



CITY OF COSTA MESA

CALIFORNIA 92628-1200

P.O. BOX 1200

FROM THE OFFICE OF THE CITY CLERK

August 19, 2014

Mayer Hoffman McCann, P.C.
Attn: Jennifer Farr
2301 Dupont Drive, Suite 200
Irvine, CA 92612

Dear Ms. Farr:

RE: Professional Services Agreement

Enclosed, for your records, is a fully executed copy of the professional services agreement for Mayer Hoffman McCann, P.C. to provide transient occupancy tax audit services.

Sincerely,


Brenda Green
City Clerk

Enclosure (1)

**CITY OF COSTA MESA
PROFESSIONAL SERVICES AGREEMENT
WITH
MAYER HOFFMAN MCCANN, P.C.**

THIS AGREEMENT is made and entered into this 16th day of July 2014 ("Effective Date"), by and between the CITY OF COSTA MESA, a municipal corporation ("City"), and MAYER HOFFMAN MCCANN, P.C., a California corporation ("Consultant").

WITNESSETH:

A. WHEREAS, City proposes to utilize the services of Consultant as an independent contractor to provide transient occupancy tax auditing 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 "Proposal") attached hereto as Exhibit "B", both incorporated herein by this reference.

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

1.3. Performance to Satisfaction of City. Consultant agrees to perform all the work to the complete satisfaction of the City and within the hereinafter specified. Evaluations of the work will be done by the Chief Executive Officer (City CEO) 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 the fee schedule described in Exhibit "B" of this Agreement (the "Fee Schedule"). Consultant's total compensation shall not exceed Fifty Eight Thousand Five Hundred Dollars (\$58,500.00).

2.2. Additional Services. Consultant shall not receive compensation for any services

provided outside the scope of services specified in the Consultant's Proposal unless the City or the Project Manager for this Project, prior to Consultant performing the additional services, approves such additional services in writing. It is specifically understood that oral requests and/or approvals of such additional services or additional compensation shall be barred and are unenforceable.

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

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

3.0. TIME OF PERFORMANCE

3.1. Commencement and Completion of Work. The professional services to be performed pursuant to this Agreement shall commence within five (5) days from the Effective Date of this Agreement. Said services shall be performed in strict compliance with the Project Schedule approved by City as set forth in the schedule in Exhibit "B" of this Agreement ("Project Schedule"). 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 36 months, ending on June 30, 2017, with an option to extend the contract in one-year periods for a minimum of two fiscal years, 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.

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

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

Agreement.

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

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

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

IF TO CONSULTANT:

Mayer Hoffman McCann, P.C.
2301 Dupont Drive, Suite 200
Irvine, CA 92612
Tel: 949-783-1740
Fax: 949-263-5520
Email: JFarr@cbiz.com
Attn: Jennifer Farr

IF TO CITY:

City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626
Tel: 714-754-5219
Fax: 714-754-5040
Email: Colleen.Odonoghue@costamesaca.gov
Attn: Colleen O'Donoghue
Assistant Finance Director

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 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.

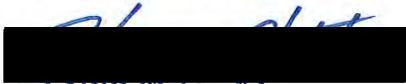
6.26. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one agreement.

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.

[Signatures on the following page.]

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



Chief Executive Officer

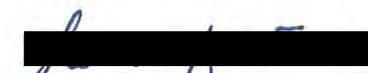
Date: 8/11/14



Interim Finance Director

Date: 8.7.14

CONSULTANT



Signature

Date: 8/7/2014

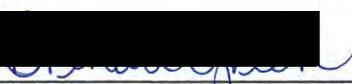
Jennifer Farr, Shareholder

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: 08/08/14

APPROVED AS TO INSURANCE:



Risk Management

Date: 8/6/14

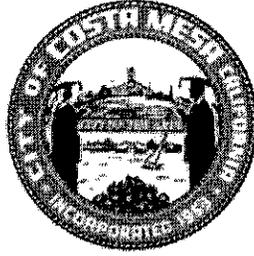
APPROVED AS TO CONTENT:



Project Manager

Date: 8/7/14

EXHIBIT A
REQUEST FOR PROPOSALS



REQUEST FOR PROPOSAL

FOR

TRANSIENT OCCUPANCY TAX AUDIT SERVICES

RFP No. 1168



**Finance Department
CITY OF COSTA MESA**

Released on April 4, 2014

TRANSIENT OCCUPANCY TAX AUDIT SERVICES
REQUEST FOR PROPOSAL (RFP)

Dear Proposers:

The City of Costa Mesa (hereinafter referred to as the "City") is requesting proposals from a qualified firm, to conduct an audit of the books of thirty motels and hotels over the course of three years in the City of Costa Mesa to ensure proper reporting of revenues to the City. The term is expected to be for three (3) years with one-year options to renew.

The audit shall be made in accordance with the City's Transient Occupancy Tax Title 16 – Taxation, Chapter IV of Costa Mesa Municipal Code. To provide a final report of the audit results within 60 days of completion of fieldwork including for each property a recommendation regarding the need for prior year audits. Prior years audit will be done on an as needed basis at the request of the City.

Transient Occupancy Tax (TOT) represents the City's fourth largest source of revenue. The FY 13-14 estimated TOT revenue is \$7.2 million, which represents 6.97% of the total General Fund revenues. This amount reflects an increase of \$500,000 or 7.46% compared to the estimate in FY 12-13 due to increased activity over the past few quarters. Since the 2010, the City has seen a continued increase in TOT revenue when compared to the prior year.

1. BACKGROUND

The City of Costa Mesa is a general law city, which operates under the council/manager form of government with a General Fund budget of over \$103 million and a total of over \$132 million of fiscal year 2013-2014.

The City of Costa Mesa, incorporated in 1953, has an estimated population of 110,757 and has a land area of 16.8 square miles. It is located in the southern coastal area of Orange County, California, and is bordered by the cities of Santa Ana, Newport Beach, Huntington Beach, Fountain Valley, and Irvine.

The City is a "full service city" and provides a wide range of services. These services include: police and fire protection; animal control; emergency medical aid; building safety regulation and inspection; street lighting; land use planning and zoning; housing and community development; maintenance and improvement of streets and related structures; traffic safety maintenance and improvement; and full range of recreational and cultural programs.

The City of Costa Mesa is home of the Segerstrom Center for the Arts, Orange County Fairgrounds, South Coast Repertory Theater and the South Coast Plaza Shopping Center, which is the single largest commercial activity center in the City. The volume of sales generated by South Coast Plaza, secures its place as the highest volume regional shopping center in the nation.

2. SCHEDULE OF EVENTS

This request for proposal will be governed by the following schedule:

Release of RFP	April 4, 2014
Deadline for Written Questions	April 18, 2014
Responses to Questions Posted on Web	April 25, 2014
Proposals are Due	May 9, 2014
Interview (if held)	May 21, 2014
Approval of Contract	June 3, 2014

All dates are subject to change at the discretion of the City.

3. SCOPE OF WORK

The City currently has 30 hotels and transient occupancy taxes ("TOT") totaled \$7.2 million in fiscal year 2012-2013. In previous years, TOT audits were performed by an internal staff member. The City wishes to engage external auditors to audit 6 to 11 hotels per year on a rotating basis.

Required services:

The following is a summary of the TOT scope of audit for the years ended June 30, 2014, 2015, and 2016.

The City will coordinate with the auditor for finalizing the attached Appendix I scheduling of said audits. Selection of the specific entities to be audited each project will be the responsibility of the City.

In the event that extraordinary circumstances warrant more intensive and detailed services beyond those in the contractual agreement the firm shall provide in writing and in advance the reasons for the additional services together with the firm's estimation of cost.

Our procedures for each hotel as agreed upon by the management of the City of Costa Mesa will be as follows;

1. Review the City Municipal Code Title 16 Taxation Chapter IV. Transient Occupancy Tax and resolutions related to the transient occupancy tax.
2. Verify the mathematical accuracy and timeliness of transient occupancy reports filed with the City for the calendar years 2014 and 2015 as detailed in Appendix D.

