



CITY COUNCIL AGENDA REPORT

MEETING DATE: JUNE 19, 2012

ITEM NUMBER:

SUBJECT: GRAPHIC DESIGN SERVICES REQUEST FOR PROPOSAL

DATE: JUNE 7, 2012

FROM: CEO's OFFICE/CENTRAL SERVICES DIVISION

PRESENTATION BY: BILL LOBDELL, COMMUNICATIONS DIRECTOR

FOR FURTHER INFORMATION CONTACT: LEIGH CHALKLEY AT (714) 754-5237
BILL LOBDELL AT (714) 754-5288

RECOMMENDATION:

Staff recommends that the City Council:

- 1) Approve the attached contract with We The Creative for Graphic Design Services, in an amount not to exceed \$75,000 for FY 2012-13, pending the resolution of the City's outsourcing constraints. This agreement is for a three (3) year term with two (2) one-year renewals;
- 2) Authorize the CEO to administratively implement a 3–6 month transition plan to maintain portions of Graphic Design Services in-house and execute the agreement for Graphic Design Services with the We The Creative design firm;
- 3) Authorize staff to rescind layoff notices previously distributed to the remaining Central Service Division employees; and
- 4) Eliminate one of the two Graphic Designer positions effective upon the retirement of the incumbent employee.

BACKGROUND:

In accordance with Council Policy 100-6, a Graphic Design Services Evaluation Committee was formed to evaluate the viability of contracting for City Graphic Design Services. The committee met to discuss the duties and responsibilities of the Central Services Division and to determine possible alternatives for service delivery. Based on the detailed review of all alternatives, the Committee concluded that the most viable alternative was to retain the existing service levels but at a lower cost through reorganization or contracting with either a public or private entity. In order to evaluate these options, the Central Services Division prepared a draft request for proposals (RFP), which was reviewed and finalized by the Evaluation Committee.

At the regular City Council meeting on December 22, 2011, the various alternatives for Graphic Design Services were presented together with the staff recommendation for releasing an RFP. The City Council directed staff to release the RFP based on staff and community input.

The City received five (5) proposals from private companies and the Evaluation Committee interviewed the three finalists. Committee members were impressed by all of the finalists, which provided creative designs, innovations such as web-based design services and competitive pricing. However, We The Creative—whose owner lives in Costa Mesa—finished with the highest ranking and also received excellent references from its government clients.

ANALYSIS:

In response to the City's RFP, proposals were received and reviewed by an Evaluation Committee consisting of City Staff as well as an outside agency staff member. The proposals were reviewed using the following criteria:

1. Qualifications of the entity and key personnel.
2. Approach to providing the requested services.
3. Price proposal.
4. Innovative and/or creative solutions.

Following the completion of the evaluation process, the Evaluation Committee reviewed the rankings of the eligible candidates and determined that the graphic design requirements of the city could be improved and streamlined by implementing a hybrid public-private model that would give the City the convenience and flexibility of an in-house graphic designer and the ability to outsource extra work to a highly regarded private vendor. This plan is especially attractive because of the scheduled July 4, 2012 retirement of one of the City's two graphic designers.

A component of the plan would include the creation of online templates for commonly requested items such as letterhead, business cards, NCR forms and envelopes that would automate the ordering process by working in conjunction with our offsite print vendor. The hybrid plan would also allow the City to test its partnership with We The Creative and monitor the costs during a trial period.

INNOVATIVE MERIT:

The RFP process has enabled the City to take a fresh look at its Central Services Division and revealed innovations such as web-based ordering of commonly requested items that both reduces the workload on the graphics department and provides faster service to City departments.

STAFF TRANSITION PLAN:

The Central Services Division has four full-time employees who are responsible for providing mail, copy, print and graphic design services to city departments and facilities. Two full-time employees are assigned to graphics, though one employee is scheduled to retire on July 4, 2012. Given the city's emphasis on improving communications and marketing, the hybrid plan being proposed will provide the City the flexibility to adjust, revise and create materials on demand, as well as provide the opportunity to automate the ordering process by creating online templates, automated proofs and paperless processing. The Central Services supervisor will be retained to oversee and manage the Graphic Design Services contract during the transition and to supervise any other Central Services not covered in the current proposal.

