CITY OF COSTA MESA
PROFESSIONAL SERVICES AGREEMENT
WITH
ONWARD ENGINEERING

THIS AGREEMENT is made and entered into this 4th day of February, 2014 ("Effective Date"), by and between the CITY OF COSTA MESA, a municipal corporation ("City"), and Onward Engineering, a California corporation ("Consultant").

W I T N E S S E T H :

A. WHEREAS, City proposes to utilize the services of Consultant as an independent contractor to engineering design services, as more fully described herein; and

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

C. WHEREAS, City and Consultant desire to contract for the specific services described in Exhibit "A" (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 Sections 1090-1092 of the California Government Code, in the subject matter of this Agreement.

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

1.0. SERVICES PROVIDED BY CONSULTANT

1.1. Scope of Services. Consultant shall provide the professional services described in the City's Request for Proposal ("RFP"), attached hereto as Exhibit "A," and Consultant's Response to City's RFP (the "Response") attached hereto as Exhibit "B", both 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. Consultant also warrants that it is familiar with all laws that may affect its performance of this Agreement and shall advise City of any changes in any laws that may affect Consultant's performance of this Agreement.

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

(a) Meet with Consultant to review the quality of the work and resolve the matters of concern;

(b) Require Consultant to repeat the work at no additional fee until it is

satisfactory; and/or

(c) Terminate the Agreement as hereinafter set forth.

1.4. Warranty. Consultant warrants that it shall perform the services required by this Agreement in compliance with all applicable Federal and California employment laws including, but not limited to, those laws related to minimum hours and wages; occupational health and safety; fair employment and employment practices; workers' compensation insurance and safety in employment; and all other Federal, State and local laws and ordinances applicable to the services required under this Agreement. Consultant 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.

1.5. Non-discrimination. In performing this Agreement, Consultant shall not engage in, nor permit its agents to engage in, discrimination in employment of persons because of their race, 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.

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

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

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

2.0. COMPENSATION AND BILLING

2.1. Compensation. Consultant shall be paid in accordance with the fee schedule set forth in Exhibit "C," attached hereto and made a part of this Agreement (the "Fee Schedule"). Consultant's total compensation shall not exceed One Hundred Nineteen Thousand, Six Hundred Seventy Dollars ($ 119,670.00).

2.2. Additional Services. Consultant shall not receive compensation for any services provided outside the scope of services specified in the Consultant's Proposal unless the City 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 the City for approval on a progress basis, but no more often than two times a month. Said invoice shall be based on the total of all Consultant's services which have been completed to City's sole satisfaction. City shall pay Consultant's invoice within forty-five (45) days from the date City receives said invoice. Each invoice shall describe in detail, the services performed, the date of performance, and the associated time for completion. Any additional services approved and performed pursuant to this Agreement shall be designated as "Additional Services" and shall identify the number of the authorized change order, where applicable, on all invoices.

2.4. Records and Audits. Records of Consultant's services relating to this Agreement shall be maintained in accordance with generally recognized accounting principles and shall be made available to City or its Project Manager for inspection and/or audit at mutually convenient times 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 strict compliance with the Project Schedule approved by City as set forth in Exhibit "D," attached hereto and incorporated herein by this reference. The Project Schedule may be amended by mutual agreement of the parties. 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 one year through February 3, 2015, unless previously terminated as provided herein or as otherwise agreed to in writing by the parties.

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

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

City or in the possession of the Consultant.

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

5.0. INSURANCE

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

(a) Commercial general liability, including premises-operations, products/completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury or bodily injury with a policy limit of not less than One Million Dollars ($1,000,000.00), combined single limits, per occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or shall be twice the required occurrence limit.

(b) Business automobile liability for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than One Million Dollars ($1,000,000.00), combined single limits, per occurrence for bodily injury and property damage.

(c) Workers' compensation insurance as required by the State of California. Consultant agrees to waive, and to obtain endorsements from its workers' compensation insurer waiving subrogation rights under its workers' compensation insurance policy against the City, its officers, agents, employees, and volunteers arising from work performed by Consultant for the City and to require each of its subcontractors, if any, to do likewise under their workers' compensation insurance policies.

(d) Professional errors and omissions ("E&O") liability insurance with policy limits of not less than One Million Dollars ($1,000,000.00), combined single limits, per occurrence and aggregate. Architects' and engineers' coverage shall be endorsed to include contractual liability. If the policy is written as a "claims made" policy, the retro date shall be prior to the start of the contract work. Consultant shall obtain and maintain, said E&O liability insurance during the life of this Agreement and for three years after completion of the work hereunder.

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

(a) Additional insureds: "The City of Costa Mesa and its elected and appointed boards, officers, officials, agents, employees, and volunteers

are additional insureds with respect to: liability arising out of activities performed by or on behalf of the Consultant pursuant to its contract with the City; products and completed operations of the Consultant; premises owned, occupied or used by the Consultant; automobiles owned, leased, hired, or borrowed by the Consultant."

(b) Notice: "Said policy shall not terminate, be suspended, or voided, nor shall it be cancelled, nor the coverage or limits reduced, until thirty (30) days after written notice is given to City.

(c) Other insurance: "The Consultant's insurance coverage shall be primary insurance as respects the City of Costa Mesa, its officers, officials, agents, employees, and volunteers. Any other insurance maintained by the City of Costa Mesa shall be excess and not contributing with the insurance provided by this policy."

(d) Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the City of Costa Mesa, its officers, officials, agents, employees, and volunteers.

(e) The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

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

5.4. Certificates of Insurance. Consultant shall provide to City certificates of insurance showing the insurance coverages and required endorsements described above, in a form and content approved by City, prior to performing any services under this Agreement. The certificates of insurance shall be attached hereto as Exhibit "E" and incorporated herein by this reference.

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

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

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

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

6.4. Notices. Any notices, documents, correspondence or other communications concerning this Agreement or the work hereunder may be provided by personal delivery, 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:	IF TO CITY:
Onward Engineering	City of Costa Mesa
300 S. Harbor Blvd, Suite 814	77 Fair Drive
Anaheim, CA 92805	Costa Mesa, CA 92626
Tel: (714) 533-3050	Tel: (714) 754-5183
Fax: (714) 948-8978	Fax: (714) 754-5028
Attn: Majdi Ataya, President	Attn: Pritam Deshmukh

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 "F" 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. Consultant agrees to defend, indemnify, hold free and harmless the City, its elected officials, officers, agents and employees, at Consultant's sole expense, from and against any and all claims, actions, suits or other legal proceedings brought against the City, its elected officials, officers, agents and employees arising out of the performance of the Consultant, its employees, and/or authorized subcontractors, of the work undertaken pursuant to this Agreement. The defense obligation provided for hereunder shall apply without any advance showing of negligence or wrongdoing by the Consultant, its employees, and/or authorized subcontractors, but shall be required whenever any claim, action, complaint, or suit asserts as its basis the negligence, errors, omissions or misconduct of the Consultant, its employees, and/or authorized subcontractors, and/or whenever any claim, action, complaint or suit asserts liability against the City, its elected officials, officers, agents and employees based upon the work performed by the Consultant, its employees, and/or authorized subcontractors under this Agreement, whether or not the Consultant, its employees, and/or authorized subcontractors are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, the Consultant shall not be liable for the defense or indemnification of the City for claims, actions, complaints or suits arising out of the sole active negligence or willful misconduct of the City. This provision shall supersede and replace all other indemnity provisions contained either in the City's specifications or Consultant's Proposal, which shall be of no force and effect.

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

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

6.13. 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.

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

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

6.16. 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.

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

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

6.19. 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.

6.20. 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.

6.21. 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.

6.22. 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.

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

6.24. 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.

6.25. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance. Notwithstanding the foregoing, if the value of this Agreement, based upon the substantial benefit of the bargain for any party, is materially impaired, which determination made by the presiding court or arbitrator of competent jurisdiction

shall be binding, then both parties agree to substitute such provision(s) through good faith negotiations.

6.26. 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.

6.27. 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

_____ Date: _____
Mayor Jim Righeimer

CONSULTANT

Majdi Ataya Date: 1/16/2014
Signature

Majdi Ataya, President
Name and Title

80-0101723
Social Security or Taxpayer ID Number

ATTEST:

_____
City Clerk and ex-officio Clerk
of the City of Costa Mesa

APPROVED AS TO FORM:

_____ Date: _____
City Attorney

APPROVED AS TO INSURANCE:

_____ Date: _____

Risk Management

APPROVED AS TO CONTENT:

pdeshmukh _____ Date: 1/21/14

Project Manager

EXHIBIT A

REQUEST FOR PROPOSALS

CITY OF COSTA MESA

CALIFORNIA 92628-1200 P.O. Box 1200

FROM THE OFFICE OF THE TRANSPORTATION SERVICES MANAGER

November 13, 2013

SUBJECT: REQUEST FOR PROPOSALS – DESIGN AND ENVIRONMENTAL SERVICES FOR IMPROVEMENTS ON RED HILL AVENUE, PLACENTIA AVENUE, AND BRISTOL STREET

Dear Consultant:

The City of Costa Mesa is requesting proposals for professional engineering and environmental services to design improvements on three (3) separate street segments in Costa Mesa. The scope of services generally consists of preparation and processing of environmental documents and preparation of civil engineering design plans for the installation of raised medians and landscaping along Red Hill Avenue, Placentia Avenue, and Bristol Street.

Proposals for professional engineering and environmental services are requested for the three (3) individual projects listed below. The City may choose to award each project separately to different consultants or combine projects and award one or more to the same consultant.

Project A: Median installation and landscaping along Red Hill Avenue between Bristol Street and McCormick Avenue
Project B: Median installation and landscaping along Placentia Avenue between Adams Avenue and Wilson Street
Project C: Median installation and landscaping along Bristol Street between Baker Street and Newport Boulevard Southbound Frontage Road

Consultants' Proposals should include each individual Project that they are proposing, in one submitted document.

Each project is structured in the four (4) following phases:

Phase 1: Existing Plan Review, Survey, and Preliminary Design
Phase 2: Environmental Analysis and Approval
Phase 3: Final Civil Engineering Design
Phase 4: Federal Approval for Construction and Construction Support

Community outreach should be incorporated during the first three (3) phases of the project.

BACKGROUND

The City of Costa Mesa has identified accident patterns within the three (3) Project street segments that could be improved by the installation of raised landscaped medians.

In January 2013, the City was awarded Federal Highway Safety Improvement Program (HSIP) grant funds for three (3) individual projects to install medians, landscaping, and associated

77 FAIR DRIVE
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15

improvements along Red Hill Avenue, Placentia Avenue, and Bristol Street to improve pedestrian and traffic safety. Authorization to proceed with the final design for the three (3) projects was received in September 2013.

SCOPE OF SERVICES

The project scope includes the preparation of plans and processing of documents to allow the installation of medians and landscaping along Red Hill Avenue, Placentia Avenue, and Bristol Street. The subject scope of services is intended as a "Turnkey" project to maintain a responsible and comprehensive base for all project development. Tasks shall be coordinated to effectively develop interrelated project elements; the project shall not be advanced until preliminary requirements are addressed and clear direction established. The consultant shall have total responsibility for the accuracy and completeness of all work and services.

The following description of work defines the general project requirements for each median project (A, B, and C). Associated tasks and provisions not specifically defined herein are requested to be addressed in the proposal and undertaken within the proposed "Not to Exceed" contract fee.

PHASE I – Topographic Survey, Field Condition Assessment, Alternatives Analysis, Preliminary Design, & Resident Meetings

This phase consists of defining the physical conditions and utilities within the project area, preparation of preliminary design plans and establishing the design features proposed, and meeting with affected stakeholders. For Project C (Bristol Street) between Baker Street and Randolph Avenue, the consultant shall perform a traffic analysis of turning movements from driveways and pedestrian crossing movements. Based on this analysis, the consultant shall provide median alternatives to address traffic and pedestrian issues. This phase shall include the following:

1. Meet with City staff to define and clarify the work plan and project elements. The City will provide data collected to date and conceptual plans for consultant use. It is the consultant's responsibility to verify the accuracy of all information provided by the City.
2. Review all City-supplied information, including conceptual plans and neighborhood concerns.
3. Perform additional topographic surveying extending through the project area to establish horizontal and vertical controls at 25' intervals. Establish existing and proposed controls including centerline, street geometrics, and right-of-way throughout the project limits. Reference elevations to the closest and latest Orange County Benchmark (OCBM).
4. Research and establish the precise location of all utilities and utility easements. Coordinate with all utility companies to determine underground, surface, and overhead facilities. Comply with the City-adopted "Utility Coordination Procedures." Determine where interfaces with existing facilities will occur as a result of the future construction of this project. Consult with affected utility companies and resolve any conflicts, keeping City staff informed in writing. Maintain a Utility File on all utility documentation.
5. Plot the detailed survey notes and electronic mapping files at 40 scale using CAD on 24" X 36" sheets identifying all existing conditions. Physical features shall include BCR, ECR, flow-lines, centerlines, angle points, top of curb, spandrels, pavement striping, utilities, structures, walls, trees and landscape, underground and surface utilities, poles, hydrants, catch basins, signs, valves, manholes, and all other physical features.
6. Perform a traffic analysis of turning movements from driveways and pedestrian crossing movements along Bristol Street (Project C); recommend any alternatives to the proposed median and meet with City and affected stakeholders to reach consensus on the design.