3. Trace the gross revenues reported on the transient occupancy tax returns prepared by the Hotel to gross revenue recorded in the Hotel's accounting records and verify that these were in accordance with the City's ordinance.
4. Select a sample of rental transactions during the review period and for each transaction selected, we will verify tax computations and trace the amounts of rental revenues and transient occupancy tax collected to the books and records of the hotel.
5. Review the internal control procedures of the Hotel to determine the following
 - a. How "gross rents" and "uncollected rents" were accounted for and reported to the City.
 - b. What procedures were in place to identify transient and non-transient guest.
 - c. How exemptions, including complimentary rooms, were documented and reported to the City.
6. Review the supporting documentation, on a sample basis, for exemptions claimed on the transient occupancy tax returns.
7. Perform additional procedures that the City consider necessary to verify the reasonableness of reported revenues of the Hotel operator.

Report Deliverables

1. Contractor shall submit a draft audit report at after each project. Reports are to be submitted to the Assistant Finance Director 40 days after the completion of fieldwork. The selected consultant shall finalize interim reports as directed by the Assistant Finance Director or the Director of Finance.
2. Two-side copies of the draft final report shall be submitted to the Assistant of Finance Director or Director of Finance within 20 days after their review of the draft report(s).

The City reserves the right to choose or approve which hotels and schedule to be audited each year. A sample schedule is attached in Appendix H for bidding purpose only. Finance staff will provide adequate cooperation and assistance during the audits, including pulling and refiling of TOT related supporting documents. All working papers and reports are to be retained at the auditors' expense for a minimum of five years. The selected audit firm will be responsible for making working papers available to the City upon request

4. PROPOSAL FORMAT GUIDELINES

Interested entities or contractors are to provide the City of Costa Mesa with a thorough proposal using the following guidelines:

Proposal should be typed and should contain no more than 20 typed pages using a 12-point font size, including transmittal letter and resumes of key people, but excluding Index/Table of Contents, tables, charts, and graphic exhibits. Each proposal will adhere to the following order and content of sections. Proposal should be straightforward, concise and provide "layman" explanations of technical terms that are used. Emphasis should be concentrated on conforming to the RFP instructions, responding to the RFP requirements, and on providing a complete and clear description of the offer. Proposals which appear unrealistic in terms of technical commitments, lack of technical competence or are indicative of failure to comprehend the

complexity and risk of this contract may be rejected. The following proposal sections are to be included in the Proposer's response:

- **Vendor Application Form and Cover Letter**

Complete Appendix A, "Request for Proposal-Vendor Application Form" and attach this form to the cover letter. A cover letter, not to exceed three pages in length, should summarize key elements of the proposal. An individual authorized to bind the consultant must sign the letter. The letter must stipulate that the proposal price will be valid for a period of at least 180 days. Indicate the address and telephone number of the contractor's office located nearest to Costa Mesa, California and the office from which the project will be managed.

- **Background and Project Summary Section**

The Background and Project Summary Section should describe your understanding of the City, the work to be done, and the objectives to be accomplished. Refer to Scope of Work of this RFP.

- **Methodology Section**

Provide a detailed description of the approach and methodology to be used to accomplish the Scope of Work of this RFP. The Methodology Section should include:

1. An implementation plan that describes in detail (i) the methods, including controls by which your firm or entity manages projects of the type sought by this RFP; (ii) methodology for soliciting and documenting views of internal and external stakeholders; (iii) and any other project management or implementation strategies or techniques that the respondent intends to employ in carrying out the work.
2. Detailed description of efforts your firm or entity will undertake to achieve client satisfaction and to satisfy the requirements of the "Scope of Work" section.
3. Detailed project schedule, identifying all tasks and deliverables to be performed, durations for each task, and overall time of completion, including a complete transition plan. Include your plan to deal with fluctuation in service needs and any associated price adjustments.
4. Detailed description of specific tasks you will require from City staff. Explain what the respective roles of City staff and your staff would be to complete the tasks specified in the Scope of Work.

- **Staffing**

Provide a list of individual(s) who will be working on this project and indicate the functions that each will perform and anticipated hours of service of each individual.¹ Include a resume for each designated individual.

Upon award and during the contract period, if the contractor chooses to assign different personnel to the project, the Contractor must submit their names and qualifications including information listed above to the City for approval before they begin work.

- **Qualifications**

The information requested in this section should describe the qualifications of the firm or entity, key staff and sub-contractors performing projects within the past five years that are similar in size and scope to demonstrate competence to perform these services. Information shall include:

Names of key staff that participated on named projects and their specific responsibilities with respect to this scope of work.

A summary of your firm's demonstrated capability, including length of time that your firm has provided the services being requested in this Request for Proposal.

For private Proposers, provide at least three references that received similar services from your firm. The City of Costa Mesa reserves the right to contact any of the organizations or individuals listed. Information provided shall include:

- Client Name
- Project Description
- Project start and end dates
- Client project manager name, telephone number, and e-mail address.

Any public entity which submits a proposal should describe in detail how it currently performs services like those identified in the scope of work within its or other jurisdictions, including photographs, written policies and/or video of services provided. If you have performed these services under contract for another public entity, please provide references for those entities as set forth above for private Proposers.

- **Financial Capacity**

You may be asked to provide the Proposer's latest audited financial statement or other pertinent information such as internal unaudited financial statements and financial references to allow the City to reasonably formulate a determination about the financial capacity of the Proposer. Describe any administrative proceedings, claims, lawsuits, or other exposures pending against the Proposer.

¹ Hourly rates for the proposed personnel shall be set forth on Appendix D.

- **Fee Proposal**

All Proposers are required to use the form in Appendix D to be submitted with their proposal. Pricing instructions should be clearly defined to ensure fees proposed can be compared and evaluated. Proposals shall be valid for a minimum of 90 days following submission.

- **Disclosure**

Please disclose any and all past or current business and personal relationships with any current Costa Mesa elected official, appointed official, City employee, or family member of any current Costa Mesa elected official, appointed official, or City employee. *Any past or current business relationship may not disqualify the firm from consideration.*

- **Sample Agreement**

The firm selected by the City will be required to execute an Agreement for Services (Agreement) with the City. The form of the Agreement is enclosed as Appendix B, **but may be modified to suit the specific services and needs of the City. If a Proposer has any exceptions or conditions to the Agreement, these must be submitted for consideration with the proposal. Otherwise, the Proposer will be deemed to have accepted the form of Agreement.** See Section 13, below.

- **Checklist of Forms to Accompany Proposal**

As a convenience to Proposers, following is a list of the forms, included as appendices to this RFP, which should be included with proposals

(Appendix A) W-9 Form

(Appendix C) Ex Parte Communications Certificate

(Appendix D) Price Proposal Form

(Appendix E) Disqualifications Questionnaire

5. **PROCESS FOR SUBMITTING PROPOSALS**

- **Content of Proposal**

The proposal must be submitted using the format as indicated in the proposal format guidelines.

- **Preparation of Proposal**

Each proposal shall be prepared simply and economically, avoiding the use of elaborate promotional material beyond those sufficient to provide a complete, accurate and reliable presentation.

- **Number of Proposals**

Submit one original, Five (5) hard copies plus one disk copy of your proposal in sufficient detail to allow for thorough evaluation and comparative analysis. In the event of a conflict between the original and any hard copy or disk copy, the original shall control.

- **Submission of Proposals**

Complete written proposals must be submitted in sealed envelopes marked and received no later than 4:00 p.m. (P.S.T) on May 9, 2014 to the address below. Proposals will not be accepted after this deadline. Faxed or e-mailed proposals will not be accepted.

City of Costa Mesa
 City Hall
 Office of the City Clerk
 77 Fair Drive
 Costa Mesa, CA 92628-1200

RE: Transient Occupancy Tax Audit Services

- **Inquiries**

Questions about this RFP must be directed in writing, via e-mail to:

Rick Amadril, Interim Buyer
richard.amadril@costamesaca.gov

The City reserves the right to amend or supplement this RFP prior to the proposal due date. All amendments, responses to questions received, and additional information will be posted to the Costa Mesa Procurement Registry, Costa Mesa - Official City Web Site - Business - Bids & RFP's; Proposers should check this web page daily for new information. The City will endeavor to answer all written questions timely received no later than April 18, 2014. The City reserves the right not to answer all questions.

