

**CITY OF COSTA MESA  
PROFESSIONAL SERVICES AGREEMENT  
WITH  
DDL TRAFFIC, INC.**

THIS AGREEMENT is made and entered into this 18<sup>th</sup> day of February, 2014 ("Effective Date"), by and between the CITY OF COSTA MESA, a municipal corporation ("City"), and DDL TRAFFIC, INC., a California corporation ("Consultant").

**WITNESSETH:**

A. WHEREAS, City proposes to utilize the services of Consultant as an independent contractor for the installation of Emergency Vehicle Preemption (EVP) devices and related services, as more fully described herein; and

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

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

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

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

**1.0. SERVICES PROVIDED BY CONSULTANT**

1.1. Scope of Services. Consultant shall provide the professional services described in the City's Request for Proposal ("RFP"), attached hereto as Exhibit "A," and Consultant's Response to City's RFP (the "Response") attached hereto as Exhibit "B", both incorporated herein by this reference.

1.2. Professional Practices. All professional services to be provided by Consultant pursuant to this Agreement shall be provided by personnel experienced in their respective fields and in a manner consistent with the standards of care, diligence and skill ordinarily exercised by professional consultants in similar fields and circumstances in accordance with sound professional practices. Consultant also warrants that it is familiar with all laws that may affect its performance of this Agreement and shall advise City of any changes in any laws that may affect Consultant's performance of this Agreement.

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

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

- (b) Require Consultant to repeat the work at no additional fee until it is satisfactory; and/or
- (c) Terminate the Agreement as hereinafter set forth.

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

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

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

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

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

## **2.0. COMPENSATION AND BILLING**

2.1. Compensation. Consultant shall be paid in accordance with the fee schedule set forth in Exhibit "C," attached hereto and made a part of this Agreement (the "Fee Schedule"). Consultant's total compensation shall not exceed Two Hundred Thirty-Four Thousand Two Hundred Thirty-Six Dollars and Sixty Cents (\$234,236.60).

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 A. 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 four months, ending on June 18, 2014, 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 "D" 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:

DDL Traffic, Inc.  
14658 Central Ave.  
Chino, CA 91710  
Tel: (800) 289-6803  
Fax: (909) 606-1120  
Attn: Dan Eichmann, President

IF TO CITY:

City of Costa Mesa  
77 Fair Drive  
Costa Mesa, CA 92626  
Tel: (714) 754-5032  
Fax: (714) 754-5028  
Attn: Raja Sethuraman, Transportation  
Services Manager

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.

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

[Redacted Signature]  
\_\_\_\_\_  
Mayor

Date: 03-12-14

CONSULTANT

[Redacted Signature]  
\_\_\_\_\_  
Signature

Date: 02-28-14

Rosalie Harvey-Sales  
\_\_\_\_\_  
Name and Title

[Redacted]  
\_\_\_\_\_  
Social Security or Taxpayer ID Number

ATTEST:

[Redacted Signature] 3/13/14  
\_\_\_\_\_  
City Clerk and ex officio Clerk  
of the City of Costa Mesa



APPROVED AS TO FORM:

[Redacted Signature]  
\_\_\_\_\_  
City Attorney

Date: 02/07/14

APPROVED AS TO INSURANCE:

[Redacted Signature]  
\_\_\_\_\_  
Risk Management

Date: 2/26/14

APPROVAL BY DEPARTMENT



Daniel A. Stefano, Fire Chief

Date: 2/6/14

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



# CITY OF COSTA MESA

CALIFORNIA 92628-1200

P.O. BOX 1200

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FROM THE OFFICE OF THE DIRECTOR, DEPARTMENT OF PUBLIC SERVICES

October 25, 2013

**SUBJECT: REQUEST FOR PROPOSAL (RFP) FOR THE COSTA MESA TRAFFIC SIGNAL PREEMPTION PROJECT**

**Dear Consultant:**

The City of Costa Mesa is requesting proposals from qualified consultants, vendors and suppliers to provide cost estimates for procuring and installing emergency vehicle preemption (EVP) devices utilizing Global Positioning System (GPS) technology at 25 traffic signal locations, installation of EVP activators in 20 designated emergency vehicles and integrating the equipment with a central system located at the Traffic Management Center (TMC).