7. Preliminary design work includes plans for construction of median improvements. The preparation of cost estimates shall be included.

Community Outreach:

Installing raised medians and landscaping at certain locations may have impacts to property frontages of affected businesses. The City intends to hold three (3) neighborhood meetings and one (1) City Council Public Hearing, to identify and finalize the project concept. The Consultant is required to continue this outreach to the community during the design process under the City's direction. For the purposes of this proposal, assume up to three community outreach meetings and a City Council presentation. The Consultant will plan, prepare, and conduct these meetings based on discussions with the City. The City will assist in providing notification to affected stakeholders including businesses and residents.

PHASE II - Environmental Study

This phase includes the preparation of a Preliminary Environmental Studies (PES) document analyzing and describing environmental impacts and mitigations of each of the proposed projects, Projects A, B, and C, meeting California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA) requirements. As the three (3) median projects are federally funded, Caltrans will review and approve all environmental documents. All associated work required to receive environmental compliance shall be included within the subject scope of services, including the preparation of the Field Review form, Aerial Deposited Lead (ADL) study and other environmental studies as required, copying, distribution/mailing of notices, and providing all materials and services as necessary. The consultant shall submit copies of the environmental document, associated technical reports, and other materials for the City and Caltrans review, and address all elements to achieve Caltrans environmental clearance.

PHASE III - Plans, Specifications & Estimates

This phase includes the preparation of final plans and specifications necessary to construct each of the individual projects. The consultant is expected to meet twice a month with City staff to discuss the various design elements. This task includes, but is not limited to the following:

A. **Construction Documents** - Prepare separate design plans and profiles at 1" = 20' scale on standard 24" x 36" mylar for each Project. Electronic CAD files compatible with AutoCAD 2007 and other document files shall be delivered to City. Complete plans on mylar per City standards. Plan and profile will be required for the existing and proposed elevations. Plans are to be fully detailed to advertise and construct the project. Design plans shall include median design, landscaping and irrigation, signing and striping, and traffic control and detour, etc. Work for Project A, Project B, and Project C shall include:

   1. Utilities - Perform all necessary research to establish precise location of all utilities and utility easements. Coordinate with all utility companies to determine the nature and location of all possible relocations and associated costs. Determine where interfaces with existing facilities will occur as a result of the construction of this project. Consult with affected utility companies requiring relocations, and resolve any conflicts, keeping City staff informed in writing, including the possibility of undergrounding utilities presently on poles along the project area. Comply with Caltrans' "Manual on High and Low Risk Underground Facilities within Highway Rights-of-Way."

   2. Hydrologic/hydraulic Report – Analyze hydrologic/hydraulic conditions, develop details for standard longitudinal and cross fall drainage, and document findings and design calculations.

3. Prepare a Water Pollution Control Plan meeting recent City and State standards.

4. Prepare final cross sections at 50' intervals, indicating vertical and horizontal cross falls, elevations, analysis of super elevations/highway design speed calculations, effect to private property, etc., conforming to City standards. Detailed and complete cross sections shall be submitted with the first plan check.

5. Traffic control plans are required and must provide continuous driveway and pedestrian access at all times during the construction phase of the project. Traffic control plans shall identify each construction stage and sequence, provide adequate details on alternate detour routes, developed to minimize impacts to residents. It is intended that all travel lanes remain open during daytime hours, and that existing on-street parking remain functional on at least one side of street during construction in daytime and all parking is available during evenings and weekends.

6. The consultant shall prepare preliminary and final color renderings (hard copy and PDF) of landscaping including planting plan and palette, and a minimum of two (2) isometric views for each project to be used in presentations and reports.

7. For budgeting purposes, submit to the City preliminary construction estimates and a monthly update of the estimates as design work progresses. Prepare final the detailed construction quantity and cost estimate.

8. Obtain final design approval from the City, and comply with all applicable requirements.

9. Complete project contract documents and special provisions in a format consistent with current City projects and in conformance with State and Federal guidelines. A copy of the construction contract agreement will be furnished by the City.

10. Prepare and submit two (2) Resident Engineer files, containing at a minimum, final construction quantities and cost estimates with background calculation work sheets; soil and hydrology reports; survey data; Caltrans permit material; and relative information.

11. The Consultant will be requested to review and approve addenda and provide clarification to plans and specifications. Consultant shall attend the pre-construction meeting, and shall be available for consultation and assistance during construction of the project to clarify or explain items relating to the design. The consultant will also be responsible for preparation of final as-built plans.

12. The selected consultant shall include all additional items necessary to achieve completion and approval of the final design plans and specifications.

PHASE IV – <u>Caltrans Construction Authorization forms</u>

The consultant will be responsible for preparing all Federal forms including the Request for Authorization to Proceed with Construction, PS&E Certification, and the subject PS&E package to Caltrans Local Programs. The consultant shall efficiently address all project components as required to obtain State and Federal E-76 Certification.

Quality Assurance/Quality Control - Quality Control shall be consistently and thoroughly applied throughout project development. Assigned QA/QC staff shall be technically well qualified to conduct the appropriate level of oversight, and demonstrate a concerted and sustained commitment to provide a high quality product. Concise written records shall be maintained by the Consultant on all activities. Firms considering proposal submittals are

requested to have an in-house technical level of expertise to professionally address all aspects of the project.

Project Design meetings shall be held twice a month. The consultant shall be responsible for preparing meeting agendas, minutes, and presentation materials. A Critical Path Method (CMP) network, based on activities to support all project milestones and subtasks, shall be prepared. The information will be in the form of a bar chart and show a deliverables schedule and other relevant data needed for the control of work, for City review of the work status, and accomplishments occurring each month.

Content of Proposal

It is requested that the following be submitted with your proposal:

1. Project Understanding - provide a brief review of the project and any suggestions you might have to expedite the project or special concerns of which the City should be advised.
2. Work Plan – define the project approach, team assignments, and products.
3. Schedule – provide a detailed schedule indicating stages of work and time frames.
4. An organization chart and staffing plan identifying personnel on this project, a brief resume on each individual (two pages max per person), and recent projects on which they have worked of similar type. Identify the project manager with a detailed resume, and the individual authorized to negotiate the contract on behalf of the consulting firm.
5. A listing of similar street improvement projects that your firm has completed within the last five (5) years. Information should include a description of work, year completed, cost, and agency/client name along with the agency contact person.
6. Comply with Professional Services Agreement requirements (see attached PSA).
7. Submittal of **three (3)** duplicate proposals.

Fee Schedule

The professional services contract will not be awarded based upon competitive bidding, and it is desired that fees be submitted separately. The fee schedule should show the hourly cost of personnel per task under each phase, with a total not-to-exceed amount for each project (A, B, and C). The consultant's cost proposal for the prime and subcontractors should contain a breakdown of all cost components including labor base rate, other direct costs, overhead, and fees. It is requested that the fee, including all meetings, reproduction, materials, mailings, and associated project expenses, be itemized under the following phases:

Phase 1: Existing Plan Review, Survey, and Preliminary Design
Phase 2: Environmental Study
Phase 3: Final Civil Engineering Design
Phase 4: E-76 Authorization to Initiate Construction

Total Not To Exceed Price - $_____

NOTE: All originals of plans, field notes, data and calculations, correspondence, reports, electronic files, etc., will be turned over to the City upon completion of design. Ten percent (10%) of the total contract fee will be withheld until the final PS&E, Resident Engineers File, and all project documents are submitted in acceptable form to the City.

Contract Changes

Any change in the scope of work resulting in a contract increase or decrease in fee shall be approved by the City **in writing prior** to commencement of actual change in work. No fee

adjustment will be allowed unless said **prior** approval is authorized exclusively **in writing** by the City, without exception.

Right to Reject all Proposals

The City of Costa Mesa reserves the right to reject any or all proposals submitted, and no representation is made hereby that any contract will be awarded pursuant to this request for proposal, or otherwise. All costs incurred in the preparation of the proposal, in the submission of additional information, and/or in any other aspect of a proposal prior to the award of a written contract will be borne by respondent. The City will provide only the staff assistance and documentation specifically referred to herein and will not be responsible for any other cost or obligation of any kind that may be incurred by a respondent. All proposals submitted to the City of Costa Mesa in response to this request for proposals shall become the property of the City.

Enclosed is the City of Costa Mesa professional services standard agreement and sample certificate of insurance for reference in preparing the proposal. The minimum insurance and endorsement requirements are stated within the enclosed documents. Should your firm be interested in submitting a proposal for this project, please forward to the City of Costa Mesa, Transportation Services Division, 4th Floor City Hall, **on or before 5:00 p.m., December 11, 2013**. If additional information is required, please contact Pritam Deshmukh, Associate Engineer, at (714) 754-5183, or via email at pritam.deshmukh@costamesaca.gov.

