

**CITY OF COSTA MESA
PROFESSIONAL SERVICES AGREEMENT
WITH KOA CORPORATION**

THIS AGREEMENT is made and entered into this 21st day of July, 2015 (“Effective Date”), by and between the CITY OF COSTA MESA, a municipal corporation (“City”), and KOA CORPORATION, a California corporation (“Consultant”).

WITNESSETH:

A. WHEREAS, City proposes to utilize the services of Consultant as an independent contractor for 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’s Chief Executive Officer (“City CEO”) or his or her 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 Eighty Thousand Dollars (\$180,000.00)

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 three years, ending on July 20, 2018, 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 CEO 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:

KOA Corporation
2141 W. Orangewood Ave, Suite A
Orange, CA 92868
Tel: (714) 573-0317
Fax: (714) 573 9534
Attn: Min Zhou

IF TO CITY:

City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626
Tel: (714) 754-5183
Fax: (714) 754-5330
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

Mayor

Date: _____

CONSULTANT



Signature

Date: 7/9/15

MIN ZHOU, Vice President
Name and Title

95-4515908
Social Security or Taxpayer ID Number



Signature
Charles Stefan Vice President

Name and Title

Date: 7/9/15

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

Date: _____

APPROVED AS TO INSURANCE:

Risk Management

Date: _____

APPROVED AS TO CONTENT:



Pritam Deshmukh, Project Manager

Date: 7/9/15

DEPARTMENTAL APPROVAL



Ernesto Munoz, Public Services Director

Date: 7.10.15

EXHIBIT A
REQUEST FOR PROPOSALS



CITY OF COSTA MESA

CALIFORNIA 92628-1200

P.O. Box 1200

FROM THE OFFICE OF THE TRANSPORTATION SERVICES MANAGER

March 18, 2015

SUBJECT: REQUEST FOR PROPOSALS (RFP) – DESIGN SERVICES FOR A PROPOSED BICYCLE FACILITY ALONG WEST 19TH STREET BETWEEN PLACENTIA AVENUE AND THE GREENVILLE - BANNING CHANNEL BIKEWAY

Dear Consultant:

The City of Costa Mesa is requesting proposals for professional engineering services to design a bicycle facility along West 19th Street between Placentia Avenue and the Greenville - Banning Channel Bikeway. The scope of services generally consists of preparation of civil engineering design plans including the following improvements:

- Installation of on-street and off-street bicycle facility
- Installation of bridge structure
- Installation of retaining structures

This project is structured in the following three (3) phases:

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

The City will engage the services of a consulting firm for the Environmental Analysis and approval of this project separately and is not included as part of this RFP. Community outreach should be incorporated during the first two (2) phases of the project.

BACKGROUND

The City of Costa Mesa has identified the need to improve bicycle connectivity within the City and add Class I and II bicycle facilities that link local and regional bicycle infrastructure. The new bicycle lanes on West 19th Street and a new multipurpose trail within Talbert Regional Park will improve bicycle connectivity between the existing bicycle lanes along Placentia Avenue and the Greenville - Banning Channel Bikeway.

In October 2014, the City was awarded Federal Active Transportation Program (ATP) grant funds to install bicycle facilities and associated improvements along W. 19th Street between Placentia Avenue and the Greenville - Banning Channel Bikeway.

SCOPE OF SERVICES

The project scope includes the preparation of plans and processing of documents to allow the installation of a bicycle facility along W. 19th Street and within Talbert Regional Park. The City plans to construct a 10-foot wide concrete paved trail generally along the alignment of an existing

utility easement and natural trails with a total length of approximately 2,760 feet within Talbert Regional Park. The project will continue the separated trail as a Class I bike trail for 860 feet along W. 19th Street between the Park and Whittier Avenue. At Whittier Avenue, the proposed trail will transition to a striped and signed on-road Class II bike lane on both sides of W. 19th Street to Placentia Avenue, a length of 2,600 feet. The total proposed length of the project is 6,220 feet with 3,620 feet of Class I/Multipurpose trail and 2,600 feet of Class II bike trail.

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 the bicycle infrastructure project. 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. The Consultant shall review utilization of the existing two-way turn lane (median lane) and on-street parking along W. 19th Street between Placentia Avenue and Whittier Avenue. Based on this, the Consultant shall develop conceptual alternatives for implementing bike lanes within the existing right-of-way. 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 an analysis of driveway accessibility along W. 19th Street between Whittier Avenue and Placentia Avenue; and develop conceptual design alternatives for bicycle facilities and meet with City and affected stakeholders to reach a consensus on the design. The Consultant will collect turning movement and daily counts at all driveway locations along W. 19th Street between Whittier Avenue and Placentia Avenue. This data will be used to perform traffic analysis to assess the utilization of the existing two-way median turn lane along W. 19th Street between Whittier Avenue and Placentia Avenue. The Consultant will also collect on-street

parking utilization data along W. 19th Street between Whittier Avenue and Placentia Avenue. Based on the data, the Consultant will identify opportunities and constraints for accommodating new bicycle facilities within the existing right-of-way by replacing the two-way turn lane or on-street parking along W. 19th Street. The findings of this analysis will be assimilated and presented in graphic format in the community outreach meetings.

7. Identify constraints and develop alternatives for constructing the Class I section of the bicycle trail between Whittier Avenue and the Greenville - Banning Channel Bikeway.
8. Prepare a preliminary trail alignment plan for the portion along Talbert Regional Park including the bridge portion.
9. Preliminary design work includes plans for construction of bicycle infrastructure improvements. The preparation of cost estimates shall be included.
10. The Consultant shall prepare preliminary landscaping and irrigation plans with color renderings (hard copy and PDF) of planting plan and palette for applicable portions of the multi-use trail (bike path).
11. The Consultant shall prepare a minimum of three (3) street view renderings of the proposed design for different sections of the bicycle infrastructure along W. 19th Street which will be used in presentations and reports.