The successful bidder shall be an authorized reseller/integrator that will provide turnkey services on all equipment and installation of signal preemption system for emergency vehicles, signalized intersections, field maintenance software and central management software to be installed at the TMC. Minimum system requirements are also provided in Exhibit A as project specifications. The successful bidder must also provide an optional maintenance fee schedule for the EVP system.

RFP package must be addressed and delivered to Raja Sethuraman, Transportation Services Manager, by close of business day on Friday November 22, 2013, to be considered. All questions or technical clarifications should be directed to Pritam Deshmukh, Associate Engineer, at [pritam.deshmukh@costamesaca.gov](mailto:pritam.deshmukh@costamesaca.gov) or 714-754-5183.

**GENERAL WORK PROGRAM**

The professional services scope of work is intended as a "Turnkey" project. All tasks shall be coordinated to effectively develop interrelated project elements and tasks shall not be advanced until preliminary requirements are addressed and clear direction established. The consultant/contractor shall have total responsibility for the accuracy and completeness of all work and services required for this project. 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 commitment to provide a high quality product.

Consultants/Contractors proposing on this project shall clearly demonstrate the ability and commitment to accelerate project completion with alacrity and efficiency. Accordingly, the consultant/contractor shall commit all necessary resources to achieve expeditious completion. Firms

considering proposal submittals are requested to have in-house technical expertise to fully and professionally address and facilitate all aspects of the project. The selected firm shall maintain the same project manager throughout the duration of the project, as specified in the proposal and approved by the City.

The following description of work defines the general project requirements. Associated tasks and provisions not specifically defined herein are requested to be fully addressed in the proposal. The tasks and fee shall reflect the mandatory combined elements for the overall project; Vehicle Equipment, Intersection Equipment, Field Software and Central Software. All tasks shall be undertaken and complete within the proposed "Not to Exceed" contract fee.

## **PROJECT DESCRIPTION**

The consultant/contractor will be responsible for procuring and installing signal preemption equipment in emergency vehicles and at intersections within the City. The consultant/contractor will also be responsible for integrating the signal preemption equipment with the existing signal system at each intersection and at the City's Traffic Management Center (TMC). The implementation of signal preemption will include installation of Intersection Equipment and Vehicle Equipment and integration of Field Software and Central Software.

**Vehicle Equipment** should include a Multimode Light Emitting Diode (LED) Emitter, which is usually mounted on top of the vehicle, an integrated Radio/GPS Control Unit containing a GPS receiver and a 2.4 Gigahertz (GHz) spread spectrum transceiver enclosed in a single rugged cabinet for mounting inside the vehicle and a Vehicle Interface Cable for connecting the control unit to the antenna. The Multimode LED Emitter includes infrared emitter as well as GPS/Radio Antenna.

**Intersection Equipment** should include a matching GPS/Radio Antenna that mounts on the signal pole or on top of the traffic cabinet, an integrated electronic sensing GPS/Radio unit containing a GPS receiver and a 2.4 GHz spread spectrum transceiver, Multimode Phase Selector, Card Rack, Auxiliary Interface Panel and GPS Installation Cable. Except of the GPS/Radio Antenna, all the components will be installed in the traffic signal cabinet either in a detector rack or as a stand-alone system.

**Field Software** shall be provided with similar capabilities as the Central Software. Field Software will be used to set up parameters required to process the encoded data from the Vehicle Equipment and to retrieve data from traffic signals if communication with TMC is lost.