From the date that this RFP is issued until a firm or entity is selected and the selection is announced, firms or public entities are not allowed to communicate outside the process set forth in this RFP with any City employee other than the contracting officer listed above regarding this RFP. The City reserves the right to reject any proposal for violation of this provision. No questions other than written will be accepted, and no response other than written will be binding upon the City.

- **Conditions for Proposal Acceptance**

This RFP does not commit the City to award a contract or to pay any costs incurred for any services. The City, at its sole discretion, reserves the right to accept or reject any or all proposals received as a result of this RFP, to negotiate with any qualified source(s), or to cancel this RFP in part or in its entirety. The City may waive any irregularity in any proposal. All proposals will become the property of the City of Costa Mesa, USA. If any proprietary information is contained in the proposal, it should be clearly identified.

6. EVALUATION CRITERIA

The City's evaluation and selection process will be conducted in accordance with Chapter V, Article 2 of the City's Municipal Code (Code). In accordance with the Code, the lowest responsible bidder will be determined based on evaluation of qualitative factors in addition to price. At all times during the evaluation process, the following criteria will be used. Sub-criteria are not necessarily listed in order of importance. Additional sub criteria that logically fit within a particular evaluation criteria may also be considered even if not specified below.

1. Qualifications of Entity and Key Personnel-----35%

Includes ability to provide the requested scope of services, the Proposer's financial capacity, recent experience conducting work of similar scope, complexity, and magnitude for other public agencies of similar size, references.

2. Approach to Providing the Requested Scope of Services-----30%

Includes an understanding of the RFP and of the project's scope of services, knowledge of applicable laws and regulations related to the scope of services.

3. Price Proposal-----25%

Price Proposals will be evaluated on the basis of the Total Estimated Annual Price submitted in Appendix D.

4. Results of reference checks – 10%

Reference checks will be conducted for a short list of firms or the top rated firms.

7. EVALUATION OF PROPOSALS AND SELECTION PROCESS

In accordance with its Municipal Code, the City will adhere to the following procedures in evaluating proposals. An Evaluation/Selection Committee (Committee), which may include members of the City's staff and possibly one or more outside experts, will screen and review all proposals according to the weighted criteria set forth above. While price is one basic factor for award, it is not the sole consideration.

A. **Responsiveness Screening**

Proposals will first be screened to ensure responsiveness to the RFP. The City may reject as non-responsive any proposal that does not include the documents required to be submitted by this RFP. At any time during the evaluation process, the City reserves the right to request clarifications or additional information from any or all Proposers regarding their proposals.

B. **Initial Proposal Review**

The Committee will initially review and score all responsive written proposals based upon the Evaluation Criteria set forth above. The Committee may also contact Proposer's references. Proposals that receive the highest evaluation scores may be invited to the next stage of the evaluation process. The City may reject any proposal in which a Proposer's approach, qualifications, or price is not considered acceptable by the City. An unacceptable proposal is one that would have to be substantially rewritten to make it acceptable. The City may conclude the evaluation process at this point and recommend award to the lowest responsible bidder. Alternatively, the City may elect to negotiate directly with one or more Proposers to obtain the best result for the City prior to making a recommendation or selection.

C. **Interviews, Reference Checks, Revised Proposals, Discussions**

Following the initial screening and review of proposals, the Proposers included in this stage of the evaluation process may be invited to participate in an oral interview. Interviews, if held, are tentatively scheduled for May 21, 2014 and will be conducted at City of Costa Mesa City Hall, 77 Fair Drive, Costa Mesa, CA 92628. This date is subject to change. The individual(s) from Proposer's firm or entity that will be directly responsible for carrying out the contract, if awarded, should be present at the oral interview. The oral interview may, but is not required to, use a written question/answer format for the purpose of clarifying the intent of any portions of the proposal.

In addition to conducting an oral interview, the City may during this stage of the evaluation process also contact and evaluate the Proposer's references, contact any Proposer to clarify any response or request revised or additional information, contact any current users of a Proposer's services, solicit information from any available source concerning any aspect of a proposal, and seek and review any other information deemed pertinent to the evaluation process.

Following conclusion of this stage of the evaluation process, the Committee will again rank all Proposers according to the evaluation criteria set forth above. The Committee may conclude the evaluation process at this point, and make a recommendation for award, or it may request Best and Final Offers from Proposers. The City may accept the proposal or negotiate the terms and conditions of the agreement with the highest ranked firm, which shall be determined to be the lowest responsible bidder. The City may recommend award without Best and Final Offers, so Proposers should include their best proposal with their initial submission.

Recommendation for award is contingent upon the successful negotiation of final contract terms. Negotiations shall be confidential and not subject to disclosure to competing Proposers unless an agreement is reached. If contract negotiations cannot be concluded successfully within a time period determined by the City, the City may terminate negotiations and commence negotiations with the next highest scoring Proposer or withdraw the RFP.

8. PROTEST PROCEDURES

Failure to comply with the rules set forth herein may result in rejection of the protest. Protests based upon restrictive specifications or alleged improprieties in the proposal procedure which are apparent or reasonably should have been discovered prior to receipt of proposals shall be filed in writing with the RFP Facilitator at least 10 calendar days prior to the deadline for receipt of proposals. The protest must clearly specify in writing the grounds and evidence on which the protest is based.

Protests based upon alleged improprieties that are not apparent or which could not reasonably have been discovered prior to submission date of the proposals, such as disputes over the staff recommendation for contract award, shall be submitted in writing to the RFP Facilitator, within forty-eight hours from receipt of the notice from the City advising of staff's recommendation for award of contract. The protest must clearly specify in writing the grounds and evidence on which the protest is based. The RFP Facilitator will respond to the protest in writing at least three days prior to the meeting at which staff's recommendation to the City Council will be considered. Should Proposer decide to appeal the response of the RFP Facilitator, and pursue its protest at the Council meeting, it will notify the RFP Facilitator of its intention at least two days prior to the scheduled meeting.

9. CONFIDENTIALITY

The California Public Records Act (Cal. Govt. Code Sections 6250 et seq.) mandates public access to government records. Therefore, unless information is exempt from disclosure by law, the content of any request for explanation, exception, or substitution, response to this RFP, protest, or any other written communication between the City and Proposer, shall be available to the public. The City intends to release all public portions of the proposals following the evaluation process at such time as a recommendation is made to the City Council.

If Proposer believes any communication contains trade secrets or other proprietary information that the Proposer believes would cause substantial injury to the Proposer's competitive position if disclosed, the Proposer shall request that the City withhold from disclosure the proprietary information by marking each page containing such proprietary information as confidential. Proposer may not designate its entire proposal as confidential nor designate its Price Proposal as confidential.

Submission of a proposal shall indicate that, if Proposer requests that the City withhold from disclosure information identified as confidential, and the City complies with the Proposer's

request, Proposer shall assume all responsibility for any challenges resulting from the non-disclosure, indemnify and hold harmless the City from and against all damages (including but not limited to attorney's fees that may be awarded to the party requesting the Proposer information), and pay any and all costs and expenses related to the withholding of Proposer information. Proposer shall not make a claim, sue, or maintain any legal action against the City or its directors, officers, employees, or agents concerning the disclosure, or withholding from disclosure, of any Proposer information. If Proposer does not request that the City withhold from disclosure information identified as confidential, the City shall have no obligation to withhold the information from disclosure and may release the information sought without any liability to the City.

10. EX PARTE COMMUNICATIONS

Proposers and Proposers' representatives should not communicate with the City Council members about this RFP. In addition, Proposers and Proposers' representatives should not communicate outside the procedures set forth in this RFP with an officer, employee or agent of the City, including any member of the evaluation panel, with the exception of the RFP Facilitator, regarding this RFP until after Contract Award. Proposers and their representatives are not prohibited, however, from making oral statements or presentations in public to one or more representatives of the City during a public meeting.

A "Proposer" or "Proposer's representative" includes all of the Proposer's employees, officers, directors, consultants and agents, any subcontractors or suppliers listed in the Proposer's proposal, and any individual or entity who has been requested by the Proposer to contact the City on the Proposer's behalf. Proposers shall include the Ex Parte Communications form (Appendix C) with their proposals certifying that they have not had or directed prohibited communications as described in this section.