Community Outreach:

Installing new bicycle facilities along W. 19th Street may have impacts to residential and commercial property frontages. The City intends to hold community outreach meetings to identify and finalize the project concept. The Consultant is required to assist the City in their outreach effort during the design process. For the purpose of this proposal, assume up to three (3) 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 - Plans, Specifications & Estimates

This phase includes the preparation of final plans and specifications necessary to construct the proposed project. The Consultant is expected to coordinate twice a month and meet once 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 the Project. Electronic CAD files compatible with AutoCAD 2007 and other document files shall be delivered to the 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 bicycle lane design, multi-use trail design, structural design for the bridge and retaining structures, landscaping and irrigation, signing and striping, and traffic control and detour, etc. Work for the project shall include:

1. Utilities - Perform all necessary research to establish the 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 construction in daytime.
 6. The Consultant shall prepare final landscaping and irrigation plans with detailed specifications for applicable portions of the multi-use trail (bike path).
 7. For budgeting purposes, submit to the City 70% and 90% preliminary design plans and construction estimates and a monthly update of the estimates as design work progresses. Prepare the final detailed construction quantity and cost estimate.
 8. Obtain final design approval from the City and County 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. The Consultant shall attend the pre-construction meeting, and shall be available for consultation and assistance during the 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 III – Caltrans Construction Authorization forms

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.

A Project Design meeting shall be held once a month. Additional meetings may be required during the initial phase of the project. The Consultant shall be responsible for preparing meeting agendas, minutes, and presentation materials. A Critical Path Method (CPM) 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 the 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 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 the project. 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: Final Civil Engineering Design
- Phase 3: E-76 Authorization to Initiate Construction and Construction Support

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 the 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 the 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., Friday, April 17, 2015**. If additional information is required, please contact Pritam Deshmukh, Associate Engineer, at (714) 754-5183, or via email at pritam.deshmukh@costamesaca.gov.

Sincerely,



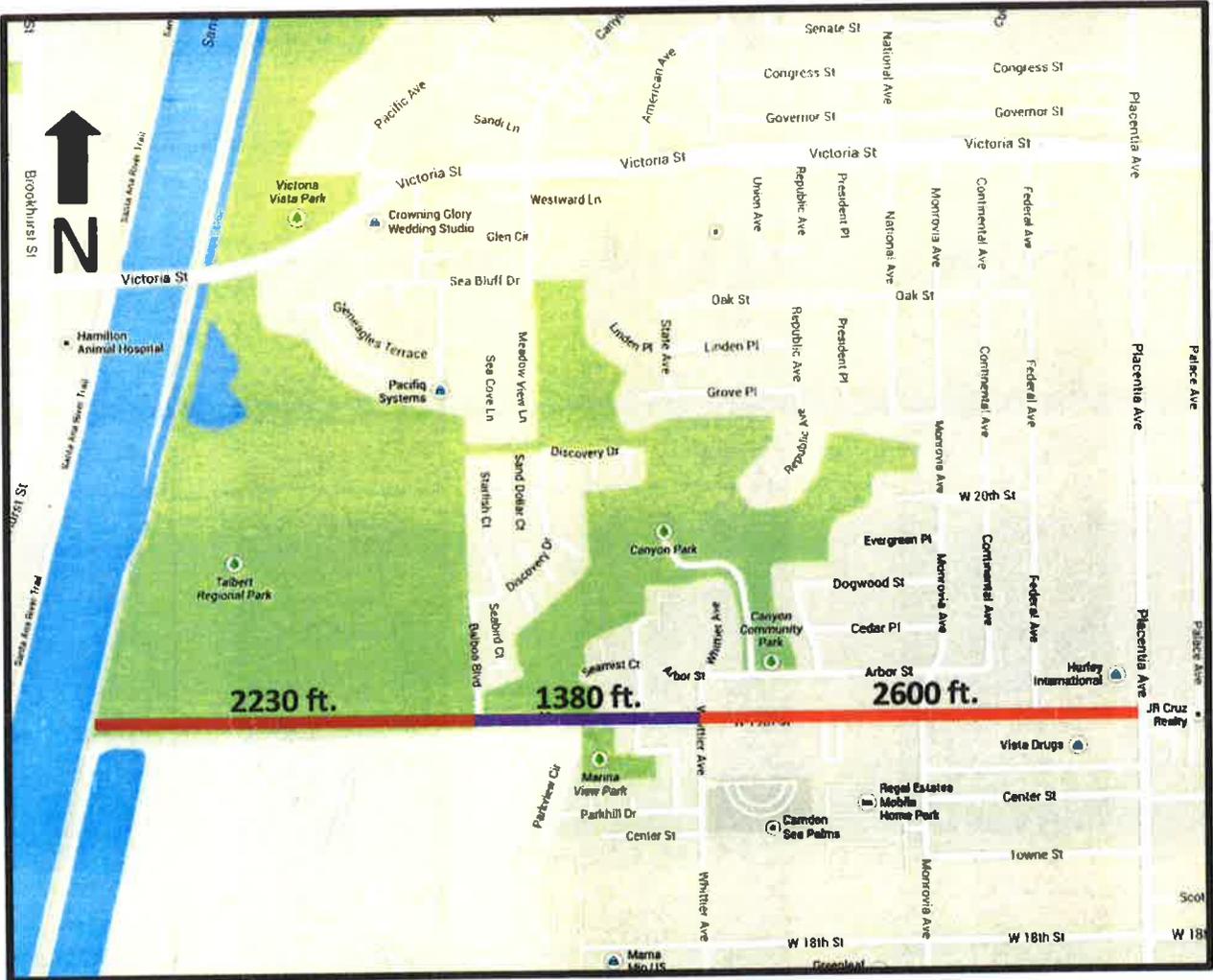
RAJA SETHURAMAN, Manager
Transportation Services

Attachments: 1 - Location Map
 2 - Concept Plans
 3 - Typical Sections
 4 - Sample Professional Services Agreement

c Ernesto Munoz, Public Services Director
 Pritam Deshmukh, Associate Engineer

CITY OF COSTA MESA

LOCATION MAP 19th Street Trail



 Multipurpose Trail

 Class I Bike Trail

 Class II Bike Lane



PROJECT LIMITS



MACHLINE
SEE BELOW LEFT

MACHLINE
SEE ABOVE RIGHT



MACHLINE
SEE BELOW LEFT

MACHLINE
SEE ABOVE RIGHT

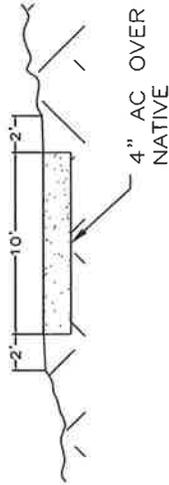


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PLACENTIA AVE.