**Central Software** should include a geographic map display of equipped intersections, zones and real-time vehicle locations, a real-time configuration utility for modifying field parameters and settings, and a performance measuring module, which is used to initiate and schedule automatic data uploads and downloads from equipped vehicles, and to query logged vehicle and intersection activities. In addition, the manufacturer must provide a systems plan that incorporates industry accepted preemption protocol, such as NTCIP 1211, into future software updates. Staff training on using and operating the signal preemption system should be included in the implementation phase.

To ensure priority control system integrity, operation and compatibility, all components shall be procured from the same manufacturer. The system shall offer compatibility with most signal controllers, e.g. Multisonic 820, Econolite ACS 3, National Electrical Manufacturers Association (NEMA) 170, etc. RS-232, USB and Ethernet interfaces shall be provided to allow management by on-site interface software and central software.

## **CONTENT OF PROPOSAL**

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

- A narrative understanding of the project, any suggestions you might have to expedite the project or special concerns that the City should be advised of. Identify all tasks necessary to meet the intended project objective and achieve project completion within the proposal timeframes.
- Separate scope of services section for the task work to be performed for the signalized intersections and for the emergency vehicles per the proposed work and preliminary equipment lists provided in Exhibit A. Sub-consultants and teams shall be listed on the proposal.
- A detailed schedule indicating stages of work, sub-tasks and timeframes.
- An organization chart and staffing plan identifying personnel who will perform work on this project, a brief resume on each individual (one page max per person) and recent projects they have worked on 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.
- A listing of similar signal preemption projects that your firm has completed within the last five years. Information should include a description of work, year completed, cost, and agency/client name along with the agency contact person.
- The City may develop a short list and schedule interviews or make an award based on proposals alone.
- Commitment to comply with Professional Services Agreement requirements for the City of Costa Mesa and Insurance requirements, attached on Exhibit B.
- Submittal of **Four(4)** duplicate proposals are requested.
- The proposal may not be longer than 20 pages, except for attached resume pages.

## **FEE SCHEDULE**

The professional services contract fee is to be submitted in a separate envelope. The fee schedule should show the hourly cost of personnel per task under each phase and equipment cost, with a total not-to-exceed amount for the project. The consultant's cost proposal for the prime and sub-consultants should contain a breakdown of all cost components including labor base rate, other direct costs, overhead, and fees in compliance with the described scope, the attached General Specifications, and include all associated work required to achieve the project objective. It is requested that the fee, including meetings, reproduction, materials, and associated project expenses be itemized per the following General Fee Schedule format, though additional support details maybe included:

## General Fee Schedule Summary

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Part 1--Intersection Equipment Installation  
and integration.

Lump Sum \$ \_\_\_\_\_

Part 2--Vehicle Equipment Installation  
and integration.

Lump Sum \$ \_\_\_\_\_

Part 3--Field and Central System  
Software Implementation and training

Lump Sum \$ \_\_\_\_\_

**CUMULATIVE NOT-TO-EXCEED FEE:**            \$ \_\_\_\_\_

Additive Work Scope

Annual Maintenance Fee

Lump Sum/Year            \$ \_\_\_\_\_

Additive work shall be included exclusively at the discretion of the City contingent on bid results. Please include an estimated work breakdown structure for the project and personnel rate sheet. The evaluation recognizes that costs may vary based upon project approach so work breakdown structure information should support fee submissions.

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*All originals of plans, field notes, correspondence, reports, electronic files, etc., will be turned over to the City upon completion of work. Ten percent (10%) of the total contract fee will be withheld until final project documents are submitted 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 any 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 OR SPLIT ALL PROPOSALS**

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

The City of Costa Mesa professional services standard agreement and sample certificate of insurance are included as Exhibit B. 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, 77 Fair Drive, Costa Mesa, CA 92628, **on or before 5:00 p.m. November 22, 2013**. No Faxed Copies; Postmarks will not be accepted in lieu of actual delivery.