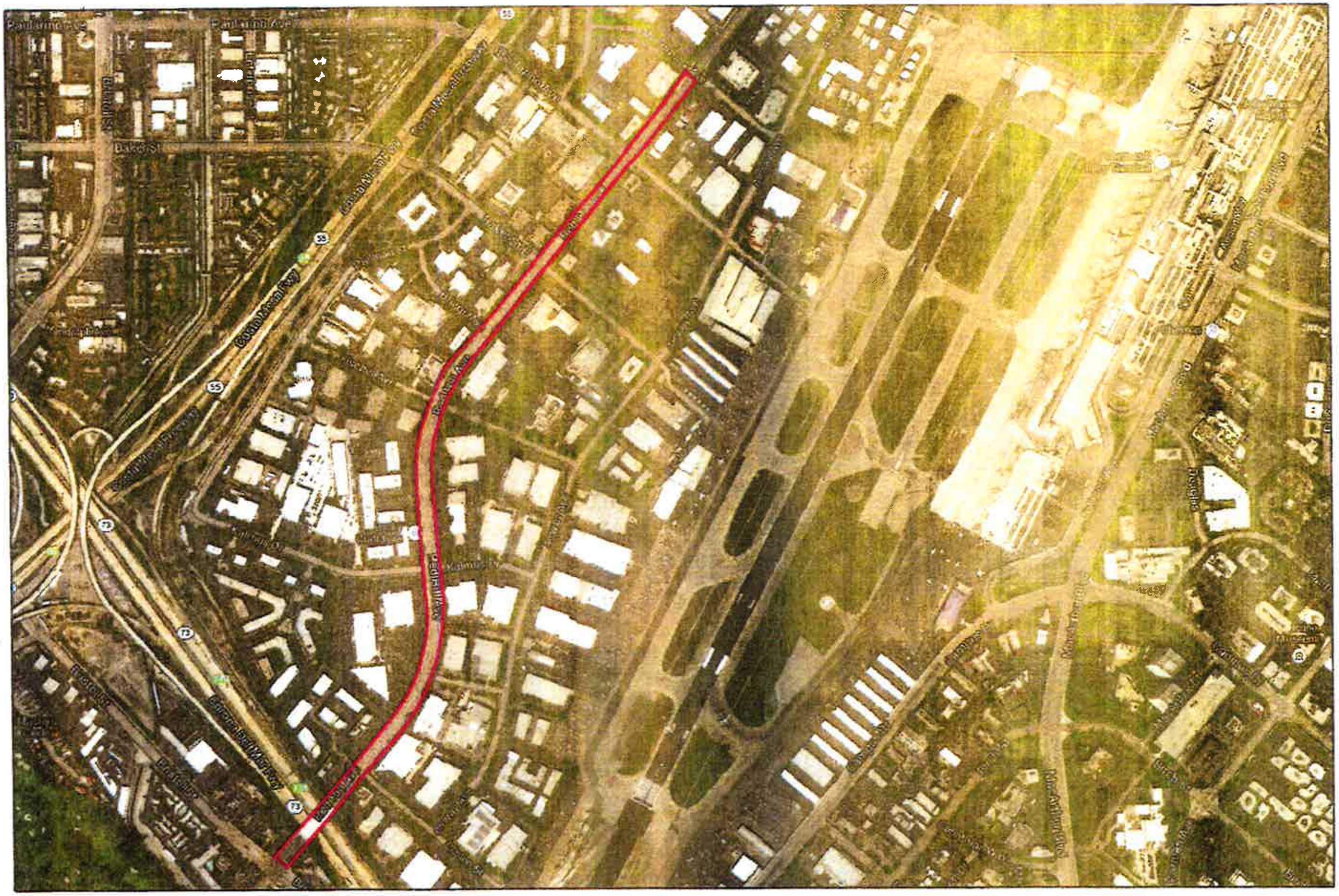
Sincerely,

Raja Sethuraman

RAJA SETHURAMAN, Manager
Transportation Services

Attachments: 1 - Location Maps
2 - Sample Professional Services Agreement

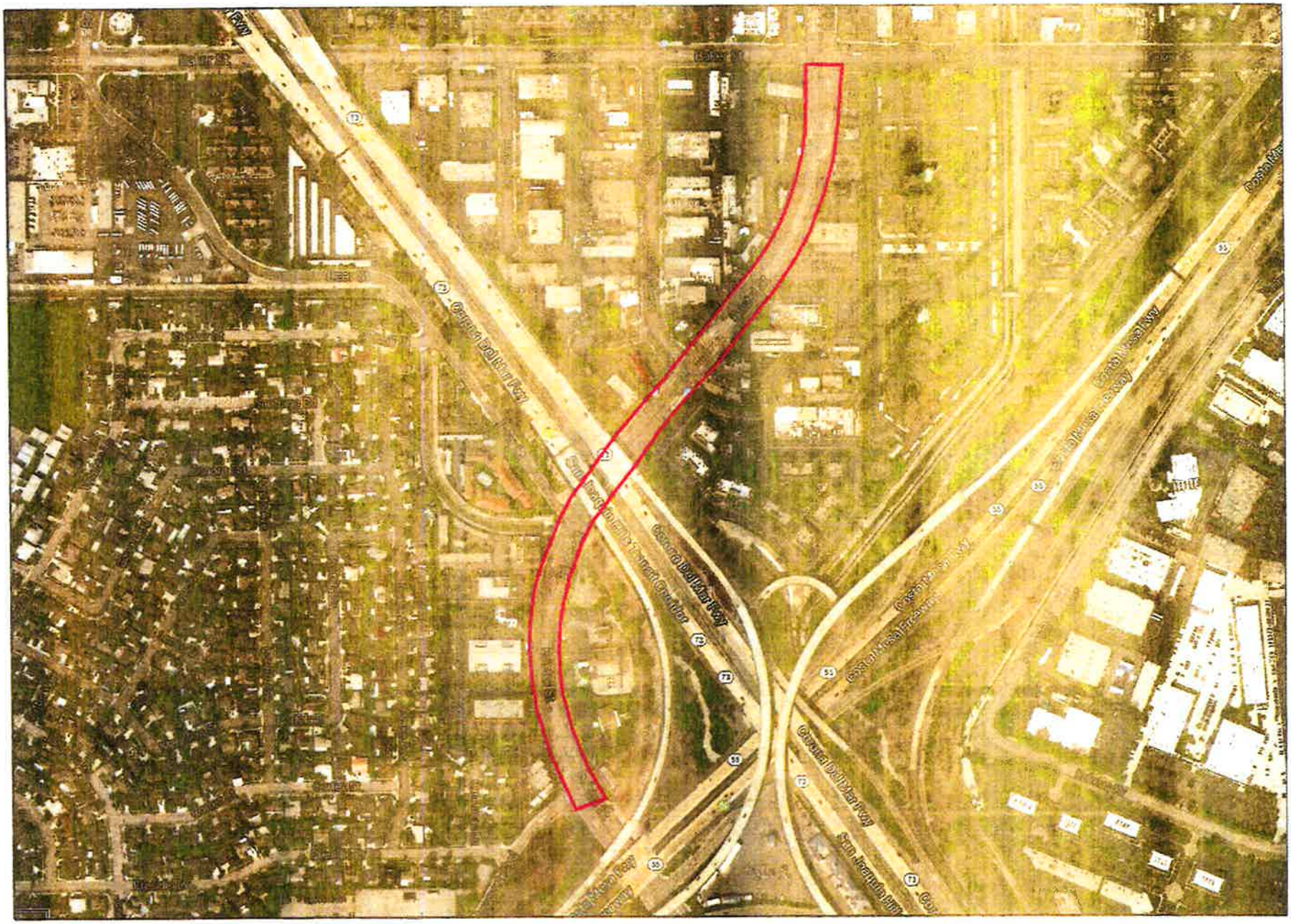
c Ernesto Munoz, Public Services Director
Pritam Deshmukh, Associate Engineer
David Cho, Assistant Engineer



PROJECT A : REDHILL AVE
MCCORMICK AVE TO BRISTOL ST

21

PROJECT B : PLACENTIA AVE
ADAMS AVE TO WILSON ST



PROJECT C : BRISTOL ST
BAKER TO SB NEWPORT BLVD

Exhibit B

This Agreement template is for informational purposes only and is intended for use as an example to vendors showing the City's requirements. When making a request, please submit only the Request form, above, and supporting documents.

PROFESSIONAL SERVICES AGREEMENT
FOR

THIS AGREEMENT is made and entered into this _____ day of _____, 2007 ("Effective Date"), by and between the CITY OF COSTA MESA, a municipal corporation ("City"), and _____, a California corporation ("Consultant").

WITNESSETH:

A. WHEREAS, City proposes to have Consultant perform _____ as described herein below; and

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

C. 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 the City's Request for Proposal ("RFP") attached hereto as Exhibit "A" and incorporated herein by reference and Consultant's Response to City's RFP (the "Response"). A copy of said Response is attached hereto as Exhibit "B" 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. 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 in accordance with the fee schedule set forth in Exhibit "C," attached hereto and made a part of this Agreement (the "Fee Schedule"). Consultant's compensation shall in no case exceed _____ Dollars ($_____.00).

2.2. Additional Services. Consultant shall not receive compensation for any services provided outside the scope of services specified in the Response 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 Project Manager for approval on a progress basis, but no more often than monthly. Said invoice shall be based on the total of all Consultant's services which have been completed to City's sole satisfaction. City shall pay Consultant's invoice within forty-five (45) days from the date City receives said invoice. Each invoice shall describe in detail, the services performed 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 strict compliance with the Project Schedule approved by City as set forth in Exhibit "D," attached hereto and incorporated herein by this reference. The Project Schedule may be amended by mutual agreement of the parties. 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 ___ (X) year, ending on _____, unless previously terminated as provided herein or as otherwise agreed to in writing by the parties.

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

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

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

5.0. INSURANCE

5.1. Minimum Scope and Limits of Insurance. Consultant shall obtain 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.

(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. 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.

5.4. 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.

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:	IF TO CITY:
	City of Costa Mesa 77 Fair Drive Costa Mesa, CA 92626
Tel:	Tel: 714-754-
Fax:	Fax: 714-754-
Attn:	Attn:

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: Consultant shall protect, defend, indemnify and hold harmless City and its elected and appointed officials, officers, and employees from any and all claims, liabilities, expenses, including attorney fees, damage to property or injuries to or death of any person or persons or damages of any nature including, but not by way of limitation, all civil claims or workers' compensation claims arising out of or in any way connected with the intentional or negligent acts, error or omissions of Consultant, its employees, agents or subcontractors in the performance 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. 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.

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

6.13. 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.

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

6.15. 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 RFP or the Response, 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 both the Response and the RFP and the Response shall govern over the RFP.

6.16. 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.

6.17. 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.

6.18. 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.

6.19. 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.

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

6.21. 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.

6.22. 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.

6.23. 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.

6.24. 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

_____ Date: _____
Mayor of the City of Costa Mesa

CONSULTANT

_____ Date: _____
Signature

_____
Name and Title

_____
Social Security or Taxpayer ID Number

ATTEST:

_____
City Clerk and ex-officio Clerk
of the City of Costa Mesa

APPROVED AS TO FORM:

_____ Date: _____

City Attorney

APPROVED AS TO INSURANCE:

_____ Date: _____
Risk Management

APPROVED AS TO CONTENT:

_____ Date: _____
Project Manager

EXHIBIT A

CITY'S REQUEST FOR PROPOSAL

EXHIBIT B

RESPONSE AND SCOPE OF SERVICES

EXHIBIT C

FEE SCHEDULE

EXHIBIT D

PROJECT SCHEDULE

EXHIBIT E

CITY COUNCIL POLICY 100-5

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

BACKGROUND

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

PURPOSE

It is the purpose of this Policy to:

1. Clearly state the City of Costa Mesa's commitment to a drug-free society.

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

POLICY

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

1. Contractor or Sub-grantee hereby certifies that it will provide a drug-free workplace by:

a. **Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in Contractor's and/or sub-grantee's workplace, specifically the job site or location included in this contract, and specifying the actions that will be taken against the employees for violation of such prohibition;**

b. Establishing a Drug-Free Awareness Program to inform employees about:

1. The dangers of drug abuse in the workplace;

2. Contractor's and/or sub-grantee's policy of maintaining a drug-free workplace;

3. Any available drug counseling, rehabilitation and employee assistance programs; and

4. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

c. **Making it a requirement that each employee to be engaged in the performance of the contract be given a copy of the statement required by subparagraph A;**

d. Notifying the employee in the statement required by subparagraph 1 A that, as a condition of employment under the contract, the employee will:

1. Abide by the terms of the statement; and

2. Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;

e. **Notifying the City of Costa Mesa within ten (10) days after receiving notice under subparagraph 1 D 2 from an employee or otherwise receiving the actual notice of such conviction;**

f. Taking one of the following actions within thirty (30) days of receiving notice under subparagraph 1 D 2 with respect to an employee who is so convicted:

1. Taking appropriate personnel action against such an employee, up to and including termination; or

2. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health agency, law enforcement, or other appropriate agency;

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 F

CERTIFICATES OF INSURANCE

ACORD CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YY): 3/23/2010

PRODUCER

[redacted]

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE

INSURED

[redacted]

* Sample *

INSURER A:	Travelers Indemnity Co. of Connecticut
INSURER B:	Travelers Property Casualty Co of Ameri
INSURER C:	Liberty Insurance Underwriters, Inc.
INSURER D:	Travelers Casualty Ins. Co. of America
INSURER E:	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A	GENERAL LIABILITY	[redacted]	8/15/2009	8/15/2010	EACH OCCURRENCE	$1,000,000
	X COMMERCIAL GENERAL LIABILITY				FIRE DAMAGE (Any one fire)	$1,000,000
	CLAIMS MADE X OCCUR				MED EXP (Any one person)	$10,000
					PERSONAL & ADV INJURY	$1,000,000
					GENERAL AGGREGATE	$2,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER: POLICY X PRO-JECT LOC				PRODUCTS - COMP/OP AGG	$2,000,000
A	AUTOMOBILE LIABILITY	[redacted]	8/15/2009	8/15/2010	COMBINED SINGLE LIMIT (Ea accident)	$1,000,000
	ANY AUTO				BODILY INJURY (Per person)	$
	ALL OWNED AUTOS					
	SCHEDULED AUTOS				BODILY INJURY (Per accident)	$
	X HIRED AUTOS					
	X NON-OWNED AUTOS				PROPERTY DAMAGE (Per accident)	$
	GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT	$
	ANY AUTO				OTHER THAN AUTO ONLY: EA ACC	$
					AGG	$
	EXCESS LIABILITY				EACH OCCURRENCE	$
	OCCUR CLAIMS MADE				AGGREGATE	$
						$
	DEDUCTIBLE					$
	RETENTION $0					$
D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	[redacted]	9/1/2009	9/1/2010	X WC STATUTORY LIMITS OTHER	
					E.L. EACH ACCIDENT	$1,000,000
					E.L. DISEASE - EA EMPLOYEE	$1,000,000
					E.L. DISEASE - POLICY LIMIT	$1,000,000
C	OTHER Professional Liability	[redacted]	3/25/2010	3/25/2011	$1,000,000 per claim $2,000,000 annual aggr	

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS

RECEIVED
MAR 24 2010
RISK MGMT.

CERTIFICATE HOLDER

ADDITIONAL INSURED; INSURER LETTER:

City of Costa Mesa
77 Fair Dr.
Costa Mesa CA 92626

CANCELLATION 10 Day Notice for Non-Paymnt of Prem

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT.

AUTHORIZED REPRESENTATIVE [redacted]

(42)

© ACORD CORPORATION 1988

POLICY NUMBER: COMMERCIAL GENERAL LIABILITY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – (FORM B)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART.

SCHEDULE

Name of Person or Organization:

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" for that insured by or for you.

SAMPLE

 Copyright, Insurance Services Office, Inc., 1984

Sample

POLICY NUMBER: _.