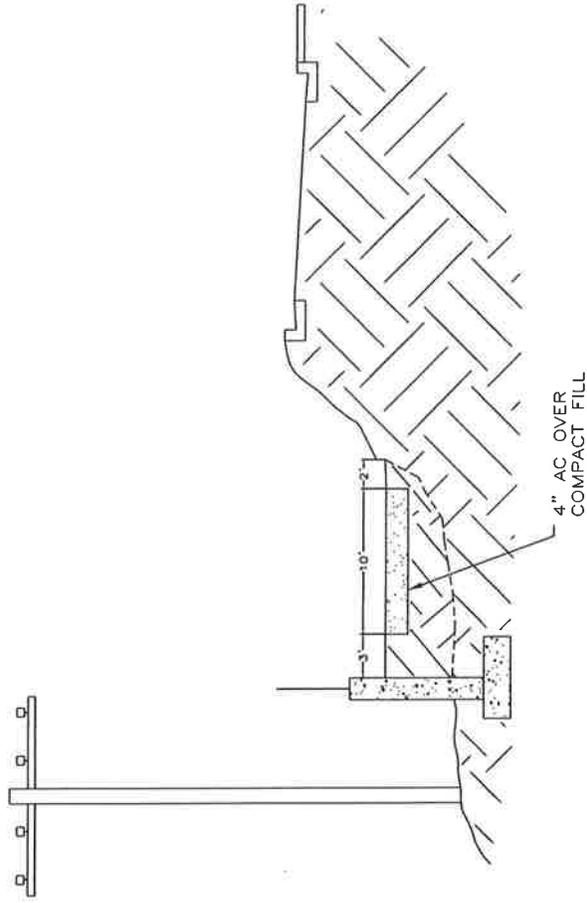


19th Street Trail CONCEPT PLAN

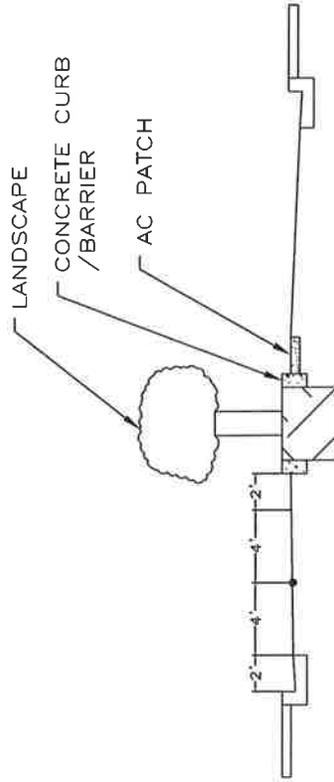
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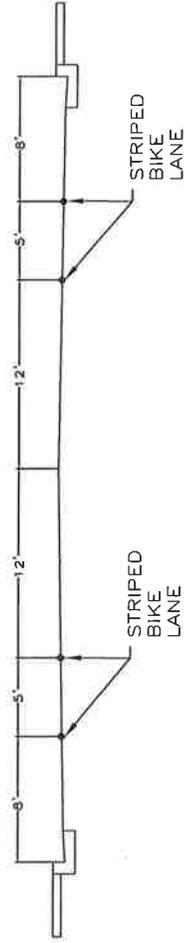
B



C



D



19th Street Trail

TYPICAL SECTIONS



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:

Tel:
Fax:
Attn:

IF TO CITY:

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

Mayor of the City of Costa Mesa
CONSULTANT

Date: _____

Signature

Date: _____

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

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;**

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

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;

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

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

2. Contractor and/or sub-grantee shall be deemed to be in violation of this Policy if the City of Costa Mesa determines that:
 - a. Contractor and/or sub-grantee has made a false certification under paragraph 1 above;
 - b. Contractor and/or sub-grantee has violated the certification by failing to carry out the requirements of subparagraphs 1 A through 1 G above;
 - c. Such number of employees of Contractor and/or sub-grantee have been convicted of violations of criminal drug statutes for violations occurring in the workplace as to indicate that the contractor and/or sub-grantee has failed to make a good faith effort to provide a drug-free workplace.

3. Should any contractor and/or sub-grantee be deemed to be in violation of this Policy pursuant to the provisions of 2 A, B, and C, a suspension, termination or debarment proceeding subject to applicable Federal, State, and local laws shall be conducted. Upon issuance of any final decision under this section requiring debarment of a contractor and/or sub-grantee, the contractor and/or sub-grantee shall be ineligible for award of any contract, agreement or grant from the City of Costa Mesa for a period specified in the decision, not to exceed five (5) years. Upon issuance of any final decision recommending against debarment of the contractor and/or sub-grantee, the contractor and/or sub-grantee shall be eligible for compensation as provided by law.

ACORD CERTIFICATE OF LIABILITY INSURANCE

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

PRODUCER

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

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:

* Sample *

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.

INBR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	[REDACTED]	8/15/2009	8/15/2010	EACH OCCURRENCE \$1,000,000 FIRE DAMAGE (Any one fire) \$1,000,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/DP AGG \$2,000,000
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	[REDACTED]	8/15/2009	8/15/2010	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO	[REDACTED]			AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$
	EXCESS LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE RETENTION \$0	[REDACTED]			EACH OCCURRENCE \$ AGGREGATE \$ \$ \$
D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	[REDACTED]	9/1/2009	9/1/2010	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> TOTL-ER 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:

CANCELLATION 10 Day Notice for Non-Paymnt of Prem

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

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]

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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

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 Conditions (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

PROJECT UNDERSTANDING

Introduction

The City of Costa Mesa plans to improve the City's bicycle connectivity by providing new bicycle facilities along 19th Street, from Placentia Avenue to Balboa Boulevard, continuing through Talbert Regional Park to the Santa Ana River Banning Channel Bikeway. The new facilities will transit existing fully developed streets, partially developed streets, and natural habitat areas, within the jurisdiction of the cities of Costa Mesa, Newport Beach, and the County of Orange. The City of Costa Mesa is taking the lead role in implementing this project.

