of the Preliminary Official Statement and the final Official Statement for the bonds proposed to be issued by [_____] (the “District”). Although the bonds are exempt from the requirement that they be registered with the Securities and Exchange Commission, they are subject to the anti-fraud provisions of the federal securities laws and the laws of the State of California. Therefore, it is critical that the Preliminary Official Statement and final Official Statement not contain any material misstatements or omissions. Accordingly, the information that you provide in response to this Questionnaire must be complete and accurate in every respect.

As used herein the term “Property” refers to all of the property within the District. The term “Project” refers to the proposed improvements to be made within the District including all residential and commercial development.

I. OWNERSHIP

- (a) Name of the developer (the “Developer”) of the property (the “Property”) within the District:

- (b) Please describe the ownership structure of the Developer. Include a description of any partnership, limited liability company or other arrangements, and names of all general partners, members and officers. Attach resumes of key individuals and a copy of any partnership agreements, operating agreements, articles of incorporation and bylaws.

- (c) Please attach copies of the Developer’s most recent annual and quarterly financial statements. If the Developer is a publicly held company, please provide copies of the most recent 10Q or 10K filing.

- (d) Include at least one reference from a bank or financial institution.

Note: Financial statements and information obtained from bank references are necessary as part of the due diligence process required to issue the bonds. Any nonpublic information will remain strictly confidential unless and until published as part of the Official Statement.

(e) Who is the contact person for the Project?

Name: _____
Title: _____
Phone Number: _____
E-Mail: _____

(f) Please provide the contact information of the attorney who will be representing the Developer in connection with the issuance of bonds by the District.

Name: _____
Title: _____
Phone Number: _____
E-Mail: _____

(g) Please attach your most recent copy of a preliminary title report for the Property.

II. PROJECT INFORMATION

(a) Name of Project:

(b) Location of Project:

(c) Description of Project

(i) Number of gross acres:

(ii) Number of developable acres:

(d) How long has Developer owned the Property?

(e) Describe the existing land uses on the Property:

(f) Please summarize the existing entitlements for the Project (i.e., number and type of residential units, commercial square footage, industrial square footage, recreation uses, other public uses) and provide a list of the governmental approvals that govern development of the Property:

- (g) Please attach a copy of each Purchase and Sale Agreement including any amendments executed by Developer for Property in the District.
- (h) Please summarize the improvements to be completed by the Developer with respect to the Project and the status of the construction of the improvements and a timeline for completion.
- (i) Please provide a budget for the improvements to be installed by the Developer and describe how the improvements are to be financed.
- (j) Please answer the following questions and provide any of the following received with respect to the Property.
 - (i) Has an environmental impact report been approved for the Project? YES NO. If yes, please provide a copy along with any supplement thereto.
 - (ii) Has a Phase I Environmental Site Assessment been prepared for the property? YES NO. If yes, please provide a copy of all assessments prepared.
 - (iii) Has a soils report been prepared for the Project? YES NO. If yes, please provide copies of all reports.
- (k) List any approved tentative, final or parcel maps applicable to development of the Project and provide a copy of all conditions to development.
- (l) Are any impact fees owing as a condition to develop? YES NO. If yes, please describe, list below and provide copies of any agreements or documents which contain such conditions.
- (m) Is there any endangered species habitat on the Property? YES NO. If yes, please describe.

- (n) Are there any legal impediments that could delay or prevent the buildout of the Project as planned? ___ YES ___ NO. If yes, please describe.
- (o) Are you aware of any proposed restrictions on the rate of future growth in the jurisdiction where the Project is to be located which may impact the development of the Project (i.e., proposed growth control ordinances or initiatives or limitations on water availability)? ___ YES ___ NO If YES, please explain:
- (p) Are there any geological impediments (earthquake faults, flood zones, high ground water, soil slippage, etc.) to buildout of the Project? If so, please describe.
- (q) What are your long-term plans for any portion of the Property not already conveyed to merchant builders? For any portion to be constructed by Developer please describe planned improvements and timing.
- (r) Are there any existing trust deeds/loans on the Property? ___ YES ___ NO. Please state the name of the lending institution, the approximate maximum loan amount and approximate current balance of the loan.

- (s) Has construction financing for the Project been obtained? YES NO. If yes, please describe the source and amount of such loan and any acquisition and development loans, and provide copies of all loan agreements and promissory notes. If no, describe whether any loans are required to develop.
- (t) Other than the District, is there any existing or proposed community facilities district or assessment district that includes all or a portion of the Property? YES NO. If yes, please describe the name, dollar amount and a contact person for information regarding each district.
- (u) Have any property taxes or assessments on the Property been delinquent at any time during the past 3 years? YES NO. If yes, please explain.
- (v) Please attach a copy of the most recent tax bill for each parcel of the Property and evidence that current installments due have been paid (in the form of a copy of check, wire or receipt for payment).
- (w) Has any claim been made or suit been filed, or is any claim or suit now threatened against the Developer or the Property with respect to the Project? YES NO.