If additional information is required, please contact Pritam Deshmukh, Project Manager at (714) 754-5183, or email at: [pritam.deshmukh@costamesaca.gov](mailto:pritam.deshmukh@costamesaca.gov).

Sincerely,



Raja Sethuraman  
Transportation Services Manager

Attachments:      Exhibit A-- Specifications  
                         Exhibit B-- Professional Services Agreement and Sample Certificate of Insurance

cc: Ernesto Munoz, Director of Public Services  
     Pritam Deshmukh, Project Manager

# Exhibit A

## **EVP GPS CONCEPT OF OPERATIONS**

The EVP GPS System shall consist of four main components: Vehicle Equipment, Intersection Equipment, Field Software and Central Software.

*Vehicle Equipment*, hereinafter referred to as VE, consisting of a Multimode LED Emitter which includes infrared emitter and a GPS/UHF antenna mounted on top of the vehicle and an integrated control unit in a single rugged cabinet for mounting inside the vehicle. The VE is responsible for communicating to a spread-spectrum frequency hopping radio installed at a signalized intersection at a minimum distance of 2000 feet with no line-of-sight obstructions. Its purpose is to provide location and identification information, and to request preemption only when the fire engine is in emergency response mode. Therefore, the VE must be installed such that manual activation of the VE is disabled.

*Intersection Equipment* hereinafter referred to as IE, consisting of a matching GPS/UHF antenna that mounts on the signal pole or on top of the traffic cabinet and an integrated electronic sensing unit that is installed in the traffic signal cabinet either in a detector rack or as a stand-alone system. Its purpose is to communicate with the VE to process the encoded data to ensure that the vehicle is (1) in a predefined approach corridor, (2) heading toward the intersection, (3) requesting preemption, and (4) within user-settable range. When these conditions are met, the phase selector shall generate a priority control request to the traffic controller for the approaching priority vehicle. In addition, the IE shall be capable of monitoring and reporting active traffic signal phase greens for performance measurements. The IE shall report back to the Central Software on either a cyclical or by user demand at the Traffic Management Center (TMC) via IP/Ethernet network.

*Field Software*, hereinafter referred to as FS, shall be provided with similar capabilities as the *Central Software*. FS is used to set up parameters required to process the encoded data from the VE. It is also used to retrieve performance measures and activity logs in the event that communications to the traffic signal has been lost.

*Central Software*, hereinafter referred to as CS, consisting of a geographic map display of equipped intersections, zones and real-time vehicle locations, a real-time configuration utility for modifying field parameters and settings, and a performance measuring module, which is used to initiate and schedule automatic data uploads and downloads from equipped vehicles, and to query logged vehicle and intersection activities. In addition, the manufacturer must provide a systems plan that incorporates industry accepted preemption protocol, such as NTCIP 1211, into future software updates.

When an equipped vehicle enters a predefined zone of an intersection approach street (and under predefined conditions such as speed or direction), the IE installed in the traffic signal cabinet shall provide a signal that is interpreted as a priority request by a local NEMA or 2070- based traffic signal control. Detection zones shall be rectangular geographic areas defined by the longitude and latitude of start and end points, zone width, and an allowable range of vehicle headings.

The system shall be capable of activating or deactivating a priority or pre-emption request signal to a traffic signal controller within two seconds of the equipped vehicle entering or exiting a predefined vehicle detection zone. The start and stop point of detection in each equipped intersection's approach

corridors shall be independently programmable by distance to the center of the intersection for each approach. The detection start and stop point shall be capable of being defined separately for each vehicle or class of vehicle.

Each vehicle equipped with the signal priority system shall have a unique vehicle identifier (I D) that is transmitted to the IE unit located in the traffic control cabinet for recording requests/activity.

Each IE unit located in a traffic control cabinet shall have a unique intersection identifier (I D) such that it will only initiate a request when an equipped vehicle has crossed into a preprogrammed detection zone established for that particular intersection. Each IE unit shall record request/activity. The intersection ID may be changed with the system configuration software.

