

**CITY OF COSTA MESA  
PROFESSIONAL SERVICES AGREEMENT  
WITH  
ONWARD ENGINEERING**

THIS AGREEMENT is made and entered into this 18th day of February, 2014 ("Effective Date"), by and between the CITY OF COSTA MESA, a municipal corporation ("City"), and ONWARD ENGINEERING, a California Corporation ("Consultant").

**WITNESSETH:**

A. WHEREAS, City proposes to utilize the services of Consultant as an independent contractor to provide on-site inspection and construction management services for various City's Capital Improvement Program Projects, 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. It is understood that in the exercise of every aspect of its role, within the scope of work, consultant will be representing the City of Costa Mesa, and all of its actions, communications, or other work, during its employment, under this contract is under the direction of the department. Consultant also warrants that it is familiar with all laws that may affect its performance of this Agreement and shall advise City of any changes in any laws that may affect Consultant's performance of this Agreement.

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

- (a) Meet with Consultant to review the quality of the work and resolve the matters of concern;
- (b) Require Consultant to repeat the work at no additional fee until it is satisfactory; and/or
- (c) Terminate the Agreement as hereinafter set forth.

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

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

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

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

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

## 2.0. COMPENSATION AND BILLING

2.1. Compensation. Consultant shall be paid in accordance with the fee schedule set forth in Exhibit "C," attached hereto and made a part of this Agreement (the "Fee Schedule"). Consultant's total compensation shall not exceed Two Hundred Thousand Dollars (\$200,000.00).

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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 twenty four (24) months, ending on February 18, 2016, 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 "F" and incorporated herein by this reference.

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

## 6.0. GENERAL PROVISIONS

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

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

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

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

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

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

IF TO CONSULTANT:

Onward Engineering  
300 S. Harbor Blvd., Suite 814  
Anaheim, CA 92805  
Tel: 714-533-3050  
Fax: 714-948-8978  
Attn: Majdi Ataya, PE

IF TO CITY:

City of Costa Mesa  
77 Fair Drive  
Costa Mesa, CA 92626  
Tel: 714-754-5378  
Fax: 714-754-5028  
Attn: Fariba Fazeli

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 "E" 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.

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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: 2-19-14

  
\_\_\_\_\_  
Department Director

Date: 2.19.14

CONSULTANT

  
\_\_\_\_\_  
Signature

Date: 2/19/2014

Muhammad Alaya, Vice President  
\_\_\_\_\_  
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:



City Attorney

Date: 01/29/14

APPROVED AS TO INSURANCE:



Risk Management

Date: 2/3/14

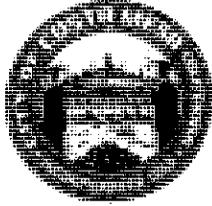
APPROVED AS TO CONTENT:



Project Manager

Date: 2-3-14

**EXHIBIT A**  
**REQUEST FOR PROPOSALS**



# CITY OF COSTA MESA

P.O. BOX 1200 • 77 FAIR DRIVE • CALIFORNIA 92628-1200

FROM THE DEPARTMENT OF PUBLIC SERVICES/ENGINEERING DIVISION

November 25, 2013

**SUBJECT: REQUEST FOR PROPOSALS FOR PROFESSIONAL SERVICES TO PROVIDE STAFF SUPPORT FOR VARIOUS CAPITAL IMPROVEMENT PROGRAM PROJECTS**

Dear Consultant:

The City of Costa Mesa is requesting a proposal from your firm to submit resumes of candidates to provide on-site inspection and construction management services for various City's Capital Improvement Program Projects. The schedule is as follows:

<u>ENGINEERING SCHEDULE</u>	<u>DATE</u>
1. Proposal Received by the City	12/30/13
2. Interviews with selected candidates	01/02/14 to 01/03/14
3. Award Professional Services Agreement	01/21/14
4. Start work	01/22/14

Enclosed is a Request for Proposals (RFP) to provide professional services. The proposal requirements and the necessary professional services required by the City are stated within the RFP. The consultant shall provide all services as requested in the RFP and stated in the submitted proposal.

### CITY OF COSTA MESA CONTACT PERSON

The City of Costa Mesa contact person is Ms. Fariba Fazeli, at (714) 754-5378. Please do not contact other staff members in reference to this RFP prior to the announcement of the award.