FISCAL REVIEW:

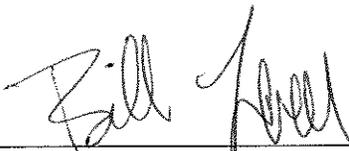
In July 2012, the City will be able to eliminate one of the two Graphics Designer positions, which currently costs \$84,787 annually. With a not to exceed contract amount of \$75,000, the potential savings would be \$9,787.

LEGAL REVIEW:

The City Attorney's Office has reviewed the attached documents and, where appropriate, approved them as to form. In light of the preliminary injunction in force that prevents outsourcing to private companies, the City Attorney's Office is researching how the City can implement this public-private partnership immediately since it does not involve the layoff of any City employee.

CONCLUSION:

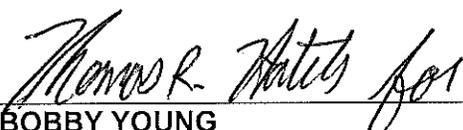
Staff recommends creating a hybrid public-private partnership for Graphic Design Services to maintain the ability to design and create materials in-house, create expanded online resources for commonly requested items, and use a private vendor—We The Creative—to accommodate graphic design overflow. The transition will be carefully monitored to measure cost savings and innovations. This proposal will provide the City with an in-house designer at a time when the City is rapidly expanding communication with residents and staff, and a high-quality graphics design firm to handle additional work.



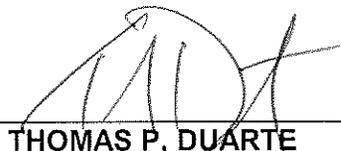
BILL LOBDELL
Communications Director



RICK FRANCIS
Assistant CEO



BOBBY YOUNG
Director of Finance and I.T.

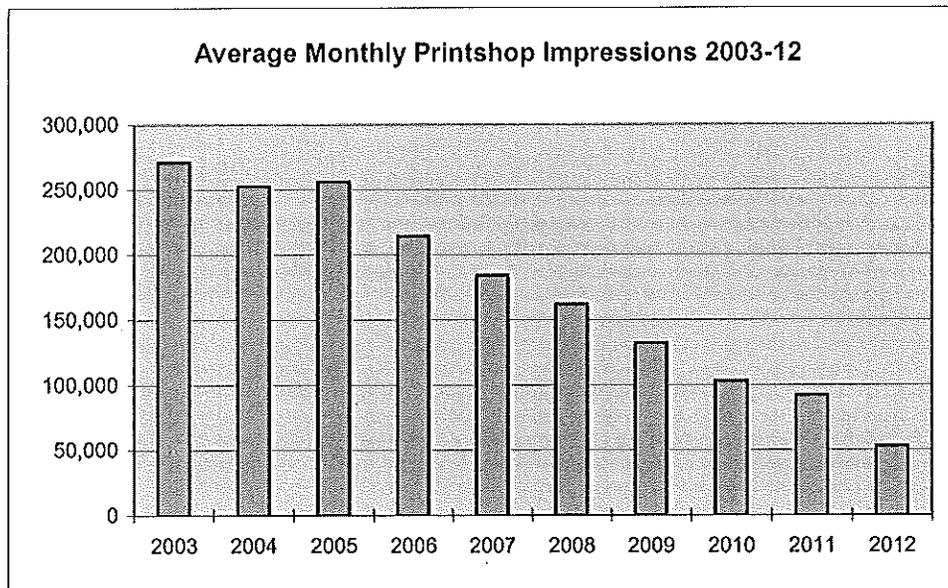


THOMAS P. DUARTE
City Attorney

- ATTACHMENTS:
- 1 Volume Charts
 - 2 Production workflow Chart
 - 3 RFP Determination Book
 - 4 Agreement with We the Creative
 - 5 Fee Proposal