The vehicle and intersection equipment shall be configurable by any computer using Windows™ XP or newer operating system and having an RS-232 (serial) or Ethernet port meeting minimum system requirements. The Systems Manager software shall be required for this task. The vehicle and intersection equipment shall be configurable over an IP network or via wireless communications.

### **MINIMUM SPECIFICATIONS FOR VEHICLE EQUIPMENT (VE)**

The Vehicle Equipment kit should consists of a Radio/GPS Control Unit containing a GPS receiver and a 2.4 GHz spread spectrum transceiver, Multimode LED Emitter which includes an Infrared Emitter and a Radio/GPS Antenna and interface cable. The supplied VE shall have the followings minimum specifications:

- The VE shall operate off any automotive 8-40 Volt DC power source.
- The VE shall be supplied with a minimum of 10 feet (3 meters) of cabling/wiring for each connection.
- The VE shall meet FCC part 15 Class A specifications
- The VE shall be programmable with the following general identification and operational information:
  - Vehicle ID (minimum 4000 unique IDs)
  - Agency (city agency using system)
  - Class of Vehicle (engine, ladder truck, etc.)
  - City Unit# (unit number or plate number issued by city)
  - Priority Level
  - Transmission Length (maximum length of data transmission in milliseconds)
  - Vehicle speed (transmitted request will end if vehicle falls below this speed for user settable timeout interval in seconds)
  - Timeout Interval (If vehicle has fallen below vehicle speed for this time in seconds, the transmitted request will cease.)

### **MINIMUM SPECIFICATIONS FOR INTERSECTION EQUIPMENT (IE)**

The Intersection Equipment kit should include GPS Radio Unit containing GPS receiver with antenna and a 2.4 GHz spread spectrum transceiver with antenna, Multimode phase Selector, Card Rack,

Auxiliary Interface Panel and GPS installation cable. The supplied IE shall have the following minimum specifications:

The IE unit shall be NEMA rated and housed in the Traffic Signal Controller Cabinet and operate on 80-140 VAC and shall be equipped with its own power supply. The IE unit shall be capable of being housed in its own plug-in enclosure (supplied by the manufacturer). The IE unit shall also fit in a NEMA, 170, or other controller detector racks with slots designated for preemption or priority control.

The IE unit indicator lights for Power On shall flash when power is applied to the IE unit. There shall also be indicator lights for signal received, active output/priority, and direction of signal or channel. The IE unit shall have at least two 100Base-T Ethernet LAN ports or one Ethernet LAN port and one USB communication port. One port may be connected to the network for remote equipment configuration and monitoring of system activity. The other port may be connected to a laptop computer for local "on-site" use or other purposes.

- The IE unit shall have a toggle switch to manually change pre-emptor between Standby and Active mode.
- The IE unit shall have a switch for manual test of each output channel.
- The IE unit shall have a toggle switch on the face plate to manually change from Priority 1 (preemption) to Priority 2 (priority) to facilitate manual tests of detector output and controller response.
- The IE unit equipment shall be programmable with the following parameters:
  - Time for call to remain on after loss of signal (in seconds)
  - Output bit map N, E, S, W or 1, 2, 3, 4. Select which of 20 output pins to activate for a particular direction or channel (1 through 20).
  - Intersection ID (range 1 to 100 million)
  - Limit to one output (the receiver can give one channel call at a time or more than one to allow the controller to determine priority.)
  - Direction enable N, E, S, W or 1, 2, 3, 4 (turn on or off each direction or channel you wish to output)
  - Minimum time duration (Unit will give an output signal for minimum amount of time after detection.)