### PROPOSAL SUBMITTAL REQUIREMENTS

Please submit three (3) copies of each candidate (up to five candidates) with their respective hourly rate no later than 11:00 a.m., on Monday, December 30, 2013. All proposals shall be delivered or mailed to:

Fariba Fazeli, P. E.  
City of Costa Mesa  
Public Services/Engineering  
77 Fair Drive, 4<sup>th</sup> Floor  
Costa Mesa, CA 92628

Mailing Address:  
P.O. Box 1200, Costa Mesa, CA 92628-4193

Sincerely,

  
Fariba Fazeli, P. E.  
City Engineer

**REQUEST FOR PROPOSALS FOR PROFESSIONAL SERVICES TO PROVIDE STAFF  
SUPPORT FOR VARIOUS CAPITAL IMPROVEMENT PROGRAM PROJECTS**

**1. INTRODUCTION**

In order to move forward with the City's Capital Improvement Program (CIP) projects, a construction manager and construction inspectors are needed to oversee the completion of Council-approved CIP projects.

The scope of work for this contract requires the consultant to provide a Professional Engineer to oversee the construction of various CIP projects in the capacity of a Construction Manager and construction inspectors on an as needed basis. This includes, but is not limited to, preparation of Requests For Proposals for Professional Engineering and/or Architectural Services, review and plan check of construction documents, review and manage consultants and/or contractors' activities and performance, advertise projects for construction, negotiate contract change orders, monitor project schedules, provide construction management, and administer all federally funded projects (i.e. award package, reimbursement request, material testing and inspection, final report, DBE and labor compliance, etc.). The consultant shall also provide one or two public works' inspectors on an as needed basis. The inspectors must have extensive knowledge of various public works' projects such as concrete, asphalt, storm drain, traffic signal, grading, landscaping, irrigation, electrical, etc.

Below is a list of CIP's projects and their status:

PROJ. NO.	PROJECT NAME AND STATUS
1	<u>ANAHEIM/SUPERIOR STORM DRAIN AND STORMWATER MITIGATION PROJECT:</u> This project consists of installation of Reinforced Concrete Box on Anaheim Avenue and Detention/Infiltration system at Lions Park. <ul style="list-style-type: none"> <li>• Complete the construction documents and advertised for construction by March 2014.</li> </ul>
2	<u>PACIFIC AVENUE AND CANYON DRIVE STREET IMPROVEMENT PROJECT:</u> This project consists of reconstruction of damaged curb & gutter, sidewalks, driveways, cross gutters and mill and AC overlay. <ul style="list-style-type: none"> <li>• This project is being advertised for construction</li> <li>• Begin construction in March 2014.</li> </ul>
3	<u>2013-2014 CITYWIDE STREET REHABILITATION:</u> This project consists of mill & AC overlay and/or slurry seal application of the streets located within the Mesa North, Westside, Upper and Lower Bird and area around the Trinity Church neighborhoods. <ul style="list-style-type: none"> <li>• This project is being advertised for construction</li> <li>• Begin construction in March 2014.</li> </ul>
4	<u>2013-2014 CITYWIDE PARKWAY REPAIR AND NEW SIDEWALK CONSTRUCTION:</u> This project consists of citywide removal and construction of damaged curb & gutter, sidewalks, driveways and cross gutters <ul style="list-style-type: none"> <li>• This project is being advertised for construction.</li> <li>• Begin construction by January 2014.</li> </ul>
5	<u>2013-2014 CITYWIDE UNIMPROVED ALLEYS:</u> This project consists of removal of the existing pavement and construction of concrete pavement of several alleys with concrete pavement. <ul style="list-style-type: none"> <li>• This project is being advertised for construction</li> <li>• Begin construction in March 2014.</li> </ul>

PROJ. NO.	PROJECT NAME AND STATUS
6	<p><b><u>2013-2014 CDBG STREET AND ALLEY IMPROVEMENT PROJECT:</u></b>  This project consists of rehabilitation of alleys and streets within the CDBG area.</p> <ul style="list-style-type: none"> <li>• This project is being advertised for construction</li> <li>• Begin construction in March 2014.</li> </ul>
7	<p><b><u>VICTORIA VALLEY INTERSECTION IMPROVEMENTS:</u></b>  This project consists of reconstruction of the north leg of the intersection and traffic signal modifications.</p> <ul style="list-style-type: none"> <li>• The construction has been awarded.</li> </ul>
8	<p><b><u>WEST 19<sup>TH</sup> STREET IMPROVEMENTS:</u></b>  This project consists of construction of a right turn lane into the Tower on 19<sup>th</sup> Street, pedestrian signal replacements, and street light modifications. This project is federally funded.</p> <ul style="list-style-type: none"> <li>• The construction has been awarded.</li> </ul>