11. CONFLICT OF INTEREST

The Proposer warrants and represents that it presently has no interest and agrees that it will not acquire any interest which would present a conflict of interest under California Government Code sections 1090 et seq., or sections 87100 et seq., during the performance of services under any Agreement awarded. The Proposer further covenants that it will not knowingly employ any person having such an interest in the performance of any Agreement awarded. Violation of this provision may result in any Agreement awarded being deemed void and unenforceable.

13 CONDITIONS TO AGREEMENT, IF ANY.

The selected Proposer will execute an Agreement for Services with the City describing the Scope of Services to be performed, the schedule for completion of the services, compensation, and other pertinent provisions. The contract shall follow the sample form of Agreement provided as Appendix B to this RFP, which may be modified by City. All Proposers are directed to particularly review the indemnification and insurance requirements set forth in the sample Agreement.

The terms of the agreement, including insurance requirements have been mandated by the City and can be modified only if extraordinary circumstances exist. Submittal of a proposal shall be deemed acceptance of all the terms set forth in this RFP and the sample Agreement for Services unless the Proposer includes with its proposal, in writing, any conditions or exceptions requested by the Proposer to the proposed Agreement. In accordance with the Municipal Code, the City may consider the scope and number of conditions in evaluation proposals and determining the lowest responsible bidder.

14. DISQUALIFICATION QUESTIONNAIRE

Proposers shall complete and submit, under penalty of perjury, a standard form of questionnaire inquiring whether a Proposer, any officer of a proposer, or any employee of a Proposer who has a proprietary interest in the Proposer, has ever been disqualified, removed, or otherwise prevented from proposing on, or completing a federal, state, or local government project because of a violation of law or safety regulation and if so, to explain the circumstances. A proposal may be rejected on the basis of a Proposer, any officer or employee of such Proposer, having been disqualified, removed, or otherwise prevented from proposing on, or completing a federal, state, or local project because of a violation of law or a safety regulation. See Appendix E.

15. STANDARD TERMS AND CONDITIONS

Amendments

The City reserves the right to amend or supplement this RFP prior to the proposal due date. All amendments and additional information will be posted to the Costa Mesa Procurement Registry, [Costa Mesa - Official City Web Site - Business - Bids & RFP's](#); Proposers should check this web page daily for new information.

Cost for Preparing Proposal

The cost for developing the proposal is the sole responsibility of the Proposer. All proposals submitted become the property of the City.

Insurance Requirements

City requires that licensees, lessees, and vendors have an *approved* Certificate of Insurance (not a declaration or policy) or proof of legal self-insurance on file with the City for the issuance of a permit or contract. Within ten (10) consecutive calendar days of award of contract, successful Proposer must furnish the City with the Certificates of Insurance proving coverage as specified within Appendix B.

EXHIBIT B
CONSULTANT'S PROPOSAL



Mayer Hoffman McCann P.C.
An Independent CPA Firm

2301 Dupont Drive, Suite 200
Irvine, California 92612
949-474-2020 ph
949-263-5520 fx
www.mhm-pc.com

April 29, 2014

City of Costa Mesa
Office of the City Clerk
77 Fair Drive
Costa Mesa, CA 92628-1200

Mayer Hoffman McCann P.C. is pleased to respond to your request to perform Agreed-Upon-Procedures for Transient Occupancy Tax Audit Services for the City of Costa Mesa. We are aware that while the City of Costa Mesa has solicited numerous proposals, Mayer Hoffman McCann P.C. (MHM) would be your best selection for the following reasons which are set forth in greater detail in our proposal:

- The Irvine office of Mayer Hoffman McCann P.C. performed over 120 Transient Occupancy Tax (TOT) compliance audits in the last three years and have been successful in finding unreported revenues for our clients on a majority of the audits.
- Our philosophy when performing compliance audits is using a strict interpretation of the City's Municipal Code when determining compliance and placing the burden of proof on the business owner.
- As part of our audit, we will provide feedback to the City regarding the language in the ordinance and the forms used to report and collect Transient Occupancy Taxes.
- We conduct exit meetings with management of each business and have management sign an acknowledgement of the findings discussed at the exit meeting. This process makes the collection of unpaid taxes easier.

Mayer Hoffman McCann P.C. thanks you for the opportunity to present our proposal qualifications and for the opportunity to be appointed as your independent auditors for Transient Occupancy Tax Audit Services. I have read and will comply with all terms and conditions in the request for proposal. The fees noted in this proposal are valid for a period of 180 days. I look forward to you contacting me so that I may answer further any questions which you may have. You may contact me at (949) 783-1740 or JFarr@cbiz.com.

Very truly yours,

A black rectangular redaction box covering the signature of Jennifer Farr.

Jennifer Farr, C.P.A.
Shareholder

Names & Titles of Corporate Board Members

(Also list Names & Titles of persons with written authorization/resolution to sign contracts)

Names	Title	Phone
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Federal Tax Identification Number: _____

City of Costa Mesa Business License Number: _____

(If none, you must obtain a Costa Mesa Business License upon award of contract.)

City of Costa Mesa Business License Expiration Date: _____

Mayer Hoffman McCann P.C.

Board Resolution

The undersigned, being all members of the Board of Directors of Mayer Hoffman McCann P.C., a Missouri professional corporation "the Corporation", do hereby approve and adopt the following resolution:

RESOLVED, that the shareholders of Mayer Hoffman McCann P.C. as listed below are hereby authorized to sign and execute contracts to provide professional services on behalf of the Corporation.

- | | |
|-------------------|-----------------|
| 1. Ken Al-Imam | 7. Bill Tapp |
| 2. Marcus Davis | 8. Bruce Murphy |
| 3. Ron Rolwes | 9. Laura Brock |
| 4. Jennifer Farr | 10. Jay Webber |
| 5. Sam Perera | |
| 6. Laurie Hopkins | |

IN WITNESS WHEREOF, the undersigned have hereunto subscribed their names effective as of February 18, 2014.



William L. Hancock



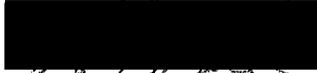
Richard A. Howard



Ernest F. Baugh



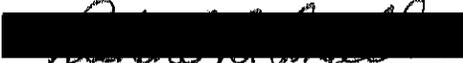
Bruce Murphy



Paul Nation



Stephen Leff



Richard Angell



Jay Webber

BACKGROUND AND PROJECT SUMMARY

We have extensive experience performing Transient Occupancy Tax Audits for California cities and Counties as described further in the Qualifications section of the proposal. Based on this experience, we understand the scope of work defined in the request for proposal. Our understanding of the work to be done and objectives to be accomplished are as follows:

- We will audit the hotels selected by the City for compliance with the City's Transient Occupancy Tax Code. We understand that we will also test for compliance with the City's Business Improvement Area Tax Code for certain hotels within the Business Improvement Area.
- Our audits will cover a one year period ending June 30, 2014, 2015, or 2016 as determined by the City.
- Draft reports will be provided to the Assistant Finance Director within 40 days after the completion of fieldwork.
- Final reports will be provided within 60 days of completion of fieldwork, assuming comments on the draft reports are received by the Assistant Finance Director within that time frame.
- We will provide the City with electronic and paper copies of each report. We will also provide the City with a bound document containing all reports issued. This consolidated bound report will include a transmittal letter to the City that will include a summary of additional tax due by hotel and recommendations we have for the City related to the Code and forms used by the City to assist the City with future compliance.
- Our objectives when completing Transient Occupancy Tax audits include the following:
 - Detecting and reporting noncompliance with the Code
 - Calculating amounts due to the City, including penalties and interest
 - Clearly explaining the findings to the hotel management and obtaining their acknowledgement of the findings
 - Providing support to the City if findings are questioned after the reports are issued
 - Providing feedback to the City on ways to improve ongoing compliance with the Code
 - Ensuring our audit documentation conforms to the attestation standards established by the American Institute of Certified Public Accountants

METHODOLOGY

Our philosophy when performing compliance audits is using a strict interpretation of the City's municipal code when determining compliance and placing the burden of proof on the hotel owner.