COMMERCIAL GENERAL LIABILITY
ECG 24 514 05 00

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PRIMARY AND NONCONTRIBUTORY PROVISION – YOUR OPERATIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

Paragraph 4., Other Insurance of Section IV (Section IV) is amended by the addition of the following:

If insurance similar to this insurance is held by a person or organization that is:

a. An owner of real or personal property on which you are performing operations; or

b. A contractor on whose behalf you are performing operations,

this insurance is primary to that other insurance, and that other insurance shall not contribute to amounts payable under this insurance, for liability arising out of your ongoing operations performed for that person or organization under a written contract. However, this does not apply to any person or organization:

a. From whom you did not receive a specific written request that this insurance be primary insurance, or if you did not receive that request prior to the date that your operations for that person or organization commenced; or

b. For whom a certificate of insurance evidencing that request is not on file with, or received by, us prior to sixty days after the end of the policy period for this insurance.

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EXHIBIT B
CONSULTANT'S PROPOSAL

Scope of Work

OE has reviewed the City's RFP and coupled that knowledge with our experience on similar projects and our understanding of the City's standards and procedures. We take no exceptions to the City's Scope of Work. What follows is a detailed explanation of each work item, clarifications, and deliverables.

PHASE 1 Existing Plan Review, Survey, and Preliminary Design

1.1 DESIGN KICKOFF MEETING

OE will set up a design kick-off meeting with City staff to discuss the scope of work, objectives, design criteria, technical requirements, and project schedule. It is important that the scope of work and schedule be reviewed and finalized by the City at this meeting to ensure a successful project.

Deliverables

-Meeting minutes and agenda

1.2 RESEARCH & REVIEW OF AVAILABLE DATA

The OE team will compile and review all existing plans and documents available from the City of Costa Mesa, Orange County Public Works Counter, OC Geomatics website, and individual utility agencies. All records will be compiled and returned to the City upon project completion. OE will also review conceptual plans and neighborhood concerns to ensure that they are addressed and that solutions can be provided at the neighborhood meetings.

Deliverables

-Existing records matrix and copies of existing records

1.3 FIELD WALK

OE will conduct a field survey to confirm existing site conditions and to shape the scope of work. OE will verify records drawings and data and inventory roadway signage and existing pavement markings. OE will prepare a photo log of key project areas. OE will coordinate with the City to ensure that all desired improvements are noted to ensure that all necessary data is obtained and considered in the design. OE will also meet with City staff to conduct a job site walk to review the findings of our site research and the preliminary scope of work. This meeting will allow us to visually understand City concerns, go over key areas, and ensure that our understanding of the City's needs and the goals of this project are understood and addresses in our design.

Additionally, OE has teamed with NUVIS to provide landscaping plans on this project. NUVIS shall conduct a pre-design tour with sketchbook and digital camera to become familiarized with existing conditions and potential effect on the design solution. This includes visual identification and evaluation. Visual identification includes looking at adjacent land uses, drainage patterns, existing infrastructure, pertinent visual characteristics, environmental conditions, site influences, and view potential/orientation and visual impact. The evaluation entails looking at the impact of pedestrian,

bicycle, and vehicular circulation patterns, physical opportunities and constraints, maintenance needs, and interrelationship with current businesses, residences, and facilities.

Deliverables

-Site evaluation notes
-Site photos & video (existing conditions)
-Pavement marking and roadway signage inventory

1.4 TOPOGRAPHIC SURVEY

OE has contracted with DBE firm CL Surveying & Mapping—with whom we have worked together on multiple projects—to provide the additional topographic survey for this project. This task includes broken down into three subtasks:

Subtask 1: Site Control- Recover project bench mark and establish horizontal and vertical control monuments within the project area to facilitate survey activity. CL Surveying and Mapping will assume a local coordinate system, horizontally, and vertical datum bases on Orange County Benchmark (OCBM).

Subtask 2: Centerline Establishment/Right-of-Way Establishment- Conduct the field measurements necessary to re-trace the street centerlines of Placentia Avenue from Adams Avenue to Wilson Street. This effort does not constitute a full and complete boundary survey of the adjacent land parcels. Survey monuments located and indicated on the survey shall be limited to existing, centerline monuments found to be present along the streets as indicated. No additional monuments will be set under this scope of services other than aerial and ground control in the topography effort.

Subtask 3: Topography and Street Cross Sections- Provide field survey full width street cross-sections at 25-foot intervals along Placentia Avenue within the project limits. Cross sections will be taken from top of curb to top of curb. Visible indications of surface utilities lying within the project limits will be located, as will accurate lid/rim and invert elevations for all drainage structures present. This item does not include any potholing or excavation work that may be required to uncover existing facilities. Should there be concerns regarding the location of subsurface utilities, said potholing will be handled under separate cover. This task can be completed in twenty-five to thirty working days, weather permitting, upon an authorization to proceed from the City. Deliverables will include an AutoCAD drawing file along with the ASCII point file of the survey points collected in the field.

Deliverables

-Centerlines and Right-of-Ways of Red Hill Avenue, Placentia Avenue and Bristol Street will be shown.
-Elevation of all grade breaks, TC and FL, LIP, lane lines and edge of pavement
-Elevation of all driveways fronting Red Hill Ave, Placentia Ave and Bristol St.
-Existing surface utilities
-Field Notes and all applicable pictures

1.5 UTILITY RESEARCH & NOTIFICATION

We believe that utility notifications are a low cost/high value component of every design project. Our past experience working on similar projects has allowed us to set a highly successful utility coordination protocol that greatly assists in the success of public works projects. First, we focus on confirming the contacts for all existing utility facilities. OE will conduct existing records research and coordination with utilities in the area and all design work will be coordinated with the affected utilities. OE will conduct an online design investigation through Dig-Alert which allows our staff to research and confirm the most recent contacts for all present affected utilities. Each company will be contacted & informed of the upcoming project. OE then conducts a three-pronged utility coordination/investigation protocol which involves a detailed local utility research, a three-step utility notification protocol (inform, advise, relocate/adjust), as well as utility coordination meetings. If we deem it necessary, we will meet individually with the affected agencies, at no additional cost to the City, to ensure project success. We will notify all affected utility companies to alert them of the upcoming project and request verification of the sizes, depths, and locations of their underground lines, facilities, and substructures within the project vicinity. After receipt of information from the utilities, OE will cross check the plotted locations with field review information to ensure the existing utility lines are shown in their proper locations. Once the proposed improvements have been finalized, OE will identify potential utility conflicts and determine where relocations will be required.

Deliverables

-Utility contact matrix & utility notification log
-1st, 2nd, and 3rd utility notices
-Correspondence to each utility company

1.6 DETAILED SURVEY PLAN

The OE team will compile the aforementioned information and prepare the survey plan for this project in the requested AutoCAD format. The 40-scale layouts are prepared using a combination of available record drawings, Geographical Information Systems, including Google Earth, utility drawings, and information collected during field reconnaissance. The basemap will include the 3D TIN surface data, project right-of-way lines and dimensions, center line data, BCR, ECR, flow lines, centerlines, angle points, top of curb, spandrels, pavement striping, utilities, structures, walls, trees and landscaping, underground and surface utilities, poles, hydrants, catch basins, signs, valves, and manholes and other physical features as well as correlating stationing for reference. The survey plan will be set up in accordance with the City of Costa Mesa digital data standards for final submittal.

Deliverables

-Survey plan (digital and hard copy)

1.7 PRELIMINARY DESIGN SCENARIOS

Once the research, field survey, and traffic impact analysis is complete, OE will begin conceptually designing the project. This includes preliminary design plans and cost estimates for each of the three projects. The design scenarios feature options and alternatives provided in the traffic analysis. In addition to utilizing the recommendations provided in the traffic analysis, the Preliminary Design Scenarios are created based on the City's Roadway Classification found in the General Plan, on the existing striping patterns, on the City's Streetscape Standards, and on any further information provided by the City. Median tapers and median flares follow the geometrics in the Standard Plans for Public Works Construction.

For this work item, OE will prepare a Preliminary Statement of Probable Costs along with backup documentation. OE will prepare breakdown the Preliminary Statement of Probable Costs to show the total cost for each project. The cost estimate development will be a continuous process which begins at project inception and ends with design completion. Our office constantly updates the unit price records from recent local projects in an effort to provide the most accurate project estimated costs. It is important to take into consideration the size and location of the project in comparison to the baseline projects. The OE design team will meet with the City to discuss project scope adjustments before the preparation of plans and specs. With the use of Civil 3D software, we are able to track the quantities and costs while preparing the plan set. This allows us to keep the cost in mind as we conduct our design. We are aware of the City's budget, and we will work with the City throughout the design to ensure that any cost reduction measures are incorporated in to the project to ensure the project is completed within the allotted budget.

NUVIS will discuss design strategy with the project team and City Project Manager, and then respond initially with a "bubble diagrammatic" schematic alternative in plan-view format. The graphic study will depict the proposed functional and spatial relationship to the site configuration:

- ☑ Creating an cohesive and aesthetic design focusing on positive features,
- ☑ Providing traffic calming measures where appropriate,
- ☑ Analyzing property protection and emergency response, and
- ☑ Compatibility with city maintenance procedures and schedules.

Based upon the review of the schematic plan, NUVIS will refine the design solution into a succinct landscape plan. NUVIS will then prepare the preliminary and final color landscape rendering. The preliminary and refined conceptual drawing will be prepared as presentation quality, color renderings at an appropriate scale for viewing from a comfortable distance, accompanied by reduced versions of the drawings.

Deliverables

-Preliminary Design Plans (digital PDF and hard copy)
-Preliminary Cost Estimate (digital and hard copy)

1.8 COMMUNITY OUTREACH & COUNCIL MEETING

Due to the impact of these projects on the surrounding area, the City is requesting one neighborhood meeting and one City Council Public Hearing to identify and finalize the project concept. OE will coordinate with the local community throughout the design process, these meetings give the community a forum to voice opinions, ask questions, and understand the project intent. OE has conducted neighborhood meetings and we understand the importance of making sure that the community is aware and accepting of the project and that mitigating measures are taken to minimize the impact of the project. OE will work with the City of Costa Mesa staff so that the planning, preparation, and meetings cover all of the aspects that the City wants covered. OE will also assist in providing notification to the various stakeholders to increase the probability of a good turnout. If requested, the OE will be prepared to display the Landscape Renderings as described in 3.1 of this Scope of Work. Otherwise, the preparation of the Landscape Renderings will remain part of the Final Civil Engineering Design phase. The key at these meetings is to anticipate concerns and to come to the meeting prepared with solutions and alternatives. We believe that prudence with this task greatly increases the likelihood that this project will have a positive public perception.

Deliverables

-City Council Public Hearing Presentation

-Meeting agenda and minutes

PHASE 2 Environmental Analysis and Approval

As the designated OCTA PES/E-76 consultant, OE will be responsible for preparing, submitting and processing all PES/E-76 documentation for this project. OE has also partnered with Chambers Group (CGI) to assist with preparing any required technical study, report or testing that may be requested or required by Caltrans in order to successfully process, analyze and obtain CEQA/NEPA approvals for this project.

2.1 PREPARE & SUBMIT PRELIMINARY ENVIRONMENTAL STUDY (PES)

This work item includes the preparation and submittal of the PES package, coordination with Caltrans Local Assistance and Environmental Division staff, and obtaining final approval of the project PES package. The PES package will be composed of:

- ☑ Transmittal Letter
- ☑ Exhibit 6A: PES Form
- ☑ Exhibit 7B: Field Review Form
- ☑ Exhibit 7G: Field Review Attendance Roster
- ☑ Attachments: APE Maps, FEMA Maps, Previous Reports
- ☑ Memorandum/Notes: Air Quality, Noise, ADL
- ☑ Technical Studies: Cultural Resources, Section 4(f), Biological Resources

The PES preparation will be initiated at project inception and will include an existing documentation research and meetings with City staff to discuss the known area of environmental or cultural concern. Upon determination of a preliminary design concept, OE will prepare the PES document and associated attachments for City review. The PES package will be submitted to Caltrans during the 75% Plan preparation phase, with approval of the PES anticipated during the 100% Plan Preparation Phase. Should any environmental comments or mitigation measures be added to the project as a result of the PES, OE will incorporate all such measures in to the 100% PS&E prior to the final submittal to the City.

Deliverables

-Preliminary & Final PES Package (Hard & Digital Copy)
-Technical Memorandums (As Applies)
-Coordination Records with Caltrans

2.2 AREA OF POTENTIAL EFFECTS (APE) MAP

In an effort to ensure all required environmental measures are noted during the design phase, OE will authorize CGI to prepare the required Area of Potential Effects (APE) Map for the City's review and inclusion in the PES package. The APE limits will be delineated to include the direct project footprint including areas that contain buildings and structures that may be potentially affected by visual, noise, or atmospheric intrusions (indirect APE). A preliminary APE will be submitted to the City for initial review. Upon approval of the APE, a final draft will be included in the PES for Caltrans review.