Each preemption record entry shall include the following points of information about the priority call:

- Agency: Indicates the operating agency of the vehicle.
- Classification: Indicates the class type of vehicle.
- Identification number: Indicates the unique I D number of the vehicle.
- Priority level: Indicates the vehicle's priority level (High, Low or Probe).
- Direction: Channel A, B, C, or D; indicates the vehicle's direction of travel.
- Call duration: Indicates the total time in seconds the priority status is active.
- Final greens at end of call: Indicates which phases are green at the end of the call.
- Duration of the final greens: Indicates the total time final greens were active at the end of call.
- Time and date call started and ended: Indicates the time a priority call started and ended, provided in seconds, minutes, hours, day, month, and year.
- Turn signal status: Indicates the status of the turn signal during the call.
- Priority output active: Indicates if the phase selector requested priority from the controller for the call.

- Historical no preempt cause: Indicates a history of conditions, which may have prevented a call or caused a call to terminate.
- Speed of vehicle: entry speed, exit speed, average speed through call,
- Relative priority: relative priority of vehicle class logged at time of call,
- Directional priority: directional priority logged at time of call,
- Preempt output used

The IE unit shall support up to 16 auxiliary NEMA Logic Level inputs/outputs (in addition to the four directional inputs) that can be configured for various special tasks such as monitoring selected signal phase greens outputs. The IE unit shall have the capability to send test signals between equipped intersections to verify proper operation of the RF link. Automatic daily testing and reporting of RF link performance can be scheduled over the traffic LAN using the Systems Manager software.

The IE unit shall be capable of receiving firmware updates through direct laptop connection, network connection, or remotely through wireless communication. The IE unit shall be capable of sending check-out notifications when equipped vehicles leave the intersection approach and enter the intersection (effectively reporting actual time of arrival). The IE unit shall be capable of sending updated time-of-day information to signal controllers as vehicle transmissions are received by the unit. The IE unit shall be capable of reporting priority events as they happen in real time or at specified intervals (daily, twice-a-day, etc.). Reporting frequency and scheduling shall be agency-selectable.

#### **MINIMUM SPECIFICATIONS FOR FIELD SOFTWARE (FS)**

The supplied FS shall have the following minimum specifications:

- FS shall be provided to manage the IE while on-site at the intersection.
- The FS shall be provided on DVD or via download from the vendor's website.
- The FS shall be supported on Windows™ XP and/or Windows™ 7 operating systems.
- The vendor shall provide minimum hardware configuration information for computer(s) running the FS.
- The FS shall provide context-sensitive online help.
- The FS shall allow the user to view and update all programmable configuration parameters of the IE.
- The FS shall allow the user to provide intersection name and approach names for each of the four channels and store these as part of the IE configuration.
- The FS shall allow the user to view and update valid and blocked vehicle codes for the IE.
- The FS shall allow the user to create preemption zones directly on a GIS map. Provided the map data is complete, it shall not be necessary to drive a vehicle to create the preemption zones. In areas where map data is incomplete or incorrect, it shall be possible to record points to be used as a reference to create the preemption zones.
- The FS shall allow the user to save the configuration from the IE to a file.
- The FS shall allow the user to restore the configuration for a IE from a saved configuration file.
- The FS shall allow the user to print the IE configuration.
- The FS shall allow the user to view the activity log from the IE.
- The FS shall allow the user to save the activity log to a file.
- The FS shall allow the user to print the activity log.

- The FS shall allow the user to update firmware for all upgradable modules of the IE.
- The FS shall display current status of all vehicles within radio range of the IE, both in table format and displayed on a GIS map. The following details shall be tracked:
  - The approach channel
  - Agency ID, vehicle class, and vehicle ID
  - Priority level
  - Preempt *I* priority status
  - No preempt cause
  - Turn signal status
  - Signal strength serial number
  - Radio channel
  - ETA, distance, heading and velocity of vehicles in approach corridor
  - Source of the call: vehicle or intersection
  - Green phase monitoring with information on the current greens
  - Active preemption *I* priority output
- The FS shall display current status of all other intersections within radio range of the IE.
- The following details shall be tracked:
  - Name
  - Radio channel
  - Signal strength
  - Number of vehicle tracked
  - Number of satellites heard
  - Fix type
  - Horizontal and position dilution
  - Serial number