Print Shop Impressions 2003-2012

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
January	194,200	308,910	325,520	88,650	237,300	262,900	170,450	112,000	73,050	90,600
February	259,700	217,725	275,400	202,228	249,800	163,390	141,475	78,000	89,350	105,500
March	311,340	302,340	200,171	359,000	200,150	170,700	83,025	78,850	82,350	88,700
April	279,000	328,120	287,500	106,350	155,900	201,350	129,050	170,850	170,700	139,750
May	260,150	187,150	201,200	407,400	130,250	121,350	115,500	93,650	79,150	
June	278,475	367,950	161,715	204,490	178,100	210,700	223,000	104,700	55,000	
July	319,560	174,094	393,437	204,490	196,700	137,870	165,631	80,300	96,300	
August	293,250	217,000	168,428	327,000	165,500	120,150	103,700	112,200	84,250	
September	370,550	340,850	338,800	196,750	198,300	187,500	149,952	73,200	106,300	
October	260,540	319,220	366,280	139,150	168,972	136,400	114,600	77,100	90,500	
November	214,415	162,491	164,080	160,135	180,828	93,950	103,150	88,950	85,500	
December	208,810	105,556	191,050	175,950	148,335	136,500	90,750	166,310	92,550	
Total	3,249,990	3,031,406	3,073,581	2,571,593	2,210,135	1,942,760	1,590,283	1,236,110	1,105,000	424,550
Avg. Mo.	270,833	252,617	256,132	214,299	184,178	161,897	132,524	103,009	92,083	53,069