Deliverables

-Preliminary & Final APE maps

2.3 CATEGORICAL EXEMPTION/CATEGORICAL EXCLUSION (CE/CE)

Upon approval of the PES, CGI will prepare a preliminary Categorical Exclusion for NEPA compliance and a Categorical Exemption for CEQA compliance. The documents and all associated checklist, reports and backup documentation will be submitted to the City for initial review prior to distribution. Upon final approval of the CE/CE packages, OE will submit the final package to Caltrans/FHWA and the State Clearinghouse for final acceptance.

Deliverables

-NEPA Categorical Exclusion Package
-CEQA Categorical Exemption Package

ALTERNATE ITEM 1: CULTURAL RESOURCES STUDY

If determined to be necessary, CGI will complete all cultural resource efforts in compliance with CEQA and Section 106 of the National Historic Preservation Act (NHPA) and will follow the requirements set forth in the Department's Standard Environmental Reference, Volume II, Cultural Resources and the Programmatic Agreement among the Federal Highway Administration, the Advisory Council on Historic Preservation, the California State Historic Preservation Officer, and the California Department of Transportation Regarding Compliance with Section 106 of the National Historic Preservation Act, as it Pertains to the Administration of the Federal-aid Highway Program in California (Programmatic Agreement).

A cultural resources records search will be conducted on each project. The records search will provide information on known cultural resources and on previous cultural resources investigations within a one-mile radius of the project area. All information will be compiled in a report format and will be submitted to the City for preliminary review prior to inclusion and submission of the PES package.

Deliverables

-Cultural Resources Study (Digital & Hard Copy)
-Cultural Resources Records & Backup Data

ALTERNATE ITEM 2: SECTION 4(f) EVALUATION

Preliminary investigations indicate that Placentia Avenue right of way and the Fairview Park limits may not perfectly coincide. As a result, Section 4(f) Evaluation is offered as an alternative item. CGI will prepare a Section 4(f) Evaluation pursuant to the Department of Transportation Act of 1966, which prohibits the Secretary of Transportation from approving any program or project which requires the use of any publicly owned land from a public park, recreation area, or wildlife and waterfowl refuge of national, state or local significance as determined by federal, state, or local officials having jurisdiction thereof, or any land from an historic site of national, state, or local significance as so determined by such officials unless (1) there is no feasible and prudent alternative to the use of such land, and (2) such program includes possible planning to minimize harm to such park, recreational area, wildlife and waterfowl refuge, or historic site resulting from such use (Department of Transportation Act of 1983, 49 U.S.C. Section 21).

CGI will conduct a study of the potential 4(f) resources impacted by the project, analyze the data, and determine the level of response necessary, pursuant to Section 4(f) of the Department of Transportation Act. OE and CGI will coordinate with the appropriate State and Federal agencies to receive concurrence on the level of document necessary and will document these findings in a report.

Deliverables

-Section 4(f) Evaluation Report
-Coordination & Meeting Records

ALTERNATE ITEM 3: BIOLOGICAL RESOURCE & WETLANDS STUDY

If found necessary, this work item may only be required on the Placentia Avenue project due to its traversing through the Fairview Park. OE and CGI will conduct a literature review to assist in determining the existence or potential occurrence of sensitive plant and animal species on the project site or in the vicinity. Federal and State lists of sensitive species and current database records, including the California Natural Diversity Data Base (California Department of Fish and Game, 2007) and the California Native Plant Society's Electronic Inventory of Rare and Endangered Vascular Plants of California (Skinner, et al., 2007), will be examined.

Fieldwork will be conducted by qualified CGI biologists in order to document the presence / absence of sensitive biological resources (e.g., species or habitats), or to determine the potential for occurrence of such resources that may not be detectable when the fieldwork is conducted. The location of any sensitive biological resources present on site, including plants and plant communities, will be mapped. For optimal results, CGI recommends conducting the fieldwork in the springtime (i.e., April or May), if possible. This will maximize the ability to effectively detect and positively identify sensitive species, particularly plants.

Deliverables

-Biological Resources & Wetlands Report

ALTERNATE ITEM 4: AIR QUALITY REPORT

Should Caltrans not accept the justification memorandum that will be included in the PES package for Air Quality compliance, CGI will conduct an air quality analysis to satisfy CEQA, state and federal environmental requirements, and conformity provisions of the Clean Air Act Amendments (CAAA).

The Air Quality Report will be prepared in accordance with the latest following protocols / guidelines: Caltrans Transportation Project-Level Carbon Monoxide Protocol, FHWA / EPA Transportation Conformity Guidance for Qualitative Hot-spot Analysis in PM2.5 and PM10 Nonattainment and Maintenance Areas, FHWA Interim Guidance on Air Toxic Analysis in NEPA Documents, and Caltrans' Policy on Greenhouse Gas Emissions. If the project is determined to be a Product of Air Quality Concern (POAQC), PM10 and PM2.5 Emissions will be quantified based on consultation and coordination with the Transportation Conformity Working Group.

Additionally, the Greenhouse Gas Emissions Analysis will be based on the Caltrans Climate Action Program. The Air Quality Report will also analyze construction-related impacts and adhere to the South Coast Air Quality Management District's (SCAQMD) rules and requirements. Construction impacts will be qualitatively evaluated commensurate with available project specific information.

The Air Quality Report will need to document whether the proposed Project is included in the latest RTP, and RTIP and Federal Statewide Transportation Improvement Program (FSTIP) for preliminary engineering / environmental documentation. The Air Quality Report will make a final determination whether the build alternatives will conform to applicable state and federal air quality plans. Mitigation measures will be defined for any construction and / or operational impacts that are identified. Coordination with the Department will be necessary to ensure that the proposed Project would not violate / exacerbate air quality in the South Coast Air Basin (SCAB). Additional documentation which includes the Conformity Analysis Checklist, from the code of Federal Regulations (40 CFR 93.102 through 93.123) will also be provided. This work item will not be initiated without prior City approval.

Deliverables

-Air Quality Report

ALTERNATE ITEM 5: NOISE REPORT

Should Caltrans not accept the justification memorandum that will be included in the PES package for Noise Impacts, CGI will prepare a noise impact analysis consistent with the Department's Traffic Noise Analysis Protocol (TNAP) and Technical Noise Supplement (TeNS) to address traffic noise impacts on noise-sensitive uses, such as existing and approved future residential areas located adjacent to the proposed project.

Short-term noise impacts from construction sources will be analyzed based on the equipment expected to be used, length of a specific construction task, equipment power type (gasoline or diesel engine), horsepower, load factor, and percentage of time in use. United States Environmental Protection Agency (EPA) recommended noise emission levels will be used for the construction equipment. The construction noise impact will be evaluated in terms of maximum levels (Lmax) and the frequency of occurrence at adjacent noise-sensitive locations. Analysis requirements will be based on the sensitivity of the area and the City's Noise Ordinance specifications.

Existing roadway traffic noise will be calculated as baseline conditions, using concurrent traffic counts obtained during ambient noise level measurement. The future traffic conditions will assume either the worst-case traffic condition or the projected traffic volumes provided in the traffic study.

Deliverables

-Noise Report

ALTERNATE ITEM 6: AERIALLY DEPOSITED LEAD TESTING & TECHNICAL REPORT

Should Caltrans not accept the justification memorandum that will be included in the PES package for Aerially Deposited Lead compliance, OE will authorize CGI to conduct an ADL investigation along the project site. Samples of soil will be taken from each project site affected and will be tested for the presence of lead. This work item assumes that all samples will be taken in areas adjacent to the roadway and that no roadway cores will be required. All finding will be presented in a report format and will be returned to Caltrans for final confirmation.

Deliverables

-Aerially Deposited Lead Findings Report

PHASE 3 Final Civil Engineering Design

3.1 75% AND 100% PLAN PREPARATION

Upon initiation of the Final Civil Engineering Design Phase, OE will prepare the plans in accordance with City of Costa Mesa standard plan preparation guidelines and the RFP requirements. The following are descriptions of the key components. The plans will be prepared on 24"x36" bond paper and at a minimum will include the following sheets:

Description	Sheet Count
	Placentia Ave.
Title Sheet	1
Details & Typical Section	1
Median Plan & Profile with Signing & Striping	7
Drainage Improvement Plans	0
Landscape Modification Plans	9
Traffic Control Plans	4
Design Cross Section Sheets (50' O.C.)	10
Utility Relocation Plans	As-needed
TOTAL:	**32 sheets**

OE has assumed a 75% and 100% submittal of the full plan set. OE has included the necessary submittal hours as well as plan check meetings in each task to ensure full review and incorporation of the plan check comments. The following are brief descriptions of each plan component covered under this work item:

Title Sheet, Details & Typical Sections: The title sheet will incorporate all City of Costa Mesa general provisions, project key map, project vicinity map, project legend, benchmark and basis of bearing information, project signatures, revision dates, and any other information that may be required by the City. OE will also provide typical sections for each leg of the improvement showing

the proposed work, existing and proposed roadway widths, and any other pertinent information for the construction of the project. OE commits to providing all necessary details, notes, and revisions to the detail sheets as may be required.

Median Improvement/Signing & Striping Plans: The Street Improvement Plans consist of the Median Plan and Profile prepared at horizontal 1"=40' and vertical 1"=4'. The profile includes the existing centerline finished surface elevations and the proposed right and left top of median curbs. The Plan view includes the horizontal alignment, removal and construction notes and all revised striping and new or relocated signage.

Drainage Improvement Plans: OE will prepare all plans and profiles for catch basin and storm drain lateral relocations. Details will be provided at 1" = 40' Horizontal Scale. Profiles will be at 1"=2' Vertical Scale.

Landscape Modification Plans: NUVIS shall prepare construction documents and specifications book conforming to the City standard construction methods, the Standard Specification for Public Works Construction and applicable County, State, and Federal regulations and codes (i.e., CPSC, ADAAG and DOI). They may include but not limited to, referenced standard drawings, irrigation plans which illustrate pipe sizes, heads, valves, clock locations and points of connection, planting plan which illustrate size, location, and species, technical specifications (based on the Green Book - Standard Specifications for Public Works Construction). The final documents will be submitted with a statement of probable construction costs relative to the bid item quantities for formal plan check by the City.

Traffic Control Plans: Traffic Control Plans are prepared at 1"=40' and double tiered on each sheet. The plans will indicate the work area, the limits and transitions of proposed lane closures, and staging. It is anticipated that one phase will be required consisting of closing the inside lanes while constructing the medians.

Design Cross Section Sheets (50' intervals): The cross section sheets will be prepared in 1"=20' horizontal and 1"=2' vertical scale. Cross section sheets will include vertical and horizontal cross falls, elevations, and join elevations to private property. Sections will be prepared per City standards. Cross sections will be submitted at the first plan check.

Utility Relocation Plans: If necessary, OE will coordinate and incorporate all utility relocation plans that are designed by the affected utilities. SCE, water, gas, and cable line adjustment/relocations will be shown on the plans with their proposed locations as well as owner information.

Deliverables

-Design Plans (digital and hard copies at 75% and 100% for each project)

3.2 PREPARE PRELIMINARY & FINAL COLOR LANDSCAPE RENDERINGS

During Phase 1, NUVIS will prepare a preliminary color landscape rendering in order to convey the project intent. The conceptual landscape rendering will be prepared as presentation quality, color rendering at an appropriate scale for viewing from a comfortable distance, accompanied by reduced versions of the drawings. The rendering will be used in the community coordination meeting for overall description of the project layout. The landscape rendering will also be accompanied by the isometric landscape rendering described below. Upon approval of the preliminary design, NUVIS will update and submit a final landscape rendering that will be used at the council meeting for approval of the final design.

Deliverables

-Preliminary Color Landscape Rendering (Large & Reduced Scale)
-Final Color Landscape Rendering (Large & Reduced Scale)

3.3 PREPARE ISOMETRIC LANDSCAPE RENDERINGS

In order to better convey the aesthetics and look of the project, NUVIS will also prepare two (2) Isometric Landscape Renderings for each project that will be used to augment the standard landscape renderings. The isometric landscape renderings will give a better perspective for residents and business owners during the community coordination meeting and will help gain community support for the projects. It is anticipated that both isometric landscape renderings will be prepared and displayed at the community coordination meeting for each project. Each rendering will be presented in a birds' eye view and will be a professional artist's rendering.

Deliverables

-Isometric Landscape Renderings (2 per project)

ALTERNATE ITEM 7: STREET VIEW LANDSCAPE RENDERINGS

In an effort to provide the City with project savings, OE proposes a credit to the City as an alternate work item should the City choose to omit the isometric landscape renderings and use only street view landscape renderings. The street view landscape renderings will be prepared by NUVIS in a professional landscaping format and will provide a view of the new landscaping from a street view perspective.