If yes, please attach a copy of the complaint, or if unavailable, please list the court in which the action is pending and the case number, or if the claim or action has not yet been filed please attach any documents summarizing the claim or action.

III. RELATED PROJECT INFORMATION

- (a) Has an absorption study been done for the Project within the last two years? YES NO. If yes, please provide a copy.
- (b) Has an appraisal been done for the Property within the last two years? YES NO. If yes, please provide a copy.
- (c) Is any of the Property (other than portions thereof that have been improved with completed residential or commercial structures) currently for sale? YES NO. If yes, please provide a copy of the sale terms.

IV. EXPERIENCE AND FINANCIAL CAPACITY OF DEVELOPER

- (a) Has the Developer, or any individual or entity which has an ownership interest in the Developer, ever defaulted in the payment of a special tax or an assessment on property owned by it? YES NO. If yes, please explain.

- (b) Is the Developer, or any individual or entity which has an ownership interest in the Developer, now in default on any loans, lines of credit or other obligation, or has the Developer (or related entity) been in default on any loans lines of credit or other obligation in the past five years? YES NO. If yes, please explain.

- (c) Has the Developer, or any individual or entity which has an ownership interest in the Developer, ever filed for bankruptcy or been declared a bankrupt? YES NO. If yes, specify date and location of court where bankruptcy action took place.

- (d) Have you prepared a business plan and/or pro forma for the proposed Project? YES NO. If YES, please attach a copy. If NO, please prepare a detailed pro forma and provide it as soon as possible.

- (e) Has the Developer, or any individual or entity which has an ownership interest in the Developer, ever failed to comply within the last five years with the terms of any agreement to provide continuing disclosure with respect to a bond issue? YES NO. If YES, please describe the bond issue and the nature of the failure to comply.

V. NOTICE REGARDING DISCLOSURE.

The Securities and Exchange Commission recently adopted amendments (the “Amendments”) to Rule 15c2-12 under the Securities Exchange Act of 1934 relating to certain required disclosure information that must be made available to prospective purchasers of municipal bonds. Under the Amendments, certain material information must be disclosed (i) in connection with the initial offering of bonds with respect to “material persons”; and (ii) on an ongoing basis with respect to “obligated persons.” Whether a property owner/developer might be a material person or an obligated person will depend on all of the facts and circumstances. If the information you provide in response to this questionnaire indicates this might be the case, the financing team will review with you the information that may need to be disclosed to potential bond investors in order to satisfy the Amendments.

The undersigned hereby certifies that all responses provided herein are true and correct.

By: [_____]

By: _____
[President/CEO/CFO/or Equivalent]

ATTACHMENT C

POLICIES AND PROCEDURES MANUAL

Adopted by City Finance Department on _____, 2018
Adopted by City Council on _____, 2018

**City of Beaumont
Finance Department
Amended and Restated Policies and Procedures Manual**

**BOND PROCEEDS TRACKING POLICIES – ACCOUNTS PAYABLE
APPLICABLE TO DEVELOPMENT-BASED FINANCINGS BY EACH OF
CITY OF BEAUMONT**

**BEAUMONT FINANCING AUTHORITY
COMMUNITY FACILITIES DISTRICT NO. 93-1**

**AND
ANY ADDITIONAL COMMUNITY FACILITIES DISTRICT APPROVED BY THE
CITY OF BEAUMONT**

The accounts payable function must be coordinated closely with the Public Works department (“PW”) and in addition must process payments in a timely and professional manner in accordance with the applicable Indenture or Trust Agreement.

Care must be taken to see that payments are both accurate and timely. Internal control over disbursements requires proper supporting documentation to ensure that the City only pay legitimate transactions for acquisition of goods or services. No one person shall process a complete cycle of transaction from origination to completion.

Purpose

The purpose of this Policies and Procedures Manual is to memorialize, identify and communicate key principals and procedures to be used to track and account for the expenditure of proceeds from debt obligations – particularly obligations issued by the Beaumont Financing Authority (the “BFA”) secured by land assessment/tax-backed securities – and land assessment/tax-backed securities issued by Community Facilities District No. 93-1 (the “District”) or any community facilities district subsequently authorized or approved by City of Beaumont. In 2017, the BFA consented to a Cease and Desist Order with the U.S. Securities and Exchange Commission (the “SEC Order”) related to certain past disclosure decisions. This Policies and Procedures Manual is intended, in part, to ensure that City officials and staff remain in full compliance with the obligations under past or future bond documents and with the SEC Order.

Distribution and Training

This Policies and Procedures Manual shall be provided to all officials and staff that are involved with the accounting of bond proceeds (including, but not limited to, the payment of costs or expenses that are to be ultimately paid with bond proceeds).