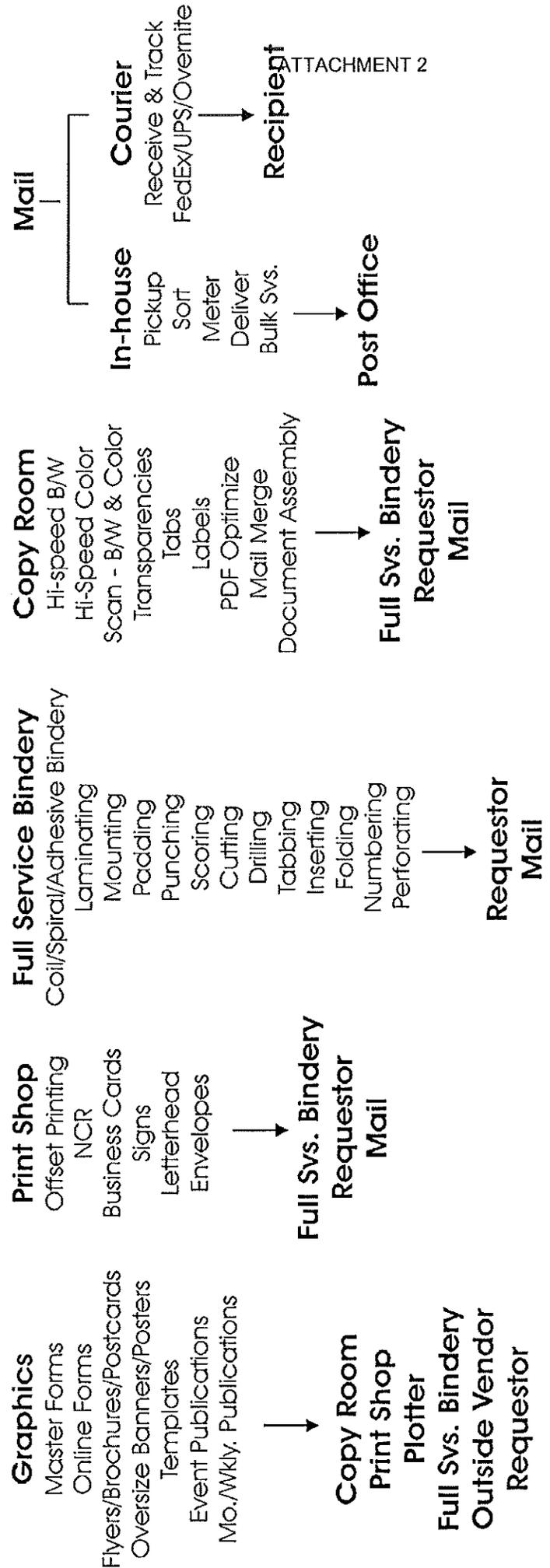


Central Service PRODUCTION WORKFLOW

INCOMING WORK

E-Print Front Counter Email Pneumatic Tubes Interoffice Envelopes

CENTRAL SERVICES



PROFESSIONAL SERVICES AGREEMENT

CITY OF COSTA MESA

THIS AGREEMENT is made and entered into this ___ day of ____, 2012 (“Effective Date”), by and between the CITY OF COSTA MESA, a municipal corporation (“City”), and consultant, Jovenville, a California limited liability partnership, dba We The Creative (“Consultant”).

WITNESSETH:

A. WHEREAS, City proposes to have Consultant provide graphic design services as described herein below; and

B. WHEREAS, Consultant represents that it has that degree of specialized expertise necessary to practice and perform the services herein contemplated; and

C. WHEREAS, City and Consultant desire to contract for specific services in connection with the project described below (the “Project”) and desire to set forth their rights, duties and liabilities in connection with the services to be performed; and

D. WHEREAS, no official or employee of City has a financial interest, within the provisions of California Government Code, Sections 1090-1092, in the subject matter of this Agreement.

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

1.0. SERVICES PROVIDED BY CONSULTANT

1.1. Scope of Services. Consultant shall provide the professional services described in Consultant’s Proposal (the “Proposal”). A copy of said Proposal is attached hereto as Exhibit “A” and incorporated herein by this reference.

1.2. Professional Practices. All professional services to be provided by Consultant pursuant to this Agreement shall be provided by personnel experienced in their respective fields and in a manner consistent with the standards of care, diligence and skill ordinarily exercised by professional consultants in similar fields and circumstances in accordance with sound professional practices. It is understood that in the exercise of every aspect of its role, within the scope of work, consultant will be representing the City, and all of its actions, communications, or other work, during its employment, under this contract is under the direction of the City. Consultant also warrants that it is familiar with all laws that may affect its performance of this Agreement and shall advise City of any changes in any laws that may affect Consultant’s performance of this Agreement.

1.3. Warranty. Consultant warrants that it shall perform the services required by this Agreement in compliance with all applicable Federal and California employment laws including,

but not limited to, those laws related to minimum hours and wages; occupational health and safety; fair employment and employment practices; workers' compensation insurance and safety in employment; and all other Federal, State and local laws and ordinances applicable to the services required under this Agreement. Consultant shall indemnify and hold harmless City from and against all claims, demands, payments, suits, actions, proceedings, and judgments of every nature and description including attorneys' fees and costs, presented, brought, or recovered against City for, or on account of any liability under any of the above-mentioned laws, which may be incurred by reason of Consultant's performance under this Agreement.

1.4. Non-discrimination. In performing this Agreement, Consultant shall not engage in, nor permit its agents to engage in, discrimination in employment of persons because of their race, religion, color, national origin, ancestry, age, physical handicap, medical condition, marital status, sexual gender or sexual orientation, except as permitted pursuant to Section 12940 of the Government Code. Violation of this provision may result in the imposition of penalties referred to in Labor Code, Section 1735.

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

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

2.0. COMPENSATION AND BILLING

2.1. Compensation. Consultant shall be paid on a per job or hourly basis, as the case may be, as set forth in the Fee Proposal portion of its proposal, copies of the relevant pages of which are separately attached as Exhibit "B." Consultant shall be paid \$10.00 per day for two (2) pre-scheduled daily deliveries/pick-ups at Costa Mesa City Hall. Consultant shall also be paid \$10.00 for any on-demand pick-up/delivery run outside of the regularly scheduled deliveries/pick-ups at City Hall and for pick-up/delivery runs to other City facilities within Costa Mesa city limits. Consultant's total compensation shall not exceed Seventy Five Thousand Dollars (\$75,000.00) per annum.