Deliverables

-Street View Landscape Renderings (2 per project)

3.4 PREPARE HYDROLOGIC/HYDRAULIC REPORT

OE will prepare a hydrologic and hydraulic report for the project areas. The report will include an analysis of the longitudinal and cross fall drainage to ensure that the existing runoff will be adequately conveyed to the existing or relocated drainage inlets. It is assumed the City will provide

OE with the existing master drainage plan and the currently experienced flows into the existing inlets. Utilizing this data, we will conduct a capacity analysis for the storm drain inlet as well as the storm drain lateral to ensure adequate crossfall is encountered within the gutters, and adequate openings are provided both for the storm drain inlets as well as the lateral. All drainage improvements will be specifically detailed and called out on the plans for removal, replacement, relocation, or new construction. One of our proposed Project Engineers is a certified QSD/QSP with experience preparing Hydrology Reports and a background in hydrology.

Deliverables

- Hydrologic Report & Findings

3.5 PREPARE WATER POLLUTION CONTROL PLAN

OE has obtained the City's preferred water pollution control documentation text from previous projects. We will modify the provided text to ensure the specifications share the required stipulation to ensure full water pollution control is incorporated as part of this project. At a minimum, OE will specify that the Contractor prepare a SWPPP and provide a QSP during the construction process for storm water monitoring. The City will be responsible for inputting the obtained data into the SMARTS system and for filing the required Notice of Intent prior to the start of construction.

Deliverables

- Incorporate necessary text & conditions in specifications

3.6 75% AND 100% SPECIFICATION PREPARATION

Clarity of bid items, site control, and payment method for each item of work are crucial in the preparation of the project specifications. OE will edit the "boiler plate" specifications provided by the City of Costa including Instruction to Bidders, Proposal, Contract Agreement, General Specifications, and General Provisions. OE will also prepare the technical portion of the project specifications utilizing the Green Book, APWA Standard Plans, California MUTCD, and Caltrans Standard Specifications. Copies of standard details and plans specified will be included in the plans or specifications. We will ensure that each pay item is clearly referenced and described in each applicable section of work. The bid schedule will be included per City Standard and as directed and approved by City staff. Close attention will be paid to the delineation of each bid item to ensure that the specified project scope covers the full intent of the City.

Deliverables

-75% & 100% Specifications (digital and hard copies at 75% and 100% for each project)

3.7 75% AND 100% COST ESTIMATE PREPARATION

OE will prepare a construction quantity and cost estimate with each submittal (75% and 100%). The estimate will show quantities and unit prices for each bid item along with appropriate mobilization and contingency costs. Our unit prices will be based on a combination of prices obtained from recent construction bids for similar projects, discussions with City staff, and discussions with other agencies and consultants in the construction industry—including contractors and suppliers. The items listed in the cost estimate will be the basis for the preparation of the bid schedule. The cost estimate will be prepared using the latest version of Microsoft Excel.

Deliverables

-75% & 100% Cost Estimates (digital and hard copies at 75% and 100% for each project)

3.8 CALTRANS PERMIT

We believe that it is important for the encroachment permit for constructing the medians within Caltrans Right of Way be prepared and completed during the design phase so that the bid package can include all necessary Caltrans encroachment permit items. In order to avoid delays in the construction of this project, Onward Engineering proposes to prepare the encroachment permit, exhibits and documentation during the design phase and will aim to submit as early as possible for the noted areas. Since the Caltrans encroachment permit only requires that the work within Caltrans right of way be shown, we can submit early for the permit in order to ensure a quick approval and correlation of the stipulation. This work item also includes the correlation of the bid specifications and design plans with the received stipulations for traffic control and notification at or near the freeway entrances as well as the inclusion of the encroachment permit making it easier for the contractor to obtain the rider permit to begin construction.

Deliverables

- Encroachment Permit with Bid Package

3.9 FINAL PS&E SUBMITTAL

Upon approval of the 100% PS&E Package, OE will plot the final plan set, wet sign all necessary bid documents and will compile our design files for a final submittal to the City. At this phase plans will be guaranteed to meet the 5 C's, consistent, clear, correct, constructible, and complete. A discussion of our QA/QC plan can be found following this section.

Deliverables

-Engineer wet signed hard copy plans (3 bond copies)
-PDF copies of PS&E along with workable files (word specs, excel estimate, and AutoCAD plans on CD
-Mylar print of plans

3.10 PREPARE RESIDENT ENGINEER'S FILES

Once the final PS&E submittals are approved OE will prepare and submit a Resident Engineer's file containing, at a minimum, final construction quantities and cost estimate with background calculation work sheets; soil and hydrology reports; survey data; utility file; Caltrans permit material; and all related project information. OE will maintain all project files in accordance with the City's design requirements and will present all files in clean, organized binders in addition to digital copies of all the project files.

Deliverables

-Two copies of Resident Engineer files along with electronic copy of files on CD

3.11 CONSTRUCTION TECHNICAL SUPPORT

OE will review and approve addenda if necessary and provide clarification to the plans and specifications. We will attend the pre-construction meeting, and we will be available for consultation and assistance during construction of the project to clarify or explain items relating to the design. OE will also be responsible for preparing as-built plans at the end of construction.

Deliverables

-Responses to RFIs
-Addenda
-Prepare As Built Plans

PHASE 4 FEDERAL APPRIVAL FOR CONSTRUCTION & CONSTRUCTION SUPPORT

4.1 PREPARE & SUBMIT CALTRANS AUTHORIZATION FORMS (RFA)

OE will prepare the request for authorization package in accordance with the Local Assistance Procedures Manual (LAPM). As was previously mentioned, OE is currently the on call consultant for OCTA to assist and prepare RFA packages for local Orange County agencies. OE understands the full process of preparing the RFA package from the minute details required in the new right-of-way certification to the formatting and calculation methods required in the finance letter.

OE will ensure that all required federal forms are included in the project specifications and that the plans are prepared in accordance with the required SRTS laws. OE will also ensure that the PES be approved and properly circulated and attached to the RFA package to minimize the back and forth between Caltrans. OE will strive to make the RFA process as smooth as possible in order to ensure a timely and easy approval of the project and obtainment of the E-76.

Deliverables

-RFA Package (Including all forms & signatures)

QUALITY ASSURANCE/QUALITY CONTROL

OE has on file and employs a detailed QA/QC program manual that outlines the definition of roles, responsibilities, expectations, review requirements, and quality standards of all documents and procedures within the firm. The following are key points within our QA/QC program:

Quality Assurance

Quality assurance is a proactive measure taken to ensure the systems and procedures are in conformance with the City's requirements and expectations. Our QA process includes the following:

a) Staffing: Of principal importance to a successful project is the definition of roles and procedures which will be followed during the course of a design project. By clearly laying out the expectations of a project prior to its commencement, we are able to schedule, budget, and plan for the required protocols and quality requirements. The City of Costa Mesa can be confident in our designation of roles on each project. We will plan for and allocate the necessary staffing to complete this project. OE has the proper protocols and procedures in place to ensure the project is managed, designed, and submitted in accordance with Agency standards.

b) Budget: As the design team, it is not only our responsibility to design the project within the allocated hours, but we must also design the project with the construction budget in mind. We understand there are many unknowns in project design, which is why we keep the budget in-line by tracking our hours and having status meetings to discuss the progress of the project in relation to the schedule. With regard to the construction budget, we utilize the data analysis capabilities of AutoCAD Civil 3D to provide us with accurate cost estimate scenarios to deliver to our clients a wider range of options for construction.

c) Scheduling: Schedule control is achieved by planning early and tracking/updating the schedule on a regular basis. For each project we are assigned, we will commit that our proposed staff is available for the duration of the proposed schedule and are prepared to meet and exceed the Agency's scheduling needs for a project.

d) Documentation: We provide document control through two main methods. First, as a versatile firm, we meet with our designated PM at the City to set up and model documentation and formatting standards for each component of the project (Plans, Specifications, Estimates, etc.) to match those desired by the City in order to ensure full compliance of the documents.

e) Status Reports: Also, as a continued effort to complete each project on schedule, we will include a work item to track and distribute status reports. Status reports will include project status, action item list, ongoing items, schedule updates, upcoming critical items, and will also include attachments/exhibits of critical items in need of discussion.

Quality Control-Emphasizing design quality and design clarity is the surest way to minimize the amount of change orders and construction costs. There is no better or more effective way to control total project costs than producing well-documented, well designed plans and specifications. PS&E must be of high quality.

a) Plan Review: Our submitted documents will go through three levels of review prior to each submittal: Initial Peer Review, PM Review, and QA/QC Review. This tiered review allows for error mitigation on 3 separated levels of detail: ground level (drafting, calculations, and document formatting), project management level (design and project intent compliance) and quality assurance level (completeness of document and ensure "biddable" plans). Plan checks will look at five key items (5C's).

   Consistent: The plans will be consistent with other plans developed by or for OE and will comply with all standards and guidelines set by OE design manuals and electronic standards.

   Clear: The plans will not contain any design errors or omissions which will require an unnecessary number of addenda during the project advertisement period. Plans must be clearly understandable and not subject to various interpretations or assumptions.

   Correct: The plans will not contain any design errors or omissions which will cause the delay, postponement, or cancellation of the project advertising.

   Constructible: The plans will not contain design errors or omissions which increase the probability of multiple change orders during construction. Additionally, the plans will be free of any error which would force the Contractor to deviate from the plans and specifications in order to achieve constructability.

   Complete: The plans will be an accurate and thorough representation of the proposed project features and details to be constructed. The plans will be supported by a thorough and detailed documented development process. The plans will be developed with the active involvement of all affected parties and stakeholders throughout all stages of development.

b) Communication: We will stay in constant communication with the City to ensure we understand and have all necessary milestones in place and that we meet those milestones. As our previous clients can attest to, Majdi will allocate as many staff or support staff to this project to ensure the schedule is maintained and that you are satisfied with the delivery of your project. We make a point to accommodate our client's needs, and we guarantee you will be satisfied with our ability to deliver. By making ourselves available, we avoid any defects to the final PS&E that could occur as a result of miscommunication or misunderstanding.

c) Scheduling: For the remote possibility there is a delay, OE will develop strategies to bring the project back on track using all necessary means at no additional cost to the City. Above all else, clear communication will be the critical item in bringing any schedule slippage back on track. Our staff will actively communicate with all affected parties to reschedule or reallocate resources in an effort to expedite all necessary items. In many instances, tasks can be reorganized to allow for staggering of work items.

EXHIBIT C

FEE SCHEDULE

CITY OF COSTA MESA
FEE PROPOSAL TO PROVIDE DESIGN & ENVIRONMENTAL SERVICES FOR PROJECT B: MEDIAN INSTALLATION AND LANDSCAPING ALONG PLACENTIA AVENUE BETWEEN ADAMS AVENUE AND WILSON STREET

Item No.	Project Tasks	QA/QC Manager $110 Hours	Project Manager $100 Hours	Project Engineers $85 Hours	OE FEE Lump Sum	SUB/REIMB FEE Lump Sum	TOTAL FEE
PHASE I	Topographic Survey, Field Condition Assessment, Alternatives Analysis, Preliminary Design, & Resident Meetings						
1	Design Kick-off Meeting/Project Meetings	2	8	8	$1,700	$525	$2,225
2	Research & Review of Available Data	0	4	8	$1,080	$0	$1,080
3	Topographic Survey & Design Field Walk	0	2	16	$1,560	$17,275	$18,835
4	Utility Research & Notification	0	4	16	$1,760	$0	$1,760
5	Detailed Survey Plan	0	2	8	$880	$0	$880
6	Traffic Analysis	0	0	0	$0	$0	$0
7	Prepare Peliminary Design Scenarios	2	8	40	$4,420	$4,975	$9,395
8	Community Outreach & Council Meetings	0	8	20	$2,500	$1,375	$3,875
	Phase I Reimbursables	Reproduction Costs				$500	$500
	Phase I Grand Total	4	36	116	$13,900	$24,650	$38,550
PHASE II	Environmental Study						
1	Prepare & Submit PES Package (PES)	2	8	40	$4,420	$2,625	$7,045
2	Area of Potential Effects (APE) Map	0	1	0	$100	$1,750	$1,850
3	Categorical Exemption/Categorical Exclusion (CE/CE)	0	1	0	$100	$1,225	$1,325
	Phase II Reimbursables	Reproduction Costs				$500	$500
	Phase II Grand Total	2	10	40	$4,620	$6,100	$10,720
PHASE III	Plans, Specifications & Estimates						
1	75% & 100% Plan Preparation	8	68	204	$25,020	$15,500	$40,520
2	Prepare Hydrologic/Hydraulic Report	0.5	4	20	$2,155	$0	$2,155
3	Prepare Water Pollution Control Plan	0.5	4	20	$2,155	$0	$2,155
4	Prepare Preliminary & Final Color Landscape Renderings	0	0	0	$0	$1,700	$1,700
5	Prepare Two Isometric Landscape Renderings	0	0	0	$0	$2,625	$2,625
6	75% & 100% Specification Preparation	2	8	20	$2,720	$0	$2,720
7	75% & 100% Cost Estimate Preparation	1	3	12	$1,430	$2,875	$4,305
8	Caltrans Permit	0	0	0	$0	$0	$0
9	Final PS&E Submittal	0	4	20	$2,100	$0	$2,100
10	Prepare Resident Engineers Files	0	2	12	$1,220	$0	$1,220
11	Construction Technical Support & As-Builts	0	0	30	$2,550	$3,800	$6,350
	Phase III Reimbursables	Reproduction Costs				$1,500	$1,500
	Phase III Grand Total	12	93	338	$39,350	$28,000	$67,350
PHASE IV	Caltrans Construction Authorization Forms						
1	Prepare & Submit Caltrans RFA	1	4	24	$2,550	$0	$2,550
	Phase IV Reimbursables	Reproduction Costs				$500	$500
	Phase IV Grand Total	1	4	24	$2,550	$500	$3,050
	GRAND TOTAL	19	143	518	$60,420	$59,250	$119,670