Prior to the start of audit fieldwork, we will perform the following procedures:

1. Review the City's Code for Transient Occupancy Taxes and Business Improvement Area Assessment
2. Provide the City with a form letter to notify the hotel of the upcoming audit.
3. Call hotel to schedule the audit. We typically provide a few optional dates for the audit and work with the hotels to find a mutually agreeable audit start date.
4. Send the Hotel an audit request list at least a week prior to the audit start date.
5. Review the results of prior audits for the Hotel to determine if there are areas that require follow up.
6. Discuss any specific concerns the City has with the Hotel.
7. Provide the audit schedule to the City

Our fieldwork procedures at each Hotel include the following procedures for a three year look back period:

8. We will obtain all reports provided by the hotel owner to the City for the period under audit.
9. We will interview the appropriate individuals responsible for recording revenues reported to the City. We will document and walkthrough a typical transaction from billing to collection to recording to deposit, if any. During the process, we will gain an understanding of the specific system reports used to generate reporting to the City and determine what adjustments are made to any system reports or files. We will determine how gross rents and uncollected rents are accounted for in the system. We will inquire about complementary rooms and barter transactions.
10. We will determine if reports were submitted to the City on time or penalties were properly calculated if TOT returns were late.
11. We will calculate the mathematical accuracy of the amount due to the City based on the applicable tax rate.
12. We will trace information from the reports provided to the City to hotel reports and accounting records supporting the amounts reported.
13. We will review the Hotel's reports and financial statements to identify revenues that are not included as taxable for calculation of the tax. We will evaluate the reasonableness of the exclusion.
14. We will select a sample of monthly revenues reported to the City and trace revenues to detailed reports by customer (daily reports). From these detailed reports, we will select

a sample of customer folio's to verify that all amounts collected from the customers are reflected in the system reports.

15. We will evaluate the hotel owner's adherence to charging Transient Occupancy Taxes through review of folios.
16. For any exemptions noted, we will review a sample of exemptions and trace to evidence that it allowable (e.g. government employee, stay longer than 30 days, etc.). For government employees, this will include obtaining a copy of the government exemption documentation.
17. We will obtain information about complementary rooms including whether or not tax was paid on complementary rooms. We will include information about the number of complementary rooms given in our report.
18. We will conduct an exit meeting with the hotel management summarizing our findings to ensure we answer any questions they have about our findings. We will ask the hotel management to sign an exit meeting summary of the findings.
19. We will issued an agreed-upon-procedures report in accordance with the standards established by the American Institute of Certified Public Accountants. The report will identify the agreed upon procedures performed, results reached and recommendations. The report will include a schedule of revenue reported, taxes paid and exemptions reported to the City, audited amounts, and amounts due to the City along with penalties, if applicable.
20. We will provide the draft report to the City for review within 40 days of the end of fieldwork. We will finalize the report within 5 days of the City's review, but not later than 60 days after the end of fieldwork.

Requests of City Staff

To enable us to perform the audits successfully, we request that the City provide us with a copy of the Transient Occupancy Tax Returns filed with the City during the audit period. If not clear from the return itself, we will also request information to determine the date the return was received by the City.

During the audits, we will keep the City informed of any difficulties we have related to hotel's refusals to provide us information and issues that are subject to an interpretation of the City's Code. While we do not anticipate having these problems, if these problems arise, we will ask the City for advice on how to proceed.

Schedule

We propose the following schedule, subject to City approval.

Approval of Contract	August 12, 2013
Notification letters sent out by City	August 2013
Scheduling and request lists sent by MHM	August 2013
Audit Fieldwork	September – October 2013
Draft reports provided to City	October – November 2013
Finalize all report	November – December 2013

QUALIFICATIONS

We have extensive experience performing Transient Occupancy Tax Audits for California cities and Counties. We have performed over 120 Transient Occupancy Tax (TOT) compliance audits in the last three years and have been successful in finding unreported revenues for our clients on a majority of the audits. The following is a listing of certain contracts awarded or performed in the last three years.

County of San Diego

In 2012, we were awarded a contract with the County of San Diego to perform 10 Transient Occupancy Tax audits a year for three years. In our first year, we found exceptions in 8 of the 10 audits which more than paid for the cost of the audit services for all three years combined.

City of Huntington Beach

We were engaged in 2013 to perform 22 Transient Occupancy Tax audits and 27 Concessionaire audits over a three year period. In the first year, we tested 9 hotels and reported errors in all hotels tested amounting to \$14,750 of additional tax due to the City.

City of Culver City

We were engaged in 2013 and in 2009 to perform Transient Occupancy Tax Audits for the City of Culver City. In 2013 and 2009 we audited 18 hotels in the City and completed our procedures within the required timeframe. In 2013, we found errors in 11 of the 18 hotels amounting to over \$100,000. In 2009, we found errors in 14 of the 18 hotels amounting to over \$160,000.

City of Commerce

In 2013, we were engaged to perform TOT audits for two hotels. We found exceptions in both hotels which more than covered the cost of the audits.

City of Dana Point

We were engaged in 2010 to perform thirteen Transient Occupancy Tax audits for the City of Dana Point for the years 2007, 2008, and 2009. Procedures included review of internal controls, the verification of gross revenues, testing the accuracy of TOT tax remitted, allowance of exemptions, review of Operators total revenues to ensure all taxable revenues are included in the gross revenues reported, and the determination of any amounts due to or from the City. Our findings exceeded \$1 million.

City of Inglewood

In 2010 we performed 45 Transient Occupancy Tax audits for the City of Inglewood. Procedures included review of internal controls, the verification of gross revenues, testing the accuracy of TOT tax remitted, allowance of exemptions, review of Operators total revenues to ensure all taxable revenues are included in the gross revenues reported, and the determination of any amounts due to or from the City.

City of Indian Wells

We were engaged in 2010 and previous years to perform Transient Occupancy Tax audits of the City's four hotels. We also performed agreed-upon-procedures on the tennis stadium and golf course operating agreements.

City of Rancho Mirage

For the years 1991 through 2010, we performed certain audits and agreed-upon procedures in regard to Hotel/Motel Operators' compliance with the City's Transient Occupancy Tax Codes. The engagement covered 8-14 agreed upon procedures engagements per year. Procedures included review of internal controls, the verification of gross revenues, testing the accuracy of TOT tax remitted, allowance of exemptions, review of Operators total revenues to ensure all taxable revenues are included in the gross revenues reported, and the determination of any amounts due to or from the City.

Additionally, we have performed transient occupancy tax audits for the following Cities:

City of West Covina
City of Lake Forest
City of Whittier
City of Carlsbad
City of Laguna Hills
City of Orange
City of Aliso Viejo

References

For your convenience, we have listed below references for some of the recent audits we have performed that are similar in scope.

<u>Name of Client/Contact</u>	<u>Type of Audit</u>	<u>Approximate Fee</u>
City of Culver City Jeff Muir Chief Financial Officer (310) 253-5865 Jeff.muir@culvercity.org	Transient Occupancy Tax audits	\$28,000
City of Inglewood Sharon Koike Acting Finance Director (310) 412-8724 skoike@cityofinglewood.org	Transient Occupancy Tax audits	\$50,000
County of San Diego Sharyl Hunt (619) 531-5265 Sharyl.hunt@sdcounty.ca.gov	Transient Occupancy Tax audits	\$60,000

About Mayer Hoffman McCann P.C.

Mayer Hoffman McCann P.C. is a National CPA Firm. The firm is independently owned and operated through its 270 shareholders. The firm began in Kansas City, Missouri in 1954. After years of steady growth the Firm expanded into a National Practice. Mayer Hoffman McCann P.C. currently operates from 35 offices throughout the United States and is licensed in all 50 States. Mayer Hoffman McCann P.C. is closely aligned with CBIZ (NYSE:CBZ). The 270 shareholders in 35 Mayer Hoffman McCann P.C. offices direct the resources of approximately 2000 Accounting and Audit professionals who services the attest clients of Mayer Hoffman McCann P.C.

The Western Region Office of Mayer Hoffman McCann P.C. work closely together in servicing clients and sharing professional resources among offices. Those offices locations are as follows:

- San Diego, California
- Irvine, California (Government services headquarters)
- Irvine, California (SEC services headquarters)
- Los Angeles, California
- Bakersfield, California
- Oxnard, California
- San Jose, California
- Salt Lake City, Utah
- Phoenix, Arizona

The Western Region offices have more than 425 professional accounting and audit personnel available to the 56 shareholders of Mayer Hoffman McCann P.C. in the Western Region offices.