Pricing as set forth in the Fee Proposal shall not be increased for a minimum of two (2) years from the effective date of this Agreement. Any subsequent price increases shall be requested as least sixty days prior to any such increase taking effect and shall not exceed The Bureau of Labor Statistics Consumer Price Index (CPI) data for Los Angeles-Riverside-Orange County, CA, All Items, Not Seasonally Adjusted, "annualized change comparing the original proposal month and the same month in the subsequent year."

2.2. Additional Services. Consultant shall not receive compensation for any services provided outside the scope of services specified in the Proposal unless the City or the Project

Manager for this Project, prior to Consultant performing the additional services, approves such additional services in writing. It is specifically understood that oral requests and/or approvals of such additional services or additional compensation shall be barred and are unenforceable.

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

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

3.0. TIME OF PERFORMANCE

3.1. Commencement and Completion of Work. The professional services to be performed pursuant to this Agreement shall commence within five (5) days from the Effective Date of this Agreement. Said services shall be performed in accordance with the proposal lead times identified in the Fee Proposal (Exhibit "B") or as otherwise agreed at the time of assignment; individual graphic design jobs shall be completed by the requested time and date submitted with each job request. Failure to commence work in a timely manner and/or diligently pursue work to completion may be grounds for termination of this Agreement.

3.2. Excusable Delays. Neither party shall be responsible for delays or lack of performance resulting from acts beyond the reasonable control of the party or parties. Such acts shall include, but not be limited to, acts of God, fire, strikes, material shortages, compliance with laws or regulations, riots, acts of war, or any other conditions beyond the reasonable control of a party.

4.0. TERM AND TERMINATION

4.1. Term. This Agreement shall commence on the Effective Date and continue for a period of three years, unless previously terminated as provided herein or as otherwise agreed to in writing by the parties. At the end of the term period, the City may determine, in its sole discretion, to exercise an option to renew the contract for up to two periods of one (1) year each. The City shall give notice to Consultant of its intention to exercise such option at least 30 days prior to expiration of the base or option term, as the case may be.

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

termination. In the event of such termination, Consultant shall immediately stop rendering services under this Agreement unless directed otherwise by the City.

4.3. Compensation. In the event of termination, City shall pay Consultant for reasonable costs incurred and professional services satisfactorily performed up to and including the date of City's written notice of termination.

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

5.0. INSURANCE

5.1. Minimum Scope and Limits of Insurance. Consultant shall obtain and maintain during the life of this Agreement all of the following insurance coverages:

- (a) Comprehensive general liability, including premises-operations, products/completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate.
- (b) Automobile liability for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate.
- (c) Workers' compensation insurance as required by the State of California. Consultant agrees to waive, and to obtain endorsements from its workers' compensation insurer waiving, subrogation rights under its workers' compensation insurance policy against the City and to require each of its subcontractors, if any, to do likewise under their workers' compensation insurance policies.
- (d) Professional errors and omissions ("E&O") liability insurance with policy limits of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate. Consultant shall obtain and maintain, said E&O liability insurance during the life of this Agreement and for three years after completion of the work hereunder.

5.2. Endorsements. The comprehensive general liability insurance policy shall contain or be endorsed to contain the following provisions:

- (a) Additional insureds: "The City of Costa Mesa and its elected and appointed boards, officers, agents, and employees are additional insureds with respect to this subject project and contract with City."
- (b) Notice: "Said policy shall not terminate, nor shall it be cancelled, nor the coverage reduced, until thirty (30) days after written notice is given to City."
- (c) Other insurance: "Any other insurance maintained by the City of Costa Mesa shall be excess and not contributing with the insurance provided by this policy."

5.3 If any of such policies provide for a deductible or self-insured retention to provide such coverage, the amount of such deductible or self-insured retention shall be approved in advance by City. No policy of insurance issued as to which the City is an additional insured shall contain a provision which requires that no insured except the named insured can satisfy any such deductible or self-insured retention.