A conceptual plan and preliminary alignment was developed for the proposed bike facility for the Active Transportation Program (ATP) Cycle I grant application. The segment on 19th Street from Placentia Avenue to Whittier Avenue is proposed as a Class II bike lane; from Whittier Avenue to Balboa Boulevard as a Class I Bike Trail; and the remainder across Talbert Regional Park as a multipurpose trail.

Construction funding will be provided through Federal Active Transportation Program (ATP) grant funds administered through the State of California. The construction budget obtained from the ATP Cycle I grant is \$1.7 million.

The City plans to procure the services of a professional engineering firm to provide "turn-key" project design services. This work will include preliminary engineering and analysis; the preparation of construction-ready bid documents consisting of complete plans, specifications, and a construction cost estimate. (NOTE: environmental analysis and approval is not a part of this scope of work).

KOA Corporation (KOA) is a leading engineering firm in the design and implementation of innovative bicycle facilities in southern California. We are currently engaged in developing similar projects for the County of Los Angeles along the Los Angeles River (~6 miles), the City of Moreno Valley Aqueduct Bike Trail (~9.5 miles), the City of Long Beach Daisy Avenue bike lane (~10 miles), and the City of Wildomar (~4 miles), among others. The 19th Street bikeway will provide an important east-west connection within Costa Mesa, as well as access to the regional bike system along the Santa Ana River. We believe this project provides an exciting opportunity to enhance the City and the local area through the development of new trailheads and educational resources adjacent to Talbert Park.

KOA's Design Approach

The project can be broken down into two segments. Each segment has its own design characteristics.

Segment I – Talbert Regional Park (2,760 feet)

The trail will commence at an access point from the Santa Ana River Banning Channel Bikeway, run easterly alongside natural trails and the utility easement, and connect to the westerly end of 19th Street. The starting point is at the Banning Channel. Access from the channel to Talbert Park should not exceed a 5% grade and should accommodate bicycles as well as joggers and pedestrians. An

approximately 300 feet retaining wall is needed in order for the trail to go up to meet the river embankment. A paved pathway and adjacent “soft” dirt path would work well. KOA will work with the City to consider the new utility alignment or other alternatives before selecting a final design (NOTE: Although the RFP states that a 10-foot-wide PCC bike path will be developed, we would recommend considering a 12-foot to 14-foot path more in alignment with current State guidelines).

The trail system transitioning across Talbert Park could be a combination of paved bike path and soft jogging/walking path. The exact configuration and position will be determined during design development with the City, with the consideration of feedback from public outreach efforts.

Trail access from Talbert Park up to 19th Street again presents an opportunity to enhance the project significantly. A bridge structure is recommended in the RFP. From our field review, we have identified two possible practical bridge alignments; however, based on our discussion with the City staff on June 15, the alignment without a bridge is the preferred alternative which has lower environmental impact and project cost. With the preferred alternative, a 500 feet retaining wall is needed where the trail goes down the side of the street. KOA will work closely with the City to develop an optimal trail alignment and configuration.

Segment 2– 19th Street Terminus to Placentia Avenue

The remainder of the project will incorporate primarily Class II bike lanes along this area. A short segment of Class I bike is to be evaluated at the 19th Street terminus. Our preliminary review indicates that existing parking, center left turn lanes, medians, and travel lanes may not be wide enough to include an additional bike path. KOA will conduct studies for parking utilization, center/left turn medians, and driveway usage to develop suitable recommendations for modifying the street configuration. The potential conditions would include removing center left turn lane or removing parking on the south side of the street to accommodate Class II bike lanes. The final condition would be determined by public input from residents along 19th Street.

The proposed bike facility on 19th Street ends at the signalized intersection of 19th Street and Placentia Avenue. Transition treatments should be provided at the intersection. KOA recommends that the eastbound bike lane along 19th Street starts east of Placentia. The design will be able to improve bicyclist safety and avoid right hook accidents.

PHASE I – TOPOGRAPHIC SURVEY, FIELD CONDITION ASSESSMENT, ALTERNATIVES ANALYSIS, PRELIMINARY DESIGN, RESIDENT MEETINGS

TASK I – SCOPING MEETING and PROJECT MANAGEMENT

Upon receiving the notice to proceed, KOA will conduct a scoping meeting with City staff. The agenda items will include:

- Discussion of City and consultant objectives and expectations
- Project work plan, schedule, and deliverables
- Information management
- Communications protocol
- Other stakeholder coordination
- Obtain existing plans/data/utility information from the City

We plan to provide an opportunity to walk/bike the site with City staff, conduct an overview of the project, and identify critical issues in the field.

In addition, KOA plans to conduct monthly progress meetings or other means of communications with the City staff. We will take meeting minutes and identify action items.

Deliverables:

- Meeting agenda
- Meeting minutes

TASK 2 – CONCEPTUAL ENGINEERING

The KOA Team will conduct design development work and prepare preliminary engineering plans and cross sections for the development of the proposed bike facility improvements. Specific work will include the research of existing record data; utility research; field and topographic surveys; alternatives studies; preliminary alignment; and public outreach.

The team will prepare unit-based cost estimates for each of the options identified during the conceptual engineering stage. The pros and cons for each option will be studied and tabulated. We will prepare a plan layout with typical sections for each option. We will submit the conceptual engineering alternatives and our recommendation on the optimum trail configuration. The analyses will focus on benefits to the public and on cost effectiveness.