The consultant's candidates must have at least ten (10) years prior experience for similar types of projects. All candidates will be evaluated on the basis of their expertise, prior experience on similar projects, demonstrated competence, timely performance, ability to meet the project schedule, and an understanding of the project.

**2. CONTENT OF PROPOSAL**

To maintain uniformity, your proposal must be limited to **five candidates** (include each candidate's resume and hourly rate).

**3. CONSULTANT SELECTION COMMITTEE**

The Public Services Department of the City of Costa Mesa has established a Consultant Selection Committee consisting of at least four (4) members from this department who have acted in the capacity of Project Manager or Project Engineer for the City on previous similar projects. The evaluation of each candidate will be based on the technical information and qualifications presented in the resume, reference checks, and other information, which will be gathered independently.

**4. PROFESSIONAL SERVICES AGREEMENT**

The City of Costa Mesa has a sample of the Professional Services Agreement, which is available at the City for your review. The RFP and the consultant's proposal will be attached to and become part of the executed agreement as exhibits.

The City will not permit reduction in the City's "Scope of Consultant Services" without written approval.

**5. INSURANCE REQUIREMENTS**

General Liability:	\$1,000,000
Automobile Liability:	\$1,000,000
Workers Compensation and Employers' Liability:	\$1,000,000
Professional Liability:	\$1,000,000

Additional and primary Insurance endorsements shall include City of Costa Mesa

6. **SUMMARY**

The City appreciates participation, and the intent of this RFP is to establish the minimum consultant services required. Prior to awarding a contract, all insurance documents must be submitted and approved.

**EXHIBIT B  
CONSULTANT'S PROPOSAL**

## Mary Jane "M.J." Gistine

### CONSTRUCTION MANAGER

BS Engineering, Penn State - Registered Professional Engineer #57283 - Former City of Irvine PM Staff

#### PROFILE

M.J. possesses over 36 years of solid experience in the public works sector. She places emphasis in exceeding our clients' expectations by developing a thorough scope of work prior to contract execution. As Project Manager, M.J. has gained effective leadership and communication skills in leading projects from inception to completion. M.J. also has extensive experience working with Caltrans and managing project involving multiple stakeholders. As a Project Manager, M.J. continues to utilize her diversified experience in delivering small and large CIP Projects.

#### WORK EXPERIENCE

##### LAMBERT ROAD REHABILITATION PROJECT (PHASE I&II), City of Brea

M.J. provided design engineering services for this project comprised of 3,900lf of roadway. The project spanned from Delta Avenue to Tamarack Avenue. This project was required intense focus and acute attention to detail as it is on a major arterial. This project required replacement of damaged curb, gutter, and sidewalk, installing ADA compliant curbs with custom designed reinforcement, stabilizing base material and replacing median island noses. M.J. was able to complete this project with an extensive drivability review and assessed roadway cross-fall s relating to new ramp and driveway construction. Phase 2 of this project includes rehabilitation of the segment of Lambert Road from Tamarack Avenue to State College Boulevard. The work also encompasses reconstruction of curb access ramps, sidewalk improvements, and 2,000 linear feet of storm drain improvements from Cliffwood Avenue to State College Boulevard.

##### MAIN ST. LAND ACQUISITION, WIDENING AND REHAB, Fed., State, County of Orange and Caltrans

M.J. Acted in a dual role for this project which has a total cost of \$13 million dollars. Prior to construction, M.J. acted as the Right-of-Way Engineer and successfully negotiated friendly purchases on 32 parcels in only 4 months. (ROW staff had previously closed 2 escrows in 7 months). During construction, she acted as the Chief Project Manager who:

- ✓ Coordinated and struck a good balance between the City's required traffic alterations and the effect on major entities, such as John Wayne Airport, the Radisson Hotel and McDonalds.
- ✓ Prepared Change Order recommendations and justification in a manner which received quick approval and participation from Caltrans.
- ✓ Kept the project on schedule despite groundwater, utility conflicts
- ✓ Managed heavy traffic and plan revisions.
- ✓ Prepared Federal, State, and County (AHFP/SLTPP/OCTA) Financial accounting reports.