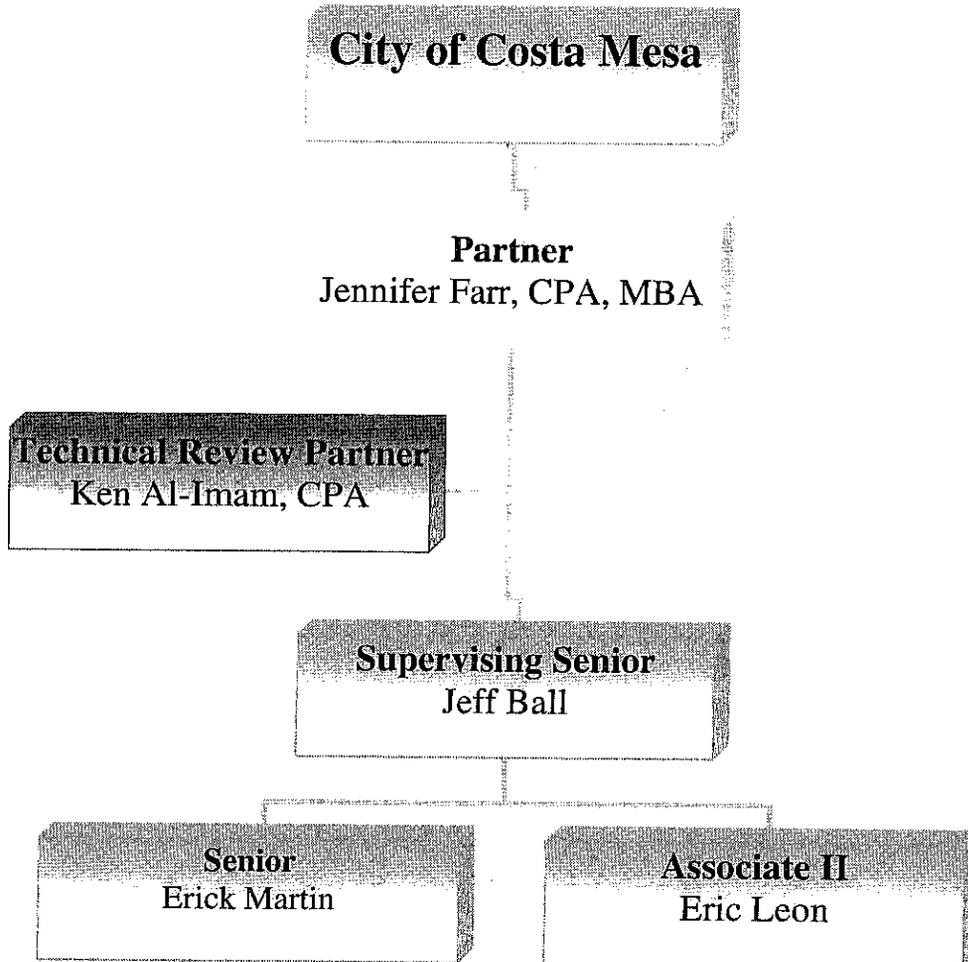
MHM plans to provide the audit services to the City of Costa Mesa from full-time staff located in our Irvine office. The Irvine office joined MHM on January 1, 2006. This office is the former CPA practice of Conrad and Associates, L.L.P., a 35 year old CPA firm which has been nationally and locally recognized for its expertise in governmental accounting and auditing. The Irvine office is the technical and practice unit designated within MHM for governmental expertise and training for MHM on a national level. A breakdown of the Irvine Office's personnel by classification is as follows:

Classification	Number of Employees
Shareholders/Partners	6
Managers	10
Seniors	15
Staff	16
Administrative support	3
Total personnel	<u>50</u>

STAFFING

The successful outcome of any audit requires personnel with the managerial and technical skills to perform the work required. The engagement team who will serve the City of Costa Mesa have served together as a team of professionals on numerous audit.

We believe that efficient administrative management and supervision of the audits is an extremely critical factor in achieving the desired results for the City of Costa Mesa. In that regard, our proposal organizational structure for providing independent auditing services is as follows:



METHODOLOGY

Our philosophy when performing compliance audits is using a strict interpretation of the City's municipal code when determining compliance and placing the burden of proof on the hotel owner.

Prior to the start of audit fieldwork, we will perform the following procedures:

1. Review the City's Code for Transient Occupancy Taxes and Business Improvement Area Assessment
2. Provide the City with a form letter to notify the hotel of the upcoming audit.
3. Call hotel to schedule the audit. We typically provide a few optional dates for the audit and work with the hotels to find a mutually agreeable audit start date.
4. Send the Hotel an audit request list at least a week prior to the audit start date.
5. Review the results of prior audits for the Hotel to determine if there are areas that require follow up.
6. Discuss any specific concerns the City has with the Hotel.
7. Provide the audit schedule to the City

Our fieldwork procedures at each Hotel include the following procedures for a three year look back period:

8. We will obtain all reports provided by the hotel owner to the City for the period under audit.
9. We will interview the appropriate individuals responsible for recording revenues reported to the City. We will document and walkthrough a typical transaction from billing to collection to recording to deposit, if any. During the process, we will gain an understanding of the specific system reports used to generate reporting to the City and determine what adjustments are made to any system reports or files. We will determine how gross rents and uncollected rents are accounted for in the system. We will inquire about complementary rooms and barter transactions.
10. We will determine if reports were submitted to the City on time or penalties were properly calculated if TOT returns were late.
11. We will calculate the mathematical accuracy of the amount due to the City based on the applicable tax rate.
12. We will trace information from the reports provided to the City to hotel reports and accounting records supporting the amounts reported.
13. We will review the Hotel's reports and financial statements to identify revenues that are not included as taxable for calculation of the tax. We will evaluate the reasonableness of the exclusion.
14. We will select a sample of monthly revenues reported to the City and trace revenues to detailed reports by customer (daily reports). From these detailed reports, we will select

JENNIFER FARR, CPA, MBA
ENGAGEMENT SHAREHOLDER

California CPA Certificate No. 76292, October 1998

ROLE ON PROJECT

Ms. Farr will serve as the Engagement Shareholder on this project. She will oversee the project to ensure all required deadlines are met, provide technical assistance to the audit teams, and review the final reports before they are released. Ms. Farr is a Certified Public Accountant with over 16 years experience in local government auditing. Ms. Farr has been a speaker on matters pertaining to technical issues and new GASB pronouncements. Ms. Farr is also responsible for the firm-wide training for the Government Services Division of MHM in the area of local governmental accounting and auditing.



PROFESSIONAL EXPERIENCE

- 16 years - Mayer Hoffman McCann P.C.
(formerly Conrad and Associates, LLP)
- 1 ½ Years - Ronald Blue and Co.

EDUCATION

- Bachelor of Arts - Business Administration/Accounting
(California State University, Fullerton)
- Bachelor of Arts - English *(California State University, Fullerton)*
- Masters of Business Administration *(California State University, Fullerton)*

TRANSIENT OCCUPANCY TAX AUDITS

Ms. Farr has performed hotel audits for the following governments:

City of Dana Point
City of Commerce
City of Culver City
City of Huntington Beach
City of Indian Wells
City of Rosemead
City of West Covina
City of Walnut Creek
County of San Diego

Ms. Farr has also been the Technical Review Partner on the City of Rancho Mirage, the City of Inglewood, the City of Carlsbad and other transient occupancy tax audits.

Ms. Farr has been providing financial statement and compliance auditing services to Cities, Special Districts, and other Government Agencies in California for the last 16 years.

Mr. Al-Imam will serve as the **Technical Review Partner** on the engagement. Mr. Al-Imam is an active member and past president of CCMA (California Committee on Municipal Accounting). He has made presentations in public hearings before the Governmental Accounting Standards Board (GASB) and has been part of the committee contributing to the past two GASB implementation guides. Mr. Al-Imam has a degree in Business Administration – Accounting from California State University Fullerton. Mr. Al-Imam’s California CPA license number is 32377E.