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

5.5. Non-limiting: Nothing in this Section shall be construed as limiting in any way, the indemnification provision contained in this Agreement, or the extent to which Consultant may be held responsible for payments of damages to persons or property.

6.0. GENERAL PROVISIONS

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

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

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

6.3. Project Managers. City shall designate a Project Manager to work directly with Consultant in the performance of this Agreement. City's Project Manager will be William Lobdell.

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

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

IF TO CONSULTANT:

We the Creative
 2810 Villa Way
 Newport Beach, CA 92663
 Tel: 877-887-1318
 Fax: 949-723-1566
 Attn: Joven Orosco

IF TO CITY:

City of Costa Mesa
 77 Fair Drive
 Costa Mesa, CA 92626
 Tel: 714-754-5156
 Fax: 714-754-5330
 Attn: Purchasing

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

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

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

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

6.9. Indemnification and Hold Harmless:

To the fullest extent permitted by law, the Consultant assumes liability for and shall save and protect, hold harmless, indemnify, and defend the City and its elected and appointed officials, officers, and employees (all the foregoing, hereinafter collectively, "Indemnitees") from and against all claims, suits, demands, damages, losses, expenses, and liabilities of any kind whatsoever (all the foregoing, hereinafter collectively "Claims") including, without limitation, attorneys' fees, arising out of, resulting from, relating to, or claimed to have arisen out of, resulted from or related to the engagement of Consultant or the performance of this Agreement by the Consultant (including its subcontractors and suppliers)

It is expressly intended by the parties that Consultant's indemnity and defense obligations shall apply, and Indemnitees shall be fully indemnified without offset, deduction or contribution, regardless of any negligence or other fault of Indemnitees, or any of them, and whether or not such Indemnitee negligence or other fault caused or contributed to the arising of the Claims.

"Claims" as used in this section shall include, without limitation, those for personal injuries, wrongful death, mental or emotional distress, loss of consortium, damage to or loss of use of real, personal or intangible property of any kind, loss of income, loss of earning capacity, and business, financial, commercial or pecuniary losses of any kind whatsoever, and attorneys fees, and costs and expenses of any kind whatsoever.

Consultant's indemnity and defense obligations shall cover the acts or omissions of any of Consultant's subcontractors, and suppliers, and the employees of any of the foregoing.

The Consultant's indemnity and defense obligation under this Section includes, without limitation, any claims, suits, demands, damages, losses, expenses, and liabilities arising from allegations of violations of any federal, State, or local law or regulation, and from allegations of violations of Consultant's or its subcontractor's personnel practices or from any allegation of an injury to an employee of the Consultant or subcontractor performing work or labor necessary to carry out the provisions of this Contract.

The indemnification obligations in this Section shall not be construed to negate, abridge or otherwise reduce any other obligation of indemnity the Consultant may have with respect to

the City which may otherwise exist. If any judgment is rendered against the City or any of the other individuals enumerated above in any such action, the Consultant shall, at its expense, satisfy and discharge the same. This indemnification shall survive termination or expiration of this Agreement.

6.10. Independent Contractor: Consultant is and shall be acting at all times as an independent contractor and not as an employee of City. Consultant shall secure, at his expense, and be responsible for any and all payment of Income Tax, Social Security, State Disability Insurance Compensation, Unemployment Compensation, and other payroll deductions for Consultant and its officers, agents, and employees, and all business licenses, if any are required, in connection with the services to be performed hereunder.

6.11 PERS Eligibility Indemnification. In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement claims or is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

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

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

6.13. Confidentiality: Any City materials to which the Consultant has access, information that reasonably might be construed as private or containing personal identifiable information, or materials prepared by the Consultant during the course of this Agreement

(collectively referred to as "confidential information") shall be held in confidence by the Consultant, who shall exercise all reasonable precautions to prevent the disclosure of confidential information to anyone except the officers, employees and agents of the Consultant as necessary to accomplish the rendition of services set forth in this Agreement. Consultant shall not release any reports, information, private or promotional information or materials, whether deemed confidential or not, to any third party without the approval of the City.