##### MACARTHUR BOULEVARD WIDENING & REHABILITATION, Fed., State, County of Orange and Caltrans

M.J. had dual role responsibilities on this \$7 million dollar project. Prior to construction, M.J. acted as the Right-of-Way Engineer. M.J. was able to successfully negotiate friendly purchase agreements on 7 of 8 parcels in a 3-month span. During construction, M.J. acted as Chief Project Manager. She quickly and cooperatively resolved underground conflicts with the utility representatives, John Wayne Airport Authority, and the Contractor.

**CULVER DRIVE & WALNUT AVENUE RESURFACING AT THE I-5 FREEWAY: State (Caltrans)**

M.J. Managed both combined road program projects simultaneously. She coordinated the work of 2 different Contractors in adjoining areas. The work was unique due to its close proximity to schools, shopping centers, and residential street outlets. M.J. was able to successfully coordinate with all stakeholders to ensure successful project delivery.

**BARRANCA ROAD WIDENING (AHFP, SLTPP, OCTA, CALTRANS): City of Irvine & City of Tustin**

As the Project Manager, M.J. amicably resolved the driveway access conflict with the Tustin MCAS commanding personnel on this \$1.6 million dollar project. M.J. saved the City of Irvine considerable amount of money on traffic signal equipment order through negotiations.

**SAND CANYON BRIDGE WIDENING & BIKE TRAIL ACROSS SAN DIEGO CREEK: City of Irvine**

As the Project Manager, M.J. acted as a liaison during a standoff between Southern California Edison and the City staff. M.J. was able to negotiate an agreement between the two parties. M.J. was able to manage this project, expediting the design and beating the contract award deadline which gained the City \$150,000 in outside funding. Despite a rain washout of the falsework, the work was completed on schedule and on budget.

**CULVER DRIVE & WALNUT AVENUE RESURFACING AT THE I-5 FREEWAY, STATE (CALTRANS)**

M.J. Managed both combined road program projects simultaneously. She coordinated the work of 2 different Contractors in adjoining areas. The work was unique due to its close proximity to schools, shopping centers, and residential street outlets. M.J. was able to successfully coordinate with all stakeholders to ensure successful project delivery.

**MEADOWBROOK TO LAKE CONNECTION ROAD: Irvine Unified School District**

As the Project Manager, M.J. was nominated for the City Manager's Cornerstone Award as a result of superior efforts to reduce project cost on this project. M.J. visualized a future need of Irvine Unified School District (IUSD) for water access, initiated meetings, conceived a joint design, and ultimately concluded an agreement with IUSD to share 50% of the waterline construction costs.

**WESTPARK, PHASE I & II - 880 ACRE DEVELOPMENT: Irvine Company & City of Irvine**

M.J. took the lead role in expediting the Plan Check Process through the various City departments on the \$5 million dollar development project. M.J. worked at an accelerated pace to meet City Council Report deadlines and the developer's aggressive opening schedule.

**HARVARD/WARNER TRAFFIC SIGNAL MODIFICATIONS: The Irvine Company & City of Irvine**

M.J. managed this project and completed the work on a critically short deadline, saving a significant amount of money for the City by gaining Contractor cooperation and implementing a rarely-used contract process.

**SAN DIEGO CREEK OPEN SPACE- 11 ACRE CHANNEL HABITAT RESTORATION**

As the Project Manager of this 2 mile, 11.5 acre habitat restoration project, M.J. personally found a significant amount of design deficiencies and inaccuracies in the construction drawings that were prepared by a consulting firm for the Developer. Worked extremely persuasively and effectively to correct all problems so as to engage in the project construction during the permitted planting window allowed by Fish & Game. M.J. saved the project from being postponed an additional year, saving additional costs on this \$3.2 million dollar project.

# Chris Boren

## SR. CONSTRUCTION INSPECTOR

Public Works Inspector Level I · Public Works Inspector Level II · Nuclear Densometer Work · Traffic Signal Experience

### PROFILE

Chris is a Senior Construction Inspector at Onward Engineering. He has a variety of certifications and has taken part in multiple training programs over his years of experience. Chris' experience includes a plethora of projects, and he advocates safety and quality at the jobsite. His accuracy and efficiency in the field ensure a successful project. Chris' work will always include making sure that the contractor is efficient with his time and acting in the best interest of the City as their advocate in the field.