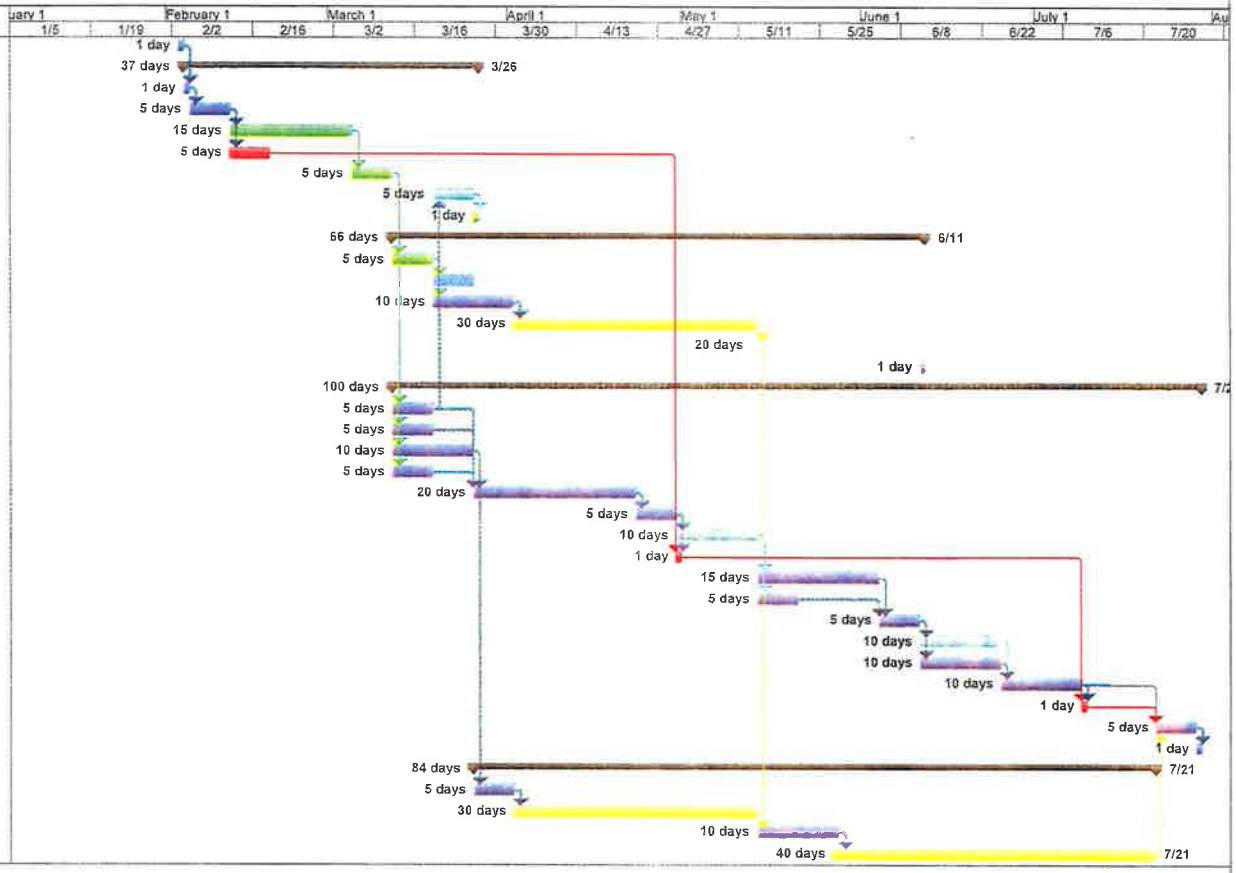
ALTERNATE WORK ITEMS							
1	Air Quality Report	0	2	4	$540	$3,450	$3,990
2	Noise Report	0	2	4	$540	$2,700	$3,240
3	Cultural Resources Study	0	2	4	$540	$2,375	$2,915
4	Section 4(f) Evaluation	0	2	4	$540	$2,575	$3,115
5	Biological Resources and Wetlands Study	0	2	4	$540	$2,825	$3,365
6	Aerially Deposited Lead Testing & Technical Report	0	2	4	$540	$3,150	$3,690
7	Street View Landscaping (Credit)	0	0	0	$0	-$525	-$525

EXHIBIT D

PROJECT SCHEDULE

CITY OF COSTA MESA
PLACENTIA AVENUE MEDIAN INSTALLATION PROJET
PRELIMINARY PROJECT SCHEDULE

ID	Task Name	Start	Finish
1	Notice to Proceed	Mon 2/3/14	Mon 2/3/14
2	**PHASE I - Topo Survey, Field Assessment, Prelim Design, et al**	**Tue 2/4/14**	**Wed 3/26/14**
3	Design Kick-off Meeting/Project Meetings	Tue 2/4/14	Tue 2/4/14
4	Existing Records Documentation and Review	Wed 2/5/14	Tue 2/11/14
5	Topographic Survey Project B	Wed 2/12/14	Tue 3/4/14
6	Utility Notification & Investigation	Wed 2/12/14	Tue 2/18/14
7	Prepare Peliminary Design Scenarios Project B	Wed 3/5/14	Tue 3/11/14
8	Submit and Review Preliminary Design	Wed 3/19/14	Tue 3/25/14
9	Community Outreach Meetings	Wed 3/26/14	Wed 3/26/14
10	**PHASE II - ENVIRONMENTAL STUDY**	**Wed 3/12/14**	**Wed 6/11/14**
11	Draft Preliminary Environmental Study (PES) Project B	Wed 3/12/14	Tue 3/18/14
12	City review Draft PES	Wed 3/19/14	Tue 3/25/14
13	Prepare & Submit Final PES	Wed 3/19/14	Tue 4/1/14
14	Caltrans Review PES	Wed 4/2/14	Tue 5/13/14
15	**Alternate Technical Studies (If needed)**	**Wed 5/14/14**	**Tue 6/10/14**
19	Categorical Exemption/Categorical Exclusion (CE/CE)	Wed 6/11/14	Wed 6/11/14
20	**PHASE III - PLANS, SPECIFICATIONS AND ESTIMATES**	**Wed 3/12/14**	**Tue 7/29/14**
21	Prepare Two Isometric Landscape Renderings	Wed 3/12/14	Tue 3/18/14
22	Prepare Preliminary Landscape Renderings	Wed 3/12/14	Tue 3/18/14
23	Prepare Design Cross Sections (50' Interval)	Wed 3/12/14	Tue 3/25/14
24	Hydrologic/Hydraulic Report	Wed 3/12/14	Tue 3/18/14
25	Prepare 75% Plans - Median, Striping, Landscape, TC	Wed 3/26/14	Tue 4/22/14
26	Prepare 75% Specifications and Estimate	Wed 4/23/14	Tue 4/29/14
27	Submit 75% PS&E & Review	Wed 4/30/14	Tue 5/13/14
28	Utility Coordination - 2nd Notice	Wed 4/30/14	Wed 4/30/14
29	Prepare 100% Plans - Median, Striping, Landscape, TC	Wed 5/14/14	Tue 6/3/14
30	Final Color Landscape Renderings	Wed 5/14/14	Tue 5/20/14
31	Prepare 100% Specifications and Estimate	Wed 6/4/14	Tue 6/10/14
32	Submit 100% PS&E & Review	Wed 6/11/14	Tue 6/24/14
33	Prepare Water Pollution Control Plan	Wed 6/11/14	Tue 6/24/14
34	Final Approved PS&E and Mylar Submittal	Wed 6/25/14	Tue 7/8/14
35	Utility Coordination - 3rd Notice	Wed 7/9/14	Wed 7/9/14
36	Prepare Resident Engineers Files	Tue 7/22/14	Mon 7/28/14
37	Begin Construction Technical Support	Tue 7/29/14	Tue 7/29/14
38	**PHASE IV - CALTRANS CONSTRUCTION AUTHORIZATION**	**Wed 3/26/14**	**Mon 7/21/14**
39	Prepare and Submit R/W Certification	Wed 3/26/14	Tue 4/1/14
40	Caltrans Review of R/W Certification	Wed 4/2/14	Tue 5/13/14
41	Prepare and Submit RFA Package to Caltrans	Wed 5/14/14	Tue 5/27/14
42	Caltrans RFA Review and Approval	Tue 5/27/14	Mon 7/21/14



Client: City of Costa Mesa
Project: Placentia Avenue Median
Version: 1/14/14

EXHIBIT E

CERTIFICATES OF INSURANCE

ONWAR-1 OP ID: SF

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 01/15/14

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
Solomon & Solomon Ins Brokers
Lic #0C30562
23332 Mill Creek Dr Ste 135
Laguna Hills, CA 92653
Kathy Shoffeitt
949-583-0300
949-951-9342

CONTACT NAME:
PHONE (A/C, No, Ext):
FAX (A/C, No):
E-MAIL ADDRESS:

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : Hartford Casualty Insurance Co	29424
INSURER B : Sentinel Insurance Company	11000
INSURER C : Oak River Insurance Compnay	34630
INSURER D : HISCOX/Lloyd's Syndicate	047731
INSURER E :	
INSURER F :	

INSURED
Onward Engineering
300 S. Harbor Blvd. Ste. #814
Anaheim, CA 92805

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	GENERAL LIABILITY COMMERCIAL GENERAL LIABILITY CLAIMS-MADE X OCCUR X Business Owners X No Deductible GEN'L AGGREGATE LIMIT APPLIES PER: X POLICY PRO-JECT LOC	X	X	72SBAUV3949	07/19/13	07/19/14	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$ 2,000,000 $ 300,000 $ 5,000 $ 2,000,000 $ 4,000,000 $ 4,000,000 $
B	AUTOMOBILE LIABILITY X ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS HIRED AUTOS X NON-OWNED AUTOS X Comp: $500 X Coll: $500			72UECUM6814	07/21/13	07/21/14	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ 1,000,000 $ $ $ $
A	X UMBRELLA LIAB X OCCUR EXCESS LIAB CLAIMS-MADE DED X RETENTION $ 10,000			72SBAUV3949	07/29/13	07/19/14	EACH OCCURRENCE AGGREGATE	$ 1,000,000 $ 1,000,000 $
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y/N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N/A	X	2200059189131	06/01/13	06/01/14	X WC STATU-TORY LIMITS OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	$ 1,000,000 $ 1,000,000 $ 1,000,000
D	Professional Liab Claims-Made7/24/04			ANE111261413 DED PER CLAIM $5,000	08/07/13	08/07/14	Per Claim Aggregate	1,000,000 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
RE: Design Engineering/Placentia Avenue Median project
City of Costa Mesa,its elected or appointed boards, officers, agents, and employees are included as additional insured with primary non-contributory wording applies per the Business Liability Form SS0008, pages(10-17). Waiver of subrogation apples to *****PLEASE SEE ATTACHED NOTEPAD*****

CERTIFICATE HOLDER

CITYOFC

City of Costa Mesa
attn: Pritam Deshmukh
77 Fair Drive
Costa Mesa, CA 92628-1200

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE
Stephanie Fader

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general liability per the SS0008 form. Waiver of subrogation applies to workers comp per WC990410A form.
Policy provides 30 days written notice of cancellation for other than non-payment of premium

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT-CALIFORNIA BLANKET BASIS

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

The additional premium for this endorsement shall be 2.00 % of the total policy premium otherwise due on such remuneration.
The minimum premium for this endorsement is $ 350.00

Schedule

Person or Organization	Job Description
ALL ORGANIZATIONS FOR WHOM THE WAIVER OF SUBROGATION IS ISSUED	ALL CALIFORNIA OPERATIONS

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective 06/01/2013 Policy No. 2200059189-131 Endorsement No. 1

Insured ONWARD ENGINEERING Premium $

Insurance Company
Oak River Insurance Company

Countersigned by _____

70

This Paragraph **f.** applies separately to you and any additional insured.