## **MINIMUM SPECIFICATIONS FOR CENTRAL SOFTWARE (CS)**

The supplied CS shall have the following minimum specifications:

The CS shall create and maintain a database of all equipped vehicle, intersection, and detection zone information. It shall be capable of graphically displaying user-programmed streets and detection zones for each intersection. The program shall be used as a repository for all system-wide information. It shall be capable of configuring required operating information into each piece of equipment and obtaining stored operation history from each device.

The following intersection and detection zone information shall be stored in the CS database for each equipped intersection:

- Intersection ID (numeric only, 1 through 4000)
- Intersection ID (agency's ID)
- Intersection IE unit IP address
- Intersection Center (latitude and longitude)
- Zone# (per associated intersection)
- Route Street (main street name)
- Crossing Street (crossing street name)
- Start (beginning of zone, latitude and longitude)
- Finish (end of zone, latitude and longitude)
- Heading (vehicle primary intended degree heading)

- Heading Variance (allows you to select the amount of acceptable variance in degrees for the approach heading direction)
- Heading Limits (degree counter-clockwise and clockwise)
- Directional Code (select direction N, E, S, W, aux.1, and aux.2)
- Zone Width (set width or rectangular detection zones)
- Zone Type (fire, express transit, bus weekly m-f, bus weekend, or bus special event; Software functions 3-4 and 7-9 shall be capable of being set utilizing real-time data from vehicle equipment.
- Zone distance or length (calculated by system)

The CS shall be able to display and record an equipped vehicle's motion through an approach, save that information with a distinct file name, and later recall and replay the equipped vehicle's run graphically on an intersection map. This playback shall also indicate heading, speed, and distance to the intersection at each stored data-point.

The CS shall be capable of collecting and organizing real-time vehicle GPS position data in order to create or modify the intersection and detection-zone location database for each intersection in the system while the vehicle is passing through the area of interest.

The CS shall support serial RS-232, Ethernet 100Base-T, USB or the system's existing wireless communications. The CS shall retrieve, display, and store activity log reports from the equipped vehicle unit. The CS shall retrieve and display the firmware versions currently loaded on VE and IE units when connected to the corresponding units. The Systems Manager software shall include self-test scheduling and initiation functionality, which prompts the IEs to conduct a unit-to-unit communication and response test at specified time intervals. The software shall also be capable of generating reports of test results. The CS shall display equipped intersections, zones, and real-time vehicle positions on a map display, and the software shall update vehicle-positions every four seconds or less.

The CS shall include an integrated Google map or approved equivalent map to display intersection, zone, and vehicle locations, and it shall be capable incorporating the agency's existing GIS maps for location display. The CS shall allow users to select specific vehicles, intersections, and zones to display on the integrated map, while unselected items are hidden on the map. The CS shall generate Event logs to show a history of signal-priority/preemption requests, Connection logs to show a history of network-connection issues, and Database logs to show a history of database access and log-on/log-off activity by user. All logs shall be capable of exporting as spreadsheet formats for external applications. The CS database shall be capable of being maintained and served in an MS-SQL environment. The CS should be compatible with MIST (be Telvent).

## Exhibit B

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

### PROFESSIONAL SERVICES AGREEMENT FOR

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

#### WITNESSETH:

- A. WHEREAS, City proposes to have Consultant perform \_\_\_\_\_ as described herein below; and
- B. WHEREAS, Consultant represents that it has that degree of specialized expertise contemplated within California Government Code, Section 37103, and holds all necessary licenses to practice and perform the services herein contemplated; and
- C. WHEREAS, City and Consultant desire to contract for specific services in connection with the project described below (the "Project") and desire to set forth their rights, duties and liabilities in connection with the services to be performed; and
- D. WHEREAS, no official or employee of City has a financial interest, within the provisions of California Government Code, Sections 1090-1092, in the subject matter of this Agreement.