### WORK EXPERIENCE

#### RESIDENTIAL AREA 1B AND ARTERIAL ZONE 7 ROAD MAINTENANCE PROJECT, Diamond Bar

Chris was the Inspector on the City of Diamond Bar's Residential Area 1B and Arterial Zone 7 Road Maintenance Project. The project included 2.5 miles of arterials and 10.2 miles of residential and collector streets with a construction cost of approximately \$1.3 million. The scope of work included rehabilitation of the roadway using primarily slurry seal and chip seal methods. In areas of extreme degradation, an asphalt overlay or full width grind and replacement was recommended depending on funding availability. An Encroachment Permit including Traffic Control Drawings for Caltrans to provide S.R. 57 Ramp Closures affected by the slurry operations on Diamond Bar Boulevard.

#### BRISTOW PARK NEIGHBORHOOD REHABILITATION PROJECT, Commerce

Chris provided inspection services on this CDBG-funded project. The project was constricted by the I-5 Freeway to the north, BNSF Railroad to the south, the City of Los Angeles Boundary to the west and the 710 Freeway to the east. The project covered approximately 4,900 LF. The scope included: 1,350 SF of sidewalk, installing 25 new ramps and upgrading 13 ramps to meet ADA compliance, 1,610 SF of cross-gutter, replacing 25 street signs, adjusting 25 manholes, trimming tree roots and installing barriers, and a combination of full-depth reclamation, reconstruction and grind and overlay. The City selected cement treated base and reconstruction as the method for rehabilitation.

#### ROSINI & ROSEWOOD NEIGHBORHOOD REHABILITATION PROJECT (PHASE II), Commerce

Chris provided inspection services to the City of Commerce on Phase II of this politically-sensitive residential reconstruction project. The \$1.4 million project spanned 6,960 LF of reconstruction, utilizing cement treated base. The scope included excavating 14 inches of roadway, treating a 10-inch section of base with cement, adjusting 33 manholes and 19 valve lids, installing loops, and traffic striping

#### 2010 CITYWIDE STREET REHABILITATION – ARRA PHASE I, Bell Gardens

- Arterial Streets/Traffic Control/BMP Implementation
- Approx. 1 mile grind and overlay, 370,818 square feet of variable depth cold mill
- 19 ADA compliant curb ramps constructed & 21 ADA compliant curb ramp retrofits
- C&G, Drive Approach, Sidewalk, local depressions

- Localized full section removals, Installation of C MB Materials
- Base course, leveling course, ARHM cap
- Sewer and Storm Drain Manhole Adjustment, Water Valve Can Adjustment
- Traffic Signal Pull Box Adjustment, Traffic Striping, and Traffic Signal Loop Detectors

2010 CITYWIDE STREET REHABILITATION – ARRA PHASE II, Bell Gardens

- Local and Arterial Streets
- Traffic Control
- BMP Implementation
- 187,468 square feet of variable depth cold mill
- 5 ADA compliant curb ramps constructed
- 32 ADA compliant curb ramp retrofits
- Sidewalk, C&G, Alley Approach, PCC Bus Pad
- Localized full section removals, Installation of CMB Materials
- Variable Thickness Base Course, Variable Thickness ARHM Cap

2011 RAMONA "A" ROADWAY REHABILITATION– ARRA, Baldwin Park

- Arterial Streets/Traffic Control/BMP Implementation
- 200,656 square feet cold mill
- 14 ADA compliant curb ramps constructed
- 4,285 square feet of PCC Roadway
- PCC Roadway, Spandrels, C&G, Drive Approach, Sidewalk, Stamped Concrete
- Leveling Course, ARHM Cap
- Sewer and Storm Drain Manhole Adjustment, Water Valve Can Adjustment
- R&R IIISNS & Repair of 16" RCP
- 16" to 24" Diameter Tree Removal
- (6) 2" Water Service Installations and Backflow Device Installations
- Upgrade of existing irrigation systems & installation of new parkway irrigation systems