Deliverables:

- Conceptual engineering exhibits (plans and sections for alternatives)
- Conceptual-level construction cost estimate
- Minutes of review meeting

TASK 3 - SURVEY

KOA's subconsultant, KDM, has previous survey and mapping experience within the Talbert Park area. KDM worked as the survey subconsultant to the prime consultant in 2012 for the Orange County Sanitation District's Southwest Costa Mesa Trunk Sewer Project 6-19. The majority of this project was within Talbert Park. The work to produce a base map included aerial mapping and field-augmented

ground surveys within the park and adjacent to the Banning Ranch property abutting the southerly boundary of the park property.

For this project, KDM has obtained a preliminary title report to determine the park boundary and to acquire record documents to indicate the locations of existing Southern California Edison and Orange County Flood Control District easements along this southerly boundary abutting the Banning Ranch property.

The extensive work to locate record monuments and establish a control network within and adjacent to the perimeter of this site provided us with an excellent working knowledge of existing conditions, available accessibility, and on-the-ground experience, enabling the team to have a head-start in obtaining and collecting the information to provide a superior mapping product at a cost-effective budget for the design goals of this project.

Deliverables:

- Base map in AutoCAD format
-

TASK 4 – UTILITY RESEARCH

KOA will contact the utility companies to obtain any as-built plans for the identification of utility locations within the project limits. We will compile a utilities contact matrix to track when utilities are contacted, who is contacted, and when and how they respond, in accordance with the City’s “Utility Coordination Procedures”. Plans will be sent to the utility companies at each plan submittal milestone for the resolution of utility conflicts with the proposed construction. This will be tracked on the utilities matrix. KOA will consult and resolve any apparent conflict difficulties.

Deliverables:

- Utility contact letters
 - Plan submittals to utilities
 - Utilities contact matrix
-

TASK 5 – GEOTECHNICAL REPORT

KOA engaged Geo-environmental, Inc. to provide a scope of services as below:

GEI proposes to perform a soils investigation at the project site to determine the conditions of the existing pavement, base course, and subgrade soils, and provide recommendations for design of retaining walls and pavement. The geotechnical investigation will include collection of bulk and undisturbed soil samples from the site, laboratory testing, engineering analyses, and the preparation of a report presenting recommendations for the improvements planned at the project site. The scope of our investigation will consist of five (5) tasks: (1) data

review/coordination, (2) field investigation, (3) laboratory testing, (4) engineering analyses, and (5) report preparation. These tasks are briefly described below.

Task 1 – Data Review/Coordination – Available geotechnical and geological data regarding the project site and surrounding areas will be reviewed to assess the expected soil conditions at the site. The data review will include the review of published geologic maps and grading reports for the site and other geotechnical data contained in our in-house files, and in City/County files. City records to be reviewed will include any existing improvement plans, topographic data, maps, as-constructed drawings, utility plans, reports, aerial photographs, and other pertinent information necessary for the project. At least two (2) working days before the fieldwork, GEI will obtain all necessary state, federal, local, and other permits and licenses as necessary.

Task 2 – Field Investigation – The field investigation will consist of two (2) parts: a site reconnaissance and a subsurface exploration. The site reconnaissance will include examination of the project site to evaluate existing improvements, and gain familiarity with the site and specific pavement conditions, especially potential construction areas. The proposed boring locations will be marked in white and Underground Service Alert (USA) will be notified for coordinating with utility companies to locate and field-mark existing substructures. The markings provided by USA will be used to ensure the protection of any identified existing utilities. Following the notification to USA, the field investigation will be performed.

The field investigation will include exploration of the site by drilling four (4) soils borings along the proposed trails' alignment to secure undisturbed and bulk soil samples for laboratory analysis of the subgrade soils supporting the pavement sections. The borings will be drilled by utilizing either a 6-inch or an 8-inch diameter truck-mounted hollow-stem auger drill rig. The soils borings will be drilled to approximate depths ranging between 5 and 50 feet below the existing ground surface or to the depth of refusal. The deep boring is intended to collect information about the groundwater table at the site and to obtain the required parameters for the soil liquefaction analysis. The depths of the proposed borings may change depending on the materials encountered during the field investigation.

Boreholes will be backfilled with soil cuttings generated from the same boring and compacted immediately after the final samples are retrieved.

Task 3 – Laboratory Testing – Disturbed bulk and relatively undisturbed drive soil samples collected during the proposed field investigation will be examined in the laboratory to confirm field classifications. Selected samples from the borings will be tested to help evaluate engineering properties of the subsurface soils, including in-situ moisture content and dry density, classification testing including grain-size distribution, sand equivalence, and plasticity/expansive characteristics, shear strength, compaction characteristics (maximum dry density and optimum water content) by modified proctor testing, compressibility characteristics, and corrosive properties (resistivity, pH, soluble sulfates, and chloride). The numbers and types of tests will depend upon the soils encountered and the planned improvements at the sample location. Results of all laboratory testing performed on bulk and drive samples of the subsurface soils will be included in the appendix of the engineering report prepared for the project. The proposed laboratory-testing program is outlined in Table I.

Task 4 – Engineering Analysis – Engineering analyses will be performed upon completion of the laboratory testing. Results from the field and laboratory testing, site reconnaissance, and GEL's experience will be the basis for the engineering analyses.

Task 5 – Report Preparation – An engineering report will be prepared at the conclusion of the investigation to aid in the preparation of the earthwork grading-plan. The report will be prepared in accordance with standard drawings and specifications of the City or other applicable agencies. It will describe GEL's purpose, methods and procedures used to conduct the field exploration (including sampling collection methods), investigation findings (soil characteristics), geotechnical engineering conclusions/recommendations regarding appropriate construction methods, and supporting laboratory test procedures and results. The report will provide foundation design parameters, bearing capacity, anticipated settlements, backfill requirements, trenching recommendations, compaction requirements, subgrade preparation, and treatment recommendations for wet, unsuitable, and/or saturated conditions. It will also provide the depths and estimated quantity of needed over-excavation, and any necessary bedding and shoring design recommendations.