3. **Financial Responsibility Laws**

   a. When this policy is certified as proof of financial responsibility for the future under the provisions of any motor vehicle financial responsibility law, the insurance provided by the policy for "bodily injury" liability and "property damage" liability will comply with the provisions of the law to the extent of the coverage and limits of Insurance required by that law.

   b. With respect to "mobile equipment" to which this insurance applies, we will provide any liability, uninsured motorists, underinsured motorists, no-fault or other coverage required by any motor vehicle law. We will provide the required limits for those coverages.

4. **Legal Action Against Us**

   No person or organization has a right under this Coverage Form:

   a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or

   b. To sue us on this Coverage Form unless all of its terms have been fully complied with.

   A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this insurance or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

5. **Separation Of Insureds**

   Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this policy to the first Named Insured, this insurance applies:

   a. As if each Named Insured were the only Named Insured; and

   b. Separately to each insured against whom a claim is made or "suit" is brought.

6. **Representations**

   a. **When You Accept This Policy**

      By accepting this policy, you agree:

      (1) The statements in the Declarations are accurate and complete;

      (2) Those statements are based upon representations you made to us; and

      (3) We have issued this policy in reliance upon your representations.

   b. **Unintentional Failure To Disclose Hazards**

      If unintentionally you should fail to disclose all hazards relating to the conduct of your business at the inception date of this Coverage Part, we shall not deny any coverage under this Coverage Part because of such failure.

7. **Other Insurance**

   If other valid and collectible insurance is available for a loss we cover under this Coverage Part, our obligations are limited as follows:

   a. **Primary Insurance**

      This insurance is primary except when **b.** below applies. If other insurance is also primary, we will share with all that other insurance by the method described in **c.** below.

   b. **Excess Insurance**

      This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis:

      (1) **Your Work**

      That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";

      (2) **Premises Rented To You**

      That is fire, lightning or explosion insurance for premises rented to you or temporarily occupied by you with permission of the owner;

      (3) **Tenant Liability**

      That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner;

      (4) **Aircraft, Auto Or Watercraft**

      If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion **g.** of Section **A.** – Coverages.

      (5) **Property Damage To Borrowed Equipment Or Use Of Elevators**

      If the loss arises out of "property damage" to borrowed equipment or the use of elevators to the extent not subject to Exclusion **k.** of Section **A.** – Coverages.

71

(6) **When You Are Added As An Additional Insured To Other Insurance**

That is other insurance available to you covering liability for damages arising out of the premises or operations, or products and completed operations, for which you have been added as an additional insured by that insurance; or

(7) **When You Add Others As An Additional Insured To This Insurance**

That is other insurance available to an additional insured.

However, the following provisions apply to other insurance available to any person or organization who is an additional insured under this Coverage Part:

(a) **Primary Insurance When Required By Contract**

This insurance is primary if you have agreed in a written contract, written agreement or permit that this insurance be primary. If other insurance is also primary, we will share with all that other insurance by the method described in **c.** below.

(b) **Primary And Non-Contributory To Other Insurance When Required By Contract**

If you have agreed in a written contract, written agreement or permit that this insurance is primary and non-contributory with the additional insured's own insurance, this insurance is primary and we will not seek contribution from that other insurance.

Paragraphs **(a)** and **(b)** do not apply to other insurance to which the additional insured has been added as an additional insured.

When this insurance is excess, we will have no duty under this Coverage Part to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

(1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and

(2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

c. **Method Of Sharing**

If all the other insurance permits contribution by equal shares, we will follow this method also. Under this approach, each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

8. **Transfer Of Rights Of Recovery Against Others To Us**

a. **Transfer Of Rights Of Recovery**

If the insured has rights to recover all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them. This condition does not apply to Medical Expenses Coverage.

b. **Waiver Of Rights Of Recovery (Waiver Of Subrogation)**

If the insured has waived any rights of recovery against any person or organization for all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, we also waive that right, provided the insured waived their rights of recovery against such person or organization in a contract, agreement or permit that was executed prior to the injury or damage.

72

F. OPTIONAL ADDITIONAL INSURED COVERAGES

If listed or shown as applicable in the Declarations, one or more of the following Optional Additional Insured Coverages also apply. When any of these Optional Additional Insured Coverages apply, Paragraph **6.** (Additional Insureds When Required by Written Contract, Written Agreement or Permit) of Section **C.**, Who Is An Insured, does not apply to the person or organization shown in the Declarations. These coverages are subject to the terms and conditions applicable to Business Liability Coverage in this policy, except as provided below:

1. **Additional Insured - Designated Person Or Organization**

   WHO IS AN INSURED under Section **C.** is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

   a. In the performance of your ongoing operations; or

   b. In connection with your premises owned by or rented to you.

2. **Additional Insured - Managers Or Lessors Of Premises**

   a. WHO IS AN INSURED under Section **C.** is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Designated Person Or Organization; but only with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to you and shown in the Declarations.

   b. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

   This insurance does not apply to:

   (1) Any "occurrence" which takes place after you cease to be a tenant in that premises; or

   (2) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

3. **Additional Insured - Grantor Of Franchise**

   WHO IS AN INSURED under Section **C.** is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured - Grantor Of Franchise, but only with respect to their liability as grantor of franchise to you.

4. **Additional Insured - Lessor Of Leased Equipment**

   a. WHO IS AN INSURED under Section **C.** is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured – Lessor of Leased Equipment, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person(s) or organization(s).

   b. With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after you cease to lease that equipment.

5. **Additional Insured - Owners Or Other Interests From Whom Land Has Been Leased**

   a. WHO IS AN INSURED under Section **C.** is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured – Owners Or Other Interests From Whom Land Has Been Leased, but only with respect to liability arising out of the ownership, maintenance or use of that part of the land leased to you and shown in the Declarations.

   b. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

   This insurance does not apply to:

   (1) Any "occurrence" that takes place after you cease to lease that land; or

   (2) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

6. **Additional Insured - State Or Political Subdivision – Permits**

   a. WHO IS AN INSURED under Section **C.** is amended to include as an additional insured the state or political subdivision shown in the Declarations as an Additional

Insured – State Or Political Subdivision - Permits, but only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit.

b. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

(1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the state or municipality; or

(2) "Bodily injury" or "property damage" included in the "product-completed operations" hazard.

7. Additional Insured – Vendors

a. WHO IS AN INSURED under Section **C.** is amended to include as an additional insured the person(s) or organization(s) (referred to below as vendor) shown in the Declarations as an Additional Insured - Vendor, but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business and only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

b. The insurance afforded to the vendor is subject to the following additional exclusions:

(1) This insurance does not apply to:

(a) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;

(b) Any express warranty unauthorized by you;

(c) Any physical or chemical change in the product made intentionally by the vendor;

(d) Repackaging, unless unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;

(e) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;

(f) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;

(g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or

(h) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:

(i) The exceptions contained in Subparagraphs **(d)** or **(f)**; or

(ii) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

(2) This insurance does not apply to any insured person or organization from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

8. Additional Insured – Controlling Interest

WHO IS AN INSURED under Section **C.** is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured – Controlling Interest, but only with respect to their liability arising out of:

a. Their financial control of you; or

b. Premises they own, maintain or control while you lease or occupy these premises.

74

This insurance does not apply to structural alterations, new construction and demolition operations performed by or for that person or organization.

9. **Additional Insured – Owners, Lessees Or Contractors – Scheduled Person Or Organization**

   a. WHO IS AN INSURED under Section **C.** is amended to include as an additional insured the person(s) or organization(s) shown in the Declarations as an Additional Insured – Owner, Lessees Or Contractors, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

      (1) In the performance of your ongoing operations for the additional insured(s); or

      (2) In connection with "your work" performed for that additional insured and included within the "products-completed operations hazard", but only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

   b. With respect to the insurance afforded to these additional insureds, this insurance does not apply to "bodily injury", "property damage" or "personal an advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

      (1) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or

      (2) Supervisory, inspection, architectural or engineering activities.

10. **Additional Insured – Co-Owner Of Insured Premises**

    WHO IS AN INSURED under Section **C.** is amended to include as an additional insured the person(s) or Organization(s) shown in the Declarations as an Additional Insured – Co-Owner Of Insured Premises, but only with respect to their liability as co-owner of the premises shown in the Declarations.

The limits of insurance that apply to additional insureds are described in Section **D.** – Limits Of Insurance.

How this insurance applies when other insurance is available to an additional insured is described in the Other Insurance Condition in Section **E.** – Liability And Medical Expenses General Conditions.

G. LIABILITY AND MEDICAL EXPENSES DEFINITIONS

1. "Advertisement" means the widespread public dissemination of information or images that has the purpose of inducing the sale of goods, products or services through:

   a. **(1)** Radio;

      (2) Television;

      (3) Billboard;

      (4) Magazine;

      (5) Newspaper;

   b. The Internet, but only that part of a web site that is about goods, products or services for the purposes of inducing the sale of goods, products or services; or

   c. Any other publication that is given widespread public distribution.

   However, "advertisement" does not include:

   a. The design, printed material, information or images contained in, on or upon the packaging or labeling of any goods or products; or

   b. An interactive conversation between or among persons through a computer network.

2. "Advertising idea" means any idea for an "advertisement".

3. "Asbestos hazard" means an exposure or threat of exposure to the actual or alleged properties of asbestos and includes the mere presence of asbestos in any form.

4. "Auto" means a land motor vehicle, trailer or semi-trailer designed for travel on public roads, including any attached machinery or equipment. But "auto" does not include "mobile equipment".

5. "Bodily injury" means physical:

   a. Injury;

   b. Sickness; or

   c. Disease

   sustained by a person and, if arising out of the above, mental anguish or death at any time.

6. "Coverage territory" means:

75

a. The United States of America (including its territories and possessions), Puerto Rico and Canada;

b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in **a.** above;

c. All other parts of the world if the injury or damage arises out of:

(1) Goods or products made or sold by you in the territory described in **a.** above;

(2) The activities of a person whose home is in the territory described in **a.** above, but is away for a short time on your business; or

(3) "Personal and advertising injury" offenses that take place through the Internet or similar electronic means of communication

provided the insured's responsibility to pay damages is determined in the United States of America (including its territories and possessions), Puerto Rico or Canada, in a "suit" on the merits according to the substantive law in such territory, or in a settlement we agree to.

7. "Electronic data" means information, facts or programs:

a. Stored as or on;

b. Created or used on; or

c. Transmitted to or from

computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

8. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".

9. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.

10. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.

11. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:

a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or

b. You have failed to fulfill the terms of a contract or agreement;

if such property can be restored to use by:

a. The repair, replacement, adjustment or removal of "your product" or "your work"; or

b. Your fulfilling the terms of the contract or agreement.

12. "Insured contract" means:

a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire, lightning or explosion to premises while rented to you or temporarily occupied by you with permission of the owner is subject to the Damage To Premises Rented To You limit described in Section **D.** – Liability and Medical Expenses Limits of Insurance.

b. A sidetrack agreement;

c. Any easement or license agreement, including an easement or license agreement in connection with construction or demolition operations on or within 50 feet of a railroad;

d. Any obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;

e. An elevator maintenance agreement; or

f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization, provided the "bodily injury" or "property damage" is caused, in whole or in part, by you or by those acting on your behalf. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph **f.** includes that part of any contract or agreement that indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing.

However, Paragraph **f.** does not include that part of any contract or agreement:

76

EXHIBIT F

CITY COUNCIL POLICY 100-5

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

BACKGROUND

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

PURPOSE

It is the purpose of this Policy to:

1. Clearly state the City of Costa Mesa's commitment to a drug-free society.

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

POLICY

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

1. Contractor or Sub-grantee hereby certifies that it will provide a drug-free workplace by:

    a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in Contractor's and/or sub-grantee's workplace, specifically the job site or location included in this contract, and specifying the actions that will be taken against the employees for violation of such prohibition;

b. Establishing a Drug-Free Awareness Program to inform employees about:

   1. The dangers of drug abuse in the workplace;

   2. Contractor's and/or sub-grantee's policy of maintaining a drug-free workplace;

   3. Any available drug counseling, rehabilitation and employee assistance programs; and

   4. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

c. Making it a requirement that each employee to be engaged in the performance of the contract be given a copy of the statement required by subparagraph A;

d. Notifying the employee in the statement required by subparagraph 1 A that, as a condition of employment under the contract, the employee will:

   1. Abide by the terms of the statement; and

   2. Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;

e. Notifying the City of Costa Mesa within ten (10) days after receiving notice under subparagraph 1 D 2 from an employee or otherwise receiving the actual notice of such conviction;

f. Taking one of the following actions within thirty (30) days of receiving notice under subparagraph 1 D 2 with respect to an employee who is so convicted:

   1. Taking appropriate personnel action against such an employee, up to and including termination; or

   2. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health agency, law enforcement, or other appropriate agency;

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.