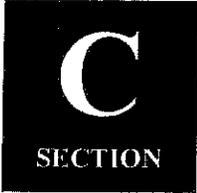
BEVERLY BLVD. REHABILITATION PROJECT – ARRA, Pico Rivera

- Arterial Streets/Traffic Control/BMP Implementation
- 1.3 Miles Grind & Overlay
- 13 ADA compliant curb ramps constructed
- 3 ADA compliant curb ramp retrofits
- Clear, Grub and Grade Existing Parkway For The Installation of New Sidewalk
- C&G, A.C. Curb, Sidewalk, Drive Approach, Cross Gutter
- Localized full section removals, Installation of CMB Materials
- Base Course, Leveling Course, ARHM Cap

PASADENA AVE. STREET IMPROVEMENT PROJECT, South Pasadena

- Arterial Streets/Traffic Control/BMP Implementation
- 125,577 square feet of cold mill & 110160 square feet of Petromat Installation
- PCC Grinding & 18" CMP R&R

**EXHIBIT C**  
**FEE SCHEDULE**



# HOURLY RATE SCHEDULE

## Firm Experience

Title	Hourly Rate*
Construction Manager	\$100/hour
Sr. Construction Inspector	\$80/hour

\*The hourly rates shown above are fully burdened, and include all mileage and reimbursable expenses. These hourly rates apply to each of our two [proposed Construction Managers and three proposed Sr. Construction Inspectors.

# D

## SECTION

# OE FIRM QUALIFICATIONS & REFERENCES

## Firm Experience

### ATLANTIC AVE. & FIRESTONE BLVD. WIDENING PROJECT, South Gate

OE provided construction management and inspection services for this project which was funded through Measure R, Metro, and other state funding sources, which will require the project to be conducted, organized and reported per the Caltrans LAPM. The project limits included two arterial streets: Atlantic Avenue from Firestone Blvd to Patata St. (~1,300 LF) and Firestone Boulevard, from Dorothy Avenue to Atlantic Ave. (~2,200 LF). The project goal was to provide traffic congestion relief and improve public services. Atlantic Avenue and Firestone Boulevard were widened at all four corners. Additionally, roadway and public amenity improvements were completed. The project also called for sewer, storm drain, and extensive water system improvements. Traffic signals were a key component of this project. Community coordination was a great focus on this project. OE coordinated with stakeholders to ensure that complaints were minimized. This project also had a heavy environmental component. All mitigation measures listed in the EIR will be closely monitored and reported during the life of the construction project. Of greatest concern will be storm water runoff contamination and prevention. Finally, the project called for extensive night work and periods of 24/7 inspection where OE was responsible for providing round-the-clock inspection and construction administration.

### 2011-2012 CITYWIDE RESIDENTIAL STREET REHABILITATION PROJECT, Placentia

OE provided design, CM, and inspection services to the City of Placentia for the 2012 City-wide Residential Street Rehabilitation Project. The project was funded by a variety of sources including Gas Tax, Proposition 1B, Measure M1, and Measure M2. Our analysis included 75 miles of roadway and the actual design spanned 35 miles. The scope of work included rehabilitating the roadway using primarily Type II slurry seal, chip seal, and portions of full R&R. The final design included rehabilitating 41% of the City's residential roadways, including 109 new ADA compliant curb ramps, 5,445 tons of slurry, 105,050 square yards of chip seal, grind and overlay with 23,059 tons of AC paving, adjusting 209 manholes and 369 water valves, and 2,363 LF of curb and gutter. OE reviewed the City's 2011 Pavement Management Report, and completed a reconnaissance field survey to better understand the existing pavement conditions. The field survey included walking each proposed roadway to make recommendations for necessary localized AC R&R patches, and identify damaged curb & gutter and uplifted, or non-ADA compliant sidewalks. OE provided a location matrix with photographs for each recommended repair, along with our estimated budget allocation for each location and work item. OE's initial project scope included only design. OE also communicated extensively with residents and fielding calls, and the project was completed under budget.

**EXHIBIT D**  
**PROJECT SCHEDULE**

## **SCHEDULE**

1. City Council Award: 02-18-2014
2. Start Work: 02-18-2014 As needed/on-call
3. End of Contract: 02-18-2016

**EXHIBIT E**  
**CITY COUNCIL POLICY 100-5**

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

BACKGROUND

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

PURPOSE

It is the purpose of this Policy to:

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

**POLICY**

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

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

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.