Deliverables:

- Geotechnical report – 3 bound sets and 1 electronic copy

TASK 6 – PRELIMINARY PLAN SHEETS

Preliminary plan sheets will be developed in AutoCAD, showing the entire project area in City Plan Sheet format at 40' scale on D-size (24"x36") sheets. All relevant existing data will be shown, including topographic survey, ECR, BCR, flowlines, 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 other physical features.

Deliverables:

- Preliminary plans
- Preliminary cost estimates

TASK 7 – GRAPHIC PRESENTATION

Utilizing AutoCAD files prepared by KOA will prepare SketchUp cross sections and exhibits showing the proposed bikeway improvements. At least three final renderings will be prepared. We anticipate preparing several additional preliminary renderings during the preliminary design process.

Deliverables:

- Sketch-Up cross sections
- Exhibits for public presentations

TASK 8 – COMMUNITY OUTREACH

KOA will assist the City of Costa Mesa in preparing and conducting community outreach meetings to discuss the project, obtain comments, and identify and finalize the project concept. We anticipate up to three such meetings and a City Council presentation to be conducted. KOA 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.

We plan one or two community meetings to receive input from the public. Our Spanish-speaking staff will provide real-time translation. We also have experience with preparing fliers in both English and Spanish.

Other tasks could include providing deliverables and services to educate the public on the project; evaluating its effectiveness; and creating bike/pedestrian and trail route map worksheets to raise route awareness and to tout the benefits of bicycling/walking.

Deliverables:

- Conceptual engineering exhibits (plans and sections for the alternatives)
- Open house meeting written comments

TASK 9 – Preliminary Structure

Moffatt & Nichol, an internationally well-known structural and harbor engineering firm will develop two retaining wall alternatives.

PHASE II – PLANS, SPECIFICATIONS, AND ESTIMATES

Upon the selection of a final design configuration, KOA will proceed with developing the construction bid package, including plans, specifications, and the construction cost estimate. KOA will coordinate with the City twice per month and conduct monthly progress meetings with City staff.

The KOA Team will prepare plans, specifications, and estimates (PS&E) and reviews at 70%, 90%, and 100% levels of completion for submittal to the City. The plans will include:

- Title sheet
- Typical sections

- Details
- Plan and profiles (1"=20' scale)
- Signing and striping layout
- Intersection and access spot treatment detail layout
- Traffic control plans
- Landscape and Irrigation plans
- Structural Plans
- Summary of quantities
- Technical specifications
- Supplemental cross section sheets at 50-foot stations

We anticipate utilizing the City's front-end contract documents and modifying them to be project-specific. We anticipate referencing the Caltrans and APWA standard specifications and adding technical special provisions, if required. The engineer's estimate will be quantity-based, using recent bid prices as a basis for developing the estimate. Following each milestone submittal, we will meet with City staff to review comments. We will send milestone plan submittals to the utility companies for the identification and implementation of utility adjustments. Upon the City's approval, we will submit three sealed hard copies of the PS&E for bidding purposes. Electronic files will be submitted in PDF, AutoCAD, Word, and Excel formats.

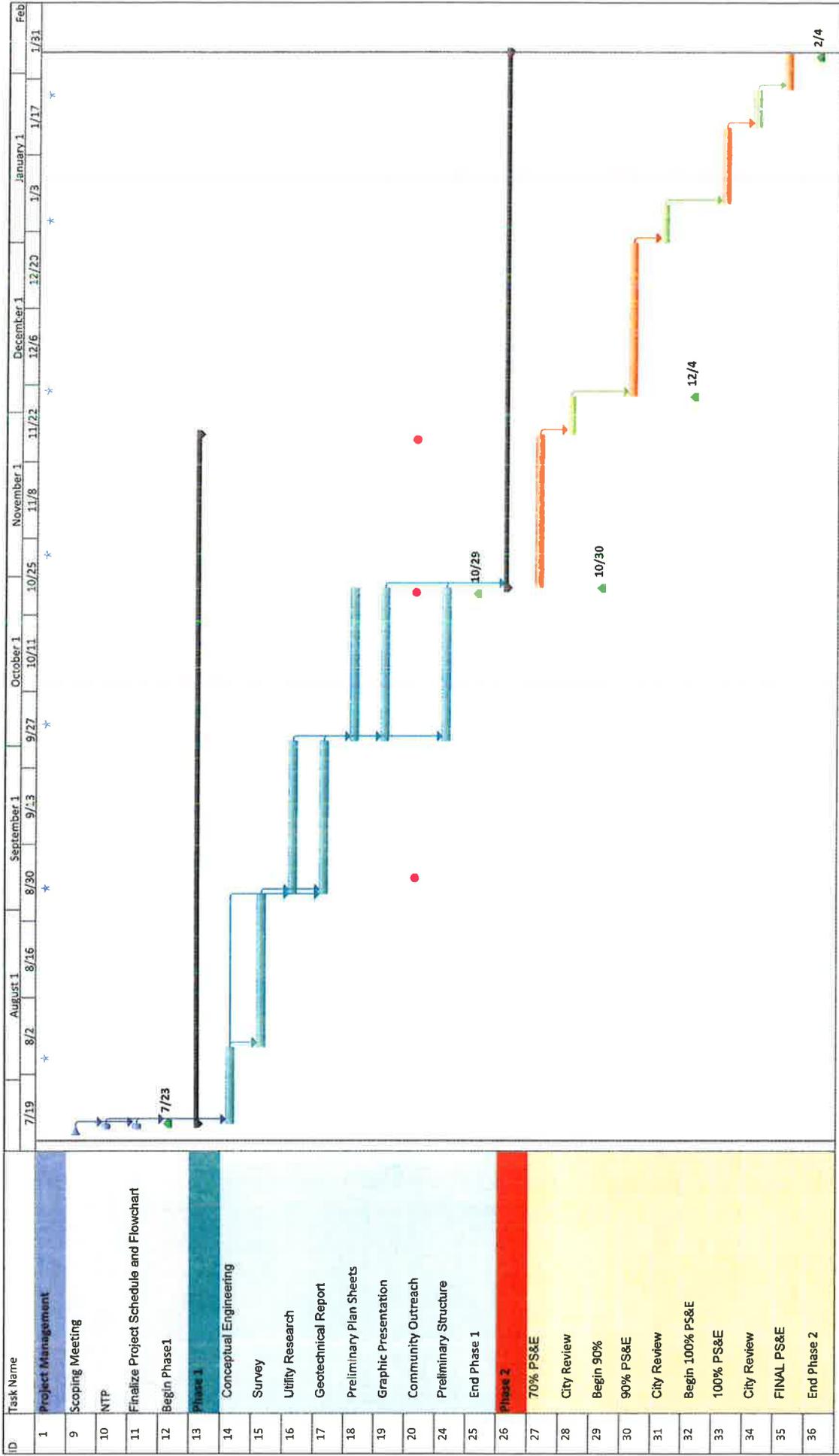
Deliverables:

- 70% draft plans
- 70% draft specification outline
- 70% draft engineer's estimate
- Minutes of 70% review meeting
- 90% draft plans
- 90% draft specifications
- 90% draft engineer's estimate
- Minutes of 90% review meeting
- 100% draft plans
- 100% draft specifications
- 100% draft engineer's estimate
- Final PS&E electronic files; final plans (24"x36" Mylar); final specifications (8.5"x11" Bond); final estimate (8.5"x11" bond)

The plans will include utility information and depict existing utilities and easements. Any necessary utility relocation or adjustment work will be included.

EXHIBIT C
FEE SCHEDULE

EXHIBIT D
PROJECT SCHEDULE



Project: City of Costa Mesa
 19th st. Bicycle Facility
 Date: Mon 6/29/15

Task Management Meeting
 Summary
 Community Outreach

EXHIBIT E
CERTIFICATES OF INSURANCE



ADDITIONAL REMARKS SCHEDULE

AGENCY Dealey, Renton & Associates		NAMED INSURED KOA Corporation 1100 Corporate Center Dr #201 Monterey Park, CA 91754 323-260-4703	
POLICY NUMBER		EFFECTIVE DATE:	
CARRIER	NAIC CODE		

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM.

FORM NUMBER: 25 FORM TITLE: CERTIFICATE OF LIABILITY INSURANCE

attached

Blanket SEVERABILITY OF INTERESTS applies to GL: Separation of Insureds - Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part 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 claim is made or suit is brought.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED (ARCHITECTS, ENGINEERS AND SURVEYORS)

This endorsement modifies insurance provided under the following:
COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

NAME OF PERSON(S) OR ORGANIZATION(S):

City of Costa Mesa - Trans Svcs Div
Attn: David Cho
PO BOX 1200
Costa Mesa CA 92628-1200

PROJECT/LOCATION OF COVERED OPERATIONS:

*Completed to read: The City of Costa Mesa and its elected and appointed boards, officers, agents, and employees -- RE: RFP, Banning Channel Bikeway

PROVISIONS

A. The following is added to WHO IS AN INSURED (Section II):

The person or organization shown in the Schedule above is an additional insured on this Coverage Part, but only with respect to liability for bodily injury, "property damage" or "personal 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;
- b. In connection with premises owned by or rented to you; or
- c. In connection with your work and included within the "products-completed operations hazard."

Such person or organization does not qualify as an additional insured for "bodily injury", "property damage" or "personal injury" for which that person or organization has assumed liability in a contract or agreement.

The insurance provided to such additional insured is limited as follows:

- d. This insurance does not apply to the rendering of or failure to render any "professional services".
- e. The limits of insurance afforded to the additional insured shall be the limits which you agreed in that "contract or agreement requiring insurance" to provide for that additional insured, or the limits shown in the Declarations for this Coverage Part, whichever are less. This endorsement does not increase the limits of insurance stated in the LIMITS OF INSURANCE (Section III) for this Coverage Part.

- B. The following is added to Paragraph a. of 4. Other Insurance in COMMERCIAL GENERAL LIABILITY CONDITIONS (Section IV):
However, if you specifically agree in a contract or agreement requiring insurance that, for the additional insured shown in the Schedule, the insurance provided to that additional insured under this

COMMERCIAL GENERAL LIABILITY

Coverage Part must apply on a primary basis, or a primary and non-contributory basis, this insurance is primary to other insurance that is available to such additional insured which covers such additional insured as a named insured, and we will not share with the other insurance, provided that:

- (1) The "bodily injury" or "property damage" for which coverage is sought occurs; and
- (2) The "personal injury" for which coverage is sought arises out of an offense committed;

after you have entered into that "contract or agreement requiring insurance" for such additional insured. But this insurance still is excess over valid and collectible other insurance, whether primary, excess, contingent or on any other basis, that is available to the additional insured when the additional insured is also an additional insured under any other insurance.

- C. The following is added to Paragraph 8. Transfer Of Rights Of Recovery Against Others To Us in COMMERCIAL GENERAL LIABILITY CONDITIONS (Section IV):

We waive any rights of recovery we may have against the additional insured shown in the Schedule above because of payments we make for "bodily injury", "property damage" or "personal

injury" arising out of "your work" on or for the project, or at the location, shown in the Schedule above, performed by you, or on your behalf, under a "contract or agreement requiring insurance" with that additional insured. We waive these rights only where you have agreed to do so as part of the "contract or agreement requiring insurance" with that additional insured entered into by you before, and in effect when, the "bodily injury" or "property damage" occurs, or the "personal injury" offense is committed.

- D. The following definition is added to DEFINITIONS (Section V):

"Contract or agreement requiring insurance" means that part of any contract or agreement under which you are required to include the person or organization shown in the Schedule as an additional insured on this Coverage Part, provided that the "bodily injury" and "property damage" occurs, and the "personal injury" is caused by an offense committed:

- a. After you have entered into that contract or agreement;
- b. While that part of the contract or agreement is in effect; and
- c. Before the end of the policy period.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DESIGNATED INSURED

This endorsement modifies insurance provided under the following:

- BUSINESS AUTO COVERAGE FORM
- GARAGE COVERAGE FORM
- MOTOR CARRIER COVERAGE FORM
- TRUCKERS COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by this endorsement.