6.14. Responsibility for Errors. Consultant shall be responsible for its work and results under this Agreement. Consultant, when requested, shall furnish clarification and/or explanation as may be required by the City's representative, regarding any services rendered under this Agreement at no additional cost to City. In the event that an error or omission attributable to Consultant occurs, then Consultant shall, at no cost to City, provide all necessary design drawings, estimates and other Consultant professional services necessary to rectify and correct the matter to the sole satisfaction of City and to participate in any meeting required with regard to the correction.

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

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

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

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

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

6.20. Construction: The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by the parties and in accordance with its fair meaning. There shall be no presumption or burden of proof favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

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

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

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

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

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

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

CITY OF COSTA MESA,

A municipal corporation

City Manager of Costa Mesa

Date: _____

CONSULTANT

Signature

Date: _____

Name and Title

Social Security or Taxpayer ID Number

APPROVED AS TO FORM:

City Attorney

Date: _____

APPROVED AS TO INSURANCE:

Risk Management

Date: _____

APPROVED AS TO CONTENT:

Project Manager

Date: _____

EXHIBIT A

CONSULTANT'S PROPOSAL

EXHIBIT B

CONSULTANT'S FEE PROPOSAL

EXHIBIT C

CITY COUNCIL POLICY 100-5

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

BACKGROUND

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

PURPOSE

It is the purpose of this Policy to:

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

POLICY

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

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

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

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

3. Making a good faith effort to maintain a drug-free workplace through implementation of subparagraphs 1 A through 1 F, inclusive.

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

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

EXHIBIT C

CERTIFICATES OF INSURANCE



2810 Villa Way, Newport Beach, CA 92663 (877) 887-1318 WeTheCreative.com

FEE PROPOSAL

Provide hourly rates, along with estimated annual pricing in accordance with the City's current requirements, as set forth in section 3 Scope of Work. Also provide your firm's proposed Staffing Plan on a separate sheet of paper. Proposer should use a separate form to state pricing for any added value.

Pricing shall remain firm for a minimum of two (2) years. Any and all requests for pricing adjustments for follow-on contract renewal periods shall be provided no later than sixty (60) days prior to the end of the contract period. Any such proposed price adjustments shall not exceed The Bureau of Labor Statistics Consumer Price Index (CPI) data for Los Angeles-Riverside-Orange County, CA, All Items, Not Seasonally Adjusted, "annualized change comparing the original proposal month and the same month in the subsequent year. (This information may be found on the U.S. Department of Labor's website at www.bls.gov.)

If bidding by hourly services provided:

Employee H	Hourly Rate T	Total Cost O	Overtime rate
\$ Joven Orozco	75		\$ 80
\$ Kenneth Lim	65		\$ 70
\$ Betty Ko	55		\$ 60
\$ Charles Pebenito	55		\$ 60
\$ Elsa Boosln	55		\$ 60

The undersigned bidder hereby offers to perform the required services in strict compliance with the specifications, terms and conditions set forth in this bid invitation.



2810 Villa Way, Newport Beach, CA 92663 (877) 887-1318 WeTheCreative.com

FEE PROPOSAL

Bidding job samples: (see attachment 2 for job samples)

Item

No.	Description	Bid Price*	Bid Price*
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JOB #1 - Quarterly Recreation Guide - Sample

Standard Lead Time: 30 days \$ 5,000 Rush Lead Time: 15 days \$ 7,500

JOB #2 - Weekly CEO Briefing - Sample

Standard Lead Time: 5 days \$ 3,500 Rush Lead Time: 3 days \$ 4,000

JOB #3 - Building Handout - Sample

Standard Lead Time: 2 days \$ 500 Rush Lead Time: 1 days \$ 500

JOB #4 - Recruitment Brochure - Sample

Standard Lead Time: 5 days \$ 2,000 Rush Lead Time: 3 days \$ 12,500

JOB #5 - Fire Prev. Education Booklet - Sample

Standard Lead Time: 30 days \$ 10,000 Rush Lead Time: 15 days \$ 15,000

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