Mr. Jeff Ball is a **Supervising Senior**. Mr. Ball has been with the firm for six years and has in-charged and worked on numerous local government and nonprofit audits. He has also performed a number Transient Occupancy Tax audits and Revenue Compliance audits for various municipalities over the past year, including the County of San Diego, City of Huntington Beach, City of Culver City, City of West Covina, City of Rancho Mirage, and the City of Dana Point. Mr. Ball will be responsible for the scheduling and coordination of the audits. Mr. Ball will perform several of the audits and provide oversight to the other auditors assigned to perform the audits. Mr. Ball will review all draft reports for each audit. Mr. Ball has a degree in Accounting from University of California, Santa Barbara.

Mr. Erick Martin will serve as one of the **Senior Auditors**. Mr. Martin has been with the firm for three years and has in-charged numerous local government and nonprofit audits. He has also performed a number Transient Occupancy Tax audits for the City of Culver City, City of Inglewood, City of Indian Wells, and the County of San Diego. Mr. Martin has a degree in Business Administration – Accounting from California State University Fullerton.

Mr. Eric Leon is an **Associate II Auditor**. Mr. Leon has been with the firm for over two years and has worked on numerous local government and nonprofit audits. He has also performed a number Transient Occupancy Tax audits for the City of Culver City, the City of Huntington Beach, and the County of San Diego. Mr. Leon has a degree in Business Administration – Accounting from Cal Poly Pomona.

Estimated Hours for the First Year (11 Hotels)

<u>Name</u>	<u>Title</u>	<u>Estimated Hours</u>
Jennifer Farr	Shareholder	30
Ken Al-Imam	Technical Reviewer	6
Jeff Ball	Supervising Senior	100
Erick Martin	Senior	50
Eric Leon	Associate II	<u>50</u>
Total		<u>235</u>

FINANCIAL CAPACITY

MHM's Association with CBIZ MHM

CBIZ MHM is one of the nation's leading providers of outsourced business services, including accounting and tax, benefits and insurance, and a wide range of consulting services. CBIZ is traded on the NYSE: CBIZ. Mayer Hoffman McCann P.C. and CBIZ MHM have a strategic association and together are operating under an alternative practice structure, which is similar to other national CPA firms.

The last audited financial statements of CBIZ MHM are available online at <http://phx.corporate-ir.net/phoenix.zhtml?c=73481&p=iro1-reports> or at www.cbiz.com under investor relations. Under the normal course of business, Mayer Hoffman McCann P.C. and CBIZ MHM are subject to claims and lawsuits. The organization has sufficient insurance to cover all such claims.

PRICING PROPOSAL FORM

TRANSIENT OCCUPANCY TAX AUDIT SERVICES

In preparing the pricing proposal for this project the consultant shall take into consideration the following;

- Compensation for services provided in competing the tasks associated with the Scope of Work and CM Municipal Code Title 16 Chapter IV Transient Occupancy Tax.
- Consultant shall state the number of hours allotted for each hotel/motel and provide a total cost for each audit year along with a stated amount for attending meetings. Should the amount of hours expended during these schedule, the consultant may be authorized to invoice the City for the additional hours upon first notifying the City that the budget limit for meetings has been reached.
- The Consultant's standard billing rates for all classifications of staff likely to be involved in the project along with hours worked and total cost.
- Describe reimbursable expenses and cost.

Employee	Hourly Rate	Total Cost
Shareholder	\$ 130	\$ 11,700
Supervising Senior	\$ 100	\$ 26,000
Senior & Associate II	\$ 70	\$ 21,000

Audit Year	Name of Hotel/Motel	Rooms	Estimated Hours work	Estimated cost of audit
2014	*Avenue of the Arts Wyndham Hotel	238	25	2,250
2014	*Best Western Newport Mesa Inn	94	25	2,250
2014	Costa Mesa Motor Inn	86	20	1,800
2014	*Crowne Plaza Costa Mesa Orange County	224	25	2,250
2014	Hacienda Inn – Travelodge	58	20	1,800
2014	Motel 6 #1347	94	20	1,800
2014	Regency Inn	32	20	1,800
2014	Sandpiper Motel	44	20	1,800
2014	Super 8 Motel	49	20	1,800
2014	Tern Inn Motel	18	20	1,800

2014	Travelodge OC Airport	120	20	1,800
	Meetings			\$ included
	Total budget for 2014 Audit	1057	235	\$ 21,150
2015	Ana Mesa Inn	52	20	1,800
2015	Bldv Hotel	58	20	1,800
2015	*Country Side Inn & Suites	176	25	2,250
2015	Harbor Bay Motel	48	20	1,800
2015	*Marriott Suites Costa Mesa	253	25	2,250
2015	New Harbor Inn	33	20	1,800
2015	*Ramada LTD	139	25	2,250
2015	Tahiti Inn Motel	19	20	1,800
2015	Vagabond Inns	127	20	1,800
2015	*Westin South Coast Plaza	390	25	2,250
	Meetings			\$ included
	Total budget for 2015 Audit	1237	220	\$ 19,800
2016	Ali Baba Motel	43	20	1,800
2016	Cozy Inn	27	20	1,800
2016	Days Inn	31	20	1,800
2016	*Hilton Orange County/Costa Mesa	485	25	2,250
2016	*Holiday Inn Express	62	25	2,250
2016	La Quinta Inn #541	160	20	1,800
2016	Motel 6 Newport Beach	87	20	1,800
2016	*Residence Inn-Costa Mesa	144	25	2,250
2016	Star Inn	30	20	1,800
	Meetings			included
	Total for 2016 Audit	1069	195	\$ 17,550

*Hotel is participating in the Business Improvement Area Assessment – additional audit step will be required

DISCLOSURE

Neither Mayer Hoffman McCann P.C. nor key employees included in this proposal have any current business or personal relationships with any current Costa Mesa elected official, appointed official, City employee, or family member of any current Costa Mesa elected official, appointed official, or City employee.

Mayer Hoffman McCann P.C. performed the City of Costa Mesa's annual independent audit for the fiscal year ended June 30, 2012 and prior years. This past professional business relationship does not impair our independence to provide the services noted in this proposal.

SAMPLE AGREEMENT

We have reviewed the sample agreement included in the Request for Proposal and have no exceptions or conditions to the agreement. We currently maintain the minimum insurance requirements noted in the sample agreement and request for proposal Appendix G.

EXHIBIT C

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 CEO, 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.

EXHIBIT D
CERTIFICATES OF INSURANCE

added as an additional insured on your policy, the most we will pay on behalf of such additional insured is the lesser of:

- a. The limits of insurance specified in the written contract or written agreement; or
- b. The Limits of Insurance shown in the Declarations.

Such amount shall be a part of and not in addition to Limits of Insurance shown in the Declarations and described in this Section.

The Limits of Insurance of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS

1. Bankruptcy

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

2. Duties In The Event Of Occurrence, Offense, Claim Or Suit

a. Notice Of Occurrence Or Offense

You or any additional insured must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:

- (1) How, when and where the "occurrence" or offense took place;
- (2) The names and addresses of any injured persons and witnesses; and
- (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

b. Notice Of Claim

If a claim is made or "suit" is brought against any insured, you or any additional insured must:

- (1) Immediately record the specifics of the claim or "suit" and the date received; and
- (2) Notify us as soon as practicable.

You or any additional insured must see to it that we receive written notice of the claim or "suit" as soon as practicable.

c. Assistance And Cooperation Of The Insured

You and any other involved insured must:

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
- (2) Authorize us to obtain records and other information;

- (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and

- (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.

d. Obligations At The Insureds Own Cost

No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

e. Additional Insureds Other Insurance

If we cover a claim or "suit" under this Coverage Part that may also be covered by other insurance available to an additional insured, such additional insured must submit such claim or "suit" to the other insurer for defense and indemnity.

However, this provision does not apply to the extent that you have agreed in a written contract or written agreement that this insurance is primary and non-contributory with the additional insured's own insurance.

f. Knowledge Of An Occurrence, Offense, Claim Or Suit

Paragraphs a. and b. apply to you or to any additional insured only when such "occurrence", offense, claim or "suit" is known to:

- (1) You or any additional insured that is an individual;
- (2) Any partner, if you or an additional insured is a partnership;
- (3) Any manager, if you or an additional insured is a limited liability company;
- (4) Any "executive officer" or insurance manager, if you or an additional insured is a corporation;
- (5) Any trustee, if you or an additional insured is a trust; or
- (6) Any elected or appointed official, if you or an additional insured is a political subdivision or public entity.