This endorsement identifies person(s) or organization(s) who are "insureds" under the Who Is An Insured Provision of the Coverage Form. This endorsement does not alter coverage provided in the Coverage Form.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Endorsement Effective: 6/29/2015	Countersigned By:
Named Insured: KOA Corporation	 (Authorized Representative)

SCHEDULE

Name of Person(s) or Organization(s): *Completed to read: The City of Costa Mesa and its elected and appointed boards, officers, agents, and employees -- RE: RFP, Banning Channel Bikeway

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

Each person or organization shown in the Schedule is an "insured" for Liability Coverage, but only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured Provision contained in Section II of the Coverage Form.

Workers' Compensation and Employers' Liability Insurance Policy
Waiver of Our Right to Recover From Others Endorsement - California
WC 04 03 06

If the following information is not complete, refer to the appropriate Schedule attached to the policy.

Insured: KOA Corporation

Policy Number WZP81021313

Producer: Dealey, Renton & Associates

Effective Date 6/29/2015

Schedule

Person or Organization

City of Costa Mesa - Trans Svcs Div
Attn: David Cho
PO BOX 1200
Costa Mesa CA 92628-1200

Job Description

*Completed to read: The City of Costa
Mesa and its elected and appointed
boards, officers, agents, and employees
-- RE: RFP, Banning Channel Bikeway

Additional Premium %

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.)

You must maintain payroll records accurately segregating the remuneration of your employees while engaged in the work described in the Schedule.

The additional premium for this endorsement shall be the percentage, as shown in the Schedule applicable to this endorsement, of the California workers' compensation premium otherwise due on such remuneration.



Authorized Representative

Policy #BA2A439568

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BLANKET WAIVER OF SUBROGATION

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM
GARAGE COVERAGE FORM
MOTOR CARRIER COVERAGE FORM
TRUCKERS COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

Paragraph **5. Transfer of Rights Of Recovery Against Others To Us** of the CONDITIONS section is replaced by the following:

5. Transfer Of Rights Of Recovery Against Others To Us

We waive any right of recovery we may have against any person or organization to the extent

required of you by a written contract executed prior to any "accident" or "loss", provided that the "accident" or "loss" arises out of the operations contemplated by such contract. The waiver applies only to the person or organization designated in such contract.

Auto insurance always follows the car, not the owner. Thus the vehicle owner's insurance is always primary. Below are the excerpted paragraphs from the ISO Business Auto Coverage form which explains the coverage.

Section II Liability Coverage,

A. Coverage,

1. Who Is An Insured,

c. anyone liable for the conduct of an "insured" described above but only to the extent of that liability

Section IV Business Auto Conditions,

B. General Conditions,

5. Other Insurance

c. Regardless of the provisions of Paragraph a. above, this Coverage Form's Liability Coverage is primary for any liability assumed under an "insured contract".

Section V Definitions,

H. "Insured contract" means;

5. "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 to pay for "bodily injury" or "property damage" to a third party or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

By California state law the Insured's Auto insurance will always be primary with respect to the Insured's owned autos.

- b. Return the stolen property, at our expense. We will pay for any damage that results to the "auto" from the theft; or
- c. Take all or any part of the damaged or stolen property at an agreed or appraised value.

If we pay for the "loss", our payment will include the applicable sales tax for the damaged or stolen property.

5. Transfer Of Rights Of Recovery Against Others To Us

If any person or organization to or for whom we make payment under this coverage form has rights to recover damages from another, those rights are transferred to us. That person or organization must do everything necessary to secure our rights and must do nothing after "accident" or "loss" to impair them.

B. General Conditions

1. Bankruptcy

Bankruptcy or insolvency of the "insured" or the "insured's" estate will not relieve us of any obligations under this coverage form.

2. Concealment, Misrepresentation Or Fraud

This coverage form is void in any case of fraud by you at any time as it relates to this coverage form. It is also void if you or any other "insured", at any time, intentionally conceal or misrepresent a material fact concerning:

- a. This coverage form;
- b. The covered "auto";
- c. Your interest in the covered "auto"; or
- d. A claim under this coverage form.

3. Liberalization

If we revise this coverage form to provide more coverage without additional premium charge, your policy will automatically provide the additional coverage as of the day the revision is effective in your state.

4. No Benefit To Bailee – Physical Damage Coverages

We will not recognize any assignment or grant any coverage for the benefit of any person or organization holding, storing or transporting property for a fee regardless of any other provision of this coverage form.

5. Other Insurance

- a. For any covered "auto" you own, this coverage form provides primary insurance. For any covered "auto" you don't own, the insurance provided by this coverage form is excess over any other collectible insurance. However, while a covered "auto" which is a "trailer" is connected to another vehicle, the Liability Coverage this coverage form provides for the "trailer" is:
 - (1) Excess while it is connected to a motor vehicle you do not own.
 - (2) Primary while it is connected to a covered "auto" you own.
- b. For Hired Auto Physical Damage Coverage, any covered "auto" you lease, hire, rent or borrow is deemed to be a covered "auto" you own. However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".
- c. Regardless of the provisions of Paragraph a. above, this coverage form's Liability Coverage is primary for any liability assumed under an "insured contract".
- d. When this coverage form and any other coverage form or policy covers on the same basis, either excess or primary, we will pay only our share. Our share is the proportion that the Limit of Insurance of our coverage form bears to the total of the limits of all the coverage forms and policies covering on the same basis.

6. Premium Audit

- a. The estimated premium for this coverage form is based on the exposures you told us you would have when this policy began. We will compute the final premium due when we determine your actual exposures. The estimated total premium will be credited against the final premium due and the first Named Insured will be billed for the balance, if any. The due date for the final premium or retrospective premium is the date shown as the due date on the bill. If the estimated total premium exceeds the final premium due, the first Named Insured will get a refund.
- b. If this policy is issued for more than one year, the premium for this coverage form will be computed annually based on our rates or premiums in effect at the beginning of each year of the policy.

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;

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

- 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;

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

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