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

#### 1.0. SERVICES PROVIDED BY CONSULTANT

1.1. Scope of Services. Consultant shall provide the professional services described in the City's Request for Proposal ("RFP") attached hereto as Exhibit "A" and incorporated herein by reference and Consultant's Response to City's RFP (the "Response"). A copy of said Response is attached hereto as Exhibit "B" and incorporated herein by this reference.

1.2. Professional Practices. All professional services to be provided by Consultant pursuant to this Agreement shall be provided by personnel experienced in their respective fields and in a manner consistent with the standards of care, diligence and skill ordinarily exercised by professional consultants in similar fields and circumstances in accordance with sound professional practices. Consultant also warrants that it is familiar with all laws that may affect its performance of this Agreement and shall advise City of any changes in any laws that may affect Consultant's performance of this Agreement.

1.3. Warranty. Consultant warrants that it shall perform the services required by this

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

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

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

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

## **2.0. COMPENSATION AND BILLING**

2.1. Compensation. Consultant shall be paid in accordance with the fee schedule set forth in Exhibit "C," attached hereto and made a part of this Agreement (the "Fee Schedule"). Consultant's compensation shall in no case exceed \_\_\_\_\_ Dollars (\$\_\_\_\_\_.00).

2.2. Additional Services. Consultant shall not receive compensation for any services provided outside the scope of services specified in the Response unless the City or the Project Manager for this Project, prior to Consultant performing the additional services, approves such additional services in writing. It is specifically understood that oral requests and/or approvals of such additional services or additional compensation shall be barred and are unenforceable.

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

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

### **3.0. TIME OF PERFORMANCE**

3.1. Commencement and Completion of Work. The professional services to be performed pursuant to this Agreement shall commence within five (5) days from the Effective Date of this Agreement. Said services shall be performed in strict compliance with the Project Schedule approved by City as set forth in Exhibit "D," attached hereto and incorporated herein by this reference. The Project Schedule may be amended by mutual agreement of the parties. Failure to commence work in a timely manner and/or diligently pursue work to completion may be grounds for termination of this Agreement.

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

### **4.0. TERM AND TERMINATION**

4.1. Term. This Agreement shall commence on the Effective Date and continue for a period of \_\_\_ (X) year, ending on \_\_\_\_\_, unless previously terminated as provided herein or as otherwise agreed to in writing by the parties.

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

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

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

## 5.0. INSURANCE

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

- (a) Comprehensive general liability, including premises-operations, products/completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate.
- (b) Automobile liability for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate.
- (c) Workers' compensation insurance as required by the State of California.
- (d) Professional errors and omissions ("E&O") liability insurance with policy limits of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate. Consultant shall obtain and maintain, said E&O liability insurance during the life of this Agreement and for three years after completion of the work hereunder.

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

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

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

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

**6.0. GENERAL PROVISIONS**

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

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

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

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

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

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

IF TO CONSULTANT:

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:



\_\_\_\_\_  
City Attorney

Date: \_\_\_\_\_

02/07/14

APPROVED AS TO INSURANCE:

\_\_\_\_\_  
Risk Management

Date: \_\_\_\_\_

APPROVED AS TO CONTENT:

\_\_\_\_\_  
Project Manager

Date: \_\_\_\_\_

**EXHIBIT A**

**CITY'S REQUEST FOR PROPOSAL**

**EXHIBIT B**

**RESPONSE AND SCOPE OF SERVICES**

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

**EXHIBIT D**

**PROJECT SCHEDULE**

**EXHIBIT E**

**CITY COUNCIL POLICY 100-5**

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

**BACKGROUND**

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

**PURPOSE**

It is the purpose of this Policy to:

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

**POLICY**

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

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

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.