This duty applies separately to you and any additional insured.

3. Legal Action Against Us

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

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this Coverage Part or

that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

4. Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under Coverages A or B of this Coverage Part, our obligations are limited as follows:

a. Primary Insurance

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

b. Excess Insurance

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

(1) Your Work

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

(2) Premises Rented To You

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

(3) Tenant Liability

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

(4) Aircraft, Auto Or Watercraft

If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion g. of Section I – Coverage A – Bodily Injury And Property Damage Liability;

(5) Property Damage to Borrowed Equipment Or Use Of Elevators

If the loss arises out of "property damage" to borrowed equipment or the use of elevators to the extent not subject to Exclusion j. of Section I - Coverage A - Bodily Injury And Property Damage Liability;

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

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

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

Any other insurance available to an additional insured.

However, the following provisions apply to other insurance available to any person or organization who is an additional insured under this coverage part.

(a) Primary Insurance When Required By Contract

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

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

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

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

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

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

- (1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (2) The total of all deductible and self-insured amounts under all that other insurance.

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

c. Method Of Sharing

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



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

NOTICE OF CANCELLATION TO CERTIFICATE HOLDER(S)

This policy is subject to the following additional
Conditions:

- A.** If this policy is cancelled by the Company, other than for nonpayment of premium, notice of such cancellation will be provided to the certificate holder(s) with mailing addresses on file with the agent of record. Such notice will be provided within 30 days of the Company's receipt of certificate holder(s) information from the agent of record.
- B.** If this policy is cancelled by the Company, for nonpayment of premium, notice of such cancellation will be provided to the certificate holder(s) with mailing addresses on file with the agent of record. Such notice will be provided within 10 days of the Company's receipt of

certificate holder(s) information from the agent of record.

If notice is mailed, proof of mailing to the last known mailing address of the certificate holder(s) on file with the agent of record will be sufficient proof of notice.

Any notification rights provided by this endorsement apply only to active certificate holder(s) who were issued a certificate of insurance applicable to this policy's term.

Failure to provide such notice to the certificate holder(s) will not amend or extend the date the cancellation becomes effective, nor will it negate cancellation of the policy. Failure to send notice shall impose no liability of any kind upon the Company or its agents or representatives.

have all your rights and duties under this Coverage Part.

e. Unnamed Subsidiary

Any subsidiary, and subsidiary thereof, of yours which is a legally incorporated entity of which you own a financial interest of more than 50% of the voting stock on the effective date of the Coverage Part.

The insurance afforded herein for any subsidiary not named in this Coverage Part as a named insured does not apply to injury or damage with respect to which an insured under this Coverage Part is also an insured under another policy or would be an insured under such policy but for its termination or the exhaustion of its limits of insurance.

3. Newly Acquired or Formed Organization

Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain financial interest of more than 50% of the voting stock, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

- a. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier;
- b. Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
- c. Coverage B does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

4. Mobile Equipment

With respect to "mobile equipment" registered in your name under any motor vehicle registration law, any person is an insured while driving such equipment along a public highway with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the equipment, and only if no other insurance of any kind is available to that person or organization for this liability. However, no person or organization is an insured with respect to:

- a. "Bodily injury" to a co-"employee" of the person driving the equipment; or
- b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

5. Nonowned Watercraft

With respect to watercraft you do not own that is less than 51 feet long and is not being used to carry persons for a charge, any person is an insured while operating such watercraft with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the watercraft, and only if no other insurance of any kind is available to that person or organization for this liability.

However, no person or organization is an insured with respect to:

- a. "Bodily injury" to a co-"employee" of the person operating the watercraft; or
- b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

6. Additional Insureds When Required By Written Contract, Written Agreement Or Permit

The following person(s) or organization(s) are an additional insured when you have agreed, in a written contract, written agreement or because of a permit issued by a state or political subdivision, that such person or organization be added as an additional insured on your policy, provided the injury or damage occurs subsequent to the execution of the contract or agreement.

A person or organization is an additional insured under this provision only for that period of time required by the contract or agreement.

However, no such person or organization is an insured under this provision if such person or organization is included as an insured by an endorsement issued by us and made a part of this Coverage Part.

a. Vendors

Any person(s) or organization(s) (referred to below as vendor), but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business and only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

- (1) The insurance afforded the vendor is subject to the following additional exclusions:

This insurance does not apply to:

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

- (b) Any express warranty unauthorized by you;
- (c) Any physical or chemical change in the product made intentionally by the vendor;
- (d) Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
- (e) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;
- (f) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;
- (g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or
- (h) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:
 - (i) The exceptions contained in Sub-paragraphs (d) or (f); or
 - (ii) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.
- (2) This insurance does not apply to any insured person or organization, from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

b. Lessors of Equipment

- (1) Any person or organization from whom you lease equipment; but only with respect to their liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person or organization.
- (2) With respect to the insurance afforded to these additional insureds this insurance does not apply to any "occurrence" which takes place after the equipment lease expires.

c. Lessors of Land or Premises

Any person or organization from whom you lease land or premises, but only with respect to liability arising out of the ownership, maintenance or use of that part of the land or premises leased to you.

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

This insurance does not apply to:

- 1. Any "occurrence" which takes place after you cease to lease that land; or
- 2. Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

d. Architects, Engineers or Surveyors

Any architect, engineer, or surveyor, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- (1) In connection with your premises; or
- (2) In the performance of your ongoing operations performed by you or on your behalf.

With respect to the insurance afforded these additional insureds, the following additional exclusion applies:

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or the failure to render any professional services by or for you, including:

- 1. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
- 2. Supervisory, inspection, architectural or engineering activities.

e. Permits Issued By State Or Political Subdivisions

Any state or political subdivision, but only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit.

With respect to the insurance afforded these additional insureds, this insurance does not apply to:

- (1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the state or municipality; or
- (2) "Bodily injury" or "property damage" included within the "products-completed operations hazard".

f. Any Other Party

Any other person or organization who is not an insured under Paragraphs a. through e. above, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- (1) In the performance of your ongoing operations;
- (2) In connection with your premises owned by or rented to you; or
- (3) In connection with "your work" and included within the "products-completed operations hazard", but only if
 - (a) The written contract or agreement requires you to provide such coverage to such additional insured; and
 - (b) This Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

With respect to the insurance afforded to these additional insureds, this insurance does not apply to:

"Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

- (1) The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
- (2) Supervisory, inspection, architectural or engineering activities.

The limits of insurance that apply to additional insureds under this provision is described in Section III – Limits Of Insurance.

How this insurance applies when other insurance is available to the additional insured is described in the Other Insurance Condition in Section IV – Commercial General Liability Conditions.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

SECTION III – LIMITS OF INSURANCE

1. The Most We will Pay

The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:

- a. Insureds;
- b. Claims made or "suits" brought; or

- c. Persons or organizations making claims or bringing "suits".

2. General Aggregate Limit

The General Aggregate Limit is the most we will pay for the sum of:

- a. Medical expenses under Coverage C;
- b. Damages under Coverage A, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and
- c. Damages under Coverage B.

3. Products-Completed Operations Aggregate Limit

The Products-Completed Operations Aggregate Limit is the most we will pay under Coverage A for damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard".

4. Personal and Advertising Injury Limit

Subject to 2. above, the Personal and Advertising Injury Limit is the most we will pay under Coverage B for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization.

5. Each Occurrence Limit

Subject to 2. or 3. above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:

- a. Damages under Coverage A; and
- b. Medical expenses under Coverage C because of all "bodily injury" and "property damage" arising out of any one "occurrence".

6. Damage To Premises Rented To You Limit

Subject to 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, lightning or explosion, while rented to you or temporarily occupied by you with permission of the owner.

In the case of damage by fire, lightning or explosion, the Damage to Premises Rented To You Limit applies to all damage proximately caused by the same event, whether such damage results from fire, lightning or explosion or any combination of these.

7. Medical Expense Limit

Subject to 5. above, the Medical Expense Limit is the most we will pay under Coverage C for all medical expenses because of "bodily injury" sustained by any one person.

8. How Limits Apply To Additional Insureds

If you have agreed in a written contract or written agreement that another person or organization be