Periodic training, taking place not less than annually, for the Director of Finance and other appropriate officials and staff of the City and the BFA involving with the accounting of bond proceeds is coordinated by the Director of Finance, who is responsible for ensuring compliance with this Policies and Procedures Manual and for implementing and maintaining a record (including attendance) of such trainings. These training sessions are provided to assist officials and staff with the accounting of bond proceeds and recordkeeping.

Timeliness

Developer is responsible for submitting requests for reimbursement to the Finance Department for review and processing, including all necessary documentation in an orderly form.

Finance Department must notify PW when documentation is received in order to have it reviewed by the project engineer.

Project Cost Approval Processing

The PW department is to assign a project engineer to perform review of documentation received from the Developer or Vendor for reimbursement.

Project engineer is to establish a list of the eligible projects as stated in the applicable Indenture or Trust Agreement.

The Project Engineer is to review all contracts and costs for the public improvements including change orders, invoices, proof of payment and lien releases, and certified payroll (when required).

A report documenting the eligible projects, construction cost review, determination of eligible costs, and recommendation for payment is to be prepared by PW department and provided to Finance Department for release of funds.

Trustee Notification

1. A written requisition of the District is prepared by the Director of Finance for the release of construction bond proceeds. (NOTE: Funds are to be disbursed to the City and remittance to applicable developer or vendor is to be made by the City through the established accounts payable process). A form of written requisition is attached hereto as Exhibit A.
2. The standard requisition form is to be used identifying the bond issue, improvement area and Trustee account number.
3. Requisitions are to be maintained in numerical sequence, assigned manually, as follows:
Fiscal Year Beginning - 3 Digit sequence (i.e., 2017-001, 2017-002, 2017-003)
4. Request must have Schedule 1 attached. Schedule 1 is to contain the wire transfer instructions, total amount, and detailed purpose/use of funds.
5. Request must contain a copy of the report prepared by PW department.
6. Request must contain Letter(s) of Request from the developer.
7. Trustee Notification documents are to be presented to the City Manager for approval.
8. Trustee Notification documents are to then be presented to City Council for approval. Written Requisition is to be signed by authorized representative.

9. Director of Finance is to transmit Trustee Notification documents to the Trustee representative for disbursement of funds.

Payment Check Processing and Reviews

10. The Trustee Notification documents are considered the supporting documents for the disbursement of funds to the developer or vendor.
11. A check request form is completed by the Director of Finance and is submitted with the Trustee Notification documents to accounts payable for payment processing.
12. Director of Finance is to monitor cash flow so that developer/vendor payment is not made prior to the receipt of construction bond proceeds.

Recordkeeping

13. The Director of Finance is to maintain a spreadsheet for each financing totaling the amount of expenditures for each type of improvement financed. At the end of each year, the spreadsheet shall be updated based on the Written Requisitions honored.

EXHIBIT A

**CITY OF BEAUMONT COMMUNITY FACILITIES DISTRICT NO. 93-1
SPECIAL TAX BONDS, _____
(IMPROVEMENT AREA NO. _____)
ACCOUNT NUMBER _____**

**WRITTEN REQUISITION OF THE DISTRICT
NO. _____**

The undersigned is an Authorized Representative of the City of Beaumont Community Facilities District No. 93-1 (the "District") hereby requests Wilmington Trust, National Association, as successor trustee to Union Bank, N.A. (the "Trustee") under that certain Indenture of Trust dated as of January 15, 1994, as amended and supplemented to date by the _____ Supplemental Indenture dated as of _____ (the "District Indenture"), by and between the District and the Trustee, to pay to the Persons listed on Schedule I attached hereto, the amounts shown for the purposes indicated from the Construction Fund established and maintained under the Indenture.

The District hereby certifies that (a) each obligation mentioned therein is a proper charge against such Construction Fund and has not previously been disbursed by the Trustee from amounts in such Construction Fund, (b) all conditions precedent with respect to such disbursement haven satisfied, and (c) the amount of such disbursement is for a Project Cost as defined herein, (d) is accompanied by a bill or statement of account (if any) for each obligation and (e) no Event of Default has occurred under the Indenture, (f) this request meets the requirements of the Indenture.

All payments shall be made in accordance with the payment instructions set forth on Schedule I attached hereto, and the Trustee shall have no duty or obligation to authenticate such payment instructions or authorization thereof

Dated: _____

CITY OF BEAUMONT
COMMUNITY FACILITIES DISTRICT NO. 93-1

By: _____
Authorized Representative

**SCHEDULE I
WRITTEN REQUISITION OF THE DISTRICT**

Name/Address (Wire/Check)	Amount	Purpose
CITY OF BEAUMONT Citibank ABA Acct	\$ _____	1. 2. 3.

City will process payment directly to _____
Instructions have been provided to City with documentation received to support the costs being claimed, enumerated above.